
(2011) 02 PAT CK 0035

In the Patna High Court

Case No : Criminal Appeal (DB) No. 906 of 2006

Mritunjay Mani Mishra alias Mritunjay Mishra and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 24-02-2011

Acts Referred:

Citation : (2011) 02 PAT CK 0035

Final Decision : Allowed

Judgement

Dharnidhar Jha, J.—Seventeen accused persons were put on trial in Sessions Trial No. 307 of 1994 / 75 of 2004, out of whom three Appellants of Cr. Appeal No. 1002 of 2006, namely, Narottam Mani Mishra, Dadan Misha alias Rakesh Mani Mishra and Niraj Mishra were charged along with the deceased accused Krishna Mishra alias Krishna Nandan Mishra u/s 302 of the IPC and Section 27 of the Arms Act. Thirteen other accused, including the ten Appellants of Cr. Appeal No. 906 of 2006, were charged u/s 302/149 of the IPC. Accused Chandra Bhushan Mishra alias Malik Mishra, Bamdeo Mishra and Purushottam Mishra as also Krishnan Nandan Mishra died during the pendency of the trial and the proceedings as against them were dropped, as may appear from paragraph 17 of the impugned judgment.

2. The charges related to an occurrence dated 24th May, 1994 in which Munindra Prasad was killed, allegedly by the accused persons, i.e., the accused of Chanpatia P.S. Case No. 74 of 1994. The judgment was delivered by the learned Presiding officer-cum-Additional Sessions Judge, FTC- V, Bettiah (West Champaran) on 4.9.2006 by which the Appellants Narottam Mishra, Dadan Mishra alias Rakesh Mani Mishra and Neeraj Mishra of Cr. Appeal No. 1002 of 2006 were found guilty of committing offence u/s 302 of the IPC and each of them was directed to suffer R.I. for life as also to pay a fine of rupees ten thousand each. The above named Appellants were acquitted of the charge u/s 27 of the Arms Act. No substantive sentence in lieu of fine imposed, in case of the same not being paid, appears passed by the learned trial judge against any of

the Appellants in both the appeals. The ten Appellants of Cr. Appeal No. 906 of 2006 were found guilty of committing an offence under Sections 302/149 of the IPC and each of them were directed to suffer R.I. for life and was also directed to pay a fine of rupees ten thousand each. Again, in their case also, there was no direction by the court as to what term of substantive sentence each of the ten Appellants could suffer in case of non-payment of fine.

3. The Appellants of the two appeals assail their respective conviction and the sentence passed against each of them by preferring the two appeals which were heard together and are being disposed of by this common judgment.

4. The informant, Kshemendra Kumar, is the son of the deceased Munindra Prasad, Mukhia of Grampanchayat Puraina Gosai under Police station Chanpatia, District - West Champaran. He stated that when he was going to Chanpatia bazaar, at about 8.00 A.M. on 24.5.1994 and had reached near the bridge situated ahead of Miyanji Tola, he found that his father who had gone to Chanpatia at 6.00 A.M. on the same day, had been surrounded by seventeen named accused persons and some unknown and that the accused persons were firing at his father. Seeing the incident, he shouted which attracted the villagers and persons working in the surrounding fields, who came running. It was alleged that Appellants Krishna Nandan Mishra alias Krishna Mishra armed with a revolver, Neeraj Mishra armed with a country made rifle and Narottam Mishra, also armed with a country made gun, were firing at his father. Other accused persons were armed with revolvers and country made guns. The deceased accused Krishna Nandan alias Krishna Mishra fired from his weapon at his father which hit the deceased near his right ear. Neeraj Mishra fired a shot with his rifle which hit the deceased in his back whereas Appellant Dadan Mishra also fired from his country made rifle hitting the deceased in his left arm. The deceased fell down there. The accused persons, while retreating, fired at the informant and the villagers who had assembled there out of whom, one unknown person was chased and caught by the villagers. The villagers assaulted him so much so that he died then and there. The informant stated that the villagers were pointing out that the deceased unknown accused was the brother-in-law (Sala) of Appellant Pradot Mani Mishra. The informant stated that the occurrence had been seen by Babulal Mahto (P.W. 1), Khalil Mian (not examined), Gena Raut (P.W. 2), Jagdish Kasera (not examined), Banshi Singh (not examined), Anwarul Haque (P.W. 3). He further stated that the officers of Chanpatia and other police stations arrived there, but, his father was already dead.

5. It was stated by the informant that the accused persons were trying to dispossess persons of Musahar community from a Gairmazarua land and the deceased had lodged some information about it and, as such, he had been shot dead by the accused persons.

6. In spite of the fact that officers of Chanpatia police station, as stated very much in the fardbeyan, had arrived at the place of occurrence, the Fardbeyan appears recorded by P.W. 9 S.I. Ramesh Chandra Upadhyaya who on the date of

occurrence was the Officer Incharge of Sathi police station. On the basis of Ext. 1, the fardbeyan, the FIR of the case, i.e., Ext. 6 was registered by P.W. 12, the Officer Incharge of Chanpatia police station and the investigation was taken up by him. In fact, after having recorded Ext. 1, the Fardbeyan, P.W. 9 who did not have any jurisdiction to investigate the case, as the occurrence had taken place, undisputedly, within the jurisdiction of P. Ws 10 and 11, started investigating the case, as may appear from the evidence of P.W. 9 S.I. Ramesh Chandra Upadhyaya. P.W. 9 has stated that after having recorded the fardbeyan, he went towards the houses of the accused persons and searched them. During that course, he recovered an air gun over which HEBEMO-1(35) was engraved. He also recovered a farsa along with a chhura in presence of two witnesses, namely, Pashpat Prasad and Ram Bilas Raut (both not examined) and prepared the seizure memo (Ext.8/11).

7. It appears from the evidence of P.W. 12 S.I. Bharat Ram that he was transferred immediately after the occurrence from Town Police station, Bettiah to Chanpatia Police station on 4.5.1994 on account of the incident and joined his new assignment at Chanpatia at 12.30 P.M. He received the fardbeyan (Ext. 1) of the informant P.W. 4 Kshemendra Kumar, which was in the writing of S.I. Ramesh Chandra Upadhyay (P.W. 9) and on that basis he drew up the FIR (Ext. 6) and took up the investigation. He went to the place of occurrence and inspected the same in presence of P.W. 2 Gena Raut. It was a field situated contiguous south of the village road, which was further south of the village. In fact, he had not found the dead body, but he found blood in the field. The road which was contiguous north of the field was going from the village Puraina Mian tola to Chanpatia bazaar from east to west. The place where the blood stains were found, was about fifty yards east of the orchard of Malik Mishra and further one hundred yards east of that orchard was situated the FCI godown and its premises. The house of the deceased Mukhia was 1 K.M. west of the place of occurrence and there were fields of persons all around the P.O. field. It appears from the description given by P.W. 12 that the dead body of the unknown accused was also found somewhere at the same place of occurrence. P.W. 12 had learnt that the dead body was sent after preparation of the inquest report for postmortem examination to M J K Hospital, Bettiah and the blood which was found at the place of occurrence had also been seized before his arrival by one ASI.

