

---

**(1992) 04 PAT CK 0003**

**In the Patna High Court**

**Case No :** Criminal Appeal Nos. 263 and 299 of 1989

Gopal Singh and Others and Diwakar Singh and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

---

**Date of Decision :** 09-04-1992

**Acts Referred:**

**Citation :** (1992) 04 PAT CK 0003

---

## **Judgement**

S.B. Sinha, J.—These two criminal appeals arise out of a judgment of conviction and sentence dated 15-5-1989 passed by Sri Abhay Shankar Prasad XVth Additional Sessions Judge Munger in Sessions Case No. 233 of 1988 whereby and whereunder the said learned court convicted the appellants of both the appeals under Sections 302/149 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life and also convicted appellants Diwakar Singh, Subhakar Singh for commission of offence under Sections 3 and 5 of the Explosive Substances Act and sentenced each of them to undergo rigorous imprisonment for five years. Appellant Gopal Singh was also found guilty u/s 147 of the Indian Penal Code, where as other appellants were found guilty u/s 148 thereof, but no separate sentence therefore was passed against them.

2. On 2-11-1986 at about 11 a. m., the informant Murari Prasad Singh (P. W. 11) gave his fardbayan before one Bachneshar Thakur a police officer of Lakhisarai Police Station which was recorded in sub-divisional Hospital, Lakhisarai in relation to an incident which took place at 5.30 a. m. on the same date in village Kachhiama which is situated at about 15 kms. from the aforementioned Police Station, causing death of Bankey Bihari Singh, father of the informant alleging, inter alia therein as follows:

The deceased Bankey Bihari Singh at about 5.30 a. m. on 2-11-1986 had allegedly been going to his house from his Dalan and when he reached near the Batham of one Anil Singh (P.W. 3) son of P.W. 1 Jwala Singh, which is adjacent east to his Dalan, he was surround-ed by his agnates Diwakar Singh, Gopal Singh, Subhakar Singh, Kanhaiya Singh and Sanjay Singh all sons of Awadh

Kishore Singh of the same village. Diwakar Singh, Subhakar Singh and Sanjay Singh allegedly had bombs in their hands; whereas Gopal Singh and Kanhaiya Singh were armed with pistols. Allegedly Diwakar Singh threw a bomb which hit the deceased Bankey Bihari Singh, as a result whereof he received injuries and thereupon he started fleeing away. Gopal Singh and Kanhaiya Singh allegedly fired from their pistols as a result whereof, the deceased received gun shot injuries whereafter, the accused persons fled away towards their home. In the said first information report, Rambriksh Singh (P. W. 2) Jwala Prasad Singh (P.W. 1) Anil Kumar Singh (PW 3) and Anand Singh (PW 8) were named as eye-witnesses.

3. While Bankey Bihari Singh was being removed to Lakhisarai hospital in an injured condition he died at a place between village Bikra and Morma. The motive attributed on the part of the appellants for commission of the said offence is said to be the land dispute arising out of partition of the properties. The said fardbayan was marked as Exhibit 5.

4. In relation to the same incident, another first information report was lodged by appellant Kanhaiya Singh which was recorded by the aforementioned Bachneswar Thakur at about 11.30 a.m. at the Sub-divisional Hospital Lakhisarai on the same day wherein inter alia it was alleged that while the said appellant had been washing his mouth near a tubewell after answering the call of the nature, Anil Singh (PW 3) armed with a pistol, Lalan Singh armed with a gun, Sunil Singh with a gun, Nandlal Singh armed with a bomb, Arbind Singh with a bomb and Murari Singh (informant) armed with a bomb surrounded him. Murari Singh allegedly started firing at him from a double barrel gun from his house. Anil Singh fired a shot which allegedly hit him on the right side of his pelvic region, It was also alleged therein that Bankey Bihari Singh who had also been washing his hands at that time, was hit by a bullet fired by Lalan Singh.

According to appellant Kanhaiya Singh, at the place of occurrence many bombs were exploded and many shots were fired. In the said first information report also, the motive for the said occurrence has been said to be land dispute.

5. The aforementioned fardbayan of Kanhaiya Singh was marked as Ext. C whereas the formal first information report was marked as Ext. B.

