

(2011) 03 PAT CK 0068

In the Patna High Court

Case No : Criminal Appeal No. 196 of 1989 (DB)

Haji Amin Ansari and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 107

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2011) 59 BLJR 996

Hon'ble Judges : Shyam Kishore Sharma, J;Akhilesh Chandra, J

Bench : Division Bench

Advocate : Syed Alamdar Hussain, Ashok Kumar Mishra, S.A. Nazmi and Varun Kumar, for the Appellant; Shashi Bala Verma, APP, for the Respondent

Final Decision : Dismissed

Judgement

Shyam Kishore Sharma, J.—Above noted six appeals have been preferred by the Appellants named above against the common judgment dated 24th April, 1989 passed in Sessions Trial No. 63 of 1988/45 of 1988 by the learned 9th Additional Sessions Judge, Rohtas at Sasaram whereby these Appellants were found guilty for the offences under Sections 302/149 IPC, 436/149 and 307/149 IPC and u/s 27 of the Arms Act. All of them have been sentenced to undergo rigorous imprisonment for life each for the offences under Sections 302/149 of the Indian Penal Code. They have further been sentenced to undergo rigorous imprisonment for ten years each for the offences under Sections 307/149 of the Indian Penal Code, rigorous imprisonment for three years each for the offences under Sections 436/149 of the Indian Penal Code and rigorous imprisonment for one year each for the offences u/s 27 of the Arms Act. All the sentences were ordered to be run concurrently.

2. The occurrence of the night of 8/9.6.1987 at about 11 P.M. has resulted into killing of 8 (eight) persons and causing injury to 13 (thirteen) persons. The fard-

beyan (Ext. 6) of the offence was of Hari Narayan Singh (PW 10) recorded by Sub-Inspector of Police Naresh Chandra Mishra (PW 25) on 9.6.1987 at 8.00 A.M. in village Itawa, P.S. Karghar, District- Rohtas. According to the informant, in the preceding night, his sister Kamla Kumari was to be married with the son of Tribhuwan Singh. A Barati for that purpose has come from village Majhwa of district- Ara. On the eve of marriage the relatives and friends of the informant had come. The Janwasa was arranged in the north western corner of the village. A dance was taking place on that occasion which was being witnessed by the informant's relatives and friends. At about 11.00 P.M. Bernaith (a marriage rituals) was taking place in the Angan of the informant. Some persons of Barati were also present on the eve of Bernaith. Suddenly shots of firing started coming from the side of the house of Mashu Mian (not on trial) and Appellant Amin Ansari. Persons started escaping hither and thither. In the meanwhile the informant and his brother Kalika Singh (PW 5) picked up their licensed rifles and climbed upon their roof and started firing in self-defence. The firing and counter firing continued for sometimes. The accused persons set the thatched house (Palani) on fire. There was sufficient light on account of arson and in that light the informant noticed 25-30 criminals and among them he identified Amin Asnari (Appellant No. 1) having gun, Ijrail Mian (Appellant No. 3) having gun, Muni Mahesh Kumhar (Appellant No. 9) having gun, Ram Rekha Kumhar (Appellant No. 10) with country made pistol, Kailash Ram (Appellant No. 11), Mussuddin Ansari having double barrel gun, Khalil Ansari (Appellant No. 4), Rasul Asnari (Appellant No. 6), Mozaffar Mian (Appellant No. 7), Anish Ansari (Appellant No. 8) and Ibrar Ansari (Appellant No. 5)- all resident of village Itwa were identified. The informant also identified Babban Mishra (not on trial) having rifle, Bilatan Chamar and Ram Bali Chamar (not on trial) was having gun. The informant claimed to identify others if the opportunity as such was made available. After the accused persons went away, the informant got down from his roof and found Satya Narayan Singh, Jamuna Pandey, Santosh Kumar Singh, Rajeshwari Singh dead having firearm injuries. The informant received firearm injury on his left thigh. The informant also found his brother Radha Prasad Singh (PW 20), uncle Jang Bahadur Singh (not examined), uncle Satya Narayan Singh (PW 18) and Ram Chandra Singh (PW 15), villagers Kashi Mian and Saroj Kumar Singh having firearm injuries. The accused persons retreated shouting Babban Mishra Jindabad, Mashu Jindabad, Changar Party Jindabad and Raghubansh Tiwary Murdabad. Pappu Singh @ Raj Kumar Singh and Shiv Naresh Singhw were also found dead and one dancer was also found killed by the criminals. The persons who were sitting in Janwasa also received firearm injuries. The informant later on came to know that Kashi Mian who was being carried for treatment died on the way. The criminals carried away some articles of the Barat people. The occurrence was on account of the fact that the informant and Kashi Mian were having dispute with Mashuddin Ansari, Amin Ansari, Hanif Asnari, Munni Mahesh Kumhar who were in league with the gang of Changar Dushadh. Taking benefit of the fact that the informant was engaged in marriage, Munni Mahesh Kumhar, Masshuddin Ansari and others have arranged the gang for causing this offence.

