
(2001) 09 PAT CK 0006

In the Patna High Court

Case No : Cr. Appeal No. 149 of 1987 (D.B.)

Prakash Poddar @ Jai Prakash Poddar and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 03-09-2001

Acts Referred:

Citation : (2001) 09 PAT CK 0006

Final Decision : Dismissed

Judgement

B.N.P. Singh, J.—For an occurrence that took place on 17th December, 1982, on same set of evidences, two Sessions Trials bearing Nos. 185 of 1983 and 185A of 1983 commenced, on conclusion of which, Appellants suffered conviction and were sentenced to different terms of imprisonment. Three separate and distinct Criminal Appeals came to be filed by the Appellants. While Cr. Appeal Nos. 145 of 1987 and 149 of 1987 arise out of Sessions Trial No. 185 of 1983, Cr. Appeal No. 39 of 1999 arises out of judgment rendered in Sessions Trial No. 185A of 1983. Facts of both sessions cases and evidences led at trial are same, and that apart, common arguments were canvassed on behalf of the Appellants at Bar and hence all the three appeals are being disposed of by this common judgment.

2. Shorn of details, prosecution case, for which the State went for trial, was that at about 9 a.m. on 17th December, 1982, while Ragho Prasad Singh (deceased) along with his son Devendra Prasad Singh (deceased) and their employee Jai Karan Prasad Singh (P.W. 9) was irrigating his field, which situates in Dumardih Bahiyar of village Heyatpur, by means of a pumping set, which was in operation, an unruly mob of 30-40 persons came from north-east direction and surrounded Ragho Prasad Singh and Devendra Prasad Singh. It was alleged that while Appellants Chandra Roshan Pandit, Moleshwar Pandit, and Prakash Poddar, opened fire, causing gun shot injuries to Devendra Prasad Singh, Appellant Maheshwar Sao dealt blows on leg with spade, pursuant to which he dropped to the ground. When Ragho Prasad Singh getting frightened began to move towards south, the unruly mob chased him and it was alleged that Appellants Ram Bilash

Prasad, and Devendra Poddar, shot at him causing gun shot injuries, and after he dropped to the ground, Appellants Krishna Mohan and Yogi Paswan, too dealt blows with spade on him. Allegations are attributed to Appellants Badho alias Brahmdeo Yadav and Makkhan Pandit that they too dealt blows on Ragho Prasad Singh with lathi. Jai Karan Prasad Singh, seeing the gruesome murder of his master, got frightened and ran to the village. Vijay Kumar Singh (P.W. 2), Ashik Singh (P.W. 3) and Badho Mandal (P.W. 4) were suggested to be the ocular witnesses of the incident. Shortly after Jai Karan Prasad Singh ran to the village, Tapeswar Singh (P.W. 6), Radhey Prasad Singh (P.W. 1), Badho Mandal (P.W. 4) and Mahesh Sharma (P.W. 8) came along with Jai Karan Singh (sic) and noticed Bagho Prasad Singh and Devendra Prasad Singh dead and with case narrations, fardbeyan of Jai Karan Prasad Singh (P.W. 9) was recorded at 15 (sic) hours on the same day by Shri Ram (sic) Avitra Singh, Sub Inspector of Police P.W. 11) which forms basis of first information report, drawn up at Chautham Plioie Station, and investigation commenced. During pendency of investigation, Police Officer, entrusted with investigation, recorded statement of witnesses u/s 161 of the Code of Criminal Procedure, prepared inquest report of the dead bodies of Devendra Prasad Singh and Ragho Prasad Singh, seized blood-stained earth and also blood-stained (sic) anian of Devendra Prasad Singh and (sic) ent the dead bodies to the mortuary, visited the place of occurrence, and on receipt of post mortem report and conclusion of investigation, laid charge sheet before the Court and on being committed to the Court of Session, Appellants were put on trial. On these allegations of executing killings of Ragho Prasad Singh and Devendra Prasad Singh, as has been stated above, State went in trial in Session Trial No. 185 of 1983 on various charges. However, due to absconsion of Appellant Chandra Roshan Pandit, at the fag-end of trial, while his trial was segregated from rest of the Appellants, Mauleswar Pandit, Prakash Poddar, Ram Bilash Prasad, Devendra Poddar, Krishna Mohan Gupta and Yogi Paswan on being tried, suffered conviction u/s 302 of the Indian Penal Code (IPC) and were sentenced to suffer rigorous imprisonment for life. Likewise, Appellants Maheshwar Sao, Brahmdeo Yadav alias Badho, and Makkhan Pandit also suffered conviction u/s 302/149 IPC and were sentenced, the same term of imprisonment. Appellants Mauleswar Pandit, Prakash Poddar, Ram Bilash Prasad, Devendra Poddar, Krishna Mohan Gupta, Yogi Paswan and Mahesh Sah, also suffered conviction u/s 148 IPC and were sentenced to suffer rigorous imprisonment for three years. Appellants Brahmdeo Yadav alias Badho and Mauleswar Pandit also suffered conviction u/s 147 IPC and were sentenced to suffer rigorous imprisonment for two years. However, all the sentences were directed to run concurrently.