6. The prosecution in support of its case examined 14 witnesses.

PW 6. Shuva Devi, PW 9 Jairam Singh and P.W. 10 Bisundeo Singh were tendered PW 13 Arjun Rajak is a formal witness PW 12 Dr. Dharamendra Kumar Singh conducted autopsy on the dead body of Bankey Bihari Singh PW 14 Rajeshwari Prasad, was the Investigating Officer who submitted charge-sheet.

In the aforementioned case, besides P. Ws. 1, 2, 3, 7, 8 and 11 who were named as witnesses in the first information report, PW 4 Sabitri Devi and PW 5 Pinki Devi were also examined by the prosecution as eye witnesses to the occurrence. The aforementioned PWs. 4 and 5, however, although not named in

the first information report as eye-witnesses, were examined by the Investigating Officer on the date of occurrence itself at about 5 p. m. Out of the aforementioned prosecution witnesses PWs. 2, 3, 7, 8 were examined by the Investigating Officer on 15-12-1986. The trial court disbelieved the evidences of PWs. 2 and 8 as explanations offered by the prosecution for their belated examination by the police was not found satisfactory and whereas the explanations of PWs. 3 and 7 were found to be reasonable and as such the learned court below relied upon their statements made before it.

7. Before the court below the appellants also examined three witnesses. DW 1 is Dr. Shayam Sunder Prasad who was Medical Officer of proving the admission register of the jail hospital, bed head ticket etc. for the purpose of showing that appellant Kanhaiya Singh was an indoor patient in the jail hospital, The said documents were marked as Exhibits-F, E/I and F.

Similarly DW 2 Dr. Ramchandra Singh who at the relevant time was Medical Officer of the Sub-divisional Hospital of Lakshisarai was examined for the purpose of proving that at the aforementioned hospital also the appellant Kanhaiya Singh was treated for his injuries. He has also proved the injury report which was marked as Ext. G as also bed-head ticket (Ext. F-1) and the relevant entry in the admission register which was marked as Ext. E/2. The aforementioned defence witnesses were examined and the documents aforementioned were brought on record for the purpose of proving that on 2-11-1986 Kanhaiya Singh was admitted in the Lakhisarai hospital at about 8.25 p. m. and in the jail hospital Munghyr on 4-11-1986 for the purpose of receiving treatment in respect of gun shot injuries received by him.

8. The defence has also proved an agreement dated 12-6-1986 executed by Bankey Bihari Singh Rambriksha Singh, Anandi Singh and Chandrika Singh in favour of Diwakar Singh, Sudhakar Singh, Gopal Singh, Kanhaiya Singh, Lalji Singh, Sanjay Singh and one Bhushan Singh. The defence had also brought on records a complaint petition being case No. 165-C of 1986 filed by Diwakar Singh against Rambriksh Singh, deceased Banke Bihari Singh Anil Singh, Jwala Singh, Janik Singh, Murari Singh, Madhuri Singh, Lalan Singh, Sunil Singh and Nandlal Singh for an occurrence which allegedly took place on 1-8-1986 to show that the prosecution witnesses were inimical to wards them. The said complaint petition was proved by Kaleswar Prasad an advocate's clerk and the same was marked as Exhibit H.

9. From what has been noticed hereinbefore, the following facts emerge:

Bankey Bihari Singh died in the morning of 2-11-1986 having received gun shot and bomb injuries. However, according to the defence the deceased died owing to a gun shot injury received by him from a shot fired by one Lalan Singh who is said to have helped the informant in carrying the injured Banke Bihari Singh to the hospital. The said Lalan Singh has not been examined in this case. It is also admitted that appellant Kanhaiya Singh received a gun shot injury PW 1 in his

deposition alleged that the said injuries received by him from his own pistol when in, the process of being prevented from firing as he, in order to save himself, caught hold of his hands and in the scuffle that ensued the trigger of the pistol was pushed, whereas according to the defence version Anil Singh fired at Kanhaiya Singh from his pistol when he was washing his bunds near a tube well.

