
(2002) 08 PAT CK 0007

In the Patna High Court

Case No : Criminal Appeal No. 397 of 1987

Navo Nath Mishra and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2002) 4 PLJR 740

Hon'ble Judges : M.L. Visa, J;B.K. Jha, J

Bench : Division Bench

Advocate : Tara Kant Jha and Dhirendra Kumar Jha, for the Appellant; Lala Kailash Bihari Prasad, Raj Nandan Prasad Singh for Informant and Bhagya Narain Gupta, for the Respondent

Final Decision : Allowed

Judgement

M.L. Visa, J.—Both these appeals, arising out of the same judgment and order dated 22.8.1987 passed by IInd Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 182 of 1983, have been heard together and are being disposed of by this common judgment.

2. All the Appellants have been convicted and sentenced to undergo imprisonment for life u/s 396, Indian Penal Code.

3. The case of the prosecution, as disclosed in the Fardbayan (Exhibit-6) of informant Shrishti Narain Jha (P.W. 7), in short, is that on the night between 5.7.1981 and 6.7.1981, informant was sleeping alongwith his two younger brothers in Baithka of his house. On one bed, he was sleeping alone and on the another bed near his bed, his younger brothers Gopal Narain Jha (P.W. 4) and Naresh Narain Jha (P.W. 6) were sleeping. At 12 O'clock about fourteen to fifteen dacoits, coming to house of informant, entered the Baithka and started hurling lathis and when their lathis struck against Tatti of Baithka, the informant awoke on hearing the strikings and he stood on his bed. One of the dacoits ordered him

to remain standing otherwise he would be shot dead. Informant, among the dacoits, identified all the Appellants and Dahaur Jha (since dead). Appellant Navo Nath Mishra was carrying a countrymade pistol, Appellant Bindeshwar Jha was armed with Tengari (axe) and Appellant Jeev Nath Mishra was armed with a Garasa. Rest Appellants were carrying lathis, ropes and torches. In Baithka, dacoits started assaulting the brothers of informant with lathis and when they awoke, Appellant Navo Nath Mishra fired two shots from his country made pistol causing injuries on the thigh and body of Naresh Narain Jha (P.W. 6) and when Gopal Narain Jha (P.W. 4) went running out of the Baithka dacoits, after surrounding him, assaulted him with lathis. Informant also ran out of the house and went to the Darwaza of one Krishna Kant Jha (not examined) and raised hulla. While leaving Baithka, he had heard the dacoits saying that "Sala Ghar Mein Hoga" and some dacoits entered the house and when on hulla of informant, no body from his locality came, he again returned to his house and found that dacoits were running away through the backdoor of his house towards south. Mother of informant raised hulla from the house that dacoits had killed father of informant and when informant went inside his house, he found his father lying dead beneath a Chowki with injuries on his neck caused by sharp edged weapons. From his mother, the informant came to know that Appellant Bindeshwar Jha with Tengari and Jeev Nath Mishra with Garasa had inflicted injuries on the neck and body of father of informant when he had tried to hide beneath his Chauki and at that time Appellants Daya Nath Mishra, Bhai Lal Jha, Navo Nath Mishra and three to four others had surrounded his mother and had demanded keys from her and when his mother handed over them the keys and tried to prevent the dacoits from assaulting her husband, she was also assaulted with lathis by dacoits. The dacoits took away steel boxes carrying clothes, ornaments of silver and gold and a cash amount of rupees seven thousand. The dacoits also snatched an ear ring and a necklace from the body of mother of informant. As the faces of all the dacoits were open, the informant claimed to identify other dacoits on seeing them again. About his wife, informant stated that she was also assaulted by dacoits with lathis. The amount of articles, taken away in dacoity, was about rupees forty thousand. The Fardbayan (Exhibit-6) of informant was recorded at his house on 6.7.1981 at about 6.30 a.m. by Sub Inspector Radhika Raman Singh (P.W. 12).

4. On the basis of Fardbayan (Exhibit-6) of informant, formal first information report (Exhibit-4) was drawn against all the Appellants and co-accused Dahaur Jha u/s 396, Indian Penal Code. After investigation, police submitted chargesheet under Sections 147, 148, 149, 302, 323, 324, 380, 352 and 307, Indian Penal Code against all the Appellants. Taking cognizance, the case was committed to the Court of Session where charge u/s 396, Indian Penal Code was framed against all the Appellants and the Appellants were put on trial because they denied the charge. After trial, all the Appellants were found guilty u/s 396. Indian Penal Code and they were accordingly, convicted and sentenced to undergo imprisonment for life.