3. In the eventual trial, while prosecution examined 12 witnesses to bring home charges against the Appellants who were put on trial, defence too examined eight witnesses on behalf of Appellant Ram Bilash Prasad, obviously to suggest his alibi and also alleged false implication by the prosecution and the trial Court placing implicit reliance on the testimony of the witnesses, including that of P.Ws. 1 Radhey Prasad Singh, P.W. 2 Vijay Kumar Singh, P.W. 3 Ashik Singh and P.W. 4

Badho Mandal, who claimed to be ocular witnesses, rendered verdict of guilt and sentenced the Appellants in the manner stated above.

At this stage it is apt to notice that Appellant Maheshwar Sao died on 17.11.1998 during pendency of this appeal and hence this appeal (Cr. Appeal No. 149 of 1987) stood abated as against him, vide order dated 17.8.2001.

4. Now adverting to the evidences placed on record, one would find Jai Karan Singh (P.W. 9), who was maker of fardbeyan, reiterating his early version which he rendered before the Police about unruly mob of 30-40 persons having surrounded Devendra Prasad Singh when he along with Ragho Prasad Singh was irrigating the field with pumping set which was installed in the field. He would state before the Court that while Appellants Chandra Roshan Pandit, Mauleshwar Pandit and Prakash Poddar took recourse to firing causing gun shot injuries to Devendra Prasad Singh, Appellant Maheshwar Sao (since dead) dealt spade blow, after Devendra Prasad Singh dropped to the ground. When Ragho Prasad Singh, getting frightened, ran to the village towards south, the unruly mob chased him when Ram Bilas Prasad and Devendra Poddar took recourse to firing causing gun shot injuries to him and Ragho Prasad too on sustaining gun shot injuries, dropped to the ground. As for Appellants Yogi Paswan and Krishna Mohan Gupta, the witness would state that they dealt spade blows on him while Appellants Makkhan Pandit and Barho also assaulted him with lathi. He stated to have ran towards the village and narrated about the gruesome murder of Devendra and Ragho, when Siya Ram. Singh, Sundar Singh, Ram Balak Singh, Tapeswar Singh and Mahesh Sharma came along with him and noticed dead bodies of father and son. The witness would state that bad blood was persisting between the parties since long and in the year 1978, the Police had intercepted Chandra Roshan Pandit in pursuance of which, rifles, pistols and bombs were recovered from his house and in that case, Devendra Prasad Singh was a prosecution witness. The witness would also state about old enmity persisting between the parties and these evidences were obviously brought on the record to suggest the motive behind the alleged incident.

