

(2003) 01 PAT CK 0084

In the Patna High Court

Case No : Criminal Appeal No. 627 of 1987

Raghuni Singh @ Raghunandan Singh and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 302, 34

Citation : (2003) 51 BLJR 421

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

Bench : Division Bench

Advocate : Dilip Kumar Singh, K.D. Pratab and Amresh Kumar Sinha, for the Appellant; Bhagya Narain Gupta, for the Respondent

Final Decision : Allowed

Judgement

M.L. visa, J.—This appeal is directed against the judgment and order dated 21-11-1987 passed by 1st Additional Sessions Judge, Aurangabad in Sessions Trial No. 66 of 1983/47 of 1979 (in judgment wrongly typed as 47 of 1997) convicting and sentencing all the appellants to undergo rigorous imprisonment for life under Sections 302/34, Indian Penal Code and rigorous imprisonment for two years u/s 148, Indian Penal Code. Both the sentence have been order to run concurrently.

2. The case of prosecution, in short, is that on 27-7-1977, appellants Sheo Singh and co-accused Gariban Chaudhary (since deed) went to the house of deceased Rajaram Mahto, husband of informant Chandrakala Devi (PW 5) and called him. When informant enquired from them where they were taking her husband, co-accused Gariban Chaudhary told that because of some work, he was taking her husband who would come back shortly. After sometime, informant sent her daughter Gita Kumari (PW 8) to the house of co-accused Gariban Chaudhary for calling her husband and Gita Kumari (PW 8) came back and told her that her father had told her that he was coming. Thereafter, informant heard hulla that her husband had been killed and she then went weeping to the house of co-

accused Gariban Chaudhary and saw that appellants Raghuni Sigh, Sheo Singh and co-accused Gariban Chaudhary, after committing murder of her husband, threw the dead-body in lane situate towards eastern side of the house of co-accused Gariban Chaudhary and she also saw appellants Sukhdeo Singh, Ramraja Singh and Lakhan Singh coming out from the house of co-accused Gariban Chaudhary and running away fastly. Appellants Sukhdeo Singh and Raghuni Singh were armed with bhalas whereas appellants Lakhan Singh, Sheo Singh, Ramraja Sigh and co-accused Gariban Chaudhary were armed with daggers. She further saw Kalawati Devi (PW 11), daughter of co-accused Gariban Chaudhary, cleaning the blood of the house situate towards west of the lane. On hulla raised by informant, the witnesses, namely, Dilkeswar Mahto (not examined), Chandradeo Mahto (PW 3), Anant Mahto (not examined) came there and after sometime, other villagers also reached there. About the motive of occurrence, case of prosecution is that at the time of marriage of sister of appellant Raghuni Singh, the deceased husband of informant had given a sum of Rs. 500/- in cash and some other articles such as Ghee and mustard oil to appellant Raghuni Singh and four to five days prior to the day of occurrence, he had demanded back the money and articles from him and then appellant Raghuni Singh gave him threatening. The fardbayan (Exhibit-4) of informant was recorded by Assistant Sub-Inspector Nagendra Singh (PW 10) on 27-7-1977 at 3 p.m. in the village of informant on the basis of which formal First Information Report (Exhibit-1) under Sections 148, 149, 302, Indian Penal Code against all the appellants and Gariban Chaudhary was drawn. After investigation, charge-sheet under Sections 148, 149, 302, Indian Penal Code against all the appellants and co-accused Gariban Chaudhary was submitted and after taking cognizance, the case was committed to the Court of Session. As co-accused Gariban Chaudhary died after the case was committed to the Court of Session but before hearing on the charge matter, therefore, charges under Sections 148 and 302/34, Indian Penal Code were framed against the present five appellants. After trial, all the five appellants were held guilty and were convicted and sentenced, as indicated above.

3. The case of appellants is of total denial of the allegation and their false implication in the case on account of their enmity and litigation with deceased and some of prosecution witnesses. Four witnesses were examined on behalf of the appellants in the trial Court.