Although in the fardbayan of the first informant (PW 11) the injuries received by the appellant Kanhaiya Singh were not explained, but PW 1 in this statements before the police as also in the court stated that on the aforementioned date of occurrence he was being chased by the appellants while he had been returning after attending the call of the nature and out of fear he entered into a room of Anandi Singh's bungalow and bolted himself from inside. Allegedly, the appellants exploded many bombs and thereafter broke open the door of his room and assaulted him by fists and slaps. Kanhaiya Singh alleged-ly pointed out his pistol towards him but he caught his hand and twisted it down wards and in the process, the pistol was fired resulting in an injury caused to the appellant Kanhaiya Singh.

10. Mr. Rana Pratap Singh learned Counsel appearing on behalf of the appellants has taken us through the depositions of the witnesses and other materials on the records and inter alia submitted as follows:

(a) that as admittedly both the parties are close relations of each other (as would appear from paragraph 6 of the deposition of PW 1), the motive for commission of the offence assumes importance and as the same has not been proved, the prosecution as against the appellants must fail;

(b) the first informant (PW 11) in his fardbayan (Ext. 5) having not explained the grievous injury sustained by the appellant Kanhaiya Singh, the defence version of the occurrence in view of the injury

report and other documents relating thereto having been proved should be accepted as correct;

(c) it is unbelievable that the informant could not have seen the incident which purported to have taken place at the house Anandi Singh inasmuch as Jwala Singh has been named as a witness in the first information report itself;

(d) as Kanhaiya Singh was admittedly found injured by PW 11. it was obligatory on his part to explain the injury suffered by him in the fardbayan itself;

(e) in this connection it was further submitted that the story as made out by PW 1 for the first time explaining the injuries on the person of Kanhaiya Singh before the police cannot be believed inasmuch as:

(i) there is nothing to show that any incident took place in the house of Anandi Singh;

(ii) PW 1 did not suffer any injury; (iii) There is no evidence that the door was broken upon;

(iv) Although Investigating Officer stated that allegedly the door as also chitkani were found in broken condition, he admittedly had not recorded the same in his case diary nor the Deputy Superintendent of Police who supervised the investigation have found any such evidence, the evidence of PW 12 should, not be relied upon;

(v) There has been no seizure of the broken door or broken chitkani;

(f) It was further submitted that if the prosecution case is to be believed, the Investigating Officer ought to have found some blood mark, but he did not find any such mark at the place of occurrence;

(g) The conduct of PW 1 was wholly unnatural;

(h) Out of four other witnesses, namely PWs. 2, 3, 7 and 8, PW 2 and 8 had been disbelieved by the trial court as they were examined by the police for the first time forty-five days after the occurrence, namely on 15-12-1986 and for the self-same reason, the evidence of PWs. 3 and 7 should be discarded;

(i) Although PW 4 (Sabitri Devi) and PW 5 (Pinki Devi) were not named as witness of the occurrence, but they having been examined as eye-witness and thus, their testimonies should not be relied upon. It was further submitted that the other alleged eye-witnesses contradicted themselves in material particulars;

(j) It was also submitted that there is a contradiction between the medical evidence and the ocular evidence. Inasmuch as if the prosecution case is believed, the deceased Bankey Bihari Singh could not have received injuries on the front side of his body inasmuch as he allegedly after receiving injuries from the bomb thrown at him, had been fleeing away and thus all other injuries ought to have been found on the back side of his body.

11. Mr. Jawahardhari Singh learned Additional Public Prosecutor and Mr. Chainpuri learned Counsel appearing on behalf of the informant how-ever, submitted that if the evidence of PW 1 along with other eye-witnesses are taken in their entirety, it would appear that he is a truthful witness and, thus although the injuries on the person of Kanhaiya Singh had not been explained in the FIR in view of the evidence of PW 1, it may be held that the injuries on the person of the appellant Kanhaiya have fully been explained. According to the Learned Counsel, nature of injuries sustained by Kanhaiya Singh is also suggestive of the fact that the same was caused because of a shot fired from a close range which in turn proves that firing took place accidentally during a scuffle.

Learned Counsel in this connection has drawn our attention to Modi's Medical Jurisprudence, 20th edition at page 228 for the purpose of showing that although the doctor stated that the fire must have been shot from a distance of 5 feet, but in case shots are fired from a revolver or pistol such type of injuries are also possible if the same is done from distance of 2 feet.

