

(2005) 08 PAT CK 0027

In the Patna High Court

Case No : Criminal Appeal No. 450 of 2001 (D.B.)

Ram Lagan Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 02-08-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 324, 34

Citation : (2005) 4 PLJR 322

Hon'ble Judges : Syed Md. Mahfooz Alam, J; Chandramauli Kr. Pd., J

Bench : Division Bench

Advocate : Rana Pratap Singh and Dr. Arurendra Kumar, for the Appellant; Lala Kailash Bihari Prasad, for the Respondent

Final Decision : Allowed

Judgement

C.K. Prasad, J.—Both the appeals arise out of the same judgment and as such they were heard together and are being disposed of by this common judgment. Ram Lagan Singh appellant in Cr. Appeal No. 450 of 2001 was put on trial for offence u/s 302/34 of the Indian Penal Code whereas Soshan Singh @ Sasank Singh, appellant in Cr. Appeal No. 562 of 2001, who happens to be his son has been charged for offence u/s 302 of the Indian Penal Code. Both of them have further been charged for offence u/s 307/34 and Section 324/34 of the Indian Penal Code. The First Additional Sessions Judge, Begusarai by judgment dated 7th of September, 2001 passed in Sessions Trial No. 204 of 1998 found them guilty of all the charges and sentenced them to suffer rigorous imprisonment for life for offence u/s 302/34 and Section 302 respectively and rigorous imprisonment for seven years and two years for offence under Sections 307/ 34 and 324/34 of the Indian Penal Code. Being aggrieved by the same, appellants have preferred this appeal.

2. Prosecution started on the basis of first information report given by P.W. 4, Girdhari Singh before the Sub-Inspector of Police of Matihani Police Station on 31.5.1997 at about 8 p.m. according to which, on the same day at 5 p.m. his

brother Murari Prasad Singh (deceased) had gone to the field to cut the grass, where he was killed by sword by appellant Shashank Singh. In the first information report he further alleged that his another brother Banwari Singh (deceased) went there and he was also killed by appellant Shashank Singh by sword. The informant in his report further stated that thereafter he went there and he was also assaulted by Shashank Singh causing injury on his neck and left hand. According to the report on the alarm of the informant, a large number of persons collected, then the appellant fled away towards his residence. On the basis of the aforesaid information Matihani P. S. Case No. 31 of 1997 was registered against Shashank Singh alone under Sections 302, 307 and 324 of the Indian Penal Code. The motive for the occurrence according to the prosecution is the dispute in regard to the mango tree between the deceased and the appellant.

3. Police after investigation submitted charge sheet against both the appellants and they were ultimately committed to the Court of Sessions for trial. Both the appellants have been charged under Sections 302/34, 307/34 and 324/34 of the Indian Penal Code whereas appellant Shashank Singh has separately been charged u/s 302, 307 and 324 of the Indian Penal Code.

4. Appellants denied to have committed any offence and their plea is of innocence and false implication on account of land dispute. From the trend of the cross-examination, another defence which had emerged is that the three brothers were chased by the villagers, while they were attempting to commit rape.

5. Prosecution in support of its case has altogether examined ten witnesses. P.W. 1 Ranjit Kumar Singh, P.W. 2 Krishnandan Singh, P.W. 3 Gopaljee and P.W. 4 Girdhari Singh, the informant claim to be the eye witnesses to the occurrence. P.W. 5 Mahendra Singh is the Kher of the two deceased and the informant and has been examined to corroborate the case of the prosecution. P.W. 6 Anand Prasad Singh and P.W. 7 Rajaram Singh are witnesses to the inquest report. P.W. 8 Dr. Ashok Kumar Sharma is a Civil Assistant Surgeon, who had examined the injured Girdhari Singh, whereas P.W. 9 Dr. Rakesh Kumar Sinha is the Civil Assistant Surgeon, who had conducted the autopsy on the dead bodies of the deceased Murari Prasad Singh and Banwari Singh. No defence witness has been examined.