4. In order to prove its case, prosecution examined twelve witnesses. Umesh Mishra (PW 1) is the formal witness who has proved the formal first information report (Exhibit-1). Uday Narain Sharma (PW 12) is also a formal witness who has proved pages No. 26 to 110 of the case diary in the handwriting of Shri Sheo Kumar Singh, the then Sub-Inspector of Haspura Police Station and this portion of case diary is marked Exhibit 7. Chandrakala Devi (PW 5) is the informant and Gita Kumari (PW 8) is daughter of informant. Dr, Shailendra Kumar (PW 9) is the doctor who had held post-mortem examination on the dead-body of deceased. Kalawati Devi (PW 11) is an accomplice and is daughter of co-accused Gariban

Chaudhary, Ram Sagar Mahto (PW 2), Chandradeo Mahto (PW 3) and Shri Ramswarup Mahto (PW 4) are witnesses who are said to have seen the appellants throwing the dead-body of deceased in the lane and, thereafter, running away from there. Ram Sewak Singh (PW 6) and Indradeo Mahto (PW 7) are seizure list witnesses when the police had seized blood-stained soil from the house of co-accused Gariban Chaudhary as well as from the place where the dead-body of deceased was found lying. They are also witnesses on a seizure list which was prepared by police when police seized a towel which was found spread on the dead-body of deceased and which according to the prosecution belonged to appellant Sukhdeo Singh. Nagendra Singh (PW 10) is the Police Officer who had taken up the investigation of the case, and after investigating it to some stage, had handed over the charge of its investigation to Officer-in-Charge Sheo Kumar Singh (not examined).

5. Dr. Shailendra Kumar (PW 9), in his evidence, has stated that on 28-7-1977, he was posted as Civil Assistant Surgeon at Sadar Hospital, Aurangabad and on that day at 12.15 p.m., he conducted post-mortem examination on the dead-body of Rajaram Koeri and found the following ante-mortem injuries :

- (1) Sharp incised penetrating wound 2" x 1/2" x 4" on the lateral surface of the central portion of the right upper arm making a similar wound of exit with everted margins having sharp incised wound 2" x 1/2" on the medial surface,
- (2) Sharp incised penetrating wound on the right side of the chest 2" x 1/2" leading into the abdominal cavity in the mid axillary line on the intercostal space,
- (3) Sharp incised penetrating wound 2" x 1/2" leading into abdominal cavity on the upper and right side of the abdomen,
- (4) Sharp incised penetrating wound 3" x 2" leading into abdominal cavity on the upper and right side of the abdomen and one inch below injury No. (3) through which the omentum was producing out of the abdominal cavity,
- (5) Sharp incised penetrating wound 2" x 2" leading into the abdominal cavity on the lower part of the abdomen through which loop of small intestine was protruding out,
- (6) Sharp incised penetrating wound 2" x 1/2" x 1/2" which pierced the right index finger on the palmar surface from lateral to middle end,
- (7) Sharp incised penetrating wound 2" x 1/2" on the right shoulder blade,
- (8) Sharp incised penetrating wound 2" " 1/2" leading into abdominal cavity on the right side of back,
- (9) Sharp incised cut injury 2" x 1" x 2" on right side of back two inches below injury No. (8),
- (10) Sharp incised cut injury 2" x 1" x 1" on the lower part of the right side of back one inch below injury No. (9), and

(11) One Sharp incised cut injury on lower part of the right side of back two inches below injury No. (10).

According to him, rigor mortis was partly present in the lower part of lower extremity, blood was oozing through right side of nose and on internal examination, he found liver on the right lateral surface damaged at two places having sharp incised cuts due to injury Nos. 2 and 3 and all injuries were caused by sharp penetrating weapon such as bhala and dagger and cause of death was shock and haemorrhage as a result of aforesaid injuries and death had occurred about thirty six hours prior to post-mortem examination. He has proved his post-mortem examination which is marked Exhibit-3. From his examination, it appears that death of deceased was homicidal.