5. The case of Appellants, as it appears from the trend of cross-examination of prosecution witnesses, was of their complete innocence and false implication in the case on account of their enmity with the family of informant.

6. In order to prove its case, prosecution examined twelve witnesses, Shrishti Narain Jha (P.W. 7) is the informant. Amod Devi (P.W. 1), is the mother of informant, Veena Devi (P.W. 2) is the wife of informant. Gopal Narain Jha (P.W. 4) and Naresh Narain Jha (P.W. 6), both brothers of informant, are said to be present in the house at the time of commission of dacoity and are eye witnesses to the occurrence. Braj Nandan Jha (P.W. 3) is a witness on the seizure list prepared by police when it had seized blood-stained soil at the place of occurrence and has proved his signature (Exhibit-1) and signature of another witness Krishna Kumar Jha (Exhibit-1/A) on the seizure list. Gulzar Prasad (P.W. 5) is a formal witness who has proved. A protest petition (Exhibit-2) filed by informant in this case. Manoranjan Kumar Srivastava (P.W. 8) is the doctor who had conducted autopsy on the dead body of father of informant. Umakant Baitha (P.W. 9) had taken the charge of investigation of the case on 28.6.1988 from Sub Inspector Radhika Raman Singh (P.W. 12) and had simply submitted chargesheet in this case. Shyam Nandan Jha (P.W. 10) is a formal witness who has proved the formal first information report (Exhibit-4) in the pen Bal Krishna Singh, the then Sub Inspector of Aurai Police Station. Dr. Sharan Ashray Prasad (P.W. 11) is the doctor who had examined injured Naresh Narain Jha (P.W. 6) and Gopal Narain Jha (P.W. 4). Radhika Raman Singh (P.W. 12) is the Investigating Officer of this case.

7. Shristhi Narain Jha (P.W. 7), the informant, in his evidence, has said that at the time of occurrence, he was sleeping at the Darwaza and on another bed, his brothers Gopal Narain Jha (P.W. 4) and Naresh Narain Jha (P.W. 6) were also sleeping and at about 11-12 o'clock in the night about twelve to fifteen dacoits came at his Darwaza and started hurling lathis and when they started assaulting his brother Gopal Narain Jha (P.W. 4) and when their lathis struck the Tatti of Darwaza, he awoke and dacoits ordered him to keep quiet otherwise he would be killed and in the light of lantern, he identified all the Appellants alongwith Dahaur Jha. He has further said that Appellant Navo Nath Mishra was carrying a pistol, Appellant Jeev Nath Mishra was carrying a Garasa and Appellant Bindeshwar Jha was carrying a Tengari and dacoits assaulted his brother Gopal Narain Jha (P.W. 4) with lathi and when his another brother Naresh Narain Jha (P.W. 6) tried to escape, Appellant Navo Nath Mishra fired two shots at him causing injuries. When his brother Gopal Narain Jha (P.W. 4) managed to come out from Baithka, he also ran but three to four dacoits surrounded Gopal Narain Jha (P.W. 4) and started assaulting him and remaining dacoits went inside his house. He went to the Darwaza of Krishna Kant Jha and raised hulla and by that time, most of the dacoits had gone inside his house where his mother and father were there and the dacoits killed his father and took away household articles, ornaments etc. He has further said that his mother told him that Appellant Jeev Nath Mishra, inflicting injuries on his father with Garasa and Appellant Bindeshwar Jha with

Tengari committed the murder of his father. His mother had given keys to dacoits but they assaulted his mother also and dacoits took away a cash amount of rupees seven thousand also and they snatched a necklace and an ear ring from the body of his mother and when his wife tried to rescue his mother, she was also assaulted. According to him, dacoits took away articles worth about rupees forty thousand and injured persons were taken to hospital and both his brothers Gopal Narain Jha (P.W. 4) and Naresh Narain Jha (P.W. 6) were unconscious while they were being taken to hospital and when they regained consciousness, he told them the names of Appellants about murder of his father. He has said that his Fardbayan (Exhibit-6) was recorded by police on which he put his signature (Exhibit-1/B). In cross-examination, he has admitted that Appellants Jeev Nath Mishra, Navo Nath Mishra, Daya Nath Mishra and Prabhu Nath Mishra are full brothers and Baidya Nath Mishra (not among the Appellants) is their elder brother and this Baidya Nath Mishra had filed a criminal case u/s 307, Indian Penal Code against him, his deceased father and others and that case which was of an occurrence of the year, 1975 was still pending on the day of his giving evidence. He has further said that prior to occurrence of this case, a number of cases were pending between his family and Appellants.

