

(2011) 12 PAT CK 0098

In the Patna High Court

Case No : Criminal Appeal (DB) No. 1042 of 2006

Kapildeo Singh, Raj Kishore Singh and Ranjit Singh @ Ranjit Kumar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 23-12-2011

Acts Referred:

Citation : (2011) 12 PAT CK 0098

Judgement

A.K. Trivedi, J.—Criminal Appeal No.1109 of 2006 wherein Santosh Singh happens to be the appellant, Criminal Appeal No.1073 of 2006 wherein Seth Singh, Sanjay Kumar @ Sanjay Singh, Bholi Singh @ Rajiv Kumar happen to be appellants, Criminal Appeal No.1042 of 2006 wherein Kapildeo Singh, Raj Kishore Singh, Ranjit Singh @ Ranjit Kumar happen to be the appellants and Criminal Appeal No.1044 of 2006 wherein Shankar Singh happens to be the appellant commonly originate against judgment of conviction dated 17th October, 2006 and sentence dated 18.10.2006 delivered by Sri Narayan Prasad Singh, Additional Sessions Judge, Fast Track Court-IV, Sheikhpura in Sessions Trial No.309 of 2002 / T.R. No.189 of 2006 accordingly there has been analogous hearing and are being disposed of by a common judgment.

2. Appellant, Santosh Singh has been found guilty for an offence punishable u/s 148, 302 I.P.C. and 27 of the Arms Act and been directed to undergo R.I. for life u/s 302 of the I.P.C., R.I. for five years u/s 27 of the Arms Act and the sentences have been directed to run concurrently. No separate sentence has been awarded for an offence punishable u/s 148 of the Indian Penal Code. Appellant, Awadhesh Singh, Shankar Singh, Guddu Kumar, Sanjay Singh, Ranjit Singh, Seth Singh, Bholi Singh, Kapildeo Singh, Raj Kishore Singh have been found guilty for an offence punishable u/s 148, 302/149 of the IPC and were directed to undergo R.I. for life though no separate sentence has been awarded for Section 148 I.P.C.

3. Tanik Lal Singh, P.W.4 gave his fardbeyan (Exhibit 4) on 14.5.2001 at about 05:15 P.M. at his Darwaja before officer-in-charge of Chewara P.S. alleging inter

alia that on the same day at about 6 A.M. Awadhesh Singh along with Santosh Kumar, Shankar Singh, Guddu Kumar, Bholi Kumar, Sanjay Kumar, Ranjit Kumar, Kapildeo Singh, Raj Kishore Singh, Seth Singh along with 3-4 others armed with rifle, gun came and surrounded his house. Then thereafter they abused and said that why you have gave vote in favour of Shambhu Singh. Whole family will be eliminated. He begged and further disclosed that he happens to be an old and infirm and further is unable to move, So he had not cast vote in favour of anybody. Then he sat in his Baithka. Hearing noise, his brother Uma Shankar, Janardhan, Vijay, Soni and others who were sleeping at the roof of his house, awakened and further forbidden then not to abuse. Inmates have shut the door. During course thereof, Awadhesh Singh, Shankar Singh, Santosh Kumar and Bholi singh began to fire. Awadhesh Singh disclosed that they will not open the door so anyhow we should manage to climb over roof. Raj Kumar Singh was repeatedly asking for opening of the door. In the midst thereof Seth Singh, Guddu Kumar, Sanjay Kumar, Ranjit Kumar, Bhola Kumar, Shankar Singh climbed over roof of Seth Singh. Within five minutes Santosh and Guddu began to raise alarm to slip there from as they have shot at the head of Uma Kant. His brother began to flounce. Thereafter, he was taken towards Ariyari but again the accused persons intercepted on account of which he was taken to Sheikhpura through Chewari. From there he has been forwarded to Patna where he died. The motive for occurrence has been suggested as during last Mukhiya Panchayat as they have supported Shambhu Singh so the accused persons have committed the offence.

4. On the basis of the aforesaid fardbeyan Ariyari (Chewara) P.S. Case No.88 of 2001 was registered under Sections 147, 148, 149, 341, 324, 307, 302 of the I.P.C. and 27 of the Arms Act followed with investigation and submission of charge sheet under Sections 147, 148, 149, 342, 302, 120(B) I.P.C. and 27 Arms Act. Where under cognizance was also taken and accordingly, case was committed to the court of Session whereupon accused face trial which ultimately concluded in conviction.

5. The defence case as is evident from mode of cross-examination as well as statement recorded u/s 313 of the Cr.P.C. is that accused persons are innocent and they have been falsely implicated in this case on account of previous animosity prevailing amongst the parties. Then submitted that the whole allegation whatever been levelled against the appellant / convict happens to be imaginary one and further is an afterthought story. In support of their defence, exhibit A, A/1, B has been brought up on record.

6. Altogether five P.W.s have been examined on behalf of prosecution out of whom P.W.1 is Vijay Kumar, P.W.2 is Ashwini Kumar @ Soni, P.W.3 Sumitra Devi, P.W.4 Tanik Lal Singh and P.W.5 Dr. Ashok Kumar Yadav. Subsequently thereof, two police officials were examined as C.W.1 Ramesh Kumar Sharma, C.W.2, Rameshwar Singh. Side by side also exhibited Exhibit 1 Series signature of attesting witness, Exhibit 2 postmortem report, Exhibit 3 endorsement, Exhibit 4

fardbeyan, Exhibit 5 Series relevant page of case diary, Exhibit 6 formal F.I.R., Exhibit 6 F.I.R. of Chewara P.S. Case No.70 of 2001 and Exhibit 7 C.C. of order dated 12.07.2002.

7. While assailing the judgment of conviction and sentence it has been submitted on behalf of appellant that the finding of the learned lower court with regard to guilt of accused is arbitrary and is not at all supported with the evidence on record as well as by circumstances. Then it has been submitted that from the ocular evidence whatsoever been deposed by P.W.1 to 4, they not only falsified their own testimony rather they have tried to change the manner, genesis of the occurrence. That means to say the prosecution had tried to suppress the actual mode of occurrence wherein deceased was done to death and that happens to be reason behind non-examination of important witnesses including the other family members. It has further been submitted that on 14.05.2001 Vijay Kumar had given fardbeyan at the P.M.C.H. itself and the aforesaid fardbeyan was suppressed by the prosecution. However, by examination of C.W.2, the defence has been able to exhibit the same and after going through the same, it is evident that the same happens to be inconsistent with the version whatever came out from exhibit 4. Further submitted that on conjoint reading of both the documents, it is evident that two different kind of story has been flashed by the prosecution contradictory to each other so far manner of occurrence is concerned. Further submitted that P.W.2 stood as an attesting witness of occurrence over Exhibit A and during cross-examination, when his attention was drawn towards the sanctity of the document, his answer is sufficient to construe that neither P.W.1 nor P.W.2 happens to be an eye-witness to occurrence, and if they are to be accepted as an eye witness, it ruins the whole prosecution version as flashed over manner of occurrence.