5. Now adverting to the evidence of Ragho Prasad Singh (P.W. 1), one would find him stating that while he was cutting grass at a distance of about 150 yards, west to the place of occurrence, he heard sound of gun shot firing and noticed Appellants who were assaulting Devendra Singh. When Ragho Prasad Singh ran towards south west, he too was assaulted by them. Vijay Kumar Singh (P.W. 2) would state that while coming along with Ashik Singh (P.W. 3) and Badho Mandal (P.W. 4), he noticed Ragho Prasad Singh and Devendra Prasad Singh irrigating land with aid of pumping set. Shortly thereafter, an unruly mob of 30-40 persons came from north east direction. They encircled Devendra Prasad Singh and out of them, Chandra Roshan Pandit, Mauleshwar Pandit and Prakash Poddar opened fire causing gun shot injuries to him and when he dropped to the ground, Maheshwar Sao (since dead) dealt blows on him with spade. When Ragho ran towards south west, he was chased by the mob and it was Devendra Poddar and

Ram Bilas Singh, who fired on him causing gun shot injuries, and when he dropped to the ground, Yogi Paswan and Krishna Mohan Gupta dealt blows with spade on him. Brahmdeo Yadav and Makkhan Pandit too assaulted him with lathi. He stated to have gone to the village and came to the place of occurrence along with Jai Karan Singh and other villagers. Evidence of Ashik Singh (P.W. 3) was also more or less in similar terms about the unruly mob of 30-40 persons having come from north and east direction and encircled Devendra Singh. It was Chandra Roshan Pandit, Mahesh Sao and Prakash Poddar who opened fire causing gun shot injuries to him. His further evidence was that shortly after Devendra Singh dropped to the ground, Mahesh Sao dealt blows with spade on leg and when Ragho Prasad Singh ran towards south west, the mob encircled him also, pursuant to which Devendra Poddar and Ram Bilas opened fire on him and when Ragho Prasad Singh dropped to the ground, Yogi Paswan and Krishna Mohan dealt spade blows on him. Barho and Makkhan were attributed to have given lathi blows on Ragho Prasad. This witness would state that Jai ran Singh ran to the village and shortly thereafter, he came to the place of occurrence along with the villagers who noticed Ragho and Devendra dead.

6. Now adverting to the evidence of mother witness, namely, Badho Mandal (P.W. 4), who too claimed to be ocular witness, one would find him narrating in the Court that while he came along with Vijay Singh and Ashik Singh from Bhelwa ahiyar, he noticed Ragho and Devendra rigating lands with pumping set. He could further state about the presence of (sic)ai Karan Singh at the place of occurrence, and shortly after his arrival, he noticed unruly mob of 30-40 persons coming from north east direction when they encircled- Devendra Singh. Allegations attributed to Chandra Roshan Pandit and (sic)ai Prakash Poddar by this witness was that they took recourse to firing causing gun shot injuries to Devendra, who dropped to the ground on sustaining injures by him, pursuant to which Maheshwar Sao (since dead) dealt spade blow on him and after Ragho Singh ran towards south and west, the unruly mob chased him and in course of chase, it was Devendra Poddar and Ram Bilas Singh who opened fire causing gun shot injuries to Ragho Prasad Singh and after he dropped to the ground, Krishna Mohan and Yogi Paswan dealt spade blows on him. Allegations attributed to Brahmdeo and Makkhan was about dealing lathi blows on Ragho Prasad. The witness would state to have left the place of occurrence and having gone to west and south direction, getting frightened, on seeing the gruesome murder of the father and son. Shortly thereafter, the villagers came from the village and noticed Devendra and Ragho Singh dead in pool of blood.