6. Chandrakala Devi (PW 5), the informant is the wife of deceased. She, in her evidence, has said that on the day of occurrence at about 12 O'clock in the noon, appellant Sheo Singh and co-accused Gariban Chaudhary came to her house and asked her husband to accompany them on the pretext that they had some work with him and then her husband went with them to the house of co-accused Gariban Chaudhary. After sometime, she sent her daughter Gita Devi (PW 8) to the house of co-accused Gariban Chaudhary for bringing her husband and Gita Devi (PW 8) returned alone from the house of co-accused Gariban Chaudhary and informed her that her father had told her to go to home and he himself would follow her. She then alongwith Gita Devi (PW 8) went to the house of co-accused Gariban Chaudhary and saw that co-accused Gariban Chaudhary alongwith appellants Sheo Singh and Raghuni Singh threw the dead body of her husband from the house of co-accused Gariban Chaudhary in a lane and the dead-body fell at a distance of one to two steps from the house of co-accused Gariban Chaudhary in the lane. She also saw appellants Lakhan Singh, Ramraja Singh and Sukhdeo Singh running from the house of co-accused Gariban Chaudhary. She has further said that appellant Raghuni Singh and Sukhdeo Singh were carrying bhalas in their hands and remaining appellants were carrying daggers and in the meantime, Chandradeo Mahto (PW 3), Ramswarup Mahto (PW 4), Ram Sevak Singh (PW 6) and Indradeo Mahto (PW 7) and others reached near the house of co-accused Gariban Chaudhary and she also saw daughter of co-accused Gariban Chaudhary cleaning the blood from the floor of house of co-accused Gariban Chaudhary. According to her, she saw a towel on the dead-body of her husband and that towel belonged to appellant Sukhdeo Singh. She has proved her signature (Exhibit-2) on the fardbayan (Exhibit-4). Ram Sagar Mahto (PW 2), in his evidence, has said that on the day of occurrence at about 12 O'clock, he was near the shop of one Achraj Mahto when he heard some sound coming from the Dawaza of Gariban Chaudhary and he also saw informant weeping there and saw appellants Ramraja Singh, Raghuni Singh, Lakhan Singh and Sukhdeo Singh running away and appellant Ramraja Singh and Raghuni Singh were carrying bhalas and appellant Lakhan Singh was carrying a dagger but he cannot say that weapon appellant Sukhdeo Singh was carrying. He has further said that he saw the dead-body of deceased thrown near