6. P.W. 4 Girdhari Singh, who is the informant as also injured had stated in his deposition that he had gone to see his field where his brother Murari Singh had gone to cut Janera grass, when appellant Shashank Singh assaulted him by sword and when his another brother Banwari Singh ran to save him, appellant Shashank Singh gave him also sword blows causing death of both the brothers in the field itself. According to this witness, seeing his two brothers murdered he raised halla then appellant Ram Lagan Singh ordered appellant Shashank to assault him. Hearing this, he tried to flee away, but he was apprehended by appellant Shashank Singh at Bans bitti and assaulted by sword, causing injury on his neck and body. This witness has stated that after he sustained the injury, he

became unconscious and when senses came, he found himself in the clinic of P. W. 8 Dr. Ashok Kumar Sharma. He had further stated that when he was in the clinic, a police personnel came and asked to give statement, but because of serious injuries and severe bleeding although he was not in the position to speak, but on being asked, he narrated the incident and gave only the name of Shashank Singh as the assailant. After 5 to 6 days of the occurrence, when he gained senses, he narrated the entire incident to his father, who told him that Matihani Police has gone in collusion with the accused persons and have not recorded the statement of the witnesses and filed Protest Petition. In his deposition, he had also stated that P.W. 1 Ranjit Kumar Singh, P.W. 2 Krishnandan Singh and P.W. 3 Gopaljee have also seen the occurrence.

7. P.W. 1 Ranjit Kumar Singh is an eye witness to the occurrence and in his deposition, he had stated that while he was in his field, he saw the deceased Murari Prasad Singh cutting grass torn his field, when both the appellants came, appellant Shashank Singh carrying a sword and on the order of appellant Ram Lagan Singh to kill Murari Prasad Singh, appellant Shashank Singh gave sword-blows on him from behind on his neck and other parts of the body, which caused his death on the spot. Thereafter according to this witness, when his another brother Banwari Singh ran for help, appellant Shashank Singh also caught hold of Banwari Singh and gave sword blow on his neck and other parts of the body, who also died at the spot. This witness has further deposed that P.W. 4 Girdhari Singh, when saw his brothers being assaulted, he also ran for help and on the order of appellant Ram Lagan Singh, appellant Shashank Singh apprehended him near Bans-bitti and caused injuries by sword on his neck and other parts of the body. According to this witness, occurrence has taken place on account of dispute in respect of a mango tree.

8. In paragraph 12 of the cross-examination P.W. 1 has stated that no altercation has taken place for the mango tree on the day of occurrence and, in fact, the deceased Murari Singh had settled the dispute and decided that the mango fruits shall be-plucked by appellant Shashank. In paragraph 16 of the cross-examination he had stated that he had gone to the clinic of Dr. Ashok Kumar Sharma, where he stayed for about two hours, when P. W 4 Girdhari Singh was unconscious and during that period, no statement was recorded. In paragraph 21 of the cross-examination, he had admitted that appellant Ram Lagan Singh did not have any weapon and was empty handed. In paragraph 30 of the cross-examination, he has stated that his land is adjoining east to the land of deceased Murari Prasad Singh. In paragraph 33 of the cross-examination, he has stated that appellant Shashank was carrying only one sword.

9. P.W. 2 Krishnandan Singh in his deposition has stated that he had gone to his field, where he saw Murari Prasad Singh cutting Janera-grass from his own field, when appellant Shashank Singh came armed with sword alongwith appellant Ram Lagan Singh who exhorted at which appellant Shashank Singh gave several sword-blows on Murari Prasad Singh, from behind on his neck and other parts of

the body. Sustaining the injury, Murari Prasad Singh fell down, whereupon Banwari came but he was also assaulted by Shashank Singh by sword on his neck and other parts of the body and sustaining the injuries, he also fell down. Thereafter, according to this witness, Girdhari Singh came to save his brothers, at which appellant Ram Lagan Singh ordered to kill him also and hearing this Girdhari fled away from there, but was apprehended by appellant Shashank in Bans bitti and he assaulted him by sword on his neck and other parts of the body. Girdhari fell down there and the accused persons fled away from the place of occurrence. He has further stated that he saw the two brothers dead and when came at the place where Girdhari was lying, he found him unconscious. In paragraph 19 of the cross-examination, he has stated that none of the eye witnesses ran to apprehend appellant Shashank as they were under fear.