8. Amod Devi (P.W. 1), mother of informant, has said that at the time of occurrence, she, alongwith her husband and a child aged about five years was sleeping in her Pucca house when on hulla, she awoke and through the window, she saw that her sons were being assaulted by dacoits and her husband also started raising hulla on which all the dacoits proceeded towards her room and she then shut the window and dacoits started pushing the door of her room and she and her husband pressed the door of her room from inside but dacoits, after making hole in the door of her room with Tengari, opened the latch of the door by inserting hand through the hole which they had made by Tengari and three to four dacoits entered her room. Her husband, out of fear, went beneath Chowki and she, in the light of lantern, identified Appellants Jeev Nath Mishra, Prabhu Nath Mishra, Dayanath Mishra, Navo Nath Mishra, Bindeshwar Jha, Binod Jha, Vijay Jha, Bhai Lal Jha and Umesh Jha. According to her, Appellant Bindeshwar Jha was carrying a Tengari, Appellant Jeev Nath Mishra was carrying a Garasa and Appellant Navo Nath Mishra was carrying a pistol and remaining Appellants were carrying torches and lathis. She has said that she told the dacoits to take away articles but to spare them but dacoits did not listen to her and pulled her husband from the place beneath the Chowki and Appellant Bindeshwar Jha assaulted her husband with Tengari and Appellant Jeev Nath Mishra with Garasa inflicted injuries on the neck of her husband and killed her husband. When she tried to save her husband, she was assaulted by Appellant Bhai Lal Jha with Lathi on her right hand and head. Appellant Navo Nath Mishra, Binod Jha and Vijay Jha had surrounded her and other dacoits took out boxes from almirah and handed it over to other dacoits who were standing outside. She has further said that dacoits snatched golden necklace from her neck. According to her, one Bahuran Devi (not examined) had handed over a sum of rupees 320/- to her saying that

she found the money thrown on the bank of a river and on the next day about 4 p.m., one Ram Master (not examined) gave information that some boxes were lying in an open space and those boxes were brought by Rudan Sahani (not examined) and some others and she got back those boxes alongwith some torn papers and old clothes of her husband. In cross-examination, she admitted that all Appellants are her neighbours and at the time of occurrence, the Appellants had not covered their faces and since ten years before the, dacoity, there was litigation between Appellants and her husband and members of her family were not on visiting terms of their houses. Veena Devi (P.W. 2), wife of informant, in her evidence, has said that at the time of occurrence, she was sleeping in her room and her in-laws were sleeping in another room of the house and she awoke on hulla raised by her mother-in-law and she, thereafter, went in her room when she found ten to eleven dacoits out of whom she identified Appellants Jeev Nath Mishra, Navo Nath Mishra, Prabhu Nath Mishra, Daya Nath Mishra, Bindeshwar Jha Vijay Jha, Bhai Lal Jha and Umesh Jha. Appellant Navo Nath Mishra was armed with a pistol, Appellant Bindeshwar Jha was carrying a Tengari and Appellant Jeev Mishra was carrying a Garasa. The remaining dacoits were carrying torches and lathis. She has further said that Appellants Jeev Nath Mishra and Bindeshwar Jha inflicted injuries on the neck and back of her father-in-law as a result of which her father-in-law died on account of those injuries. About herself, she has said that when Appellant Bhai Lal Mishra was assaulting her mother-in-law and when she went to rescue her, she was assaulted by Appellant Prabhu Nath Mishra and she received injuries on her head and right arm. She has further said that Appellant Navo Nath Mshra was giving threatening to her mother-in-law by pistol and some other dacoits had surrounded her mother-in-law and some dacoits were taking out articles from the house and she identified the dacoits in the light of lantern which was burning in the room of her mother-in-law.