8. It has further been submitted that from Exhibit 4, the fardbeyan, it is evident that the informant can't be an eye witness to occurrence. Certainly he cannot be, as according to fardbeyan he sat at his Baithaka while the accused gone to the roof of Seth Singh from there firing was made. He had not claimed that he had seen Santosh putting aim at deceased Uma Singh. Rather he had spoken that Santosh raised alarm that he had shot Uma Kant. When the evidence of informant as P.W.4 is taken together, there happens to be considerable improvement / development in his testimony and the same makes him a liar. In likewise manner, from the evidence of P.W.3 she cannot be a witness of occurrence.

9. The aforesaid inconsistencies are bound to over shadow, the prosecution case and further, it put prosecution under such awkward situation by non-examination of FIR attesting witness Kariya Nand Prasad and Mritunjay Kumar intentionally and purposely so that the real occurrence should not unripped. The prosecution further masqueraded by keeping the other family members including Janardan, one of the brother away without any explanation. Though there happens to be definite assertion that they have jointly slept at their roof where deceased Uma

Kant sustained gun shot injury. Therefore evidence of all the persons who were at roof should have been examined to prove positively, conclusively that deceased had sustained gun shot injury in away as narrated in the fardbeyan (Exhibit 4)

10. Then it has been submitted that there happens to be inconsistency amongst the ocular as well as medical evidence. As per prosecution version, the firing was made from the roof of Seth Singh which is a single story building while the deceased was over his roof, a double storied building so there should have been presence of gun shot injury projecting towards upward direction but, surprisingly enough, no such injury is available over the person of the deceased and this again goes to adversely affect upon the credibility of the prosecution version.

11. Not only this, it has also been submitted that none of the boundary, independent witness come forward to support the case of the prosecution although these happens to be clear cut discloser by the witnesses regarding their presence after the occurrence at the spot. Prosecution also failed to put forward any cogent, plausible explanation for their non-examination.

12. The other circumstance, as has been raised by the learned counsel for the appellant is that the FIR happens to be antedated. To support the plea, it has been submitted that as per Section 157 of the Cr.P.C., the FIR was to be sent to the Magistrate within 24 hours from registration of the case. The registration of the case was made on 15.5.2001 while the FIR was received at the office of CJM on 17.5.2001. So, in the background of long standing group rivalry, it could safely be said that prosecution party have become puppet at the hands of Shambhu Singh, the opponent of the appellant and at whose direction instant case has been filed implicating the appellants. So, in sum and substance attracting attention towards different paras of the P.W.s as well as in the background of the infirmities whatever been argued, it has been submitted that prosecution could not be held to be able to substantiate its case and as such finding recorded by the learned lower court happens to be contrary to the materials available on the record and is accordingly fit to be set aside.

13. Counter meeting with the submission raised on behalf of appellant, it has been submitted on behalf of learned counsel for the State that the prosecution has been able to substantiate its case as a result of which the finding of the learned lower court holding the appellants guilty for an offence of murder is fully justified. Further, elaborating his submission, the learned counsel for the State submitted that from the evidence available on the record the place of occurrence has been proved which happens to be roof of deceased where he along with other witnesses was sleeping since before and who, after hearing sound of noise, abuse, woke up and began to see standing by the side of railing where deceased was aimed and shot at by Santosh which proved fatal. Also submitted that presence of P.W.1, P.W.2 and the P.W.3 at the roof have been established and so they happens to be the eye-witness of occurrence.

14. Then it has been submitted that P.W.4, informant, an old fellow right from the fardbeyan did not claim to be an eye witness to occurrence, rather whatever he stated in the fardbeyan to the extent of hearing call by Santosh that deceased Umakant was shot at, narrated in court. So this witness also corroborated the story without any embellishment.

15. Now, coming to medical evidence, apart from examination-in-chief, there happens to be nothing adverse to prosecution in his cross-examination which could discredit the testimony of eye witnesses. It happens to be mere submission that having the firing made from lower level to upper level, the position of injury will be in upward direction. So many factors are responsible which could not support the argument raised on behalf of defence on this score because of the fact that in so many cases, the pellet gets reflected after striking upon the bony surface. Not only this, the doctor had also negated the aforesaid suggestion flashed by the defence during cross-examination.

16. It has also been submitted that when the presence of family member appears to be probable then in that course presence of only family members excluding an independent witness is not going to give any adverse impact upon the prosecution case. It was a morning hour. All the family members were sleeping at the roof. Being awakened on hearing uproar put their presence near railing where under one of them sustained injury at the hands of accused, really rules out presence of other independent witnesses. Also submitted that there happens to be no justification at the score of prosecution to exonerate the real culprit and involve others, which at least family members would not do. Further submitted that having the incidence of murder at earlier count in the village, for which documents have already been brought up on record, might have restrained the independent witness to come forward.

17. Then coming to non-examination of Janardan, whose name figures in the fardbeyan as well as Karyanand Prasad and Mritunjay Kumar who happens to be the FIR attesting witness including other charge sheet named witness, it has been submitted that Soni Kumar is dead. The non-examination of Janardan was as a result of his non-examination by the I.O. on account of his slackness. It is not the sound principle of law that for want of non-examination of other witnesses, prosecution story should be disbelieved rather the preposition happens to be the prosecution version should be scrutinized from the evidence of the witness who have been examined to the extent whether it happens to be credible, trustworthy.

18. With regard to presence of exhibit B, it has been submitted that save and except certain variance at first part of occurrence regarding presence of accused, the manner of occurrence, place of occurrence remains in tact and firm. Even taking into account the minor inconsistency as is visualizing from Exhibit B, it cannot be said that it has changed the prosecution version as well as it puts mark of interrogation over authenticity of the prosecution version. Even accepting for an argument sake, it is bounded duty of the court to separate the

grain from the chaff that means to say the court is under obligation to separate the truth from falsehood because the "falsious in uno falsious in omnibus" is not at all applicable. Therefore, it has been submitted that in sum and substance after taking into account the totality of the materials adduced by prosecution, guilt of the appellant is found to be fully proved. Consequent thereupon appeal is fit to be dismissed.