7. Switching over to the evidence of Tapeswar Singh (P.W. 6), one would find him narrating that on receipt of information from Jai Karan Singh about Ragho, and Devendra having been killed by Chandra Roshan Pandit, Moleshwar Pandit, Makkhan Pandit, Krishna Mohan Gupta, Maheshwar Sao. Devendra Poddar, Prakash Poddar, Yogi Paswan, Barho Yadav, and Ram Bilash Prasad, he came to the place of occurrence when noticed Ragho and Devendra dead with copious blood on the place of occurrence. Ram Balak Singh (P.W. 5), Siya Ram Prasad

Sinha (P.W. 7), Mahesh Sharma (P.W. 8) and Anandi Singh (P.W. 10) have been tendered by the prosecution and there was nothing material in their evidence to merit consideration.

8. Ram Pavitra Singh, Sub Inspector of Police (P.W. 11) stated to have visited Dumar Dih Bahiyar which situates in village Heyatpur, at 3 p.m., on the same day on receipt of some information about two persons having died. He stated to have recorded the fardbeyan of Jai Karan Singh at 3 p.m. and noticed two dead bodies there. He stated to have prepared inquest report of the dead bodies, in presence of Anandi Singh and Anil Kumar Pandit. Both the dead bodies were sent to mortuary for post mortem examination. He stated to have seized blood stained earth from the site of the water channel and also a banian of Devendra, which was the wearing apparel. He stated to have noticed the dead body of Devendra at an insignificant distance from the water channel. He did not seize blood stained earth from the site where the dead body of Devendra Singh was noticed, as blood was found washed out due to flow of water. At a distance of about 300 yards, where he stated to have found dead body of Devendra Singh, which was in the maize field, he noticed copious blood there. The case was supervised by the superior Police Officer and on conclusion of investigation, charge sheet was submitted against the Appellants and others.

9. Dr. Om Prakash Sinha (P.W. 12) stated to have held autopsy over the dead body of Devendra and Ragho Prasad Singh at about 11.15 A.M. and noticed four number of wounds on different parts of person of Devendra Prasad Singh. While there was also one incised wound over the back of lower one 1/3 of right leg, on dissection, the doctor noticed that the frontal bone was fractured and brain substances were lacerated. These injuries, in the opinion of the doctor, were ante mortem in nature. While injury Nos. 1 to 6 were caused by fire arms, injury No. 7 was caused by sharp edged object. On the same day, the doctor stated to have held autopsy over the dead body of Ragho Prasad Singh, when there were four incised wounds on different parts of his person. There was defused swelling and also one circular wound over right side of front of chest just above right nipple. Surrounding skin was blackened. There was yet other circular wound with lacerated margin over right scapular region. While the first circular wound was the wound of entrance, latter was wound of exit. The doctor also noticed incised wound over left parietal region of head, and in the opinion of the doctor, all the injuries were ante mortem in nature and while injury Nos. 1 to 4 and 8 were caused by sharp cutting weapon, injury No. 5 was possible by hard and blunt substance. As for injury Nos. 6 and 7, the doctor would state that these two injuries were caused by fire-arms. Death of both injured, as has been the finding recorded by the doctor, were due to shock and haemorrhage on account of sustaining injuries by them.

10. A lot of arguments were canvassed on behalf of the Appellants to assail the findings recorded by the trial Court and it is sought to be urged that from the tenor of evidence appearing in the testimonies of the prosecution witnesses,