12. Learned Counsel further submitted that although the statements made by

Jwala Singh before police do not find place in the first information report, but he having been examined on the same day and he having shown to the Investigating Officer the place of occurrence the Court should not disbelieve his statements inasmuch as he alleged that after the occurrence took place, he immediately went inside house and thus he had no occasion to meet the informant so as to tell him about the incident which had taken place in the house of Anandi Singh.

It was further submitted that although PW 1 may not be relied upon there are other witnesses, namely PW 3, 4 and 5 who have corroborated the testimonies of PWs. in material particulars.

Learned Counsel further submitted that PW 5 had also heard a sound of firing from a gun PW 4 also stated in his evidence that accused broke the chitkani of Anandi Singh's house PW 4 further stated that he had seen Kanhaiya Singh in an injured condition. According to the learned Anil Singh being son of Jwala, there is no reason as to why the testimony of this witness should not be relied upon.

13. So far as PW 3 Anil Singh is concerned, learned Counsel submitted that he allegedly fled from the village out of fear and was arrested on 10-11-1986 and he having been released on 13-12-1986 his statement was recorded by the Police on 15-12-1986 learned Counsel submitted that the explanation for his delayed examination by the Police should be accepted.

Learned Counsel in this connection has drawn our attention to the fact that the matter would have been otherwise if the police had not examined witnesses although they were available for that purpose. It was also submitted that PW 4 Sabitri Devi and P W 5 Pinki were examined by the Investigating Officer on the same day and similarly Shuva Singh (PW 6) who had also been examined on the same day, whereas Jairam Singh (PW 9) as also Bishundeo Singh had been examined by the police on 10-12-1986.

Learned Counsel in this connection has also drawn our attention to the evidence of PW 7 Tanik Singh for the purpose of showing that he had left the village for his place of work out of fear and, thus, he was absent. Our attention has also been drawn to the fact that even the Investigating Officer in his evidence stated that the aforementioned persons had fled away. In this situation, it was submitted that explanations given by PW 3 and PW 7 should be accepted as they are most probable one.

14. With regard to the absence of blood mark in the room of the house of Anandi Singh, our attention was drawn to the evidence of DW 2 who admitted that injuries which have been sustained by Kanhaiya Singh may bleed internally to some extent also. learned Counsel further submitted that regard being had to the place of injury, the wearing apparels, particularly, the underwears and dhoti which might have been put on by Kanhaiya Singh at that time, might have also absorbed some amount of blood.

Our attention was also drawn to the evidence of PW 14 (The Investigating Officer) who stated that he had found signs of trails of blood. He also found that cow shed of Ramautar was washed but still then the blood marks could be seen, but the blood stained earth was not in such a condition which could be seized.

15. Before proceeding to discuss the ocular evidence, ante-mortem injuries on the person of the deceased, Bankey Bihari Singh, as noticed by PW 12, Dr. Dharmendra Kumar Sinha, as also the injuries received by Kanhaiya Singh may be noticed:

(a) Ante mortem injuries of the deceased Bankey Bihari Singh:

(i) 4" x 2" charring (black pigmented burnt area) on the left fore-arm in front.

(ii) 3" x 3" x muscle deep lacerated wound on left cubital region (front portion of the elbow joint).

The tendon was exposed, the vessels of this area were missing.

(iii) "diameter inverted margin lacerated wound on the abdomen just below the twelfth rib in the lumbar area left side. The injury was cavity deep, there was charring around the wound also.

(iv) Multiple spotted charring on the abdomen below the injury No. IIIrd.

On dissection of the abdomen (injury No. III) there was perforation of small gut at two places through and through and one metallic object was lodged in the pelvic region. He also found two litres of blood in the abdominal cavity. In his opinion, injury Nos. I, II and IV were caused by some explosive substances and injury No. III by fire-arm like country-made pistol.