19. To appreciate the rival contention, it looks pertinent to go through the evidence first.

20. P.W.1 happens to be Bijay Kumar. He had deposed that it was 14.5.2001 at about 5-6 A.M. At that very time he along with his uncle and two others was sleeping over roof. His uncle was Umakant Singh and Janardan Singh and brother was Ashwini Kumar. At that very time he heard sound of abuse as well as noise coming from ground. After hearing sound all of them awakened and began to see after standing near railing and found Awadhesh Singh, Santosh Kumar, Guddu Kumar, Raj Kishore Singh, Seth Singh, Shankar Singh who were abusing his whole family. They forbidden them over which they began to fire. Thereafter, Awadhesh Singh ordered to climb over roof over which they all gone to the roof of Seth Singh and named Santosh, Guddu, Shankar, Sanjay, Bholi, Ranjeet, Seth, Santosh Kumar shot at his uncle, Umakant Singh there from causing injury at his left temporal region. His uncle fell down. Santosh and Guddu after raising alarm that they have shot at Umakant, fled away. Then, thereafter, they tried to carry his uncle to Sheikhpura through Ariyari but the accused persons intercepted. However, the villagers assembled and then they have gone to Sheikhpura through Chewara. From Sheikhpura his uncle was referred to Patna and midst of way, his uncle died which was declared at PMCH. Postmortem was conducted at Patna and thereafter they conducted funeral at Patna and then returned. He identified the accused. Further had disclosed that during Mukhiya election they have supported Shambhu Singh, therefore, the accused persons have committed the offence. In course of cross-examination at para-5 had said that he along with Janardan Singh, Ashwini Kumar, Anjani Kumar, Shambhu Singh, Subodh Kumar, Amod Singh, Dani Singh, Sulo Kumar, Mritunjay Kumar have gone up to Chewara and from there he along with Janardan Singh, Ashwini Kumar, Shambhu Singh, Amod Singh have gone to Sheikhpura and from there to Patna. In para-6 had said that Sheikhpura Thana lies 3 K.M. away from Sheikhpura Hospital. He had not informed at Sheikhpura P.S. At para-7 had disclosed that at Chewara he had met with Barababu who had instructed him firstly to go to Sheikhpura Hospital however the aforesaid Barababu did not accompany. At para-10 had exhibited his signature over his fardbeyan as well as signature of Ashwini Kumar which he had given at PMCH. At para-11 had said that protest petition was filed in this case. Firstly, he denied to have read the fardbeyan but later on admitted that he had gone through the same. Then he had denied the suggestion of the defence that as there happens to be consistency in between the fardbeyan of informant Tanik Lal Singh as well as in the fardbeyan given by him, therefore, he has denied. Then para-12, 13 and 14 happens to be the contradiction put to him with regard

to the fardbeyan given by him at Pirbahore P.S. Exhibit "C?". In para-15 had said that when he returned back from Patna, he came to know that Tanik Lal had already instituted a case. In para-17 was cross-examined over last Mukhiya Election. At para-19 had said that he happens to be son of Tanik Lal. Tanik Lal happens to be three brother Tanik Lal, Janardan and Umakant. In para-20 had said that they have slept at night 09.30 P.M. They have taken meal bread, vegetable and milk. None had gone to ease. When Umakant was coming from latrine then the occurrence was committed. Further said that they have awakened after hearing noise. Then had said that he had not seen Umakant going to latrine but had seen while he was coming out. At that very time there was noise. Latrine is situated at the roof itself. In para-21 had said that his house happens to be double storied. The ground floor happens to be about 9 feet height, while upper floor 8 feet height. They were sleeping over roof of upper house. Railing is about two and half feet height. One latrine is at the roof. Aforesaid latrine was shown to the investigating authority. In para-22 had said that height of Seth Singh building happens to be about 10 feet. No room is present at his roof. Then had denied the suggestion, that no occurrence as alleged had taken place. He had further denied that he is not an eye witness to occurrence. Also denied that all these persons are not at all responsible for committing the occurrence. Further denied that, that happens to be reason behind inconsistency in the statement.

21. P.W.2 happens to be Ashwini Kumar @ Soni son of deceased. He had deposed that deceased Umakant happens to be his father. Occurrence is of dated 14.5.2001 at about 5-6 A.M. At that very time he along with his father Umakant Singh, Janardan Singh, Vijay Singh along with other family members was sleeping at the roof of double storied house. After hearing noise they awakened. At that moment his mother Sumitra Devi came and disclosed that Awadhesh Singh, Raj Kishore Singh, Bholi Kumar, Raj Kumar, Sanjay Kumar, Santosh Kumar, Guddu Kumar, Seth Singh all have surrounded the house and are abusing. When his father and Janardan Singh protested all began to fire. Thereafter, on an order of Awadhesh Singh, Seth Singh took all of them to his roof whose house lies adjacent west to his house. On an order of Awadhesh Singh, Santosh fired causing injury over left temporal region of his father. His father fell down. Then thereafter all the accused fled there from raising alarm. Subsequent to that, they have lifted his father for treatment but the accused persons intercepted them in the midst of way which was prevented by presence of villagers. Then, thereafter, they took injured Umakant to Sheikhpura Hospital through Chewara from where doctor referred him to PMCH where doctor had declared him dead. The previous Mukhiya election wherein they have supported Shambhu Singh is the cause for commission of the occurrence. Further he exhibited inquest report as well as also identified accused persons. During cross-examination he had accepted his signature over fardbeyan given by Vijay Kumar at PMCH, already marked as Exhibit A/1. Then had said that he had seen the occurrence through his eye. He had also said that Patna police had not recorded

his statement at Patna. He had made statement before the I.O. on 07.06.2001. Then had said in para-9 that while he had given statement on 07.06.2001, I.O., Dy.S.P. and S.P. all present. Further had said that he had not made statement before police prior to 07.06.2001. Then at para-14 happens to be the contradiction. In para-15 had said that the house of Seth Singh is 10 feet height. His house happens to be double storied having 30 feet height. The house of Seth Singh happens to be single story. They were sleeping over roof of upper story. Then had said that they have heard firing sound for half to one minute. Then had said that after occurrence they got down from the roof. They have not seen sign of fire over wall. None had broken his door. He had seen the accused persons from his roof. Railing is all around having height of two and half feet. He had not seen sign of firing over railing. Till firing they have remained at roof of upper floor. They were by the side of railing of the time of firing. He was not shot at. Others were also not shot at. Then had denied the suggestion of the defence that he does not happens to be an eye witness of occurrence.