namely, P.Ws. 1, 2, 3 and 4, it would appear that they were purposely introduced and were transplanted by the prosecution to lend assurance to the prosecution version even though they had no occasion to be in Dumar Dih Bahiyar on account of they having no landed property there. Contentions were raised that when large number of persons were shown to have chased Ragho Prasad to a longer distance through the maize field and also the land which was shown to have been irrigated shortly before the incident, notwithstanding there being evidence of the witnesses, there was no objective finding of the Investigating Officer about presence of marks of violence or also there being any sign of trampling of the crop in the field. In quick succession, learned Counsel would urge that since Ragho Prasad Singh was shown to have been chased by the unruly mob to a longer distance, it was reasonably expected that trail of blood should have been noticed by the I.O., had the prosecution case been true. Yet it is urged that though Ragho was suggested to have sustained injuries in the process of being chased by the unruly mob, by some of the Appellants, it was quite unlikely that he would sustain injuries on the front side while the prosecution case was otherwise. The learned Counsel would urge that though dead bodies were noticed besides the water channel, it was quite unlikely that they would not get smeared with mud and the learned Counsel, while drawing our attention to the inquest report, would urge that the inquest held over the dead body would ostensibly betray the prosecution case on this count also. Contentions were raised that when Ragho Prasad Singh, as has been evidence of the witnesses, sustained injuries from, a long distance at the hands of the assailants, the doctor stated to have found the wound blackening around, which was not possible unless the firings were shot from close range. It is urged that since Ragho sustained injuries on his person with banian on his person, it was expected that the banian would bear hole mark from the gun shot injuries which he sustained on his person and the last argument canvassed on behalf of the Appellants was that it would appear from the evidence of none else but the I.O. that before visiting the place of occurrence, he received information about two persons having been shot dead in Dumar Din Bahiyar for which station diary entry was expected to have been recorded, since it was a cognizable offence. As the said station diary entry was not placed on the record by the State, the prosecution case must suffer set back on that count, and that apart, if the version of the I.O. was accepted to be true on its face value, the fardbeyan of Jai Karan Singh recorded by Ram Pavitra Singh, S.I. was not the early version of the prosecution, that having been recorded by him during investigation u/s 161 of the Code of Criminal Procedure.

11. On marshalling the evidence placed on record, one would find that even though Radhey Prasad Singh (P.W. 1) was suggested to have rushed to the place of occurrence shortly on receipt of information from Jai Karan Singh about Devendra Prasad Singh and Ragho Prasad Singh having been shot dead and he too claimed to be ocular witness to the incident, and that apart, his name had not been transpiring in the early version of the prosecution by Jai Karan Singh as

the ocular witness. His evidence on critical analysis deserves rejection for the simple reason that it was most cryptic and omnibus and was not even with the tune of the prosecution version about the mode of assault and also manner of occurrence. Even though it was not the case of the State that Ragho too was encircled by the unruly mob, he would state that like Devendra Prasad, Ragho too was surrounded by them. Similarly, one would find evidence of P.W. 6 too to be quite omnibus without narrating the details about the weapons that were held by the assailants. Though he had been informed by Jai Karan Singh about the occurrence, but these details were conspicuously wanting in his evidence and in the backdrop of the infirmities transpiring in the evidence of these two witnesses, their evidence did not inspire confidence.

12. Now advertent to the evidence of other witnesses, who claimed to be ocular, credibility of Vijay Kumar Singh (P.W. 2), Ashik Singh (P.W. 3) and Badho Mandal (P.W. 4) has to be judged in the backdrop of criticism that were levelled against them to impeach their testimony by the learned Counsel for the Appellants. Now coming to the evidence of Vijay Kumar Singh (P.W. 2), one would notice that he simply stated that he was coming from the field, without narrating the details, that he was coming from Bhelwa Bahiyar. Though during cross examination some facts were sought to be elicited from the witness about there being any occasion for these witnesses to be in Dumar Dih Bahiyar, the witness was quite emphatic in his assertion that though he does not own land in Dumar Dih Bahiyar, he owns five bighas of land in Bhelwa Bahiyar which was purchased by his father. About the sale deed, he stated that the document was deposited in the Land Mortgage Bank. Now advertent to the evidence of Ashik Singh (P.W. 3) one would find him narrating that he was coming from Bhelwa Bahiyar, though he would not specifically state that he was coming from his own field. Though this witness does not own field in Bhelwa, he stated to own field in Dumar Dih which was purchased by him about 5-6 years back which was adjacent to the field of Ragho Singh. Now coming to the evidence of Barho Mandal (P.W. 4), though he did not own land either in Bhelwa Bahiyar or Dumar Dih, but he stated about cultivating land on batai in Bhelwa Bahiyar. If assertions made by these witnesses were taken into consideration, there was every occasion for them to be near the place of occurrence and hence their credibility could not be questioned.