(b) Injuries 0:1 the person of Kanhaiya Singh:

Lacerated wound of the diameter 4 cm x 3 1/3 cm. 1 cm in pelvic region 1 c.m. to the right of the mid line and just above the level of the root of the penis. The injury was bleeding profusely. The margin of the wound was blackish (charred) and inverted. The bullet was present subcutaneously in the left buttock. The right testicle was lacerated and the right spermatic cord was lacerated and its blood vessels (Pampiniform plexus of veins) had got ruptured.

The said injury was found by DW 2 to be a grievous one and caused by fire arm DW 1 also found bullet injury on the pelvic region of Kanhaiya Singh.

16. The question which, therefore, falls for consideration is as to whether the nature of injuries proves the version of the prosecution or that of the defence.

From a comparison of the statements made in the faridayan of PW 11 Murari Prasad Singh and the appellant Kanhaiya Singh (Exts. 5 and C respectively). it appears that whereas the prosecution witnesses has clearly stated that the deceased Bankey Bihari Singh not only received gun shot injuries but also received injuries sustained by him by reason of throwing of bombs, Ext. C

suggests that the deceased received only a bullet injury out of gun shot fired by Lalan Singh. The post mortem report (Ext. 3) clearly proves that the deceased not only received a gun shot injury on the abdomen just below the 12th rib in the lumbar area of the left side of his body (injury No. 3) but injury Nos. 1, 2 and 4 were caused by explosive substance.

17. According to the first information report, the gun shots were fired by Kanhaiya Singh not from a great distance, but the FIR of the counter case (Ext. C) suggests that the same was so done. Injury No. 3, as recorded in the post mortem report by the doctor Dharmendra Kumar Sinha (PW 12) was found to be cavity deep and there was charring around the wound also. The aforementioned injuries, according to the prosecution witnesses, were caused by a fire-arm. PW 12 has also affirmed this fact and stated that the said injury is possible to be caused by a fire-arm like country made pistol.

18. It is true that the first informant (PW II) in his fardbayan (Ext. 2) did not explain the injuries received by Kanhaiya, PW 1, however, in his statement before the police categorically stated that while the appellants broke open the door and Kanhaiya Singh intended to fire a shot at him, he in order to save himself caught hold of his hand and in the scuffle the trigger of the pistol somehow or other was pushed causing injury to Kanhaiya on his private part.

19. From the nature of the injuries suffered by Kanhaiya as is evident from Ext. G (injury report and which has been quoted above) there cannot be any doubt that the same corroborates the version of PW 1. Such injuries on the pelvic region sustained by the appellant Kanhaiya Singh is possible to be inflicted only from a close distance. As only one bullet injury on the person of Kanhaiya Singh had been noticed by DW 1 and DW 2, the entry point whereof appears to be the right side of the pelvic region just above right testicle and the exit point whereof being the left buttock, the same could not have been caused from a distance while the appellant Kanhaiya Singh was allegedly washing his mouth near a tubewell in a sitting posture.

The nature of injuries is also suggestive of the fact that the same was caused from a close distance and the shot must have been fired angularly from above the entry point of the bullet.

The evidence of PW 1, therefore, is to the aforementioned extent corroborated by the medical evidence.

20. So far as the injuries received by the deceased Bankey Bihari Singh are concerned, the medical evidence supports the prosecution version as Ext. C does not show that any injury on the person of the deceased was caused by explosive substance.

It also prima facie appears improbable that the deceased would wash his mouth at the same place with Kanhaiya Singh knowing fully well that a conspiracy has been hatched by his son and other near relations to kill Kanhaiya Singh. It also

does not seem probable that PW 11 would start firing from his house at Kanhaiya Singh although his father had been washing his mouth near Kanhaiya Singh.

21. It is true that the statements of PW 1 with regard to a part of the incident for which Kanhaiya Singh received injuries has not been mentioned in the fardbayan of the first informant (PW 11). First Information Report as is well known, although is an important document, but the same need not contain all the details. While judging a case as to whether statements before the police made by a prosecution witness which does not find place in the first information report should be believed or not, would depend upon the facts and circumstances of each case.