22. P.W.3 happens to be Sumitra Devi, wife of deceased. She had deposed that the occurrence is about two and half years ago. It was near about 5 A.M. At that very time she was inside his house. After hearing noise at her Darwaja she saw from her window and found Kapildeo Singh, Sanjay Singh, Bholi Singh, Ranjit Singh, Brijnanda Singh, Awadhesh Singh, Guddu, Shankar Singh, Seth Singh who were indulged in noise. Awadhesh Singh was saying that murder them after entering into house. They were abusing her Bhaisur. Thereafter, she gone to roof where her another Bhaisur, her son, husband and her Jautwere. Thereafter, Awadhesh Singh said that after coming to roof they be murdered. Over which Awadhesh, Santosh, Shankar, Guddu have gone to the roof of Seth Singh and then thereafter on an order of Awadhesh Singh, Santosh Singh shot at her husband causing injury at his left temporal region. The accused persons after raising alarm that they have shot at, fled away. Her husband was lifted by her Bhaisur, son, Jaut and others for treatment. In midst of way they were intercepted as a result of which they have gone to Sheikhpura through Chewara from there her husband was referred to Patna. She returned back from Sheikhpura. Her husband died. Then had said that she does not know the motive for occurrence. Also claimed identification of accused.

23. During cross-examination had deposed that house of Shankar Singh, Seth Singh and Bela Singh lies in her boundary. House of Gaya Nand and Arbind is also there. Then at para-8 had said that her house lies outside residential area of her village. Other house stood at some distance. The village is inhabited by about one hundred people. Then had said that two or four villagers came during course of occurrence, while others came thereafter. However, she cannot name them. At para-9 had said that save and except stating before the police she had not made any statement before anybody regarding the occurrence. At para-10 had said that she had returned back from Sheikhpura on the same day. She had not made statement before police on the day of occurrence. Then had said that she is not aware with the fact whether police had come to her house on the day of

occurrence, rather she had seen the police on the next day of occurrence. She had further said that she had made statement before the police two or three days after the occurrence. Then had denied the suggestion that she was not present at the alleged day, time and occurrence. She also denied the suggestion that she was away from her house. Then had said that she had not gone through the fardbeyan. In para-13 had denied the contradiction put to her. In para-14 had said the incidence continued for half an hour. In para-15 had said the accused persons came over roof and shot at. In para-16 had said that her house is doubled storied. House of Seth Singh is single story. Railing is present while no railing is present at the roof of Seth Singh. At the time of noise, her husband was standing near railing while others were also standing at the distance of two or three hands away from her husband. In para-17 had said that after sustaining firearm injury her husband fell down. Blood oozed out. Her cloths also stained with blood. She is not remembering whether she had handed it over to the police officials.

24. P.W.4 happens to be informant Tanik Lal Singh. He had said that occurrence is about three years ago. It was 5 A.M. At that very time he was at his tiled roofed Darwaja. He saw Sanjay Kumar, Awadhesh Singh, Raj Kishore Singh, Kapildeo Singh, Bholi Singh, Sanjay, Sanjeet Singh, Guddu Singh, Shankar Singh, Seth Singh who came and surrounded him and further inquired from him why they have cast vote in favour of Shambhu Singh. He owned. At that very time Sanjay Singh, Guddu Kumar, Awadhesh Singh were armed with gun while Raj Kishore Singh was armed with lathi. They have directed him to open door. On his refusal, Santosh Kumar fired. But he had not opened the door. Then thereafter Awadhesh inquired about presence of any passage for climbing over roof over which Seth Singh disclosed that they can through his roof. Then Awadhesh Singh, Seth, Sanjeet, Kapildeo came over his roof through roof of Seth. Then thereafter Sanjay son of Rajesh, again corrected as Santosh, shot at Uma Kant causing injury over his left temporal region. Soon thereafter Santosh and Guddu raised alarm and further escaped there from. Raj Kishore Singh who was standing near his Darwaja with lathi also escaped there from. Then thereafter he after opening the Darwaja gone to his roof and found his brother gasping. When they were carrying his brother to Sheikhpura Hospital, accused persons intercepted them but on account of arrival of villagers, accused persons left. Then thereafter they took Umakant to Sheikhpura through Chewara there from the doctor had referred him to Patna. He had not accompanied them. On the same day he received information from Patna regarding death of Umakant. On the same day at about 5 P.M. police had come and took his fardbeyan over which he put his signature. Identified his signature. Also claimed identification of the accused. During cross-examination had said that he had got some sort of difficulty in seeing after removal of spectacle. Further had said that he had not slept with Umakant rather he had slept in Bangla outside his house. Then had said that Vijay Kumar happens to be his son who had slept with his brother Umakant. Ashwini Kumar happens to be his nephew who had also slept with

Umakant. Then had said that he has got no animosity with Seth Singh. Then had said he has not seen Shambhu Singh in court. He has come to depose along with Vijay. Then has said that he is not aware with the fact whether his son Vijay had given fardbeyan at Patna. Then had said that none of the accused persons has assaulted him. Then had said that Santosh had only abused him. Then had said that he remained at ground. He had seen the occurrence from ground itself. He had gone to roof after occurrence. In para-3 had said that his house is about 20 feet height. Railing is about 1 feet height. He had seen the occurrence from the distance of 10 hands from his house. He was east to his house while the house lies west. He is separate from deceased. At para-4 had said that Uma Kant was taken on cot along with Janardan, Ashwini, Sumita Devi, Bhusan and others. He had not accompanied as he remained at his house. Wife of Umakant along with a son had accompanied up to Patna. Elder son of Umakant was married at the time of occurrence but he was not present at the house. Middle son of Umakant namely Susant remained at house. At para-7 had said that he is unaware with the fact that fardbeyan of his son Vijay was recorded at Pirbahore. At para-8 had said that at the time of his fardbeyan at his house, Susant son of Umakant was not present. Furthermore he said that he is not recollecting whether family member of the Umakant had turned up for statement. Then had said that Soni had given statement before the police. He was further confronted whether he had given statement in fardbeyan regarding remaining at Baithka as well as raising alarm by Santosh and Guddu after five minute. At para 10 had said that none of his family members had gone to police station before arrival of police. At para 12 said that he is not recollecting whether at the time of his fardbeyan Shambhu Singh was present. At para-13 had said that he has heard sound of firing. Then had disclosed that save and except Raj Kishore Singh others were armed with pistol. Also disclosed that he had shown the place of occurrence which happens to be roof to the police. He had also shown the blood having spread there. Raj Kishore remained outside his house. First of all he was near him and then had gone to the Darwaja of Umakant. In para -14 had said that on account of non casting of vote, Uma Kant was murdered. Then had disclosed that he cannot say how many days after Mukhiya election instant occurrence took place. Then had said that at the time of occurrence Vijay, Janardan, wife of deceased, Ashwini, Anjani were at roof. Then at para-15 had said that he had heard 5 to 7 shots. Whole occurrence was committed in between 5 to 6 A.M. In para - 19 had denied the suggestion that deceased Uma Kant died on account of self-inflicted firing at roof. Again denied that Vijay had caused murdered. Also denied the other suggestion.