8. In fact, on perusal of the evidence of P.W. 11, it appears that he along with P.W. 10 S.I. Umanath Sahay on receiving an information about commission of the murder of the deceased, came to the place of occurrence and found that a young person of 25 years was lying dead there. There was a mob of about one thousand persons and they were giving out that the dead body of that unknown man shall also be cremated with that of the Mukhia. The mob was armed with lathi, bhala and faththa also and was furious. He stated that a pistol and a few cartridges were found lying near the dead body of the unknown deceased, but the furious mob was not allowing the police either to seize the revolver or the cartridges or to take the dead body in its control. The irate mob took the dead

body near that of the Mukhia and it was found that revolver and the cartridges had gone missing from there. P.W. 11 stated that he and others reached near the place of occurrence and at the orders of the Officer Incharge (P.W. 10), he prepared inquest report by carbon process in presence of witnesses Kshemendra Kumar (P.W. 4, the informant) and Srikant Choubey (not examined). P.W. 11 also put his signature. The inquest report has been marked Ext 2. P.W. 11 seized blood and prepared seizure memo from the ploughed up field of one Nabi Hassan Mian from a place also situated west of the orchard of accused Malik Mishra. The seizure memo (Ext. 2/2) was prepared in presence of P.W. 6, Rameshwar Yadav and P.W. 7 Nandu Yadav.

9. As may appear from the evidence of P.W. 12, he recorded statements of various witnesses and received the copy of the postmortem report and after finding materials sufficient sent the accused persons up for trial, which ultimately, ended in conviction of 13 Appellants of the two appeals.

10. The defence of the Appellants was that in fact no one had seen as to how the Mukhia happened to receive injuries and died of them and that on account of some admitted dispute with the accused, all the witnesses came together to implicate the Appellants falsely out of enmity.

11. In support of the charges, the prosecution examined as many as twelve witnesses, out of whom, P.W. 1 Babu Lal Mahto, P.W. 2 Gena Raut and P.W. 3 Anwarul Haque, all named in the FIR, supported the evidence of P.W. 4, Kshemendra Kumar, the informant of the case as eye witnesses. P.W. 5 Neeraj Kumar was a formal witness who had witnessed the seizure of clothes of the deceased which were produced by the informant before the police. The seizure memo has been marked Ext. 1. These were the clothes which were found on the dead body of the deceased. P.W. 6 Rameshwar Yadav and P.W. 7 Nandu Yadav were witnesses to the seizure of blood stained earth from the field of Ali Hassan Mian in respect of which Ext. 3, the seizure memo, was prepared which was signed by both P. Ws 6 and 7. P.W. 8 Dr. Purushottam Singh had held postmortem examination on the dead body of Munindra Prasad, the deceased, and had prepared the report (Ext.4). Besides the above witnesses, four police officers were also examined by the prosecution. P.W. 9 Ramesh Chandra Upadhyaya, who on 24.5.1994 was the Officer Incharge of Sathi police station, was examined to state that while he was going to Bettiah in connection with some court work, he found a mob assembled at Chanpatia and he learnt that the Mukhia of Grampanchayat, Puraina had been murdered giving rise to a law and order situation. He went to village Puraina and found that two dead bodies were lying there, out of which, one was of the Mukhia and the other was of an unknown villager who had been killed by the irate mob. He recorded the fardbeyan (Ext.1) of P.W. 4 and searched the house of the accused persons and recovered an air gun, a farsa and a chhura in presence of a couple of persons.

12. P.W. 10 Uma Nath Sahay was the Officer Incharge of Chanpatia Police station within whose jurisdiction the place of occurrence was situated. P.W. 10 stated

that on 24.5.1994, chowkidar Chandrika Yadav (not examined) came to the place of occurrence to lodge an information that Munindra Prasad, the Mukhia of Puraina Grampanchayat, was killed by some persons after being shot at and the accused persons had ran towards Chanpatia, out of whom, one was killed by the villagers about 1 K.M. away from the place of occurrence. He came to the place of occurrence and found a dead body of about 25- year- young- person, who was wearing a full pant and a vest as also shoes. A mob of about 500 persons was raising a halla and was telling that the dead body of the killed accused shall be cremated simultaneously with the body of the deceased Mukhia. P.W. 9 could not seize the weapon which was found lying near the dead body due to the fury of the mob and attempted to calm it down and by the time the mob was controlled, the weapons went missing. P.W. 9 stated that he could not identify anyone.

13. P.W. 11 A.S.I. Gyan Prakash Shrivastava has supported P.W. 10 by stating that on receiving the news of the murder of Mukhia, he along with P.W. 10 came to the place of occurrence and found a furious mob, who were not allowing them to take the dead body of unknown accused in their control or the weapon which was lying there. After the mob was calmed down, he was asked to prepare the inquest report and, accordingly, he prepared it at about 10 A.M. P.W. 12 Bharat Ram is the I.O. of the case who had been posted on transfer on the same day and had joined the police station, Chanpatia at about 11.30 P.M.

14. The defence examined a solitary witness namely Ravindra Nath Mishra, an advocate practicing in Civil Courts, Bettiah who stated to the presence of Appellant Narottam Mishra in the Civil Court premises where he had gone to make proper pairvi in Title Suit No. 347 of 1992.

15. On consideration of the evidence of four eye witnesses and the police witnesses as also the doctor P.W. 8, the learned court below found the Appellants guilty and passed the order of sentence as indicated above.