the Darwaza of co-accused Gariban Chaudhary. He has not named appellant Sheo Singh in his evidence. Chandradeo Mahto (PW 3) has said that on the day of occurrence at about 12 O'clock, he was ploughing his land and when he proceeded towards his house and reached near the house of Jangi Dusadh, he saw appellants Raghuni Singh, Sheo Singh and co-accused Gariban Chaudhary throwing the dead-body of deceased from the house of Gariban Chaudhary in a lane and he also saw appellants Rajaram Singh, Sukhdeo Singh and Lakhan Singh coming out from the house of co-accused Gariban Chaudhary and all the aforesaid persons running towards south and appellants Raghuni Singh and Sukhdeo Singh were armed with bhalas whereas remaining three appellants were armed with daggers. He has further said that he saw a towel of appellant Sukhdeo Singh and a number of injuries on the dead-body. Ramswarup Mahto (PW 4) has said that on the day of occurrence at about 12 O'clock in the noon, he was going to see his field and when he reached near the house of Rajeshwar Chaudhary, he heard some sound and saw appellants Sheo Singh and Raghuni Singh and co-accused Gariban Chaudhary throwing the dead-body of deceased from the house of co-accused Gariban Chaudhary in a lane and also saw appellants Ramraja Singh, Lakhan Singh and Sukhdeo Singh coming out from the house of co-accused Gariban Chaudhary and they all filed away towards canal. According to him, appellants Raghuni Singh and Sukhdeo Singh were armed with bhalas whereas remaining persons were armed with daggers. He has said that he saw a towel of appellant Sukhdeo Singh and a number of injuries on the dead-body and saw the informant, her daughter, Shivbrat Chaudhary (not examined), Anant Mahto (not examined) there and also saw Kalawati Devi cleaning the blood in the house of co-accused Gariban Chaudhary. Gita Kumari (PW 8) is the daughter of deceased and she has said that on a Wednesday at about 12 O'clock, co-accused Gariban Chaudhary and appellant Sheo Singh came to her house and asked her father to accompany them on the pretext of some work and her father went with them to the house of co-accused Gariban Chaudhary and after sometime she was sent by her mother to the house of co-accused Gariban Chaudhary for calling her father and when she went there, she saw her father sitting with all the five appellants and co-accused Gariban Chaudhary and her father told her to go back and he would come-soon and she then came back to her house and told her mother that her father is coming soon but her mother again sent her to see what her father was doing and then she alongwith her mother went to the house of co-accused Gariban Chaudhary where she saw that after killing her father, appellants Sheo Singh, Raghuni Singh and co-accused Gariban Chaudhary threw the dead-body of her father and appellants Sukhdeo Singh, Ramraja Singh and Lakhan Singh ran away from there. According to her/ appellants Raghuni Singh and Sukhdeo Singh were armed with bhalas and remaining appellants were armed with daggers. She has said that witnesses Chandradeo Mahto (PW 3), Ramswarup Singh (PW 4), Ram Sagar Singh (PW 2), Ram Sevak Singh (PW 6), Indradeo Mahto (PW 7), Shivbrat Chaudhary (not examined) also came there. In para 5 of her cross-examination, she has stated that police had come in her village but she does not remember whether she was

interrrogated by police and what she had stated there. She against says that she had given statement before police but she does not remember what statement she had given. She has further made it clear that she does not remember whether she had given any statement before police about the murder of her father. She was examined on 25-4-1985 when she stated her age as twelve years and the Court below also estimated her age as twelve years. Occurrence is said to have taken place on 27-7-1977. As per age given by this witness and also as per the estimation of her age by Court below, it appears that at the time of occurrence, she was aged about four years three months. Shri Nagendra Singh (PW 10) who was first Investigating Officer of the case, in para 4 of his evidence, has stated that besides informant, he recorded the statement of witnesses, namely, Shivbrat Chaudhary (not examined), Anant Mahto (not examined, Chandradeo Mahto (PW 3). and Dilkeshwar Mahto (not examined) but about this witness Gita Kumari (PW 8), he, in para 8 of his evidence, has said that he did not record her statement because she was not produced before him. Her name was not included in the list of prosecution witnesses when police submitted charge-sheet. At a later stage at the prayer of prosecution, she was summoned as a witnesses by order dated 12-7-1984 of the Court below. In view of her own admission that she does not remember whether she had given any statement about the murder of her father before police, we do not find it safe to rely on the evidence of Gita Kumari (PW 8) who, at the time of occurrence, was, admittedly, a child aged about four years,