25. P.W.5 happens to the doctor who had conducted postmortem over dead body of Umakant Singh on 15.5.2001 at about 11 AM though the dead body was received at mortuary at 6.15 AM on 14th May, 2000 and found the following:-

One wound of entry 1/4th" with grease and abraded colour was found on the left side of face. 2" in front of upper pole of left ear. The wound directed towards right side of the head. After removal of scalp underlying blood clots were found.

Left temporal bone was found pierced. After opening cranial cavity the brain was found lacerated and infiltrated with blood and blood clots and two pellets collected from the brain.

26. During cross-examination, this witness had deposed that the injury was resultant of single shot. He was unable to give direction, nature of weapon so used nor the kinds of cartridge whether bulled or pellet. Further disclosed that taking into account condition of abdomen deceased might have taken meal at least six hours before.

27. Subsequently thereof, on account of non-prsentation of witness, the prosecution case was closed. However, on a prayer of prosecution, the part I.O. and another police official was examined as C.W.1 as well as C.W.2.

28. C.W.1 is Ramesh Kumar Sharma who on 14.5.2001 was O/c of Chewara. On that day he had recorded fardbeyan of Chewara P.S. Case No.88 of 2001 (Exhibited) and took up investigation. Exhibited formal FIR having in pen of Arun Sukla. He recorded further statement of informant. Inspected the place of occurrence which happens to be roof of upper floor of a double storied building belonging to informant. The building has eastern front having its roof measurement 12"x15". He had found blood over its southern side. He had found one tiled room at its northern eastern corner. The roof is fenced by railing. Then had given boundary east-village road, west-house of Balo Singh and Kailash Singh, Western Southern side house of Seth Singh at 2-3? South house of Shankar Singh. Then he recorded statement of Karyanand Prasad, Vijay Kumar, Smt. Sumitra Devi. Then had exhibited case diary having in his pen, as well as in pen of Kalim Ansari. M.K. Jaishwal, Manoj Kumar who took investigation on being transfer in successive manner. In para-6 had said that he had not written in the C.D. on whose information he arrived at the place of occurrence and recorded statement of informant. He recorded statement of informant at about 05:15 P.M., (17-15 hours). He recorded statement in presence of witness Karyanand Prasad and Mritunjay Kumar. He had not put date near further statement of the informant recorded in the case diary. Further disclosed that he has not mentioned over the formal FIR on which date FIR was transmitted from Police Station to learned CJM. In para-9 had said that he had recorded in para-22 dated 18.05.2001 the fact that son of informant had handed over one envelope at his house. The aforesaid envelope contained fardbeyan of informant's son which was recorded at P.M.C.H. He had seen the fardbeyan. Paragraph 10 and 11 happens to be contradiction. Then at para-12 had said that during his posting at Chewara, the case was being registered at Ariyari P.S. which lies 4 K.M. away from Chewara. Either constable or Chowkidar goes there either on foot or by bicycle for aforesaid purpose. Then had submitted that the fardbeyan was received by the learned Magistrate on 17.05.2001. He is not aware regarding the cause making delay. At para-13 had disclosed that he took statement of Vijay on 16.05.2001. While he had handed over envelope on 18.05.2001. No explanation is incorporated in the case diary. He also disclosed that he had not recorded in

the case diary whether he had investigated over the contents of the fardbeyan of Vijay. Then had denied the present FIR as antedated. In para-16 had said that he had not mentioned the fact that who had shown the place of occurrence. Further, he had not prepared sketch map of the P.O. Then had disclosed that none could see the person having over roof of informant. No witness had supported the facts whatever fardbeyan of Vijay contents. In para-18 had said that he had not seen the deceased. He found copious blood at the place of occurrence. He had found blood at southern side over roof. He had not seized. He had found blood at only one place. The blood was not dried however he had not written it down in the case diary whether it was dried or not. He had not written in the diary the area within which blood was found. Then had denied the suggestion.

29. C.W.2 happens to be Rameshwar Singh, the ASI who was posted at Pirbahore P.S. He had deposed that on 14.5.2001 he had recorded fardbeyan of Vijay Kumar at emergency ward which was read over to him and then finding it correct, he put his signature. Witness Ashwini Kumar had also put his signature. He had prepared inquest report in carbon process. Then got it forwarded to the P.S. concerned. During cross-examination by the prosecution at para-17 had said that he came and took statement of Vijay on the basis of the OD slip submitted by the doctor. He was not identifying Ashwini Kumar since before. On his identification he knew informant. He did not take assistance of doctor or nurse in getting the informant identified. Then had disclosed that fifteen minutes after recording of FIR, he transmits the FIR to concerned P.S. through postal process. The aforesaid process is being followed by the literate constable. Then had denied the suggestion that he had not recorded fardbeyan of Vijay, rather acted in collusion with accused. During cross-examination at para-12 and 13 there happens to be contradiction put to him with regard to fardbeyan of Vijay.

30. After analyzing the evidence of the witnesses inconsonance with the evidence of doctor, it is evident that deceased was done to death by means of firearm. It is also evident that deceased had sustained injury near about left temporal region and it was directed towards right side. So sustaining of gun shot injury by the deceased which subsequently proved fatal happens to be beyond controversy. Furthermore, it is also beyond doubt that deceased had sustained single gun shot injury.

31. In likewise manner, the P.O. is also out of controversy. For that, apart from suggestion to the informant (P.W.4) along with other witnesses regarding causing of murder of deceased at the roof either by self inflicted injury or at the hands of Vijay, P.W.1, all the material witnesses have stood firm and pinpointed the place of occurrence at the roof of house. Not only this, from the objective finding of I.O. C.W.1, the conclusion remains roof as the place of occurrence.

32. Now remains the only question regarding complicity of the appellant / convict. As stated above, the appellants submitted and referred improbability in the version of the prosecution (a) On account of non-examination of Janardan, Karyanand, Mritunjay Kumar (b) nature of injury (c) inconsistency (d) status of

the witness.