16. Shri Rana Pratap Singh, the learned senior counsel appearing for the Appellants has submitted that inquest was held as per the evidence of P.W. 11 ASI Gyan Prakash Shrivastava and Inquest Report (Ext.5) was prepared at 10.00 A.M. on 24.5.1994, i.e., one hour fifteen minutes prior to the lodging of the information (Ext.1). During the above period of one hour and fifteen minutes, the police was admittedly there as appears stated in the fardbeyan and which is further stated by P.W. 4 Kshemendra Kumar at paragraph 21 of his evidence. But, no one was coming forward to lodge a report regarding the manner of occurrence by naming the assailants of the deceased. Witnesses including P.W. 4 stated that when the inquest report was being prepared, they, specially P.W. 4, was present there, but they were not naming any person as accused before the police officer. It was, as such, contended that the reason for the silence of P.W. 4 as regards not coming forth to lodge a report and tell the names of the accused persons who had assaulted his father to kill him was obvious. It was submitted that it creates a serious doubt in the veracity of the prosecution story, which is further compounded by the fact that an officer who had nothing to do with the

incident, appears jumping at the scene by telling a false story that he was going to Bettiah in connection with a court case and was recording the fardbeyan of the informant. When the Officer incharge of Chanpatia Police station (P.W. 10) and another officer, i.e., ASI Gyan Prakash Shrivastava, P.W. 11, were already present at the scene of occurrence whom P.W. 4 had already met after they had reached and who had also approached P.W. 4 to elicit the report, there was no reason to accept that P.W. 9 had recorded the fardbeyan (Ext. 1). It was contended that the very document is fabricated and an after thought which is not only inadmissible in evidence but which creates a further doubt in the veracity of the prosecution story. It was contended further by Shri Singh that the police officers and other officers were against accused Malik Mishra, as was suggested to P.W. 4 in paragraph 22, and the informant who was a person who was acting behind the facade of taking up cudgels against the haves for the have-nots, might have been murdered and it was a right opportunity for the police officers to falsely implicate the whole family of accused Malik Mishra. It was contended that interestedness of the police in implicating the accused persons might be gathered from the fact that P.W.9 Ramesh Chandra Upadhyaya who did not have any jurisdiction to do anything regarding the investigation of the case, was going to make raid in the houses of the accused persons and was showing recovery of innocuous articles so as to creating incriminating material. It was contended further that holding of inquest and seizure of incriminating materials, like, the blood stained earth are part of investigation, as admitted by P.W.12 in paragraph-16 of his evidence. Facts indicating that investigation had already preceded the recording of fardbeyan(Ext-1), renders the document inadmissible as was held by this Court in 2005(1)PLJR 446 and also by the Supreme Court in (2007) 13 SCC 501. Some of the witnesses named in the FIR were not examined and persons who had witnessed the incident and who could be the members of the mob or had assembled there as per the FIR itself, were not ready to come forward to support the prosecution charges. Informant is the son of the deceased and the three witnesses, P. Ws.1, 2 and 3 were highly interested persons on account of being inimical to the accused persons or appearing deeply interested with the deceased. Their evidence could not be relied upon to uphold the conviction. Learned Counsel took us through the evidence of witnesses in support of above contention on interestedness and animosity of the witnessed towards the Appellants. It was contended, lastly, that the manner of occurrence, as stated by P.W.4 either in the fardbeyan or in his evidence, does not get corroborated by the evidence of P. Ws.1, 2 and 3 and the evidence appears highly improbable and as such unsafe to act upon. It was as such contended that the learned trial Judge mis-appreciated the evidence and went on to convict the Appellants wrongly.

17. Sri Basant Kumar Choudhary, the learned senior counsel appearing for the informant, contended that the police investigation was callous and deficient and that the police was simply not allowed to investigate the case by an irate mob. It was contended that while preparing fardbeyan and inquest report, mentioning

time in them were not serious matters and it was merely a mistake committed by the police officers for which the whole of the prosecution story could not be thrown out as was laid down by the Supreme Court in (2008) 16 SCC 372 as the credibility of the witnesses has to be considered and the judgment has to be tested on that basis. The manner of occurrence also appears not varying much and this was the reason that the courts duty was always to separate the grains from the chaff. Sri Choudhary referred to us a few decisions of the Supreme Court, like, (2007) 13 SCC 501, (2008) 16 SCC 372, (2001) 9 SCC 567 and AIR 1975 SC 1962. Sri Choudhary was contending that the witnesses might have mistaken in stating that they saw any accused firing a particular shot, but they appear to have witnessed the incident. It was further contended in the above context that their evidence was co-related to seeing a bleeding wound and thereby inferring that a shot had hit a particular part of the body and as such, they might have mistaken in giving evidence as regards the manner of occurrence. Similarly, the distance between the assailant and the deceased could not be accepted as the only distance; it may vary and varying narration about the distance from which the shots were fired by the police may be due to human perception. Hence, the absence of blackening or charring around a wound was not vital. Sri Choudhary was pointing out that injury No. 1 which was a very simple injury recorded by P.W.8 while holding the postmortem examination may also be caused by fire arm on account of the shot being fired tangentially. Sri Choudhary referred to us another judgment of the Supreme Court reported in (2010) 10 SCC 259.

18. Sri Ashwani Kumar Sinha, the learned Additional Prosecutor appearing for the State drew our attention to the statement made in the fardbeyan of P.W.4 when he was stating to P.W.9 S.I. Ramesh Chandra Upadhyay that just after the incident the police of Chanpatiya had already reached and they were very much present there, but the fardbeyan was recorded by the officer-in-charge of Sathi police station and that tells a volume about the genuineness and acceptability of the prosecution story and the chance of false implication as pleaded by the accused.

19. Four police officers, namely, P.W. 9 Ramesh Chandra Upadhyaya, P.W. 10 Umanath Sahay, P.W. 11 Gyan Prakash Shrivastava and P.W. 12 S.I. Bharat Rai had investigated the case in one part or the other. The evidence of P.W. 12 Bharat Rai would point out as if he were the only investigating officer. But, when his evidence is considered deeply, then what is found is that some of the most important documents pertaining to some aspects of investigation, like, seizure of blood from the place of occurrence, search of the houses of the accused, holding of inquest on the dead body and preparing documents in the above behalf were done by any of the three officers, i.e., P. Ws 9, 10 and 11. P.W. 12 Bharat Rai, the main investigating officer of the case, of course, appears going to the place of occurrence after having registered the FIR, but he did not appear doing any part of the investigation more than recording statements of witnesses. P.W. 12 would say that he was told or he gathered from whatever source not disclosed by

the witness, that the inquest on the dead body of the deceased was held by ASI Gyan Prakash Shrivastava and the seizure of blood stained earth was also made by him which included the preparation of seizure memo also. This evidence appears in paragraph 5 of the evidence of P.W. 12. Similarly, the dead body challan for dispatching the dead body for holding postmortem examination by the doctor of M J K Hospital, Bettiah was also prepared by the above noted ASI P.W. 11 (P.W. 12 paragraphs 3 and 4). Likewise, the houses of the accused persons were searched by P.W. 9 S.I. Ramesh Chandra Upadhyaya, who was the officer incharge of Sathi police station on the date of occurrence and seizure of an air gun, a farsa and a chhura was made and the seizure memo was prepared by P.W. 9 in the above behalf. P.W. 9 S.I. Ramesh Chandra Upadhyaya had nothing to do either with the occurrence or the place of occurrence, as regards the jurisdiction of a police officer to enter into the investigation. He might have some semblance of jurisdiction to record the fardbeyan, if there could be no police officer to record it. But, that would not be empowering him to go in search of the accused persons, make the raid in their houses, conduct searches of the same as well and then recover certain articles, of course, not connected to the occurrence and to prepare seizure memos. All these steps and acts of P.W. 9 were legally recognized steps in investigation, which was completely outside the jurisdiction of P.W. 9. I am quite clear in my mind that the above conduct of P.W. 9 might be illegal but, that is not going to have any effect as regards the strength or weakness of the prosecution case. Similarly, this Court simply failed to find any reason as to why SI Umanath Sahay (P.W. 10), who only had the jurisdiction to perform all the acts, right from the stage of recording of the fardbeyan up to performing any acts of investigation, was not doing anything in spite of remaining at the scene of occurrence. He was, instead asking his junior officer, P.W. 11 ASI Gyan Prakash Shrivastava, to seize the blood stained earth from the field, prepare the seizure memo as also to hold inquest and to prepare the inquest report in addition to preparing the dead body challan. These are all mysterious circumstances.