7. In this case Kalawati Devi (PW 11), daughter of co-accused Gariban Chaudhary is the only eye-witness but then she has been treated as an accomplice. She was first made a witness in this case and, accordingly, her name figured in the column of witnesses in the charge-sheet but by order dated 12-7-1984 on the prayer of prosecution to issue summons to her as an accused she was made an accused and, thereafter, by order dated 25-1-1986 passed by the then 1st Additional Sessions Judge, Aurangabad, she was granted pardon. She, in her evidence, has stated that on the day of occurrence, ail the five appellants came to her house in search of her father Gariban Chaudhary and they had some talk with her father and, thereafter, her father and appellant Sheo Singh left the house and went towards north and after sometime, they both returned to her house alongwith deceased and they all sat in a room of her house and started talking with each other. Gita Kumari (PW 8), daughter of, deceased came and asked her father to go to house because her mother was calling him and then deceased asked his dauther to go to house and said that he would follow her soon and then Gita Kumari (PW 8) left for her house. She has said that thereafter, all the appellants started assaulting the deceased and appellants, Raghuni Singh and Sukhdeo Singh were armed with bhalas whereas remaining appellants and her father Gariban Chaudhary were armed with daggers and all the appellants and her father killed the deceased and threw the dead-body towards north of house. She has said that intestine of deceased came out from the abdomen and appellant Sukhdeo Singh warapped the abdomen with

his towel and deceased received injuries on his chest, abdomen and she had seen the appellants killing the deceased and appellant Raghuni Singh, by showing bhala, threatened her to run away otherwise she would also be killed and she then went towards the boundary wall of her house and from there started witnessing the occurrence. She has further said that in her house, some blood had fallen and she washed it at the order of her father. In cross-examination, she has said that her statement was recorded by police and there also she had given the correct statement about the occurrence. This evidence is not supported by Investigating Officer Nagendra Singh (PW 10) who in para 14 of his cross-examination, has stated that this witness had not stated before him that on the day of occurrence, appellants had come to her house and had some talks with her father and, thereafter, her father and appellant Sheo Singh went towards north and, thereafter, they came with deceased and, thereafter, they all sat in her house and they committed the murder of deceased. He has further said that she had not stated before him that appellants Raghuni Singh and Sukhdeo Singh were armed with bhalas and other appellants and her father were armed with Churas and she has also not stated that appellants threw the dead-body of deceased in a lane. The Court below has considered this point but by applying the principle laid down by the Supreme Court in the case of Madan Mohan Lal v. State of Punjab, AIR 1970 Supreme Court 1006, that when accomplice gives his statement before police at that time, he does not know that he would be granted pardon and for that reason, he does not come with all the facts known to him and he does so before a Magistrate as he knows that he would be tendered pardon on the condition that he would disclose all the facts known to him. The Court below, therefore, did not take note of the omission of PW 11 in giving the details of the occurrence in her earlier statement before police and has not considered it a discrepancy and has relied on her evidence. As discussed earlier, Kalawati Devi (PW 11), daughter of co-accused Gariban Chaudhary was cited as a witness in the charge-sheet. During the course of investigation, she was not treated as an accused. It was only after examination of some witnesses when prosecution filed a petition for summoning her as an accused and allowing the prayer of prosecution, she was made an accused. Her father had died much before the prosecution filed the petition for summoning her as an accused so when she was summoned as an accused, admittedly, her father, who was one of the accused persons in this case was dead. Possibility of finding out a way to get rid of this case by falsely claiming herself to be an accomplice and seeking pardon cannot be ruled out. Her evidence clearly suggests that she is not an accomplice, She has stated that when she was watching the occurrence, appellant Raghuni Singh, showing a bhala to her, threatened her to run away otherwise she would also be killed. The only part which she is claiming to have taken in the occurrence is wiping out the bloodstains from her house but that she did under the orders of her father. This cannot be termed a taking any part in the commission of the offence because the blood was wiped out by her when she was ordered by her father to do so, So, we find that her evidence at best can be treated as evidence of a witness and not of

an accomplice. Once she is included in the category of witnesses, the principle, which is applicable in the case of other witnesses, will be equally applicable in her case and contradiction in her earlier statement and in her evidence cannot be ignored on the ground that at the time of giving her statement before police, she was not sure that she would be granted pardon because, admittedly, at that time, she was not arrayed as an accused in this case. The defence, by examining Chandra Kishore Singh (DW 3) has brought on record an affidavit (Exhibit-C) said to have been sworn by this witness. In this affidavit, she has stated that her statement was not recorded by police and if the police has written any statement claiming to be her, that is false and it is also quite false that she had said that appellant Raghuni Singh had attempted to kill her with the dagger and she had not seen any dead-body or any blood fallen and she had not cleaned any blood.