33. Admittedly there has been non-examination of Janardan, Karyanand, Mritunjay Kumar, Anjani. On this score it is better to refer evidence of C.W.1, from whom defence had failed to cross examine whether those witnesses were examined during course of investigation. From the nature of evidence of C.W.1, it is evident that he had not conducted the investigation in proper way. Whether the slackness on the part of investigating officer is going to sieve the prosecution case, now the aforesaid issue has been settled at rest that a perfunctory investigation is not going to demolish the prosecution case if it is otherwise proved by cogent, reliable evidence.

34. From the evidence of P.W.1, P.W.2, P.W.3, it is consistent that deceased was shot at from the roof of Seth Singh while he was standing near railing at the roof of his double story building. It is suggested by the defence that the location of injury in that case should have been projected upward while nature of injury rules out the same. So there has been much stress on this aspect by laying down that there has been inconsistency in between ocular as well as medical evidence.

35. On this score, the evidence of P.W.5 has to be taken into consideration. Apart from his examination-in-chief wherein location of injury has been given, during cross-examination ruled out possibility of defence version. Furthermore, in a decision reported in 2011 Criminal Law Journal, page 280 at para 10 it has been explained by the Hon"ble Apex Court in following manner:

10. Mr. Anoop Kumar Srivastava, counsel for the appellant tried to content that the view taken by the trial Court was a reasonable and possible view and, therefore, the High Court was in error in interfering with the judgment of acquittal. Mr. K.T.S. Tulsi, senior counsel who came at the fag end of the hearing of the case confined his submissions to some self perceived inconsistency between the ocular evidence and the medical evidence. Mr. Tulsi laid great stress that according to the ocular testimony at the time of firing the shot, the appellant and Raj Kumari were not standing at the same level and from there he tried to build up an argument that the direction of the movement of the pellet inside the victim as found by the Doctor belied the prosecution case. In support of his submission he relied upon some decisions of this Court in which the presence of the eye witnesses at the time of the occurrence was doubted and their testimony was not accepted in light of the medical evidence. In the facts of this case, we fail to see any inconsistency in the medical evidence and the ocular evidence and, therefore, the decisions relied.

Apart from this, the nature of injury suggest movement left to right.

36. Now coming to status of the witness it is needles to say that all the material witness are own family members and not interested. Further, the time of occurrence in consonance with the narration of the prosecution case, their presence is but natural. As such, their evidence in the aforesaid background should not be rejected and for that (2011) 9 SCC 698 can be taken into

consideration.

17. This Court in *Kartik Malhar v. State of Bihar*⁷ defined "interested witness" as: (SCCp. 621, para 15)

15. ... "11. ... A close relative who is a natural witness cannot be regarded as an interested witness. The term "interested" postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason."*

18. Evidence of related witness can be relied upon provided it is trustworthy. Mere relationship does not disqualify a witness. Witnesses who are related to the victim are as competent to depose the facts as any other witness. Such evidence is required to be carefully scrutinized and appreciated before reaching to a conclusion on the conviction of the accused in a given case. See *Himanshu v. State (NCT of Delhi)*⁸ and *Bhajan Singh*⁴.

Another decision which could be referred on this score is *State of U.P. Vs. Naresh and Others*,

24. The High Court disbelieved both the witnesses Subedar (PW-1) and Balak Ram (PW-5) as being closely related to the deceased and for not examining any independent witnesses. In a case like this, it may be difficult for the prosecution to procure an independent witness, wherein the accused had killed one person at the spot and seriously injured the other. The independent witness may not muster the courage to come forward and depose against such accused. A mere relationship cannot be a factor to affect credibility of a witness. Evidence of a witness cannot be discarded solely on the ground of his relationship with the victim of the offence. The plea relating to relatives? evidence remains without any substance in case the evidence has credence and it can be relied upon. In such a case the defence has to lay foundation if plea of false implication is made and the Court has to analyse the evidence of related witnesses carefully to find out whether it is cogent and credible. *Jarnail Singh and Others Vs. State of Punjab, Vishnu & Ors. V. State of Rajasthan*, (2009) 10 SCC 477 : (AIR 2009 SCW 6363); and *Balraje @ Timbak* (AIR 2010 SCW 3707) (supra))

In an another judgment the Hon'ble Court has occasion to deal with the same and observed as reported in 2011 Criminal Law Journal, page-306.

21. Merely because the witnesses were closely related to the deceased persons, their testimonies cannot be discarded. Their relationship to one of the parties is not a factor that effects the credibility of a witness, moreso, a relation would not conceal the actual culprit and make allegations against an innocent person. A party has to lay down a factual foundation and prove by leading impeccable evidence in respect of its false implication. However, in such cases, the court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible evidence. *Dalip Singh and Others Vs. State of Punjab, Masalti Vs. State of U.P., Lehna Vs. State of Haryana, and Rizan and Another Vs.*

State of Chhatisgarh, through The Chief Secretary, Govt. of Chhatisgarh, Raipur, Chhatisgarh,

37. Now coming to reliability of evidence of individual witness, first of all evidence of P.W.4, informant is to be looked into. From the fardbeyan (Ext.4) it is evident that he had not claimed himself as an eye witness to occurrence. In likewise manner his evidence appears to be, however tried to developed on this score to claim an eye witness wherein he does not succeed.

38. So far, remaining witnesses are concerned, P.W.2 and P.W.3 are the witnesses who right from initial stage stood as an eye witness. They also fairly faced lengthy cross-examination and their status as an eye witness could not be shaken by the defence.

39. With regard to P.W.1, appellants have struck upon his testimony labeling as liar on account of presence of Ext.C, a fardbeyan given by him at P.M.C.H. Patna wherein manner of occurrence, as argued, found contrary to whatever been advanced by P.W.4 along with other witnesses. With the strength of aforesaid Ext. C, whereupon P.W.2 stood as an attesting witness, his evidence also been challenged.

40. True it is, from Ext. C only some portion of manner of occurrence has been found to be at variable than whatever been brought at initial stage to trial but presence of accused along with Santosh being an assailant is there. Not only this, the P.O. has also been identified as same place. The aforesaid document could be treated as statement recorded u/s 161 Cr.P.C. Another statement of this P.W. supports the version as led by prosecution and even during trial he had supported the same. Save and except attracting attention towards Ext.C, the defence could not be able to extract anything in their favour adverse to prosecution.