22. In a case of this nature, the totality of the circumstances as also the broad probabilities of the case cannot be also lost sight of. PW 1 in his deposition stated that the appellants chased him while he had been returning to his house after attending the call of the nature. He while being chased entered inside a room of Anandi Singh's bungalow and closed the door whereafter he heard sounds of explosion of bomb. Allegedly after some time, the appellants started knocking the door of this room and broke open the chitkani. All the appellants entered the room and assaulted him with fists and slaps. He further stated that at that point of time somebody cried out to kill him whereupon Kanhaiya wanted to fire at him from his pistol, but he caught hold of his band and pressed the same down to save himself, but the pistol fired resulting in the injury. He, therefore, fled away to his house and learnt about the injuries caused to Bankey Bihari later on from the inmates of his house.

23. PW 1 Jwala Prasad Singh admitted did not accompany PW 1 and other persons to hospital with injured Bankey Bihari Singh. He appears to have confined himself in his house. Admittedly, first information report in respect of both the case (one arising out of the fardbayan of Murari Prasad Singh PW 11) and another arising out of Fardbayan of Kanhaiya Prasad Singh were received by the Investigating Officer at above 2.30 on that date. He there after started for the place of occurrence at 3"0 clock. As noticed hereinbefore, the distance between the place of occurrence and the Police Station is about 13 kms. and injured Bankey Bihari Singh had been taken by the witnesses on a cot. Admittedly PW 11 and his other relative had gone to Lakhisarai town on foot.

24. In view of the fact that Bankey Bihari died on the way and his body was straight away taken to the hospital where fardbayan of PW 11 was recorded, goes to show that the relatives of the deceased were anxious to take the injured to the hospital. By the time, however, fardbayan of PW 11 was recorded Bankey Bihari had already died as admittedly he died on the way to hospital. The post mortem examination of the deceased Bankey Bihari Singh was held on 3-11-1986 at about 10 a.m. It is thus evident that the dead body of Bankey Bihari Singh was not released on 2-11-1986 and as such probability of PW 11's remaining at Lakhisarai town cannot be ruled out.

25. The Investigating Officer (PW 12) has not stated that PW 11 or any other person who had gone to Lakhisarai along with him came back to the place of occurrence. In fact, PW 12 categorically stated that it was PW 1 who himself had taken him to the place of occurrence. In such a situation, it does not seem probable that PW 1 would concoct a story for the purpose of explaining the injuries on the person of Kanhaiya Singh.

26. PW 1's evidence in this regard has been corroborated in material particulars by PW 4 and PW 5, PW 4 in her deposition categorically stated that the appellants went to the Bungalow of Anadi. She further stated that the appellants broke the chitkani of Anandi Singh's house PW 5 in her deposition also stated that she heard the sound of a gun shot.

27. PW 3 Anil Singh is an accused in the counter case. Although his statement had been recorded by the police on 15-12-1986 but it appears that apprehending that he may be arrested he fled away from the village and there-after he was arrested on 10-11-1986 and remained in police custody up to 13-12-1986. Although his statements have been recorded by the police belatedly, in view of the fact that he was also made an accused in the counter case, his presence cannot be disbelieved. This witness has also corroborated in material particulars the testimonies of PW 1.

28. It is also true that PWs. 3 and 4 were not named as witnesses in the first information report, but they being ladies and as PW 11 (first informant) must have been in a great hurry to shift the injured Banke Bihari Singh to the hospital and, thus, it is wholly unlikely that he would come to learn about the name of all the witnesses who had seen the entire occurrence.

PWs. 4 and 5 being ladies and they having been examined by the police on the very day on which the incident took place and, thus, in ray view their testimonies cannot be thrown out on that ground alone.

29. Further the presence of the female inmates of the house in the early hours of the day cannot be doubted. PWs. 4 categorically stated that on hearing the sounds of bomb explosions she came out of her house and saw Pinki. She had also stated that Diwakar threw bomb on Banke Bihari and Gopal Singh and Kanhaiya fired at him with their pistols. She further stated that appellants broke open the chitkani of the room and entered inside it whereafter she heard sound of firing and saw Kanhaiya coming out in an injured condition, This witness also deposed that she had seen Anil Singh and Anandi Singh at the Darwaja of Anil Singh.