9. Gopal Narain Jha (P.W. 4), the brother of informant, has said that at the time of occurrence, he, alongwith his younger brother Naresh Narain Jha (P.W. 6), was sleeping on a bed in his Baithka and his elder brother informant was sleeping on another bed in the Baithka and he awoke on hearing sound of hurling lathi by dacoits and he identified all the Appellants and Ashok Jha, Sominder Jha, Ram Ballabh Jha and Dahaur Jha among the dacoits. About Dahaur Jha, he has said that he died. He has further said that Appellant Bindeshwar Jha was armed with Tengari, Jeev Nath Jha was armed with Garasa and Appellant Navo Nath Jha and Ashok Kumar Jha were carrying pistols and Sominder Jha was carrying a bottle and other dacoits were armed with torches and lathis. He has said that there were four to five dacoits who were not identified by him and Appellants Umesh Jha, Bharat Lal Jha and Bhai Lal Jha were hurling lathis and when informant awoke, dacoits asked him to keep quiet otherwise he would be shot dead and Appellant Navo Nath Mishra inflicted injuries by his pistol on the leg and body of Naresh Narain Jha and Ashok Kumar Jha fired short on his head and Appellant Bharat Lal Jha and Bhai Lal Jha assaulted him with lathis. He has further said

that three dacoits remained there and remaining dacoits went towards his pucca house through courtyard and he became unconscious and when he regained consciousness he came to know that dacoits had killed his father. He has admitted that Appellants Bindeshwar Jha, Binod Jha and Vijay Jha are brothers-in-law of one Saneshwar Mishra of his locality and his family had litigation with this Saneshwar Mishra on account of some land. Naresh Narain Jha (P.W. 6), another brother of informant, in his evidence, has said that at the time of occurrence, he alongwith his brother Gopal Narain Jha (P.W. 4) was sleeping on a bed in his Baithka and when dacoits started assaulting his brother Gopal Narain Jha (P.W. 4), he awoke and saw fifteen to sixteen dacoits out of whom he identified Appellants Bindeshwar Jha, Binod Jha, Vijay Jha, Umesh Jha, Jeev Nath Mishra, Prabhu Nath Mishra, Daya Nath Mishra, Bhai Lal Jha alongwith Sominder Jha, Ashok Jha and Ram Swaroop Jha. According to him, Appellant Bindeshwar Jha was armed with a Tengari, Jeev Nath Jha with a Garasa and Navo Nath Jha with a pistol and remaining Appellants were carrying lathis and torches. He has further said that when he protested assault on his brother Gopal Narain Jha (P.W. 4), Appellant Navo Nath Jha fired on him causing injuries on his thigh, forehead and below the chest of right side and some dacoits assaulted him with lathi and after receiving injuries, he became unconscious and regained consciousness at hospital where he came to know from informant that dacoits had killed his father and they had also assaulted his mother and Bhabhi and had taken away the articles from his house. In cross-examination, he has said that he regained consciousness at about 12 o'clock in the noon on 7.7.1981.

10. Dr. Manoranjan Kumar Srivastava (P.W. 8) has said that on 7.7.1981 at 11 a.m., he conducted autopsy on the dead body of deceased and found the following ante mortem injuries:

- (i) Incised and punctured wound 2" x 1/2" x lung deep on the back of right side of chest,
- (ii) Incised wound 2" x 1/2" bone deep on the right side of neck,
- (iii) Incised wound of 3" x 1/2" x bone deep on the left side of neck, and
- (iv) Incised wound 2" x 1/2" x bone deep on the back of neck.

About the cause of death, he has said that it was due to shock and haemorrhage and injury No. (i) was caused by a sharp pointed weapon and remaining injuries were caused by sharp cutting weapon such as Garasa, Tengari, etc. About injury No. (i), he has clearly stated that it was not possible even by force with the corner portion of Tengari or Garasa. About time of death, he has said that it was within forty eight hours and he has proved the post mortem examination report which is marked Exhibit-3. In cross-examination, he has said that injury No. (i) was possible by Bhala or Barcha.

11. Dr. Sharan Ashray Prasad (P.W. 11) has said that on 6.7.1981, he examined Naresh Narain Jha (P.W. 6) and found the following injuries on his person:

- (i) Multiple lacerated wound on the medial side of left thigh 4" x 2",
- (ii) Lacerated wound on the right side of abdomen 2/10" x 1/10" x skin deep,
- (iii) Lacerated wound 2/10" x 2/10" x skin deep on head.