Another reason was that Raghubnsh Tiwary was one of the guests of the informant on the eve of marriage and Raghubansh Tiwary was having enmity with Babban Mishra and Bilatan Chamar. The fard-beyan was sent to Karghar Police Station where it was received on 12.30 hours on 9.6.1987 and the same resulted into registration of Karghar P.S. Case No. 84 of 1987 under Sections 147, 148, 149, 324, 307, 302, 436, 427, 379 of the Indian Penal Code and Section 27 of the Arms Act. The formal FIR (Ext. 10) was drawn up and investigation was started.

3. In nutshell, the case relates to killing of (1)) Satya Narayan Singh, (2) Jamuna Pandey, (3) Santosh Kumar, (4) Rajeshwari Singh, (5) Kasim Ansari, (6) Raj Kumar Singh @ Pappu Singh, (7) Sheonaresh Singh and (8) Manju Kumari and injuring (1) Hari Narayan Singh (PW 10), (2) Radha Prasad Singh (PW 20), (3) Jag Narain Singh, (4) Kameshwar Singh (PW 21), (5) Sanjay Kumar Tiwari, (6) Satya Narain Singh (PW 8), (7) Umashankar Singh (PW 16), (8) Bishunu Dutta, (9) Ram Naresh Singh, (10) Satyanarain Singh son of Chabbu Singh (PW 18), (11) Ramchandra Singh (PW 15), (12) Saroj Kumar Singh and (13) Raghubansh Tiwary.

4. The chargesheet was submitted and accordingly, cognizance was taken. The case was committed to the court of Sessions where charges were explained to the accused persons. They pleaded their innocence and trial proceeded.

5. In course of trial, the prosecution has examined following witnesses:

PW 1- Shiv Kumar Singh

PW 2- Ram Prasad Singh

PW 3- Srikrishna Singh

PW 4- Haridwar Singh

PW 5- Kalika Singh

PW 6- Dr. Birendra Narain Singh, the medical officer who have examined the injured

PW 7- Rama Shanker Singh, the farmer,

PW 8- Satya Narayan Singh, the farmer,

PW 9- Satyadeo Singh, the farmer,

PW 10-Hari Narayan Singh, the farmer,

PW 11-Ambika Singh, the farmer,

PW 12-Origas Hembram, the Sargent Major,

PW 13-Lal Bahadur Singh, the farmer,

PW 14-Ramashish Singh, the farmer,

PW 15-Ramchandra Singh, the farmer, PW

16-Uma Shanker Singh, a student,

PW 17-Lallan Singh, a student,

PW 18-Satyanarayan Singh son of Chabbu Singh, the farmer,

PW 19-Kameshwar Singh, the farmer,

PW 20-Rada Prasad Singh, the farmer,

PW 21-Dr. Ramdeo Rai, the Dy. Superintendent of Sadar Hospital who conducted the autopsy on all the eight deceased,

PW 22-Gulam Mohiuddin, the mason,

PW 23-Ram Bilash Sharma, the constable,

PW 24-Ram Sarekh Singh, the Police Inspector and

PW 25-Naresh Chandra Mishra the Assistant Sub-Inspector of Police. The prosecution has got exhibited the following documents:

Exhibit 1- Signature of Srikant Singh on carbon copy of seizure list,

Exhibit 1/A- Signature of Ramashanker Singh on carbon copy of seizure list,

Exhibit 1/B- Signature of Srikant Singh on carbon copy of seizure list,

Exhibit 1/C- Signature of Binay Singh on carbon copy of seizure list,

Exhibit 1/d to 1/1- Signature of Kalika Singh on inquest reports,

Exhibit 1/J- Signature of Kalika Singh on seizure list,

Exhibit 2 to 2/9-Injury reports,

Exhibit 1/11 to 1/16 Signature of Satyadeo Singh on Inquest Reports,

Exhibit 1/17- Signature of Hari Narayan Singh on fard-beyan,

Exhibit 1/18- Signature of Hari Narayan Singh on Inquest Report,

Exhibit 3- Report of Arms Expert,

Exhibit 1/19- Signature of Lallan Singh on seizure list,

Exhibit 1/20- Signature of Lal Bahadur Sing on seizure list,

Exhibit 1/21- Signature of Lallan Singh on seizure list,

Exhibit 1/22- Signature of Lal Bahadur Singh on seizure list,

Exhibit 4 to 4/7- Post Mortem Report,

Exhibit 1/23- Signature of Mohiuddin on carbon copy of inquest report,

Exhibit 1/24- Signature of Manjur Hussein on carbon copy of Inquest Report,
Exhibit 5- Sanha Entry No. 178 of karghar Police Station,
Exhibit 6- Fard-beyan,
Exhibit 7 to 7/4- Carbon Copy of Seizure list,
Exhibit 8 to 8/7 Inquest Report in carbon copy,
Exhibit 9- Case Diary from Para No. 1 to 169,
Exhibit 10- Formal F.I.R. and
Exhibit 11- Requisition.

Besides the oral and documentary evidences, some material exhibits were also marked on behalf of the prosecution which are as follows:

Material Exhibit I - Rifle,
Material Exhibit II - Double Barrel Gun,
Material Exhibit III - Single Barrel Gun in two parts,
Material Exhibit IV to IV/2 - Empty Cartridges of rifle and
Material Exhibits v. to V/2- fifty empty cartridges,
Material Exhibit VI series- Live cartridges of gun
Material Exhibit VII series - Live cartridges of rifle

6. The defence has examined Md. Hanif (DW 1) and Sri Munsu Ram (DW 2). The defence has got exhibited the following documents:

Exhibit A- Public Petition dated 9.4.87,
Exhibit B- Seizure list,
Exhibit C- Certified Copy of Khatian of khata No. 23,
Exhibit C/A- Certified Copy of Khatian R.S. Khata No. 19 in the name of Basedo Rai, Exhibit C/B- Certified Copy of R. S. Khatian of Khata No. 35 in the name of Ram Chandra Rai,
Exhibit C/C- Certified copy of R.S. Khatian Khata No. 62 in the name of Sarvsadharan, Exhibit D- Map,
Exhibit E- Certified Copy of deposition of Ram Prasad Singh and
Exhibit E/A- Certified Copy of deposition of Kalika Singh.

7. From the trend of cross-examinations as well as the argument of the defence, it appears that the occurrence has not been denied rather the implication of the accused persons has been denied on the ground that there was no source of light

by which the prosecution witness could be able to identify the accused persons and also that the story of generator was subsequently introduced by the prosecution though it was not mentioned in the fard-beyan. Their further defence was that the implication is on account of enmity which has been mentioned in the fard-beyan itself.

8. The trial court after considering the versions of the accused as well as the prosecution and after considering the documents produced by all concerned, came to the opinion that the prosecution has been able to prove its charge and passed the order of conviction and sentence.

9. Now this Court is required to see as to whether the prosecution has been able to prove the charges against all the Appellants or any of the Appellants beyond the shadow of all reasonable doubts.