10. P.W. 3 Gopaljee is also an eye witness to the occurrence and has stated in his deposition that he was in his own field, which is adjoining to the field of deceased Murari Prasad Singh, where he saw Murari Prasad Singh cutting grass. According to this witness, both the appellants came there and appellant Shashank was armed with sword and on the order of Ram Lagan Singh, appellant Shashank Singh gave sword blows on Murari Prasad Singh from behind on his neck and other parts of the body and when his younger brother Banwari Singh ran to save him, the appellant Shashank also assaulted him by sword on his neck and other parts of the body. Sustaining the injuries, both the brothers fell down and on hearing alarm their brother Girdhari Singh ran to save them when appellant Ram Lagan Singh ordered to kill Girdhari also. Upon this, Shashank chased him and apprehended him near Bans bitti and gave him sword blows on his neck. Girdhari fell down and became unconscious. In paragraph 7 of the cross-examination, this witness has stated that there was dispute in regard to the mango tree and there was no other dispute. He denied the suggestion of the defence that dispute was resolved by deceased Murari. In paragraph 11 of the cross-examination, he admitted that Ram Lagan Singh is an old person and his son appellant Shashank had five children.

11. P.W. 8 Dr. Ashok Kumar Sharma, who had examined informant Girdhari Singh had stated about the injuries sustained by him. He found the following injuries on his person:--

- (i) incised wound 8" x 2" x 2" at the back of neck,
- (ii) incised wound 8" x 2" x 2" on the back of neck,
- (iii) incised wound 2" x 1/2" x 1/2" on left wrist,
- (iv) incised wound 1" x 1/2" x 1/4" on left wrist,
- (v) incised wound 1/2" x 1/4" x 1/2" on left wrist.

According to the Doctor, all the injuries were caused by sharp cutting weapon, which were grievous in nature and dangerous to life caused within six hours.

12. P. W. 9 Dr. Rakesh Kumar Sinha, who had conducted the post mortem examination on the dead bodies of Murari Prasad Singh and Banwari Prasad Singh had found following ante mortem injuries on the dead body of Murari Prasad Singh:--

(i) incised wound 4" x 1/2" x bone deep exposing the cervical cavity over the left parietal region running transversely. Brain matter was demonstrated,

(ii) incised wound 3" x 1/2" x muscle deep over the left side of the face cutting the left ear lobule running transversely,

(iii) incised wound 8" x 1/2" x cutting the mandibles over the left side of the face running transversely,

(iv) incised wound 4" x 1/2" x cutting the bones over the chin transverse in direction,

(v) incised wound 4" x 1/2" cervical vertical deep cutting all the visceral situated in front of the neck--running transversely running to oesophagus and veins in front of the neck were severed blood and blood clots present. Thyrohyoid cartilage were also cut through.

(vi) incised wound 6" x 1/2" x maxillary cavity deep cutting the left maxilla,

(vii) incised wound 5" x 1" x muscle deep over the back of the neck cutting the lining at the base of the neck running transversely,

(viii) incised wound 6" x 1.5" x muscle deep over the back of the neck,

(ix) incised wound 2" x 1/2" x bone deep over the right thenar eminence. Fracture of the first right metacarpal was observed.

He had found following ante mortem injuries on the person of Banwari Singh:--

(i) incised wound running transversely 5" x 1" x cervical muscle deep over the front of the neck cutting the entire soft tissues, major structure viz. trachea, oesophagus, neck veins and muscles in the front of the neck-cutting half way through the cervical vertebrae also blood and blood clots found in the vicinity,

(ii) incised wound 1.5" x 1/2" x bone deep over the face cutting both the mandibular ramii, blood and blood clots present running transversely,

(iii) incised wound 5" x 1" x brain cavity deep over the left side of the face--running transversely cutting the left mandible, left ear, left side of occipital region, blood and blood clots present. Fracture of the left mandible and the left occipital so appreciated,

(iv) incised wound three in number over the left shoulder ranging from 1" to 4" in length, each, 1/2" in width and 1" in depth, cutting the left scapula in three places respectively, blood and blood clots present.

(v) incised wound right index finger chopped-off at the level of the proximal

phalanx,

(vi) right thumb incised so much so that it was hanging by means of a tag of a skin only.

13. In the opinion of the Doctor, death had occurred on account of shock and haemorrhage as a result of the injuries sustained by them, which have been caused by weapon like talwar and were sufficient in ordinary course of nature to cause death.

14. P. W. 10 Negeshwar Prasad Singh is a Sub-Inspector of Police, who had investigated the case and submitted charge sheet. He has stated in his deposition that after hearing the incident, he went to the village where he came to know that Girdhari Singh has been admitted in a clinic at Begusarai and when he went to the clinic, he found Girdhari Singh unconscious and learnt that his statement has already been recorded by the Town Police Station. He had further stated that he collected the fardbeyan from the Town Police Station, which led to the registration of the case.

15. The learned Judge relying on the evidence of the prosecution witnesses came to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubt and, accordingly, convicted and sentenced the appellants as above.