41. Whether the evidence of P.W.s are to be accepted or not. It has, as referred in foregoing paragraphs been pleaded on behalf of appellant that there happens too be material contradiction / discrepancies visible in the evidence of prosecution witnesses as such same be rejected at its thrash hold.

42. As discussed, save and except having discrepancies persisting in the evidence of P.W., in consonance with Ext. "C over which the conduct of prosecution can be termed as pious by bringing it on record as well as having procurement of attendance of witness C.W.2, nothing more is found to be in the evidence of remaining witnesses. Being an attesting witness over Ext. "C", P.W.2 could not be confronted as he does not happens to be maker of document, consequent thereupon, the contents thereof cannot be allowed to be used against him. However law on this score happens to be conclusive and for that reference may have 2011 Criminal Law Journal page 2162.

25. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of

memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. (Vide : State rep. by Inspector of Police Vs. Saravanan and Another, Arumugam v. State, AIR 2009 SC 331; Mahendra Pratap Singh Vs. State of Uttar Pradesh, and Dr. Sunil Kumar Sambhudayal Gupta and Others Vs. State of Maharashtra, page 306, para-25 it has been held as:

25. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the Court to reject the evidence in its entirety. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses. (See: State of U.P. Vs. M.K. Anthony, and State of Rajasthan Vs. Om Prakash, State rep. by Inspector of Police Vs. Saravanan and Another, and Prithu @ Prithi Chand and Another Vs. State of H.P.,

Another decision could be referred on this score as reported in 2011

Criminal Law Journal page 283.

10. In Balaka Singh and Others Vs. The State of Punjab, this Court observed as under:

It is true that, as laid down by this Court in *Zwinglee Ariel Vs. State of Madhya Pradesh*, and other cases which have followed that case, the Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this court only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply.

11. In *Ugar Ahir and Others Vs. The State of Bihar*, this Court held as under:-

The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in every thing) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinize the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest.

12. A similar view was taken in *Nathu Singh Yadav Vs. State of Madhya Pradesh*,

13. The maxim has been explained by this Court in *Jakki @ Selvaraj and Another Vs. State rep. by the IP, Coimbatore*, , observing:-

The maxim *falsus in uno, falsus in omnibus* has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to is, that in such cases testimony may be disregarded, and not that it must be discarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called a mandatory rule of evidence".

14. It is well settled in law that the maxim *falsus in uno, falsus in omnibus* (false in one false in all) does not apply in criminal cases in India, as a witness may be partly truthful and partly false in the evidence he gives to the Court (Vide: *Kulwinder Singh Vs. State of Punjab*, *Mohan Kumar Rayana Vs. Komal Mohan Rayana*, *Jayaseelan Vs. State of Tamil Nadu*, *Mani @ Udattu Man and Others Vs. State rep. by Inspector of Police*, and *Balraje @ Trimbak Vs. State of Maharashtra*,

15. This position of law has been reiterated by this Court in *Prem Singh and Others Vs. State of Haryana*, , wherein the Court clearly held as under:

It is now a well-settled principle of law that the doctrine "*falsus in uno, falsus in omnibus*" has no application in India.

16. In view of the above, the law can be summarized to the effect that the aforesaid legal maxim is not applicable in India and the court has to assess to what extent the deposition of a witness can be relied upon. The court has to

separate the falsehood from the truth and it is only in exceptional circumstances when it is not possible to separate the grain from the chaff because they are inextricably mixed up, that the whole evidence of such a witness can be discarded.

Number of witnesses required to prove the offence by members of a large unlawful assembly:

In State rep. by Inspector of Police Vs. Saravanan and Another, it has been observed as

14. Material Contradictions:

While appreciating the evidence, the court has to take into consideration whether the contradictions /omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide: State rep. by Inspector of Police Vs. Saravanan and Another,

In Bihari Nath Goswami Vs. Shiv Kumar Singh and Others, the Hon'ble Apex Court had examined the issue and hold:

Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.

43. There has been argument on behalf of appellant over authenticity of the fardbeyan. Though no-cross-examination has been made on this score either to informant nor to the Investigating Authority except suggestion so flashed. However, during cross-examination itself it is evident that Chewra happens to be out post within Ariyari P.S. which lies 5 miles away. From column of Formal FIR it is evident that the case was registered on 15-5-2011 at 17.30 hours and the same was received at CJM office 17.5.2001. So it was received beyond 24 hours. Moreover, during intervening period I.O. had already proceeded with investigation, I.O. has not been cross-examined over the same and so no explanation was required. Moreover delay in dispatch of FIR has been taken into consideration times within member and reference may have 2011 Criminal Law Journal page-306.

11. Undoubtedly, there is delay of 5 days in sending the Special Report. This Court in Badam Singh Vs. State of Madhya Pradesh, while considering this issue held that where the investigating officer categorically stated that he was not in a position to give any explanation for the delay in sending the Special Report, it may be fatal to the prosecution's case.

12. However, a larger Bench of three Judges in *Balram Singh and Another Vs. State of Punjab*, held as under:

10....we notice that in reality there is no delay in preparing the FIR but there was some delay in transmitting the said information to the Jurisdictional Magistrate. Having been satisfied with the fact that the FIR in question was registered in the morning of 6-5-1990, we do not think that the delay thereafter in communicating it to the Jurisdictional Magistrate on the facts of this case, has really given any room to doubt that the said document (FIR) was created after much deliberations. At any rate, while considering the complaint of the appellants in regard to the delay in the FIR reaching the Jurisdictional Magistrate, we will have to also bear in mind the creditworthiness of the ocular evidence adduced by the prosecution and if we find that such ocular evidence is worthy of acceptance, the element of delay in registering a complaint or sending the same to the Jurisdictional Magistrate by itself would not in any manner weaken the prosecution case.

13. In *The State of Rajasthan Vs. Shri Teja Singh and Others*, *The State of Rajasthan Vs. Shri Teja Singh and Others*, this Court held that the receipt of special report by the Magistrate is a question of fact and the prosecution may explain the delay in sending the special report. However, the explanation so furnished by the prosecution must be convincing and acceptable. The same view has been re-iterated in *Ramesh Baburao Devaskar and Others Vs. State of Maharashtra*,

14. In *Sarvesh Narain Shukla Vs. Daroga Singh and Others*, this Court held that delay in forwarding the Special Report to the Magistrate could not raise a suspicion that FIR had been written later and was ante-timed. Suspicion of manipulation of the documents prepared during the initial investigation would not dislodge the documentary and oral evidence on the spontaneity of the lodging of the FIR.