20. When we consider the evidence of P. Ws 10 and 11, i.e., S.I. Umanath Sahay and ASI Gyan Prakash Shrivastava respectively, what we find is that they were not even ready to acknowledge the fact relating to the performance of their official acts towards investigation, as indicated above. In their cross-examination, both the witnesses have simply gone on to say that they were simply not remembering as to what did they do on that particular day after the incident had occurred. P.W. 10 S.I. Umanath Sahay, the Officer Incharge of Chanpatia Police station has recorded his own statement (Ext. M), which is the basis of Chanpatia P.S. Case No. 75 of 1994, which was registered in respect of the murder of the unknown person who was allegedly, chased, caught by the mob and killed. But, curiously enough, this witness P.W. 10, when cross examined to the above fact in paragraph 2 of his evidence, bluntly stated that he had not done anything after finding the dead body of an unknown person who was killed by the mob, but, subsequently, he again said that he was not exactly remembering whether he

had drawn up the FIR of Chanpatia P.S. Case No. 75 of 1994 on his own statement in respect of the murder of unknown person by the furious mob. The evidence of P.W. 10 deepens the mystery further and makes the matter more complex when he simply goes on to say that he was not remembering anything as to what had happened on that particular day, like, registering the station diary entry on the statement of chowkidar Chandrika Yadav. He was not even remembering as to who were the officers accompanying him though in the same paragraph 9 he says that ASI Gyan Prakash Shrivastava joined him at the place of occurrence. He was unable to say whether he took any action after having gone near the dead body of the deceased. He was not even remembering whether he was present at the police station at 1.30 P.M. on 24.5.1994 nor he was remembering whether he left the police station after having handed over the charge of station diary to any other officer. Subsequently, he says that he did not do anything in respect of the murder of Mukhiaji (deceased) as he became busy in maintaining law and order situation on the spot.

21. P.W. 11 ASI Gyan Prakash Shrivastava would say that he seized blood stained earth from two places from the field of occurrence and he also held inquest report and prepared the dead body challan to send the dead body for postmortem. P.W. 11 stated that all the above acts were performed by him at the orders of P.W. 10. But, when it came to the turn of P.W. 10, S.I. Umanath Sahay, then he was not supporting the above facts. He was telling the court in paragraph 4 of his cross examination that no inquest report was prepared at his orders. However, he did admit that the inquest report was prepared and the dead body was sent for postmortem examination. The state of mind of P.W. 10 on the day he was deposing in court was so pathetic that he was telling the trial court that the officers accompanying him were competent to perform the above acts of investigating a case but why did not they do it, he could not say. The explanation for the above lapse as pointed out by the P.W. 10 was that many higher police officers had already reached there.

22. The evidence of P.W. 12, the I.O. of the case S.I. Bharat Rai also appears on the same line. Most part of the evidence of P.W. 12 are inadmissible, inasmuch as he has stated to the trial court that either he learnt or was told about a particular step of investigation which was conducted by some other officer. There is no name stated by him as to who had pointed out that particular fact in respect of performance of a step in investigation and by whom. On consideration of the evidence of P.W. 12, it appears that he only recorded the statement of witnesses who either came to him or were brought to him. Thus, the whole investigation appears completely inept, deficient and definitely perfunctory, but then, the question is as to what could be the impact on the prosecution case of such perfunctory or inept investigation.

23. Both the sides have placed reliance upon the same judgments on the above point. The learned Counsel for the Appellants has submitted that the lapse in investigation may not be affecting the credibility of the witnesses, but if it is

shown that there were some materials indicating as if the investigation had been already undertaken prior to the recording of the fardbeyan, then the effect of such situation could be creating a doubt about the correctness of the prosecution case as was laid down by this Court in Deo Pujan Thakur and Others Vs. State of Bihar and by the Supreme Court in Ramesh Baburao Devaskar and Others Vs. State of Maharashtra, . In Aqeel Ahmad Vs. State of U.P., which was the judgment cited by the learned Counsel for the informant, the lapse in investigation was considered as may appear from paragraph 18 of the report, not to affect the credibility of witnesses. It was pointed out that not naming the accused in the inquest report (Panchnama) was of no consequence. The Supreme Court in the case of Ramesh Babu Rao Devaskar (supra) has noted in paragraph 18 that the FIR cannot be lodged in a murder case after the inquest had been held. If a prosecution witness, who claims himself to be an eye witness to the occurrence, fails in lodging an FIR, then the inference may be that some unknown assailants had killed the deceased and the FIR might be antedated or ante timed. This Court in 2005(1) PLJR 446, speaking through one of us (Smt. Mishra, J.) was pointing out that if the investigation had started before recording of the fardbeyan, the FIR on the basis of such a fardbeyan was hit by the mischief of Section 162 Code of Criminal Procedure and it can, at best, be treated as a statement u/s 161 of the Code of Criminal Procedure While laying down the above proposition, the court was considering some of the leading judgments on the point as may appear from paragraph 16 of Deo Pujan Thakur and Others Vs. State of Bihar .

24. Learned Counsel for the informant was urging before us that the lapse in investigation was not going to affect the credibility of the witness as was laid down by the Supreme Court in Aqeel Ahmad Vs. State of U.P., and it was held that the credibility of witnesses has to be considered independently of the mistakes which might have been committed by the witnesses or which might appear from a defective investigation document, like, the inquest report or seizure memo which may contain wrong mention of time about the steps in investigation.