16. Mr. Rana Pratap Singh, Senior Advocate appearing on behalf of the appellants submits that all the eye witnesses PWs. 1 to 4 are close relatives of the deceased and, in fact, PW. 4 Girdhari Singh is the own brother of the deceased and their conduct in not attempting to rescue the deceased is unnatural, which throws doubt in the case of the prosecution. He points out that according to the evidence of PWs. 1, 2 and 3, they were loitering in the nearby field, but did not do anything to save the deceased, render their conduct unnatural and on this ground alone, their evidence is fit to be discarded.

17. Mr. Lala Kailash Bihari Prasad, Additional Public Prosecutor, however, appearing on behalf of the State submits that appellant Shashank was armed with sword, whereas the witnesses were unarmed and, therefore, not in a position to resist the assault and, hence, their conduct cannot be said to be unnatural so as to discard their testimony.

18. Having appreciated the rival submission, I do not find any substance in the submission of Mr. Singh. Appellant Shashank Singh was armed with sword and seems to be in a fit of rage, which would be evident from the number and nature of the injuries sustained by the deceased and in such circumstance witnesses not intervening to prevent assault cannot be said to be unnatural leading to the conclusion that they are not eye witnesses to the occurrence. In fact, these witnesses have stated about the alarm raised by them, which in the circumstance cannot be said to be an unnatural conduct.

19. Mr. Singh has drawn my attention to the evidence of PWs. 1, 2 and 3 wherein

these witnesses have stated that they had gone along with the informant to the clinic of PW. 7 Dr. Ashok Kumar Sharma during which period the police had visited the clinic. He points out that these witnesses have not narrated the incident to the police. Had they been the eye witnesses, they ought to have narrated the incident to the Police and having not done so, their claim to be the eye witness to the occurrence is fit to be rejected, contends Mr. Singh.

20. Mr. Prasad, however, contends that these witnesses were attending to PW. 4 Girdhari, who was fighting for his life and in such circumstance, they not stating about the incident to the police itself shall not discard their claim of being eye witnesses to the occurrence.

21. Having considered the rival contention, I do not find any substance in the submission of Mr. Singh. There is consistent evidence that two persons have lost their lives and Girdhari was fighting for his life. PW. 10 Nageshwar Prasad Singh, who had come to the clinic to take the statement of Girdhari has stated that he was unconscious. Further after knowing that PW. 4 Girdhari's statement has already been recorded, by the town Police Station, he had gone to collect the same. In such circumstances, in my opinion, mere failure on the part of the witnesses to give the details of the incident to the Investigating Officer in the clinic shall not itself discredit their evidence.

22. Mr. Singh has drawn my attention to the evidence of P.W. 6 Anand Prasad Singh and PW. 7 Rajaram Singh, who are witnesses to the inquest, but have not disclosed to the Investigating Officer conducting the inquest, how the occurrence took place. He submits that this clearly goes to show that till the preparation of the inquest report, nobody knew how the occurrence had taken place. In this connection my attention has also been drawn to the statement of P.W. 5 Mahendra Prasad Singh, who in his evidence has stated that the aforesaid two witnesses were requested to keep guard of the dead bodies. He has also drawn my attention to the evidence of the inquest witnesses where they have deposed that it was P. W. 5 Mahendra Prasad Singh, who has asked them to keep watch over the bodies. Mr. Singh points out that had the witnesses seen the occurrence, they must have narrated to the witnesses of the inquest report, the manner in which the occurrence had taken place. This, according to the learned counsel, throws doubt on the case of the prosecution.

23. I do not find any substance in this submission of Mr. Singh, P. W. 5 Mahendra Prasad Singh, who had asked the witnesses to the inquest report to keep guard on the dead bodies of his two sons is not an eye witness to the occurrence. Further he had lost his two sons and one of his sons had sustained severe injuries and was required to be taken to the hospital. In such circumstance, he not stating to the witnesses to the inquest report, the manner in which the occurrence had taken place and the witnesses to the inquest report not disclosing to the Investigating Officer, how the occurrence had taken place, in my opinion, do not go to show that the prosecution story is untrue.