8. So far other witnesses including informant are concerned, they have simply stated that they saw some appellants throwing away the dead-body of deceased in a lane from the house of co-accused Gariban Chaudhary. As discussed earlier, these witnesses include PWs. 2, 3 and 4 besides informant Chandra Kala Devi (PW 5). Ram Sagar Mahto (PW 2), in his evidence, has admitted that Darogi Mahto was own brother of his grandfather Chedi Mahto and deceased was grandson of this Darogi Mahto. He has further admitted that PW 3 Chandradeo Mahto is his own brother and PW 4 Ramswarup Mahto is his nephew. In this way, we find that PWs. 2, 3 and 4 are closely related to deceased and informant. Although the informant Chandrakala Devi (PW 5) has denied the suggestion of defence that owing to enmity, she has deposed falsely against the appellants and Ram Sagar Mahto (PW 2) has also denied the suggestion of defence that appellant Raghuni Singh had filed a case against him, the deceased and his other family members but then Nagendra Singh (PW 10), the Investigating Officer, in para 8 of his cross-examination, has stated that appellant Raghuni Singh had filed Haspura Police Station Case No. 4 (7) of 1977 against deceased and others and in that case, appellants Lakhan Singh, Sheo Singh and Sukhdeo Singh were named as prosecution witnesses. He has further said that deceased was a veteran criminal and was named Haspura Police Station Case No. 2 (5) of 1967 and Rafiganj Police Station Case No. 5 (70), Goh Police Station Case No. 10 (4) of 1973 and was suspected in Haspura Police Station Case No. 2 (7) of 1969. Nawal Kishore Singh (DW4) has proved First Information Report of Haspura Police Station Case No. 4 (7) of 1977 showing that appellant Raghuni Singh was informant in this case and deceased and some others were accused persons. Evidence of Ram Sagar Mahto (PW 2) is simple that he had seen appellants Ramraja Singh, Lakhan Singh and Shukhdeo Singh running away and Ramraja Singh and Raghuni Singh were armed with bhalas and Lakhan Singh was armed with daggers and he does not remember what arm appellant Sukhdeo Singh was carrying with him. About appellant Sheo Singh, he has not stated anything. His evidence does not help the case of prosecution in any way. Chandradeo Mahto (PW 3) has said that he saw appellant Raghuni Singh and Sheo Singh alongwith co-accused Gariban Chaudhary throwing the dead-body of deceased in a lane but

Nagendra Singh (PW 10), the Investigating Officer, in para 10 of his evidence, has said that this witness had not stated before him that he had seen appellants Raghuni Singh and Sheo Singh alongwith co-accused Gariban Chaudhary throwing the dead-body of deceased in a lane. The Court below has considered this contradiction in the earlier statement of this witness and in his evidence but has accepted the evidence of this witness which, in our opinion, is not correct, Evidence of Ramswarup Mahto (PW 4) is that he saw appellants Sheo Singh and Raghuni Singh and co-accused Gariban Chaudhary throwing the dead-body of deceased in a lane and he further says that appellants Raghuni Singh and Sukhdeo Singh were armed with bhalas and other appellants were armed with daggers. In para 5 of his evidence, he has stated that co-accused Gariban Chaudhary had caught both the legs of deceased whereas appellants Raghuni Singh and Sheo Singh had caught one hand each of the dead body. It does not appear convincing that while throwing the dead body of deceased, the appellant Sheo Singh would carry bhala also with him because in that case, he would be supposed to carry bhala in one hand and by other hand, he would be catching hold the dead body for throwing it.