30. PW 5 is the daughter of the deceased. According to this witness, she had come out of her house to call her father and found the appellants abusing her father Rambriksh Singh, Anil Singh and Tanik Singh. This witness also categorically stated that Diwakar threw bomb on her father and on receiving bomb injuries her father started running towards the cow shed of Ramautar Singh when he was shot by Gopal and Kanhaiya. She further stated that bombs

were thrown at her father in between baithan of Rambrisksh Singh and Anandi Singh in the lane. She further stated that her father fell down in the Gohal of Ramautar.

31. PW 11 is the first informant. He had also supported his version in the FIR. Nothing has been pointed out before us that this witness is untrustworthy.

32. In this view of the matter, in my opinion, it cannot be said that the prosecution has not been able to prove its case as against the appellants.

33. So far as submission of the learned counsel relating to non explanation of the injuries on the person of Kanhaiya Singh is concerned, the law in this regard is no longer res integra.

A Division Bench of this Court in Mahendra Banrait v. State of Bihar, reported in 1987 BBCJ 730 considered a large number of decisions of the Supreme Court namely Mohar Rai and Bharath Rai Vs. The State of Bihar, Lakshmi Singh and Others Vs. State of Bihar, Bhaba Nanda Sarma and Others Vs. State of Assam, ; Jagdish Vs. State of Rajasthan, AIR 1971 SC 2283; Bankelal and other v. The State of U. P. Ramlagan Singh and Others Vs. State of Bihar, AIR 1974 SC 1501 Onkar Nath Singh and Ors. v. The State of U. P. and held as follows:

The Supreme Court has rationalised the said principle in more than one case and it has said that before adverse, inference is drawn against the prosecution for its alleged suppression or failure to explain the injuries on the person of an accused it must be reason-ably shown that in all probability the injuries were caused to him in the same occurrence or as a part of the same transaction in which the victims on the side of the prosecution were injured. The prosecution is not obliged to explain the injuries on the person of an accused in all cases and in all circumstances but it all depends upon the facts and circumstances of each case whether the prosecution case becomes reasonably doubtful for its failure to explain the injuries on the accused or not.

It further proceeded to observe:

The statement of law on the question whether the prosecution in a given case will be required to explain the injuries or not, therefore, has to be answered not only on the plea of the defence but keeping in mind the evidence of the prosecution and the circumstances in which injuries could be caused to the accused.

34. In Hare Krishna Singh and Others Vs. State of Bihar, , it has been held:

The obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In other words, it is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence. The burden of proving the guilt of the accused is undoubtedly on the prosecution, the accused is not bound to say anything in defence. The prosecution has to prove the guilty of accused beyond

all reasonable doubts. If the witnesses examined on behalf of the prosecution are believed by the court in proof of the guilt of the accused beyond reasonable doubt, the question of the obligation of the prosecution to explain the injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and in what circumstances injuries have been inflicted on the person of the accused.

35. It is, therefore, clear that in all cases, the prosecution is not obliged to explain injuries on the person of the accused persons although it should do so. However, in this case in my opinion, the injuries on the person of Kanhaiya Singh have fully been explained by the prosecution. It, in the facts and circumstances of this case, probabilities prosecution version rather than the defence version.

36. So far as the submission of Mr. Rana Pratap Singh that there has been a contradiction between medical evidence and the ocular evidence, I do not find any substance therein.

In this connection it will be profitable to notice the following finding of the learned court below:

According to the prosecution case the bomb was thrown on Bankey Bihari Singh from behind. The witness has stated that his father had turned towards east at the time when the bomb was thrown. According to the prosecution case deceased Bankey was running towards west and being followed by the accused person. According to the prosecution case the bomb was thrown on deceased Bankey Singh adjacent to the Dalan of Anandi Singh and received fire arm injuries when he was running towards west i.e. towards Ramautar's Gohal. It appears from the evidence of the I. O. that he found remnant of the bomb near the Baithka of Anandi Singh. It further appears from his evidence that house of deceased Bankey Singh is situated in the west of this Baithka. The case of the prosecution is that Bankey Singh was running towards his house. Therefore, the witness has rightly said that he was running towards west before he was hit by bomb.