24. Mr. Singh has drawn my attention to the evidence of P.W. 10 the Investigating Officer where he has stated that when he went to take statement of the informant in the clinic, he was found unconscious. He had also drawn my attention to the evidence of P. W. 4 wherein he has stated that after the assault, he became unconscious. He submits that when the informant, according to his own evidence and that of the other eye witnesses as also the Investigating Officer was unconscious after the assault, the recording of the fardbeyan, which led to the registration of the case is shrouded with mystery. He points out that according to P. W. 4 Girdhari, he gained sense after few days, but the fardbeyan was recorded on the date of occurrence on 31.5.1997 at 8.15 p.m. itself.

25. I do not find any substance in the submission of the learned counsel. P.W. 10 Nageshwar Prasad Singh is the Investigating Officer of the case and he has not recorded the fardbeyan of the informant leading to registration of the first information report. He has clearly stated in his evidence that he went to the clinic to record the statement of the informant, but he was found unconscious and he was informed that the Officer of the Town Police Station had already recorded his fardbeyan. He had also stated in his evidence that he went to the Town Police Station, collected the fardbeyan and on that basis registered the case. P.W. 4 Girdhari the informant had admitted that he became unconscious, but he had specifically stated that he gave the statement with great difficulty to the Police. Hence, in my opinion, the recording of the first information report is not shrouded with any mystery and the same in no way throws any doubt on the prosecution case.

26. Mr. Singh then contends that according to the prosecution itself, appellant Shashank was armed with one sword and the number and the size of injuries found on the two deceased and the informant cannot be caused by one sword.

27. P.W. 8 Dr. Ashok Kumar Sharma and P. W. 9 Dr. Rakesh Kumar Sinha, who had examined the injured and conducted the post-mortem report have clearly stated in their evidence that the injuries found on their person can be caused by the sword. In the face of the evidence of the two Doctors, it is difficult to accept Mr. Singh's contention that the injuries of the dimensions found on the person of the deceased and the injured are not possible to be caused by sword.

28. Mr. Singh further contends that according to the prosecution, the motive of the occurrence is the alleged dispute between the party in respect of a mango tree, but the dispute was settled hence there was no reason for committing crime. In this connection, he has drawn my attention to the evidence of P.W. 1 Ranjit Kumar Singh in which he has stated that the dispute was settled and deceased Murari had permitted appellant Shashank to pluck the mango. He also points that for such a crime there has to be immediate cause. He points out that according to the prosecution witnesses, some differences arose in regard to the mango tree. 3-4 days before the occurrence, but nothing happened on the day of the occurrence, which could provide motive for committing the crime. In this connection Mr. Singh has drawn my attention to the evidence of P.W. 1 in

paragraphs 11 and 12 of his cross-examination in which this witness has stated that deceased Murari had settled the dispute and said that mangoes shall be plucked by appellant Shashank. This witness has further stated that on the date of occurrence, no altercation took place in regard to the mango tree. P.W. 2, P.W. 3 and P.W. 4 have also stated in their evidence that there was dispute between the party in regard to mango tree.

29. In my opinion, absence of motive itself shall not absolve the appellants from the crime as it is well settled that it is always in the mind of the accused. Whether Murari -permitting appellant Shashank to pluck the mango had satisfied him is within his knowledge. The deceased Murari permitting the appellant Shashank to pluck the mango, in the opinion of the witness was settling the dispute, but appellant Shashank might not have accepted only the right of plucking the mango. Further P. W. 5 Mahendra Prasad Singh in his evidence has clearly stated that no such settlement was made. In such a situation, the case of the prosecution cannot be thrown out on this ground. It is relevant here to state that P. W. 5 Mahendra Prasad Singh, who is the father of the deceased and the injured has stated in his evidence that motive of the occurrence was a dispute in respect of a mango tree and in the cross-examination, he had denied that the dispute was settled by deceased Murari. Thus, "the case of the prosecution is not fit to be discarded on the ground urged by Mr. Singh.

30. Appellant Shashank has been named in the first information report and the eye witness to the occurrence, namely, P.W. 1 Ranjit Kumar Singh, P.W. 2 Krishnandan Singh and P.W. 3 Gopaljee have stated about the role played by this appellant in the crime. P.W. 4, who had sustained injury in the occurrence has also stated of appellant Shashank's role in the crime. They all have alleged that this appellant caused injuries on the two deceased and the informant by sword and the two doctors, namely, Dr. Ashok Kumar Sharma, who treated the injured and Dr. Rakesh Kumar Sinha, who conducted the postmortem examination, have found incised injuries on their person. They have opined that injuries have been caused by sword. Father of the two deceased and the injured, that is, P.W. 5 Mahendra Prasad Singh had corroborated his participation. In that view of the matter, I am of the opinion that the prosecution has been able to bring home the guilt against appellant Shashank beyond all reasonable doubt and he has been rightly convicted and sentenced by the Court below.