About nature of injuries, he has said that he referred the injured for x-ray examination but because he could not get the report, he cannot say the nature of injuries. He has proved the injury report (Exhibit-5). He has further said that on the same day, he examined Gopal Narain Jha (P.W. 4) and found the following injuries on his person:

- (i) Four lacerated wound each 2/10" x 2/10" x skin deep on the right side of forehead,
- (ii) Two lacerated wounds each of the side 2/10" x 2/10" x skin deep in front of left side of head,
- (iii) Tender swelling on the middle of the lower lips 1/4" x 1/2",
- (iv) Tender swelling on the outer part of the left arm 2-1/2" x 1-1/2",
- (v) Bruise on back 5" x 1",
- (vi) Scratch on the upper part of abdomen 1/4" x 1/4".

According to him, injuries No. (iii) to (vi) might have been caused by hard and, blunt substance and these injuries were, simple. About rest of injuries, opinion was reserved as the case was referred to x-ray examination. He has proved injury report for this injured also which is marked Exhibit-5/A.

12. Radhika Raman Singh (P.W. 12) is the Investigating Officer. He has said that on 6.7.1981, he recorded the Fardbayan of informant and he has proved this Fardbayan which is marked Exhibit-6. He has also proved formal first information report (Exhibit-4) drawn on the basis of Fardbayan (Exhibit-6). He has said that the place of occurrence is a new house which is partly constructed and two Pucca rooms were found constructed. Out of the two rooms, he found one Chauki kept in the northern room and a wooden box was also found kept towards west of Chauki and there was distance of one span between the box and Chauki and in between this, dead body of deceased with cut injuries on his neck was found and lower portion of the body was beneath the Chauki. He has further said that he found blood at different places in copious quantity and wooden box was found open and some Dibba and some old clothes were found kept in box and there was cut mark by a sharp weapon on the box and he further found an almirah kept south of the wooden box and the latch of the almirah was found broken. He has also stated that one flank of the door was found cut and fallen on the floor and grains and utensils were found intact and the articles of the southern room in which P.W. 2 was said to be sleeping at the time of occurrence were also found intact. He has added that in presence of Shiv Kumar and Ramdeo Jha he prepared inquest report (Exhibit-7) and in their presence, he seized the wrist

watch of deceased alongwith its glass and (sic) and prepared a seizure list (Exhibit-6). He has further said that he seized blood stained soil from the place of occurrence in presence of Braj Nandan Jha (P.W. 3) and Krishna Kumar Jha (not examined) and prepared a seizure list (Exhibit-8/A) and he also seized the broken plank of the door in presence of witnesses, namely, Shiv Kumar Jha (not examined) and Nagendra Jha (not examined) and prepared another seizure list (Exhibit-8/B). According to him, he handed over charge of investigation on 22.6.1982 to Umakant Baitha (P.W. 9) on his transfer. In cross-examination, he has said that on receipt of rumour of dacoity, he had gone to place of occurrence and recorded the Fardbayan (Exhibit-6) of informant.

13. The evidence of Dr. Manoranjan Kumar Srivastava (P.W. 8) supports the case of prosecution that death of deceased was homicidal resulted from the injuries inflicted on him. Amod Devi (P.W. 1) and Veena Devi (P.W. 2) are only two witnesses who have claimed themselves to have seen infliction of injuries on deceased. They both have said that Appellant Jeev Nath Mishra assaulted the deceased with Garasa and Appellant Bindeshwar Jha assaulted the deceased with Tengari. Amod Devi (P.W. 1), the wife of deceased has said that both the aforesaid Appellants inflicted injuries on her husband with their respective weapons on the neck whereas Veena Devi (P.W. 2), daughter-in-law of deceased, has said that the aforesaid Appellants inflicted injuries on neck and back of the deceased. The evidence of Dr. Manoranjan Kumar Srivastava (P.W. 8) is that besides other ocised wounds found on the dead body of deceased, which were caused by sharp edged weapons, he found one incised and punctured wound on the back of right side chest which was not in any way possible Garasa and Tengari and as stated by him cross-examination, it was possible by Bhala or Barchi because both these weapons are pointed weapons. Neither P.W. 1 nor P.W. 2 has stated that any of the Appellants, at the time of occurrence, was armed with Bhala or Barchi and with that weapon he inflicted any injury on deceased. So, we find that about injury No. (i) which was found on the dead body of deceased which was incised and punctured wound, there is no explanation on behalf of prosecution that how this injury was inflicted on the deceased. The Court below, in para-25 of its judgment, has taken note of this fact and has clearly stated that there is no explanation available in the evidence of P. Ws. 1 and 2 for this injury but inspite of it, it has held that there is no least doubt in its mind that by their act, Appellant Bindeshwar Jha and Jeev Nath Mishra attributed in committing the murder of deceased. As in this case, all witnesses are closely related to each other and are members of the family of deceased and there is no evidence of a single independent witness we have to examine the evidence of prosecution witnesses very cautiously particularly in view of the fact that prosecution witnesses have admitted their long standing enmity with the Appellants. When P. Ws. 1 and 2 are claiming themselves to be eye witnesses to the occurrence and are giving a detailed account of the manner in which deceased was assaulted, the medical evidence that injury No. (i) found on the dead body of deceased was not possible by the weapons which the two