The issue in the present appeal may also be of investigating the case ineptly or inefficiently. However, what I find after considering the evidence of P. Ws 9, 10, 11 and 12, the four police officers who, some how or the other, were involved in some part or the whole of the investigation of the case, is that none of them was performing his duties so as to unearth the truth, which ultimately is the purpose of investigating a criminal case. In fact, the evidence of these witnesses raises a very strong inference indicating as if each of them were concealing some of the realities of the incident. The court had police officers before it who was not ready to come out cleanly to depose to the real facts of the case, rather, most of them appear making statements on oath even denying their own official acts which were documented in the form of Ext. M, the FIR of Chanpatia P.S. Case No. 75 of 1994, which was registered at his self statement by P.W. 10 S.I. Umanath Sahay. Likewise, P.W. 11 Gyan Prakash Shrivastava was also making false

statement by denying certain facts. Similarly, P.W.9S.I. Ramesh Chandra Upadhyay was going over board to create a document, probably, to cover up the mis-deeds of the police officers or the whole of its establishment by registering a fardbeyan in respect of an occurrence which was outside his jurisdiction and then entering into investigation part of the case by conducting raids in the houses of the accused persons. A police officer may be justified in arresting an accused or even searching his person if someone is found committing any cognizable, non bailable offence in presence of such an officer but, taking up investigation and without legally being competent in that behalf, could not be acceptable to me. P.W. 12, the Investigating Officer was rushed by police establishment of West Champaran to take over the duties of the Officer-in-charge of Chanpatia only to create records of investigation without really investigating the case correctly and properly. This was the reason that I have, somewhere presently, noted that all the four police officers appear covering up some thing which could be quite away from truth, which might have not made it possible to prosecute the present set of Appellants.

25. I am very much aware that inept or deficient investigation could never be sufficient to reject the evidence of witnesses. Their credibility has to be tested on other circumstances, like, the chance of their presence at the place of occurrence, the credibility of their claim of having seen the occurrence and intrinsic value of their evidence when they claim to be eye witnesses to the occurrence. In the above connection, it has also to be seen by the court as to whether their evidence was inspiring confidence and was free from material infirmities making the same credit worthy, whether they had stood test of cross-examination and had come out of it unscathed. If the above yardsticks are applied in deciding the credibility of the witnesses in the light of the attack against them set up by the defence to question their credibility, which may be on many counts, and the court finds that the circumstances, like, the witness being inimical appears of no consequence, for, there was no reason for the witness to falsely implicate the accused, then the evidence of witnesses may be said to be credit worthy. But if it is shown from the evidence that there was quite some lapse of time when no one including the witnesses, was coming forward to narrate the incident to the police in spite of having such opportunities or occasions and were not naming the accused persons, then a very serious defect appears in the prosecution case, which may discredit the whole prosecution narration.

26. Here, in the present case, the evidence of witnesses consistently point out that the police had reached within 10-15 minutes of the occurrence. It is, besides, stated in the fardbeyan as well by P.W. 4 the informant, that officers of Chanpatiya had promptly arrived at the scene of occurrence, but by that time his father had died. This single line of fardbeyan sufficiently indicated the quick arrival of the police, and that too before the recording of the fardbeyan. Witness, like, P.W.1 in paragraph-7 has stated that the police force reached at the place of occurrence within 15-20 minutes of the occurrence and recorded the statements

of the witnesses also. This witness has stated that he remained there at the place of occurrence for about one to one and half hours. Likewise, P.W.2 in paragraph-8 has stated that Sub Inspector of police had reached at the place of occurrence within 10 to 15 minutes of the occurrence. P.W.3 in paragraph-11 of his evidence has stated that the Sub Inspector of police had reached at the place of occurrence in between 9.30 and 10.00 A.M. and the Superintendent of Police and other police officers had also arrived there. From the evidence of P.W.4, the informant of the case, it appears that the police had reached without any loss of time. In paragraph-17 of his evidence, the witness (P.W.4) has stated that as soon as the dead body of the unknown person who was killed by the mob, was brought near that of his father, the police had also reached there and the document in respect of the dead body of his father, i.e., the inquest report was prepared, after about half an hour of it. Thus, as per P.W.4 also, the police had reached almost simultaneously within 10 to 15 minutes of the occurrence, may be around the time which was told by P.W.3 in paragraph-11, as just pointed out that the police had reached in between 9.30 and 10.00 A.M. The dead body of the deceased was seen by the police and the document, i.e., the inquest report was prepared is indicated by the evidence of all witnesses and, specially, P.W.4 in paragraph-17. In paragraph-18 P.W.4 stated that he did not exactly remember as to whether the inquest report was prepared prior to the recording of his statement. Inquest report had been marked Ext-5 by the learned trial Judge and time and hour of seeing the dead body has been recorded by the officer (P.W.11), who prepared the document in its column-3 which indicates that the dead body was seen and the inquest report was prepared at 10.00 A.M. on 24.5.1994. The evidence of P.W.9 S.I. Ramesh Chandra Upadhyay would show that he recorded the fardbeyan of the informant (P.W. 4) at 11.15 A.M., i.e., after one hour and fifteen minutes of holding the inquest and preparing the inquest report. The time of occurrence is 8.15 A.M. The evidence of the four police officers and specially, that of P.W. 9 and other witnesses also, like, P. Ws 1, 2, 3 and 4 indicates that after the deceased had been murdered, the mob of persons got infuriated and started chasing the marauders out of whom one was captured and was beaten to death. It was a very hard time for the police force, as appears from the evidence of witnesses, to control the mob fury and to get near the two dead bodies. It hardly requires to be pointed out that the whole exercise of pacifying the mob must have taken quite some time and, as such, no wonder that in spite of the police having reached around 9.00 A.M., it took almost an hour in looking at the dead body to prepare the inquest report at 10.00 A.M. If the evidence of the informant (P.W.4) in paragraph-21 is considered, he admits that as soon as the police had reached at the place of occurrence, he did not make any statement to it and kept sitting silently there. The last line of paragraph-20 of P.W.4 indicates that the police had arrived within an hour of the occurrence. This witness has further admitted in the same paragraph that when police had reached there, it went somewhere else and again came back at the same place where he was sitting. He has clearly admitted that he had met the police officers who had asked him as to whether he wanted to inform any one and to meet someone