37. PW 11 in paragraph 17 of his deposition stated as noticed hereinbefore, that his father Bankey Bihari had turned east when the bomb was thrown at him. If he had been running angularly and a bomb had been thrown at him which exploded at his front, naturally the deceased would receive injuries on the front side of his body. PW 3 in paragraph 10 of his deposition also stated that the deceased had been fleeing towards his house through lane which goes towards west. He further stated that the deceased received bomb injuries in the parti sohan which was east of his darwaja in front. This evidence also explains the statements of the informant that the deceased had received injuries when he had turned.

38. In Punjab Singh Vs. State of Haryana, it has been held:

The only contention raised was that medical evidence is inconsistent with the direct testimony. This contention must fail for two reasons--

(i) that if direct evidence is satisfactory and reliable the same cannot be rejected on hypothetical medical evidence; and

(ii) as pointed out by Mr. K. G. Bhagat learned Additional Solicitor General appearing for the State of Haryana that if medical evidence is properly read it would show two alternative possibilities but not any inconsistency. That appears to be correct.

39. In *Solanki Chimanbhai Ukabhai Vs. State of Gujarat*, , Supreme Court has laid down the law in the following terms:

Ordinarily the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye witnesses. Unless, however, the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eye witnesses the testimony of the eye witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.

40. As indicated hereinbefore, from the evidences of PWs 11 and 3 there does not appear to be an apparent contradiction between ocular evidence and the medical evidence.

41. It is true as has been submitted by the learned Counsel appearing on behalf of the appellant that the Investigating Officer in the case diary did not mention that the door as also the chitkani were found broken. Apart from the fact that besides PW 1, PW 4 has also stated that chitkani had been broken; the Investigating Officer in his deposition before the court stated that he did find that the chitkani of the room was broken, but as there had been huge crowd, he had forgotten to note the same in his case diary.

It is, however, interesting to note that a suggestion had been given to the Investigating Officer which he had denied and his statement in this regard reads as follows:

Aisi bat nahi ki jab ham 2-11-1986 ko thana por aye ebam 3-11-1986 ko jab D.S.P-saheb ke sath punah gay a to isi, bich mudalal ka, anya gawahon re kiwari par chot ka nishana bana diya. Chuki maine 2-11-86 ka nishan dekha tha, tab mudalal ushe banate punah kium?

It is therefore, clear that by the suggestion as noticed hereinbefore the defence has also admitted that there had been some marks of violence on the door.

42. In my view, non-seizure of broken door or the broken chitkani by the I. O. also is not of much importance.

The very fact that PW 1 states that he was assaulted by fists and slaps which even did not require a medical treatment, the absence of sufferance of any physical injury on the person of PW 1 was not at all material.

43. With regard to the absence of blood mark in the room of Anandi Singh, the submission of Mr. Chainpuri to the effect that there might have been some internal bleeding and some amount of blood might have been soaked by the wearing apparels put on by Kanhaiya Singh cannot altogether be ruled out.

44. So far as the submission of Mr. Singh to the effect that I. O. did not seize any blood from the other places of occurrence, it may be noticed that it is admitted that some occurrence, had taken place. It is also admitted that in the said occurrence the deceased Bankey Bihari Singh as also Kanhaiya Singh received injuries. It has also been proved that injuries received by the afore-mentioned persons were fire-arm injuries and/or caused by explosive substance. It is, therefore, not necessary to dwell upon the evidence of PW 12 to the effect that he found some trail of blood and further in paragraphs 21 and 23 of his evidence he stated that blood marks were found as the gohal of Ramautar.

45. So far as the criticism of Mr. Singh to the effect that the information must have seen the entire occurrence, in my opinion, does not have any substance inasmuch as it is well known that the power of observation of a person with regard to particular incident may vary from person to person. It therefore, cannot be said as a matter of rule that the informant must have seen the entire occurrence. It is no well known that the prosecution case has to be judged from the totality of circumstances.

See Congress Mahto v. State of Bihar, reported in 1892 Cri Cas 21.

46. For the reasons aforementioned, the judgment of conviction and sentence passed by the learned court below does not suffer from any infirmity.

In the result, the appeals are dismissed and the appellants are hereby directed to surrender before the trial court for serving out their sentences.

47. I agree.