15. In *Aqeel Ahmad (supra)*, this Court held that the forwarding of the report to the Magistrate is indispensable and absolute and it must be sent at the earliest, promptly and without any undue delay as the purpose is to avoid the possibility of improvement in the prosecution's case and the introduction of a distorted version by deliberations and consultation and to enable Magistrate concerned to keep a watch on progress of investigation. However, no rule of universal application can be laid down that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable. It would depend upon the facts of each case. If there has been some lapse on the part of the Investigating Officer that would not affect the credibility of the prosecution's witnesses.

16. In *State of Kerala Vs. Anilchandran @ Madhu and Others*, this Court placed reliance upon its earlier judgments in *Pala Singh and Another Vs. State of Punjab*, and *Sarwan Singh and Others Vs. State of Punjab*, and held that the

police should not unnecessarily delay sending the FIR to the Magistrate as the delay affords the opportunity to introduce improvement and embellishment thereby resulting in a distorted version of the occurrence. However, in case the prosecution offers a satisfactory explanation for the delay, the court has to test it. An un-explained delay by itself may not be fatal, but it is certainly a relevant aspect which can be taken note of while considering the role of the accused persons for the offence.

A similar view has been re-iterated in *Pandurang Chandrakant Mhatre and Others Vs. State of Maharashtra*,

17. In *Akbar Sheikh and Others Vs. State of West Bengal*, this Court held as under:

44. Submission of Mr Ghosh that the first information report is ante-timed cannot be accepted. It is possible that PW 1 because of lapse of time has made certain statements which go beyond the record viz. holding of inquest before the FIR was recorded. The number of accused persons in the first information report might have also been put by the investigating officer at a later point of time. The fact that the post-mortem examination had been held on 16-5-1982 itself goes a long way to establish the genesis of the occurrence. While saying so, we are not unmindful of the fact that the first information report was sent to the Magistrate after twenty-four hours. But then, in a case of this nature such delay may not, by itself, be held to be fatal.

18. In the instant case, the defence did not put any question in this regard to the investigating officer Raj Guru (P.W.10), thus, no explanation was required to be furnished by him on this issue. Thus, the prosecution had not been asked to explain the delay in sending the special report. Moreover, the submission made by Shri Tulsi that the FIR was ante-timed cannot be accepted in view of the evidence available on record which goes to show that the FIR had been lodged promptly within 20 minutes of the incident as the Police Station was only 1 k.m. away from the place of occurrence and names of all the accused had been mentioned in the FIR. Dr. Nar Singh Bahadur (P.W.4) examined Virendra Singh (D.3) on 31st May, 2000 itself at 5.40 p.m. and had noted fire arm injuries on his body and opined that the injuries were fresh in nature. Dr. Anshu Kumar Agrawal (P.W.6) had examined Atar Singh (P.W.1) on 31st May, 2000 itself at 3.50 p.m. and had noted multiple pellet wounds with surrounding charring over anterior surface of left thigh middle part and a single pellet wound over the anterior surface at right arm lower part. Dr. K.K. Saxena (P.W.5). Radiologist conducted an X-Ray examination of Atar Singh (P.W.1) on 31.5.2000 and found three small rounded radio opaque with metallic density and F.B. shadow on middle of left thigh and right arm.

The prompt lodging of the FIR is proved from the chik report and statement of the complainant u/s 161 Cr.P.C., which was recorded immediately after lodging the FIR. Any defect in the preparation of the inquest report by the investigation

officer cannot lead to an inference that the FIR was not registered at the alleged time. The FIR contains all the essential features of the prosecution's case including names of eye witnesses, time and place of incident, names of the victim, motive, name of the accused persons, weapons in their hands and manner of assault. Thus, all these things lend a seal of assurance not only to the presence of eye witnesses at the place of the incident, but also to the participation of the appellants in the crime. Courts attach great importance to the prompt lodging of FIR and prompt interrogation of a witness u/s 161 Cr.P.C. as the same substantially eliminates the chances of embellishment and concoction creeping into the account contained therein.

44. Basic rule of criminal jurisprudence during present era has found some sort of flexibility having deviation to the extent that the rigidity imposed upon prosecution to prove its case beyond all reasonable doubt and any kind of suspicion so arose leading to acquittal at least providing benefit of doubt now been not considered as sound principle of law, and that happens to be finding of the Hon''ble Apex Court reported in 2011 Criminal Law Journal page 1142

13. That brings us to the question whether the appellants could be given the benefit of doubt having regard to the nature of the evidence adduced by the prosecution against them. We do not think that the appellants have made out a case for grant of any such benefit. It is true that the prosecution is required to establish its case beyond a reasonable doubt, but that does not mean that the degree of proof must be beyond a shadow of doubt. The principle as to what degree of proof is required is stated by Lord Denning in his inimitable style in *Miller v. Minister of Pensions* (1947) 2 All ER 272 :

That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt. The law would fail to protect the community if it permitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with sentence" of course it is possible but not in the least probable, the case is proved beyond reasonable doubt....

It is true that under our existing jurisprudence in a criminal matter, we have to proceed with presumption of innocence, but at the same time, that presumption is to be judged on the basis of conceptions of a reasonable prudent man. Smelling doubts for the sake of giving benefit of doubt is not the law of the land.

14. Reference may also be made to the decision of this Court in *Sucha Singh and Another Vs. State of Punjab*, where this Court has reiterated the principle in the following words:-

...Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to

law. See Gurbachan Singh Vs. Satpal Singh and others, Prosecution is not required to meet any and every hypothesis put forward by the accused. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish.

45. In the totality of the circumstances, consideration of the evidence, there is no reason much less a compelling one to strike a discordant note. In the result these appeals fail and are hereby dismissed.

46. Appellant Santosh Singh (appellant of Criminal Appeal (DB) No. 1109 of 2006) is in custody. He will undergo remaining part of the sentence. Other appellants namely, Kapildeo Singh, Raj Kishore Singh, Ranjit Singh @ Ranjit Kumar (appellant of Criminal Appeal (DB) No. 1042 of 2006), Awadhesh Singh, Guddu Singh (appellant of Criminal Appeal (DB) No. 1061 of 2006), Seth Singh, Sanjay Kumar @ Sanjay Singh, Bholi Singh @ Rajiv Kumar (appellant of Criminal Appeal (DB) No. 1073 of 2006) and appellant Shankar Singh (appellant of Criminal Appeal (DB) No. 1044 of 2006) are on bail, their bail bonds are cancelled. They are directed to surrender and undergoing remaining sentence.

47. Let a copy of this order be sent to the trial court which will ensure that appellants are taken into custody for undergoing the remaining portion of the sentence.