13. Learned Counsel for the Appellants would also impeach their testimonies on account of their discrepant statements. Now, again advertent to the evidence of P.W. 2 Vijay Kumar Singh, he would state that he was coming along with Ashik Singh (P.W. 3) and Barho Mandal (P.W. 4). His attention was drawn to previous statement rendered by him before the Police and true it is that no such statement was rendered by him before the Police. Switching over to the evidence of P.W. 3 his attention too was drawn as to whether similar statement had been rendered before the Police by him to be in the company of Vijay Kumar Singh and Barho Mandal, while going to Dumar Dih Bahiyar, and the I.O. who recorded his statement would state in most positive terms that this witness made similar statement before him about going to Dumar Din Bahiyar in the company of Vijay

Kumar Singh. Now switching over to the statement of Barho Mandal (P.W. 4), assertion made by this witness about going to Dumar Dih Bahiyar in the company of Vijay Kumar Singh and Ashik Singh was not challenged by the defence and in the backdrop of statement of these witnesses that has been placed on record by the State, these witnesses appear to be quite natural and their presence at the place of occurrence was also quite probable.

14. Though some of the Appellants, as has been stated, are suggested to have caused gun shot injuries to Devendra Prasad Singh and Ragho Prasad Singh, and coming to the finding of the doctor, which he recorded while conducting autopsy over the dead bodies, one would find that all corresponding injuries were found on the dead bodies of Devendra and Ragho, as besides fire arm injuries, there were injuries caused by sharp cutting weapon and also hard and blunt substance. Assertion made by the witnesses about the assailants causing gun shot injuries on Ragho and Devendra were sought to be challenged on the premises that though Ragho Prasad was shown to have sustained injuries in the process of being chased, no injuries were reasonably expected on the front side. However, the evidence of P.Ws. 4 and 9 cannot be lost sight of, who stated in most positive terms that while being chased, Ragho sustained some of the injuries while looking behind. It is admitted that some of the injuries on Ragho and also Devendra were on back side and not from the front side. As for Devendra Prasad Singh, since he sustained injuries on his person on being encircled by the unruly mob, there was every likelihood of his sustaining injuries on front side as well as back side. Now coming to the other criticism levelled by the learned Counsel for the Appellants, about such fire arm injuries having not been possible from a distance, evidence of P.Ws. 2 and 3 can be taken into consideration who were stating in most positive terms that they sustained injuries from a distance of about one step and if their evidences were taken into consideration to judge the culpability of the assailants, it was not unlikely that some of the wounds found on the dead bodies of Devendra and Ragho would be blackened, and that apart, when a person is being chased by a mob, one is not expected to narrate with mathematical precision, as about the distance, when firing shots were made by the assailants and reliance on this score can be placed on a decision of the Apex Court reported in 1995 SCC (Cri) 944 (Kapur Singh v. State of Punjab). It is common knowledge that some times if shots are fired from a long range, blackening is present in the area of injury and ingress which creates doubt. The authoritative comments made in the Medical Jurisprudence of Modi may be quoted profitably as follows:

The wound of entrance in distance shots is usually smaller than the projectile due to the elasticity of the skin, and is rounded when the projectile strikes the body at a right angle and oval when it strikes the body obliquely. The edges of the wound are inverted and striking bullet covered with grease and smoke causes also a collar of abrasion, which looks like a dark ring.