upon which, he stated that he did want to inform his uncle Paras Prasad, an advocate practicing in Bettiah whereafter the police officers again inquired of him whether he should be informed and called to meet him and, accordingly, Sri Paras Prasad was informed, who appears coming there also as the witness has stated in the last line of paragraph-21 that when did Paras Prasad come he could not say, as he had already left with the dead body for postmortem examination. Thus, what appears from the evidence of P.W.4 is that the police was approaching him and was asking him to give his statement but he did not appear ready as he wanted to consult someone, like, his uncle Paras Prasad, an advocate, and the police sent for Paras Prasad who was practicing in Bettiah. It is the further admission of P.W.4 in paragraph-18 that he remained at the place of occurrence right from the beginning to the end till the dead body was dispatched for postmortem examination and he did never point out to the police as to who were the persons who had participated in the murder of his father. Inquest report(Ext-5) appears at page No. 132 of the paper book and we find that the inquest upon the dead body was held by P.W.11, as may appear from his evidence also, in presence of P.W.4 Kshemendra Kumar (informant) and one Srikant Choubey. So, after more than an hour of the occurrence the informant was there and he was constantly in the company of the police who, as per his own evidence, was asking for his statement as well, but he does not appear giving statement. He was not even ready to name any one as assailant of the deceased. P.W.10 S.I. Umanath Sahay, who arrived, undisputedly, there along with P.W.11 A.S.I. Gyan Prakash Srivastava and Chaukidar Chandrika Yadav, could not elicit any statement from P.W.4. The witness has not stated as to why he did not make any statement though he has stated that he was desirous of consulting his lawyer-uncle who did come. P.W.10 Umanath Sahay, has recorded his own statement at about 1.30 P.M. regarding the killing of an unknown man of about 25 years of age by the irate mob. Why the informant was not giving statement to the police of Chanpatiya police station remains as similar and unsolved a mystery as the mystery as to how P.W.9 S.I. Ramesh Chandra Upadhyaya, officer-in-charge of a different, unconcerned police station, Sathi, appeared at the scene of occurrence to record the statement of P.W.4. He did not have any jurisdiction in the matter as he was the officer-in-charge of a different police station, i.e., Sathi. The reason which was assigned by P.W.9 for coming at the place of occurrence has not been enforced by some further materials as to what was the case in connection of which he was going to Civil Courts, Bettiah. What was the further purpose of going to Civil Courts, Bettiah in connection with that case. It is too bald a statement given by P.W.9 S.I. Ramesh Chandra Upadhyaya indicating a reason for reaching the place of occurrence.

27. What I find more from his statement is that he was simply creating some evidence in support of his claim when he was telling the court that after having recorded the fardbayan of P.W.4 at the place of occurrence when he was there on way to Civil Courts, Bettiah, he went to village-Puraina and started searching the houses of accused persons so as to tumbling upon recoveries of an air gun, farsa

and a chhura, which led him to prepare the seizure memos. But the seizure memo Ext-2/2 which is on the lower court records points out that the solitary house of Malik Mishra was searched. As has been noted by me, any police officer could have legitimate right or jurisdiction to record a fardbeyan, but as regards investigation part of the case, it could be the solitary domain of an officer of a police station within whose territorial jurisdiction the place of occurrence fell or within whose jurisdiction the offence had been committed. Besides, what I further find from the evidence of P.W. 9 S.I. Ramesh Chandra Upadhyay is that he could find the mob assembled, when he had arrived at Chanpatiya and then he learnt that the Mukhiya of Puraina had been murdered. He thereafter came back to the village after diverting from his usual tour programme. Witnesses, specially P.W. 12, the Investigating Officer of the case, tells us that the road from Puraina village, goes west to east to come to Chanpatiya. This again is a mystery as to why P.W. 9, who had nothing to do with the occurrence or its place, should come thereafter making a detour. In my considered view, P.W.9 probably was creating the document fardbeyan(Ext-1) some times after the investigation had been taken up by P.W.10 or P.W.11 probably for the reasons as was suggested by the defence to P.W.4 in paragraph-22 that the officers had manipulated the records so as to implicating the accused persons.

28. As was noted by the Supreme Court in (2007) 13 SCC 501 (Supra) that FIR may not be a substantive piece of evidence, but it is substantial evidence if the delay is there in lodging the report. There might be many manipulations in the fabrication of the story and the implication of the accused, as such, the courts have always to insist upon prompt lodging of the report. Here in the present case, we do not only have an informant, who was not ready or forthcoming to give the true story of the version as and when he was approached by the police persons, like, P. Ws.10 and 11, but when the inquest report was being prepared after holding the inquest on the dead body of the deceased, up-till that moment of time the informant P.W.4, on his own admission, was not ready to name any one as persons or even a group of persons known or unknown who could have killed his father. If this could be the situation, then we have to hold that the prosecution story could not be accepted as a true story of the version, as there could be every chance of consultation as appears indicated by the expression of desire by P.W.4 to consult his uncle, a practicing advocate, which may result in false implication of the accused persons.

29. The above view of mind emanates from the very FIR also when the informant was stating to P.W.9 who recorded Ext-1 that the police officers of Chanpatiya had reached along with some officers just after his father had been shot and killed. Thus, again why the P.W.4 was not coming forth to give his statement to P.W. 10 or 11 and was giving his statement to P.W. 9? This aspect of the case was highlighted by learned Additional Public Prosecutor when he was questioning the competence of P.W.9 to record the fardbayan who was an officer of Sathi P.S. and not of Chanpatiya P.S.

30. Thus, what I find from the above discussion is that the conduct of both P. Ws 4 and 9 appear quite suspicious creating a doubt in the prosecution story.

31. The prosecution has alleged a motive in the FIR and that was that the accused persons were trying to dispossess the persons of Mushahar community from some gairmazarua aam land, i.e., public land, and information about that attempt of the accused persons had been lodged by the deceased before the police. P.W.3 appears very closely connected with the deceased, as he appears being opted by the Mukhiya as one of the members of his cabinet on account of the witness having failed in being elected through contest in the Panchayat elections in which the deceased Mukhiya was elected. P.W.3, to me, appears a person who could be in quite confidence of the deceased and as such he could be assumed to be aware of many things connected with the deceased. He says that he does not really know as to why the accused persons had killed the deceased (P.W.3 paragraph 1). This line of evidence appears in examination-in-chief of P.W.3. P.W.1 has not stated anything on the motive part of the occurrence, and rather has stated in paragraph 9 of his evidence that whether there was any ill-will between the deceased and the accused, he did not know. However, the Mukhiya had lodged an information regarding the acts of arson to the houses of Mushahar people, through the Dalpati whereafter the accused and the deceased were not on talking terms. Similar is the position with P.W.2 who has also not stated any fact in support of the motive alleged by the informant. The solitary evidence of P.W.4 comes in paragraph-2 of his evidence when he has stated that in Sedha Sareh the persons of Mushahar community were in possession over a particular gairmazarua land and the accused persons wanted to dispossess them, for which at the orders of his father, the Mukhiya, he in his capacity as Dalpati of the Panchayat, had lodged reports with the S.P., police station etc., upon which the police had come and had arrested the accused persons. It is further stated by P.W.4, as was stated by P.W. 1 in paragraph 9 of his evidence, that the accused persons had set fire to huts of the Mushahars. But, when the evidence of P.W. 4 in paragraph-4 is considered, he is found simply showing his ignorance by stating that he was not remembering as to whether there had been any incident with Mushahar people for which he had lodged any report with the police. This line of evidence of P.W. 4 in paragraph 2 creates a doubt about the facts stated on the point of motive. Moreover, if there was an incident of arson and if the police had come to arrest the accused persons, then there could be an inference that a case had definitely been lodged and the accused persons had been remanded in that connection by a judicial order. But, neither the FIR with respect to such an incident nor any judicial order showing the arrest of accused persons and their remand in any case relating to the above incident was brought on record by the prosecution. Three police officers out of whom two (P. Ws 9 and 12) were the Officers of Chanpatia police station, were examined as witnesses. The prosecution did not put a single question to either of them to seek the proof of the facts stated to by P.W.4 in his fardbeyan or in his evidence as the motive for committing the offence. This further creates a doubt in the prosecution case