Appellants, said to be assailants of deceased were carrying, becomes a question of great importance creating doubt about the manner in which deceased is said to have received injuries. Besides this, the evidence of informant is that when his brother Naresh Narain Jha (P.W. 6) tried to run away, Appellant Navo Nath Mishra fired two shots on him causing injuries. Naresh Narain Jha (P.W. 6), in his evidence, has also said that he received injuries on his thigh, forehead and lower portion of chest when Appellant Navo Nath Mishra fired shots at him, and some dacoits assaulted him with lathi. Gopal Narayan Jha (P.W. 4) has said that Ashok Jha who was among the dacoits caused injury on his head by firing. But the evidence of Dr. Sharan Ashray Prasad (P.W. 11) who had examined Gopal Narayan Jha (P.W. 4) and Naresh Narain Jha (P.W. 6) does not show that they had received any injury caused by any firearm. Even about the nature of injuries medical evidence is silent on the ground that the injured were referred to x-ray examination but the report of x-ray was not received. Besides this, Veena Devi (P.W. 2) has said that she awoke on hearing hulla raised by her mother-in-law and she then went in the room of her mother-in-law where she found ten to eleven dacoits already present there. In cross-examination, she has said that she saw the dacoits entering the room of her mother-in-law and she, following them, also entered the room. This does not inspire confidence because had she seen the dacoits entering the room of her mother-in-law, she would not have entered the room and like informant, tried to run away. Apart from it, she has said that the dacoits started assaulting her mother-in-law and when she went to her rescue, she was also assaulted. There is no injury report of either P. Ws. 1 or 2 and besides this P.W. 1, in her evidence, has nowhere stated that P.W. 2 was in her room at the time of occurrence and she had tried to save her from assault. P. Ws. 1 and 2 both have said that Appellant Navo Nath Mishra was armed with a pistol and in his presence, Appellant Bindeshwar Jha and Jeev Nath Mishra, by giving number of blows with their respective weapons on the deceased, committed his murder. If the Appellants had any intention to commit the murder of deceased, Appellant Navo Nath Mishra who was armed with a pistol, would have easily used it in committing the murder. When he is said to have opened fire from his pistol causing injuries to Naresh Narain Jha (P.W. 6), it does not come to reason that what prevented him from using this firearm in the room of P.W. 1 against the deceased. The evidence of informant (P.W. 7) is that he ran from his house and went to the Darwaza of one Krishna Nand Jha where he raised hulla. This Krishna Nand Jha has not been examined and informant has said that because he is to Gujarat, therefore, he is not in a position to come and depose. As stated earlier, no independent witness has been examined in this case on behalf of prosecution and the court below on this point has observed that in a village where there are two factions no independent witness likes to depose in favour of a party. We are unable to accept this logic of the Court below because in case if there are two factions in a village a number of persons, who are even not eye witnesses to the occurrence, will become ready to depose against the members of rival faction. The Appellants are neighbours of informant and a dacoity is said to have taken place in the village but not a single villager has