10. All the Appellants were charged under Sections 302 IPC for being member of unlawful assembly in prosecution of common object and for committing murder of (1) Satyanarain Singh, (2) Jamuna Pandey, (3) Santosh Kumar, (4) Rajeshwari Singh, (5) Kasim Ansari, (6) Rajkumar Singh @ Pappu Singh, (7) Sheonaresh Singh and (8) Munju Kumari on 8/9.6.87 at village Itawa, P.S.- Karghar, District-Rohtas. They were further charged under Sections 436/149 of the Indian Penal Code for committing mischief by setting fire to the hut of Hari Narain Singh which was being used as human dwelling. They have been further charged under Sections 307/149 of the Indian Penal Code for causing murderous attack upon (1) Hari Narayain Singh, (2) Radha Prasad Singh, (3) Jagnarain Singh, (4) Kameshwar Singh, (5) Sanjay Kumar Tiwari, (6) Satya Narain Singh, (7) Umashankar Singh, (8) Bishunu Dutta, (9) Ram Naresh Singh, (10) Satyanarain Singh son of Chabhu Singh, (11) Ramchandra Singh, (12) Saroj Kumar Singh and (13) Raghubansh Tiwary. They have been also charged u/s 27 of the Arms Act for possessing and using the firearms namely, guns, rifles and pistols for committing murder.

11. Before scrutinizing the evidence of other witnesses, it is desirable to look into the evidence of the informant (PW 10). He has stated that at about 11 P.M. on 8.6.1987 his sister Kamla Kumari was to be married with Anil Kumar son of Tribhuwan Singh of village Majwa. Arrangement of the Barat people was made in a tent fixed on the north western corner of the village. For entertainment, a dance was organized on the eve of marriage. The friends and relatives of the informant had also come. The arrangement for the friends and relatives of the informant was made in the western Sahan of the informant's female house. A generator was arranged on the eve of marriage and tubes were giving light with the assistance of the generator. In the northern portion of the Sahan a thatched house consisting of three rooms was situated. In those rooms the dinner of guests was being prepared. In other rooms the fodder of cattles was kept. At the time of occurrence Bernaith function was being arranged in the Angan. At that time Raghubansh Tiwary and some Barati People were present in the house. The informant was also there. The informant was going towards Sahan and when he

reached on the corner then he saw that 25-30 armed persons started firing from their country made pistols and guns. These firing caused injury to the informant and he returned immediately. In the way he met with this brother Kalika Singh (PW 5) and asked him to escape. The informant bolted the main door of his house from inside and went upon the roof of his house along with PW 5. On the roof the informant's father Ram Prasad Singh (PW 2), brother Srikrishna Singh (PW 1), brother Ambika Singh (PW 11), uncle Haridwar Singh (PW 4), Ramashish Singh (PW 14), and 2-4 persons were there. From the roof the informant saw 25-30 miscreants firing at his relatives. Some of the criminals were firing towards the informant's roof. Due to firing of the miscreants five persons fell down in the informant's Sahan. The miscreants set the thatched house on fire and went towards the tent where Barati People were sitting. The informant has identified Amin Ansari, Ijrail Mian, Munni Mahesh Kumhar, Kailash Ram, Mashuddin Ansari, Khalil Ansari, Ibrar Ansari, Bilatan Chamar, Rambali Chamar - all having pistols and Babban Mishra having rifle. The identification was in the light of tubes which were giving light with the assistance of the generator and in the light of burning thatched house. The miscreants retreated shouting. Satyanarain Singh, Jamuna Pandey, Rajeshwari Singh, Santosh Kumar Singh were found dead in Sahan. Kashi Mian was having grievous injury. He died in the way to hospital. The informant went towards tent and found Pappu Singh @ Raj Kumar Singh and dancer girl dead. Ramnaresh Singh was having firearm injury. Informant knew that on account of firing by the miscreants Radha Prasad Singh, Jagnarain Singh, Satyanarain Singh, Ram Chandra Singh, Umashankar Singh, Visnudat Singh, Sanjay Tiwary, Saroj Kumar Singh, Satyanarain Raut and Kameshwar Singh were injured. On account of this occurrence, the marriage could not be performed and ultimately the marriage was solemnized in the morning. At about 8 AM the Officer Incharge came and recorded the fard-beyan and the informant has put his signature. The informant has identified his signature (Ext. 1/17). The motive of the occurrence was described by the informant that the accused persons, who were villagers of the informant, were patronizing the gang members of Changar Dushad and it was being protested by the informant. Another motive was that one Raghubansh Tiwary has also come on the eve of marriage and that Raghubansh Tiwary was having enmity with Babban Mishra and Bilatan Chamar. The informant has supported the version given by him in the fard-beyan and in cross-examination the defence has given various suggestions and has made various queries but the informant has remained consistent and his credit has not been shaken. It has been argued by the learned Counsel for the Appellants that the informant has not named Muni Lal and Jawahir, either in his fard-beyan or in his evidence, so the entire case has become doubtful and it appears that the police at the behest of PW 25 has cropped-up the entire prosecution. There is no force in the submission in view of the consistent evidence of the informant that he has identified all the accused persons in the light of burning thatched house as well as in the light of tubes which were giving light with the assistance of the generator.