9. The case of prosecution is that at about 12 O'clock in the noon, the deceased was taken to the house of co-accused Gariban Chaudhary and, thereafter, there was a hulla that the deceased was killed and on hearing this hulla, the informant went to the house of co-accused Gariban Chaudhary. This has been stated in the fardbayan (Exhibit-4) of informant but the prosecution has not made it clear that who raised this hulla that the deceased had been killed. Besides this, according to own case of prosecution, deceased was alive till 12 O'clock in the noon of the day of occurrence and, thereafter, he was killed but the evidence of Dr. Shailendra Kumar (PW 9), who had held post-mortem examination on the dead-body of deceased, shows that he held post-mortem examination on 28-7-1977 at about 12-15 p.m. and according to him, death had occurred about thirty six hours prior to the time of the post-mortem examination suggesting that death must have occurred at about 12.15 a.m. on 27-7-1977. Nagendra Singh (PW 10), who was the first Police Officer to reach the place of occurrence and who recorded the fardbayan (Exhibit-4) of informant, in his evidence, has stated that he received the information of occurrence from Chaukidar Mangru Gope when he had gone to execute process under Sections 82 and 83, Code of Criminal Procedure in connection with Haspura Police Station Case No. 3 (6) of 1977. Although informant has denied to have met Chaukidar Mangru Gope on the day of occurrence but Chandradeo Mahto (PW 3) has admitted that after seeing the occurrence, he proceeded for police station and he met Chaukidar Mangru Gope in Haspura market and according to him Chaukidar Mangru Gope had gone to police station before him and Chaukidar Mangru Gope told the Police Officer to accompany him to place of occurrence because deceased had been killed. He has further admitted that alongwith police, he and Chaukidar Mangru Gope came to village of occurrence where police first of all recorded the statement of informant. So, according to him also, it was Chaukidar Mangura Gope who gave

information of murder of deceased to police and, thereafter, police reached the place of occurrence. Prosecution has not examined Chaukidar Mangru Gope but then defence has examined him as DW 1. In his evidence, Chaukiuar Mangru Gope has said that on the day of occurrence at the time of "sunrise, he came to know that dead-body of deceased was lying thrown in a lane and at about 8 O'clock in the morning, he went to the place of occurrence and found the dead-body of deceased thrown in a lane in front of the house of co-accused Gariban Chaudhary. His evidence supports the medical evidence that the time of death of deceased was before 8 a.m. on 27-7-1977. His evidence, coupled with the medical evidence about the time of death, completely demolishes the evidence of informant and PWs. 2, 3 and 4 that they at about 12 O'clock in the noon on the day of occurrence saw appellants Sheo Singh, Raghuni Singh and co-accused Gariban Chaudhary throwing the dead-body of deceased in a lane. It is true that police had seized blood-stained soil from the house of co-accused Gariban Chaudhary and prepared seizure list on which they put their signatures but then there is nothing on the record to show that blood-stained soil, said to have been seized from the house of co-accused Gariban Chaudhary, in fact contained any human blood although according to Nagendra Singh (PW 10), the Investigating Officer, the seized soil was sent for chemical examination. About the seizure of blood-stained soil from the house of co-accused Gariban Chaudhary, Nagendra Singh (PW 10), the Investigating Officer, has said that he found the blood-stained on the northern wall of an entrance of the house of co-accused Gariban Chaudhary and this entrance was without door frames and doors. So the evidence of Investigating Officer also suggests that the blood-stains were found on the wall of the entrance of the house of co-accused Gariban Chaudhary and not inside his house.

10. Considering the entire evidence on record, we find that prosecution has not been able to prove the charges against the appellants beyond all reasonable doubts. The judgment and order of Court below convicting and sentencing the appellants cannot be sustained.

11. In the result, this appeal is allowed and the judgment and order convicting and sentencing the appellants is set aside and the appellants are held not guilty and they are acquitted. The appellants, who are on bail, are also discharged of their liabilities of bail bonds.

B.K. Jha, J.

I agree.