as to why and for what reasons the deceased had been murdered. The police officers who were connected with one part or the other of the investigation of the present case, have not stated that they had found any sign of violence indicating that the accused persons had trespassed or committed any act of offence with the Mushahar people on that particular day, which could have invited the intervention by the Muhkia and being irritated, he was targeted and killed by the accused. This creates a further doubt in the veracity of the prosecution story.

32. Now, coming to the witnesses, what is found is that six persons were named in the F.I.R. as having seen the occurrence, out of whom Khalil Mian, Jagdish Kashera and Bansi Singh were not examined. A single line in evidence was led through P.W.4 in paragraph-6 that the above named witnesses had gone in collusion with the accused persons and, as such, they were not ready to depose in the case and support the prosecution story. This line of evidence was given by P.W.4 on 3rd June, 1997 and on perusal of the order of the lower court recorded on that day, I find that there was no such statement made by the Public Prosecutor on that day. Subsequently, a petition appears filed on 8.7.1997, i.e., after more than a month of P.W. 4 being discharged, which was on behalf of P.W.4 that the above noted witnesses had gone in collusion with the accused persons and were not ready to come and depose in support of the prosecution charges. The learned trial Judge has recorded in his order dated 8.7.1997 on the above application that the application was not bearing any signature nor it was filed by the Public Prosecutor. Thus, no order was passed and it was merely ordered to be kept on record. Merely giving a statement, in my considered view, that a particular witness is not ready to come and depose in support of the prosecution charges without assigning any substantial, acceptable reason may not be sufficient to say that there were good reasons for not examining a witness. The Public Prosecutor is the sole arbiter of deciding as to whether he has to examine a witness in support of the case or not. Even his submissions could not be acceptable to the court if it does not find substantial and acceptable reason in support of it. It was necessary in such a situation that the process of the Court would have been invoked and the same would have been issued for compelling the attendance of the witness and then the Public Prosecutor would have taken a decision by virtue of an order of the court as to whether a witness had really gone into the collusion of the accused or not. Some statement of fact made either orally or in writing without any substantial basis would not be sufficient for not examining an eye witness, more so, when the witnesses examined appear deeply interested with the prosecution and inimical to the accused persons.

33. The witnesses are deeply interested and inimical, I have recorded, on the basis of their own evidence. Ext.G is a decree which was put to execution in Title Execution Suit No. 4/1982 in which the judgment debtor was the father of the deceased Munindra Prasad, namely, Sita Ram Sah. It appears from evidence of P.W.2 Gena Raut, who is named as eye witness in the F.I.R., that he had some litigation in respect of some homestead land with accused Malik Mishra. Besides,

accused Malik Mishra had filed aforesaid Execution Case No. 4/1982 so as to dislodging P.W.2 from the homestead land and P.W.2 admits that the deceased was also one of the parties in the execution proceedings. P.W.3 Sk. Anwarul Haque has admitted in paragraph-2 of his evidence that he had fought elections for being elected as a Panch simultaneously with the deceased, but had lost. The deceased was elected as Mukhia and had co-opted P.W. 3 as one of the members of his cabinet. A suggestion was given to this witness also that he had also deposed in the above noted Execution Case No. 4/1982 in support of the deceased Mukhia, a party to the above proceeding. As regards P.W.1 Babu Lal Mahto his evidence indicates that the deceased Mukhia had appointed him as an agent for executing the scheme of Jawahar Rojgar Yojana and accused Malik Mishra had contested the election against the deceased for being elected as Mukhia. P.W.4 is the son of the deceased and he has admitted that there was a series of litigations between the two sides. Thus, what appears is that only inimically disposed or deeply interested persons have come forward to depose against the accused persons. As may appear from the evidence of P.W.2 in paragraphs-6,11&12 as also from the evidence of P. Ws.3,1&4, there were large number of persons who had been attracted to the scene of occurrence and most of them had chased the accused persons. P.W.2 in paragraph-11 has stated that Mianji Tola of village Puraina was situated at a distance of merely 5-7 lagga east of the place of occurrence and most of the residents of that Tola were out to witness the occurrence. Many persons had run to the scene of occurrence who were working in the neighbouring fields (P.W.2 paragraph-6). But, no independent person of the village came forward to depose in favour of the prosecution charges. This is one circumstance which put us on alert to appreciate the evidence of such deeply interested and inimical witnesses, who have come to support the prosecution story.

34. The above is the reason that I minutely considered all aspects of the case including the submissions of the parties and this is the reason I found that the benefit on account of any defect in the prosecution case must accrue to the accused persons. The circumstances of recording different times in different documents regarding steps in investigation, have created a serious doubt in the veracity of the prosecution story. As such, the submission of learned Counsel for the informant that lapses in the investigation may not be affecting the credibility of the witnesses or wrong mention of time was not to have any effect on the proof of the prosecution charges, to me, appears of no consequence, inasmuch as there are many circumstances which create serious doubt about the veracity of the prosecution case. One such circumstance is the claim of the witnesses of seeing the occurrence and then the manner of their narration as to how and in which manner the assault was administered to the deceased. There is great variance in the evidence of witnesses themselves and their evidence, in turn, is not corroborated by the medical evidence.