31. Mr. Singh contends that the name of the appellant Ram Lagan Singh has not been mentioned in the fardbeyan given by the P.W. 4 Girdhari Singh, who claims to be an eye witness to the occurrence. He points out that during the course of trial also varying roles have been attributed to this appellant. Mr. Singh highlights that omission of his name in the first information report and different version of the eye witnesses in regard to his role create doubt so far as participation of this appellant in the crime is concerned.

32. Mr. Prasad, however, contends that the first information report is not an encyclopedia of every event and as such mere omission on the part of the

informant to name appellant Ram Lagan Singh in the first information report does not create any doubt in the case of the prosecution so far his participation in the crime is concerned.

33. Having considered the rival submission, I am of the opinion that prosecution has not been able to prove its case beyond all reasonable doubt so far as appellant Ram Lagan Singh is concerned. Undisputedly, the fardbeyan was given by P.W. 4 Girdhari Singh, who had also sustained injuries in the occurrence. In the first information report, he had given the manner in which appellant Shashank killed his two brothers, but has not stated even presence of appellant Ram Lagan Singh at the place of occurrence. True it is that mere omission of an insignificant act in the first information report may not throw doubt in the case of the prosecution, but where an accused has played an important role, it is expected from an eye witness to state that role in the first information report. In the first information report, there is no whisper of Ram Lagan Singh being present at the place of occurrence nor any role has been attributed to him. The prosecution tried to explain it by saying that because of the injuries the informant became unconscious, but at the same time the informant in his evidence had stated that when he gained senses he found himself in the clinic of Dr. Ashok Kumar Sharma, where a Police personnel came to take his statement. He had further stated that because of the injuries he was not in a position to speak, but on being asked he could give the name of appellant Shashank only and after 5-6 days, when he gained complete sense narrated the entire incident to his father and thereafter a protest petition was filed.

34. I am of the opinion that when the informant got senses "and gave the fardbeyan, leading to the registration of the case, the role which later on is being attributed to appellant Ram Lagan Singh is not of such an insignificant nature, which in normal circumstance could have been omitted. Further there is a contradiction in regard to the role played by this appellant. During the course of trial P.W. 1 Ranjit Kumar Singh stated that it was on the order of this appellant, appellant Shashank assaulted deceased Murari Singh by sword. P. W. 2 Krish Nandan Singh has, however, stated that after appellant Shashank killed the two deceased, the informant came to save his brothers and then appellant Ram Lagan Singh gave order to assault Girdhari. P.W. 4 Girdhari Singh, the injured in his deposition has stated that after his brothers were killed by appellant Shashank, he proceeded towards them and appellant Ram Lagan Singh ordered to assault him and he fled away from there but was apprehended by Shashank later on. Thus, P. W. 2 Krish Nandan Singh and P. W. 4 Girdhari Singh although say about the presence of appellant Ram Lagan Singh, but attributes to him the role of an order giver after two persons were killed, whereas P. W. 1 Ranjit Kumar Singh and P. W. 3 Gopaljee attribute him the role of order giver for killing the deceased.

35. P.W. 4 Girdhari Singh is an eye witness to the occurrence, who had sustained injuries and there have been vital contradictions in his evidence and that of Krish

Nandan Singh on one side and P. W. 1 Ranjit Kumar Singh and P. W. 3 Gopaljee on the other in regard to the role played by appellant Ram Lagan Singh and further the omission to name him in the first information, throw doubt on the prosecution case so far as this appellant is concerned.

36. This appellant Ram Lagan Singh is an old person, aged about 70 years at the time of occurrence and happens to be the father of the appellant Shashank Singh. It is well known in this part of the country that senior member of the family is implicated in the case attributing the role of the order giver. Bearing in mind this as also the state of evidence discussed above, I am of the opinion that the prosecution has not been able to bring home the charge against appellant Ram Lagan Singh beyond all reasonable doubt. In the result, Cr. Appeal No. 562 of 2001 preferred by Sosan Singh @ Shashank Singh is dismissed. However Cr. Appeal No. 450 of 2001 preferred by Ram Lagan Singh is allowed, impugned judgment of conviction and sentence of Ram Lagan Singh is set aside. He is in jail. He be set at liberty forthwith, unless required in any other case.

Syed Md. Mahfooz Alam, J.

I agree.