12. P Ws 1, 2, 4, 5 and 14 are the witnesses of the prosecution who have stated that they have identified all the accused persons who have been put on trial. P Ws 8, 16, 18, 19 and 20 are the injured persons and they have supported the occurrence but they have failed to identify the accused persons. These five persons sustained injuries at very initiation of the occurrence and were caught unaware. P Ws 7, 11 and 15 have been tendered. P Ws 3, 13 and 17 are the witnesses of seizure of blood stained soil and burnt materials. P Ws 9 and 22 are the witnesses of inquest reports. The seized firearms were examined by PW 12. The material exhibits, which were seized, were produced by PW 23, the Constable. The case was initially investigated by PW 25 and chargesheet was submitted by PW 24.

13. PW 6 Dr. Birendra Narain Singh, the Medical Officer, has examined PW 8 Satyanarayan Singh and found two Pellet wounds on the medial surface of right foot. He was having simple injury which was caused by firearm. He was examined at 7 PM on 9.6.1987 and his injury was of within 24 hours. At about 6.15 P.M. on the same day this witness examined Bisundeo Singh (not examined) and has found one Pellet wound on lateral surface of middle one third of left thigh and one Pellet wound on the bone one third of posterior surface of left leg. The injuries were simple and were caused within 24 hours. At 8.30 P.M. on that date Ram Naresh Singh (not examined) was examined by this doctor who has found two firearm injuries upon him. Injury No. 2 was a lacerated oblique ragged wound with inverted margin wound with multiple punctured wounds on the margins scattered throughout. The skin over the wound was lost causing laceration of underlying muscles, 3/4th of the pinna of the right ear was spoiled and lost. Wound area 18.5 Cm. x 4 Cm. extended from ear to shoulder. Injury No. ii was grievous in nature. On that date Harinarain Singh was examined by the doctor. He was having two simple firearm injuries. Satytanarain Singh (PW 18) was having six firearm injuries out of which one of the injuries was grievous. Kameshwar Singh (PW 19) was having three simple injuries caused by firearms. Sanjay Kumar Tiwary (not examined) was having six firearm simple injuries whereas Umashankar Singh (PW 16) was having two firearm injuries. Jag Narain Singh (not examined) was having four firearm injuries and Radha Prasad Singh (PW 20)- tendered was having two firearm injuries and injuries were simple.

14. About the evidence of the doctor (PW 6) it was argued by the learned Counsel for the Appellants that these injuries might be caused from the top of the roof from where the informant himself was resorting to firing. But perusal of the injuries shows that none of the injuries may be caused from the top. These were merely suggestions and there is no contradiction in the evidence of PW 6 who has examined the injured prosecution witnesses having firearm injuries.

15. PW 21 was posted as Medical Officer, Sadar Hospital, Sasaram on 10.6.1987. On that dated at 8.12 AM he conducted post mortem examination on the dead body of Santosh Kumar Singh and found 11 entries of shots over the arm, back and waste. Most of the shots had past through and there wounds of entry and