Reliance can also be placed on a decision of the Apex Court of the land reported

in Mohan Singh and Another Vs. State of M.P.,

15. Though arguments were canvassed, for there being no finding of the Police Officer about holes on the banian of Devendra Prasad Singh and Ragho Prasad and still they sustained gun shot injuries on their persons, there has been evidence of none-else but the I.O. about seizure of banian of Devendra Prasad Singh which bore holes. True it is that no such finding was recorded by the Police Officer in his inquest report that was prepared by him but this is not unlikely that the I.O. might have missed to make a noting of this finding which he might have considered insignificant. Notwithstanding the narrations made by the witnesses about trampling of maize crops during chase by the assailants, there was no such objective finding by the I.O. True it is that a pumping set was shown to have been installed at the place of occurrence for irrigating land and presence of that too was conspicuously wanting in the evidence of I.O. but these facts were not so mitigating so as to militate against the bona fide of prosecution, and in fact would not affect the broad features of the prosecution case, though omission to record in the Police case diary, about presence of these facts would simply suggest sheer ignorance of the I.O. which he failed to record due to inadvertance. In view of proposition of law laid down by Apex Court of the land in catena of decisions, it is no longer *res integra* that any irregularity or even illegality during investigation, ought not to be treated as a ground to reject the prosecution case, and reliance on this score can be placed on a decision of the Apex Court of the land reported in *State of Rajasthan Vs. Kishore*, and hence arguments canvassed on this ground highlighting the omission on the part, of the I.O. has also to be rejected being meritless.

16. Though the I.O. would state in his evidence about having rushed to the place of occurrence on receipt of some information about two persons having been killed in Dumar Dih Bahiyar, and true it is that the station diary entry is not shown to have been brought on the record but this fact alone would not discard the entire evidence, obviously for the simple reason that this was not the case of the defence that the Police started investigation firstly on receipt of message and that apart, it is not in dispute that the message received by the Police Officer was quite cryptic without naming the assailant or even the deceased. In the case reported in *Tapinder Singh Vs. State of Punjab and Another*, it was held that cryptic and anonymous oral message which did not in terms, clearly specify a cognizable offence, cannot be treated as first information report. The mere fact that this information was the first in point of time does not by itself clothe it with the character of first information report and to crown all, even if the *fardbeyan* of Jai Karan Singh (P.W. 9) was not treated to be first information report, for the sake of argument, in view of clinching evidence of witnesses, that did bear probative value to be carried to it and on this score, reliance can be placed on a decision of the Apex Court reported in *Somappa Vamanappa Madar and Shankarappa Ravanappa Kaddi Vs. State of Mysore*, wherein in similar circumstances on such arguments having been canvassed before the Apex Court of the land, observations were made that rejection of the so called FIR would not

detract the testimony of eye witness which will have to be assessed on its own merit.

17. As against unimpeachable evidence, the only defence of the Appellants excepting that of Appellant Ram Bilash Prasad was that dead body of Ragho and Devendra having been brought from other place, had been dropped to the place of occurrence and it was due to long drawn animosity, that the Appellants were falsely implicated by the State. Such arguments which are being canvassed here were also canvassed before the trial Court and these arguments deserve rejection also for the reason that had the dead body been carried out to the place of occurrence from a distant place, it was quite unlikely that foot prints of those who carried the dead body to the place of occurrence, would not be available.

18. As has been stated, explicit defence of Appellant Ram Bilas Prasad was that of alibi and also his false implication due to previous animosity. Not less than eight witnesses were examined on behalf of Appellant Ram Bilas Prasad and while D.W. 1 Chandra Bhushan Choudhary and D.W. 2 Bindeshwari Mahto were examined to suggest alleged false implication due to previous animosity, D.W. 3 Hare Ram Choudhary, D.W. 4 Mahavir Sah and D.W. 5 Krishna Nandan Singh were examined to suggest the alibi of the Appellant. It is sought to be urged by the learned Counsel for the Appellants that as residents of village Gora used to graze the cattle of village Amni at one point of time, cattle of the villagers of Amni were seized by the villagers of Gora when a bond was executed by Jai Karan (P.W. 9) and others and it was only on that count that Jai Karan Singh seeing the opportunity to take revenge from the Appellants, dragged them in a false case. Similar arguments were canvassed on behalf of Appellant Ram Bilas, that it would appear from the evidence of D.Ws. 3, 4 and 5 that on the day of the incident, Ram Bilas was Sarpanch of the Gram Panchayat and was present during inaugural function of a school and also at Khagaria Housing Board Harijan Colony and Bachhout. These three witnesses claimed to be present all along in the function when the inauguration was made by Appellant Ram Bilas. The distance of these two places from the place of occurrence where Appellant Ram Bilas is stated to have participated in the inaugural function was within 12-15 kilometers and regard being had to the distance, possibility of presence of this Appellant at the place of occurrence was not unlikely and hence we find that plea of alibi raised on behalf of Appellant Ram Bilas was rightly rejected by the trial Court. That apart, some affidavits, Exhibit B series, were brought on record by D.W. 6 who was a formal witness and they being no good documents, these affidavits too merit rejection.