35. On consideration of the evidence of four eye witnesses, namely, P.W 1 to 4, I find that there is a story of chase stated by these witnesses. P.W. 4, the

informant of the case, in paragraph 23 of his evidence, has stated that on being chased by accused persons, his father went into a field running from the road and was surrounded from south, east and west. Thereafter, he has given position of different accused persons who were on different sides of the deceased. As per his evidence in paragraph 24, his father was shot at from south and from south eastern direction. It is clearly stated by P.W. 4 that Appellant Neeraj Mishra had fired a shot into the back of the deceased. So far as P.W. 2 is concerned, he has also stated that one shot was fired from the south at the deceased which hit him in his temple whereas the other shot was fired from east and when the above two shots were fired by the two different assailants, the deceased was facing west. There is no description given by P.W. 2 as to at what part of the body the second shot fired by the accused was targeted. P.W. 3 has also stated that the deceased was surrounded by the accused persons from east and north. There was none, as per P.W. 3, either on the northern or southern side of the deceased and no shot had been fired at him from east. The above evidence of P.W. 3 is contrary to the evidence of P.W. 2, which I have just noticed. P.W. 1, in paragraphs 9 and 10, had given the relevant evidence as to how the deceased was fired at and it appears that he has introduced a story of exchange of words between accused persons and the deceased which was altogether a new insertion in the prosecution story. Besides, he has stated that the deceased was surrounded on two sides at that particular moment of exchange of words between the two sides, whereupon he started running away into the field and during that position, he was fired at by the accused persons. While considering the evidence of four witnesses, what transpired was that the witnesses have stated to the court that the deceased was standing at one particular place without changing his position and in the same standing position he was targeted and hit by shots fired at the deceased. This is in the evidence of P.W. 2 and also in the evidence of P.W. 4, the informant of the case, who might not have stated it clearly, but his evidence leads to the similar inference. It is quite impossible that the deceased would have remained static at a particular point in the field while he was being hit by shots fired by the accused persons. Besides, the most important fact which emerges from the evidence of above witnesses is that none of them has stated that any shot was fired in the frontal part of the body of the deceased and specially, in his chest. However, some of the witnesses have stated that they had not seen any injury in the frontal part of the body of the deceased. Above evidence gets completely contradicted by the evidence of P.W. 8, Dr. Purushottam Singh, who held postmortem examination on the dead body of the deceased.

36. The evidence of P.W. 8 Dr. Purushottam Singh who held postmortem examination on the dead body of the deceased points out that he found the following injuries on the dead body:

"1. Lacerated wound 1/4" x 1/4" x just above and back of right ear (Pinna),

2. Lacerated wound 1/4" with inverted margin on chest left side wound of entry.

3. Lacerated wound 1/2" diameter with inverted margin over back of left side of chest wound of exit.

4. Lacerated wound 1/4" diameter over post lateral aspect of left arm wound of entry scratch 1/4"x1/4" left leg."

37. From the perusal of the above evidence, what appears is that the injury Nos. 1 and 2 were communicating to each other and those were the result of a single shot which could be caused only when the assailant could be standing in front of the deceased. The shot was hitting on the left side of the chest of the deceased and was entering his body and was exiting in the back on the left side, as may appear from the descriptions of injuries No. 2 and 3. Thus, there could not be any escape from this position that the author of that particular shot which resulted in injuries No. 2 and 3 was definitely standing in front of the deceased when he fired the shot.

38. Now, when I further consider the evidence of the doctor, what appears therefrom is that that particular shot causing injuries No. 2 and 3, which were communicating to each other, was chest cavity deep and it had badly lacerated the left as also the right lungs. This was the injury which definitely had caused the death of the deceased, because the other two injuries had not damaged any vital organ so as to resulting into the death of the deceased. Injury No. 1, a lacerated wound 1/4" x 1/4" just above the back of the right ear had been described by the doctor as skin deep and the impact was so light that the underlying bone remained unaffected. Similarly, the third injury which was again a lacerated injury measuring 1/4" in diameter was found on the lateral aspect of the left arm and there was entry to the wound. The doctor had found that the left humerus had been fractured into pieces. He has not stated that it could be the cause of death. He was very clear and specific in his opinion that the cause of death was on account of injuries No. 2 and 3, which I have already discussed, had resulted out of one gun shot. The four witnesses have very specifically stated that no assailant was standing in front of the deceased and no one had fired any shot on any of the frontal parts of his body. It is a big and meaningful variance between the medical and oral evidence which clearly indicates that the witnesses might not have seen the occurrence.

39. Learned Counsel for the informant was submitting that the variance in the evidence of witnesses as regards the distance between the assailant of the deceased and the deceased himself was not of much consequence as the human perception varies from man to man and this was the reason that the court has to separate the grain from the chaff, as was required to be done by the Supreme Court in the case of Balaka Singh and Others Vs. The State of Punjab, . Here, we do not have any such case as was attempted to be made out by the senior counsel, Shri Basant Kumar Choudhary, because the evidence is very clear which specifies the allegations against each of the three accused persons and specifically indicates that there was no assailant firing a shot anywhere on the frontal part of the body of the deceased and specially in his chest. I do accept

that witnesses may err in making narration as regards the distance between themselves and the deceased or the accused persons, but that is not the point. The point is that they were very specific that no shot was fired in the chest of the deceased though the doctor found a wound there which was the real cause of death of the deceased. This conflict and lacuna creates a serious doubt in the claim of P. Ws being eye witnesses to the occurrence, and thus in the prosecution case too, as a result of which the benefit of doubt has to accrue to the Appellants.

40. The deceased Munindra Prasad was definitely killed. So was killed another man who was said to be the brother in law (Sala) of one of the accused persons. There is no definite evidence that the other deceased was indeed related to any of the Appellants or the accused persons who died during the trial. It is all guess work. The police had found a revolver and few cartridges near the dead body which was allegedly taken away by someone of the mob. They were branding him as one of the assailants of the deceased. P.W. 12, the I.O. of the case S.I. Bharat Ram in his evidence in paragraph 8 has stated that on conducting raid, he arrested most of the accused persons of the case who were found very much in their respective houses. P.W. 12 in paragraph 39 has further stated that he conducted raid in the houses of the accused persons with the help of police force deputed at the house of accused Malik Mihsra. This also appears admitted by P.W. 4 in paragraph 21 of his evidence that there was a deputation of some police force from before the date of occurrence at a particular place. It was suggested by the accused persons to P.W. 4 and other witnesses that some orders had been passed by this Court in some other proceedings for giving security to the accused though there is no record brought on record to show that there could be some reason for deputation of force. If the accused persons were found available at their respective houses just after the occurrence and if there was a deputation of police force as per P.W. 12 paragraph 39, this also creates a doubt that they will go as preparedly as in a manner stated by P Ws to commit the offence. The identity of the unknown person who was killed was never established. That gives rise to a real suspicion as to who he was, who was treated by the mob of the people as the assailant of the deceased. These are some of the circumstances appearing from the evidence on record to create a serious doubt about the participation of the Appellants in commission of the murder of the deceased. Some most serious defect as has been pointed out by me in the present judgment, go unanswered, further deepening the doubt as a result of which I find that it was not appropriate for the learned trial judge to record an order of conviction and pass the sentences upon the Appellants. They deserve to be acquitted as the prosecution had failed to satisfactorily prove the complicity of the Appellants in commission of the murder. Accordingly, the two appeals are allowed. The order of conviction passed against the Appellants and sentences inflicted upon them are hereby set aside. They are acquitted of all the charges. Since all the Appellants of the two appeals are on bail, they shall stand discharged from the liabilities of their respective bail bonds.