exit were present. At 8.20 AM on that date, post mortem examination of Manju Kumari aged 13 years was performed. She was having multiple shots with black margin on the right loin which was wound of entry and exit on the left loin through which the loops of the bowel were protruding. The bowel was punctured from many places and clotted blood was present in abdomen. On the same day at 8.00 A.M. post mortem examination on the dead body of Jamuna Pandey was performed. The body was having 10 wounds of entries of shots distributing in the back. There were wounds of exit also in the front. Two of the shots have passed through heart. On that date post mortem examination of Kasim Ansari aged 65 years was done at 8.42 AM. He was having multiple shots on the left thigh leading to fracture of left femur. There were eight firearm injuries on the left thigh and in the leg. There were three wounds of entry of shots on the left side of abdomen. At about 8.50 AM on that date post mortem examination on the dead body of Satnarain Singh son of Ram Naresh Singh aged 45 years was done. Multiple shots wounds were present on the right shoulder. Multiple shots on the back were also present. The shots had injured the lung and heart leading to huge blood in the thorax. On the same day at 9.00 AM post mortem examination on the dead body of Rajeshwari Singh aged 35 years was done. His body was having multiple shots in the back with black margin and shots had come from the front. There were four shots in the right thigh and three in left leg. At 9.20 AM on the same date post mortem examination of Sheonaresh Singh aged 30 years was done. Firearm injury with charring in the left temporal area was found. The brain matter was out. Post mortem on the dead body of Pappu Singh aged 15 years was also done on the same day. There was a big hole with charred margin on the left side of head behind the ear. It has avulged the occipital bone and the brain matter was out. The post mortem reports are on the record as Exts. 4 to 4/7.

16. Learned Counsel for the Appellants submitted that the post mortem reports mentioned that some charring injuries were also found upon the dead body but this is not a case of any of the witnesses that any firing was made from the close range.

17. It is apparent that the firing was indiscriminate and no one had occasion to minutely peruse the acts of the all accused as to who was firing from close range or who was firing from some distance. Therefore, this suggestion is of no use to the defence. The doctors have proved that either the injuries or death is on account of use of firearms.

18. The informant gets support to his evidence from other witnesses. PW 1 has stated that in the light of mercury which was giving light through generator and in the light of burning thatched house he has identified the accused persons whose firing has caused death and injury to many. He has named the injured, deceased and the accused persons. This witness has supported the informant in toto and the prosecution has not been able to get any vital contradiction from his evidence.

19. PW 2 is another witness of the occurrence and he has described that due to

firing of the accused persons namely, the Appellants and others, 8 persons were killed and many persons whose names have been taken by him were injured. He has claimed identification of the accused persons in the light of tubelights which were emitting light through generator and also in the light of burning thatched house. This witness has remained intact and no vital contradiction has come out from his evidence.

20. PW 4 Haridwar Singh, PW 5 Kalika Singh and PW 14 Ramashish Singh are other eye witnesses who have supported the prosecution version as given by the informant and they have identified the accused persons who have caused injury and death. No major contradictions has come out from the oral testimonies of those eye witnesses who have supported that in the night of occurrence the accused persons have come and they have fired indiscriminately causing injury and death to the persons. P Ws 8, 16, 18, 19 and 20 are another set of witness who have supported the prosecution in toto but they have not identified the accused persons.

21. From the trend of various suggestions, it is apparent that the marriage of Kamla Kumari on the fateful night which was scheduled to be performed with Anil Kumar Singh of Manjgawa is not in dispute. It is not in dispute that on that date a Barat has come for marriage. That Barati was staying in a tent erected at some distance- north west from the village. It is also not in dispute that a dance party was arranged on the eve of marriage. The marriage was scheduled to be performed in the female portion of the house and towards female house a Sahan and Baithka of the informant was situated. There were three rooms in the Baithka. It is apparent from the evidence that chair, tables and cots were arranged in Sahan. A Barati had come and the process of marriage was on. From the trend of cross-examination and from the sets of evidence, it appears that the killing of 8 and injury of 17 persons is not in dispute. It is also not in dispute that the death or injury was on account of use of firearms. Only dispute is with regard to involvement of the Appellants and for that it has been argued that there was no means of identification, so the entire story about identification of the accused persons has become fabricated.