19. Good endeavours were made on behalf of the Appellants to highlight before the trial Court the previous animosity and hostility persisting between the parties in the wake of long drawn litigation and on these premises, it is sought to be urged that in view of admission of none else but the prosecution witnesses; about their involvement in a number of cases and the Appellants appearing as

witnesses in some of them, false implication of the Appellants was not ruled out. True it is that evidences placed on record do suggest a number of litigations between the parties. However, there was admission of hostility only in the cases referred to hereinafter. In the case of murder of Jatashankar, as was admitted by P.W. 1, Devendra Singh, Anandi Singh, Barho Mandal, Jai Karan Singh, Vijay Kumar Singh and Ragho Prasad Singh were the accused while Prakash Poddar, Chandra Roshan Pandit and Krishna Mohan Gupta were witnesses. P.W. 2 would state that in a case of theft of thresher, instituted at behest of Moleshwar Pandit, Ragho Prasad Singh and Jai Karan Prasad Singh, Vijay Kumar Singh and Devendra Prasad Singh were arrayed as accused. P.W. 3 would state about a proceeding u/s 107 of the Code of Criminal Procedure brought by Moleshwar Pandit in the year 1978 against Vijay Kumar Singh, Ragho Prasad Singh, Devendra Prasad Singh, Jai Karan Singh, Anandi Singh, and Ashik Singh. P.W. 4 would state that in case of murder of father of Appellant Chandra Roshan, Ragho Prasad Singh was made accused. Admittedly, these evidences placed on record do suggest some long drawn enmity persisting between the parties and there being bad blood between them, yet enmity emerging from litigations would not be the only motive for false implication of the Appellants as the old proverb cannot be lost sight of that enmity is a double-edged weapon which cuts both ways and that apart, evidence of P.W. 9 would unerringly suggest, while admitting animosity between the parties, that in the year 1978 house of Chandrashan Pandit was raided by the Police which led to recovery of incriminating articles including rifles, pistols and bombs, and in that case Devendra Prasad Singh was a prosecution witness. All these litigations, it would appear, are stale matters and it is not expected that on account of old litigation, the Appellants would be falsely dragged in the case. Though some sort of motive was assigned in the early version of Jai Karan Singh against the gruesome murder of father and son at the hands of the Appellants, that too appears to be stale matter, and even though no good motive appears in the backdrop of gruesome murder, in view of unimpeachable evidence, motive did not assume significance and it was only of academic interest. Though it is urged on behalf of the Appellants that a reasonable and probable story, likely to be true, is pitted by defence against a weak and vacillating case of the prosecution, we find that evidence of clinching nature of the eye witnesses with regard to time, place and manner of occurrence, finds much of consistency and corroboration, and thus, they deserve credence. Having bestowed our anxious and deepest consideration to the facts and circumstances of the case and also evidences placed on record, while contentions raised at Bar has to be rejected, we find no merit in these appeals warranting interference, which are accordingly dismissed. Bail bonds of the Appellants are cancelled and they are directed to surrender forthwith to serve out the sentence. Trial Court is also directed to take all coercive steps to take them into custody.

R.N. Prasad, J.

20. I agree.