come forward to depose about the dacoity. The evidence of Investigation. Officer that he found a plank of door broken and fallen on the floor is also against the evidence of P.W. 1 who has clearly said that the Appellants had made a hole in the plank of door of her room by Tengari and by inserting hand to that hole, opened the latch of the door. This also does not support the case of prosecution, the manner which door of her room was opened. The Investigating Officer (P.W. 12), in his evidence, has stated that he recorded the statements of P.Ws. 1 and 2 on 7.7.1(sic) because on 6.7.1981 when he met them they were not in a position to give the statements because they were engaged weeping. P.W. 2 has admitted that the (sic) lice came on the next day of dacoity but on that day, her statement was not recorded because she was weeping on that day and on the next day her statement and statement of her mother-in-law were recorded. This also creates a very strong doubt to accept the evidence of P. Ws. 1 and 2 that they are eye witnesses to the occurrence, When P.W. 1 was in a position to give the details of the occurrence to her son who is informant immediately after the occurrence, there was no reason for her not to give her statement on the next day of occurrence when police had come to her house. P. Ws. 1 and 2, said to be eye witnesses to the occurrence, in their evidence, have stated that they were also assaulted by dacoits and had received injuries but there is nothing on record that like other injured persons, they were also examined by any doctor. The Investigating Officer (P.W. 12) does not say that on the next day in the morning when he visited the place of occurrence, he found any injury on P. Ws. 1 or 2 although he has said that he prepared injury certificates but has not made it clear for whom such certificates were prepared by him. He, in his cross-examination, has said that by the time, he reached the place of occurrence, injured Gopal Narain Jha (P.W. 4) and Naresh Narain Jha (P.W. 6) had already been sent to hospital and he, after going to hospital, saw injuries on their persons. perhaps, the injuries certificates, prepared by him, may be for these two injured persons and no definite opinion about the injury certificate, said to be prepared by him, can be given in absence of naming the injured by him or in absence of bringing those injury certificates on record. Amod Devi (P.W. 1) has said that later one Bahuran Devi gave her a sum of Rs. 320/- saying that she found the money thrown on the bank of a river and on the next day, one Ram Master informed that some boxes were lying in Katai area which were brought by Budhan Sahni and others. None of the persons, named above, has been examined. The prosecution witnesses have claimed that they identified the Appellants in the light of lantern but the Investigating Officer, during investigation, did not find any lantern or sign of lighting the lantern which usually appear in the surrounding areas. Appellant Bharat Lal Jha was not identified by P.Ws. 1 and 2, Appellant Binod Jha by P.W. 2 and Appellant Umesh Jha by P.W. 6. Besides this, P. Ws. 4 and 6 have added names of Ashok Jha, Somendra Jha and Ram Ballabh Jha who are not among the Appellants. The medical evidence showing that the death of deceased was homicidal and the evidence of Investigating Officer who found blood stains at the place of occurrence and some marks of violence on a wooden box kept at the place of occurrence may suggest

the factum of dacoity in the house of informant but so fat manner of dacoity and participation of Appellants in that dacoity is concerned, that appears quite doubtful. The evidence of prosecution witnesses is that besides Appellants, there were some other dacoits also with them who could not be identified. The possibility of false implication of Appellants in this case on account of long standing enmity utilising the incident of dacoity cannot be ruled out. In this case, Appellant Vijay Jha and Binod Jha were examined u/s 313, Code of Criminal Procedure on 31.3.1987 and 20.4.1987 respectively when their ages were estimated by the Court below about nineteen years and twenty two years respectively. The occurrence is said to have taken place in the night between 05th and 06th July, 1981. It means that at the time of occurrence the age of Appellant Vijay Jha was about thirteen years, three months and six days and age of Appellant Binod Jha was about sixteen years, two months and fifteen days. They both are full brothers and Appellant Bindeshwar Jha is their another brother. It looks very unnatural that the Appellants would go to commit dacoity in their neighbourhood taking with them such minor and young boys as Vijay Jha and Binod Jha when they were sufficient in number and accompanied by some other persons also. besides this, age of Appellant Bhai Lal Jha was estimated by Court on 31.3.1987 when he was examined u/s 313, Code of Criminal Procedure as eighty years. The defence has brought on record a Voters' List (Exhibit-A) showing that in this Voters' List which was revised in the year, 1983, age of co-accused Dahaur Jha (since dead) is recorded as seventy two years. Since Dahaur Jha is dead now so this document does not help the case of Appellant any how but then Appellant Bhai Lal Jha, admittedly, at the time of occurrence was aged about seventy four years. So, we find that the Appellants include an old man aged about seventy four years as well as a boy aged about thirteen years and, as stated above, the Appellants are neighbours of informant with whom the family of informant had long standing dispute.

14. Considering the entire evidence on record, we find that the case of prosecution is shrouded with clouds of doubts and in view of discussion, as made above, we do not find it safe to uphold the conviction of Appellants on the basis of evidence of witnesses all belonging to one family which was having long standing enmity with the Appellants.

15. In the result, both these appeals are allowed and the Appellants are acquitted. Since all the Appellants are on bail, they are discharged from the liabilities of their bail bonds.

B.K. Jha, J.

16. I agree.