22. The occurrence has been fully supported by PW 18 the informant and witnesses, namely, P Ws 1, 2, 4, 5 and 14. Three of them, namely, P Ws 1, 4 and 15 have identified Munsu Ram and Lala Paswan whereas Jawahir has been identified by P Ws 1, 4, 5 and 14. Their identification has been claimed from the roof of the informant's house. There is no evidence as to whose firing has hit whom but the evidence is consistent that due to indiscriminate firing by a mob consisting of present Appellants the death and injury as alleged has occurred. The accused persons are villagers of the informant and so their identification in the light which was available from the burning of thatched house is thoroughly possible. Though it has been argued that the existence of generator is not mentioned in the FIR but the Investigating Officer has stated in paragraph 28 of his evidence that witness, namely, Satyanarain Singh has stated about the

existence of generator. About the generator it has come in evidence that it was taken away by operator of the generator after the occurrence. It is of common knowledge that on the eve of marriage various source of lights are arranged and marriage cannot be performed in dark. The situation in which the informant was giving his fard-beyan was such which is difficult to be imagined. The marriage was taking place. Dead bodies were scattered hither and thither. Many persons were shifted to hospital and in that situation the fard-beyan was recorded. The witnesses including the informant subsequently stated about the existence of generator. The eye witnesses have supported the factum of installation of generator and they are consistent. It is difficult to describe the role of a particular accused in case of massacre. This is not a case that one or two persons were shot dead by one or two persons rather the firing by the accused has caused death and injury to many. Therefore, argument of the learned Counsel for the Appellants that implication was only on the basis of surmises has no force specially in view of the evidence that the accused persons were well-known to the informant and witnesses from before and the witnesses are consistent that they have identified the accused persons in the light which was sufficient and there is evidence to that extent.

23. The accused persons have examined two witnesses, namely, DW 1 and DW 2. DW 1 has stated about handing over a petition dated 19.4.1987 to the Superintendent of Police Rohtas containing allegation against the Officer In charge of Karghar Police Station. It has been stated by DW 1 that when the petition was given was not known to him but in cross examination DW 1 has stated that he has not mentioned about the quarrel of two Kbaristan in the petition rather he has stated that he was not knowing that the aforesaid plot No. 355 was recorded as Kabristan in revisional survey or not. Ext. A is a public petition which is not clear that how the public petition was sent. Though DW 1 stated that it was sent through registered post but no proof either registration receipt or acknowledgment was produced. DW 2 is son of Appellant Munsu Paswan and he has stated that his license of rifle was deposited on 17.6.1987. He has stated that his father was arrested at Bus Stand while he was going to attend the proceeding u/s 107 Code of Criminal Procedure A fact which has come by way of documentary evidence must come through it. DW 2 has stated that his father was to attend the proceeding u/s 107 Code of Criminal Procedure but not even a cheat of paper was filed by him to show that as to whether his father was required to attend the court on that or not. Ext. C is the Khatian of Khata No. 23. The cadastral survey was between the year 1911-13. According to the cadastral survey, plot No. 355 was a Kabristan. Certified Copy of revisional survey Khatian of Plot No. 355 has been filed and it is not entered in Kabristan rather it was recorded as Sarvsadharan. The revisional survey was published in the year 1970-71. Ext. D is revisional certified copy and Ext. E is the certified copy of deposition of Ram Prasad Singh in a proceeding u/s 107 Code of Criminal Procedure

24. The oral and documentary evidence adduced on behalf of the defence does

not inspire any confidence.

25. After considering the entire facts discussed above, it is apparent that the prosecution has been able to prove that the accused persons on the date of occurrence had formed unlawful assembly and in furtherance of their common object they caused death of 8 (eight) persons and caused murderous attack on 13 persons. They also set fire a dwelling house of Hari Narain Singh and they used firearms in commission of offence. There are enough evidence on the record from which only inference comes that these Appellants have committed the various offences for which they were charged.

26. In the facts and circumstances, I am of the view that the prosecution has been able to prove the charges against the Appellants beyond the shadow of all reasonable doubts. Accordingly, the judgment of conviction and order of sentence is up-held.

27. In the result, all the above six appeals are dismissed. The bail bonds of the Appellants are cancelled. The Appellants are directed to surrender before the Court below forthwith to serve out remaining sentences and the Trial Court is also directed to take all coercive steps to take them into custody.