

(2003) 08 PAT CK 0072

In the Patna High Court

Case No : Criminal Appeal No. 333 of 1987 (D.B.)

Ram Subhag Singh, Ram Briksha Singh, Sidhnath Singh and
Jai Ram Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 22-08-2003

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 144
Penal Code, 1860 (IPC) — Section 148, 149, 151, 302, 307

Citation : (2003) 4 PLJR 291

Hon'ble Judges : B.K. Jha, J;A.K. Sinha, J

Bench : Division Bench

Advocate : Kanhaiya Prasad Singh and Dinu Kumar, for the Appellant; Bhagya Narain Gupta, Anjana Prakash, Shivendra Kumar Sinha and Rakesh Kumar Sinha for Informant, for the Respondent

Final Decision : Allowed

Judgement

B.K. Jha, J.—This appeal has been preferred against the judgment and order passed on 16.6.87 in S.Tr. No. 68 of 1980/42 of 1982 by the then learned Additional Sessions Judge 2nd, Gaya.

2. The learned Additional Sessions Judge, Gaya, convicted all the above named four Appellants and sentenced each of them to imprisonment for life u/s 302/149 I.P.C., R.I. for ten years u/s 302/511 I.P.C., R.I. for three years u/s 148 I.P.C. and R.I. for four years u/s 27 Arms Act. He further convicted the Appellants Jairam Singh, Sidhnath Singh and Ram Briksh Singh u/s 324 I.P.C. but passed no separate sentence on this count. He again convicted the Appellant Ram Subhag Singh u/s 302 I.P.C. and sentenced him to life imprisonment. The Appellant Ram Subhag Singh was further convicted under Sections 324 and 324/149 I.P.C. but no separate sentence was passed. Appellant Jai Ram Singh was further convicted u/s 324/149 I.P.C. but was awarded no separate sentence on this count. All the sentences, however, were ordered to run concurrently.

3. The prosecution case is that the occurrence took place on 23.5.77 at 7 A.M. in village Itwan, P.S. Arwal, District Gaya. At the alleged time the Appellant, Ram Subhag Singh, alongwith 50 persons came on two trucks bearing Nos. B.R.B.-3259 and B.R.A.-9772 and assembled in his Khalian situated in front of the house of the informant, Awadheshwar Sharma, P.W. 9. The informant identified 22 accused persons armed with lathi, guns, bhala, garansa etc. and some had bags in their hands. After assemblage of them the accused Ram Sewak Singh, since dead, ordered to encircle the house of the informant and kill them. On hearing this the informant alongwith his entire family members went on the roof of the house. In the meantime, the accused persons encircled the house of the informant and Ramnandan Singh and began to fire indiscriminately. Rajendra Sharma, son of the informant protested whereupon the accused Appellant Ram Subhag Singh fired from his gun which hit him. The accused Vijay Singh and Jairam Sharma also fired from their guns causing injury to Rajendra Sharma and he died at the spot. On protest by the informant the accused Sidhnath Singh, Ram Briksh Singh and Jairam Singh fired from their guns causing injury to the informant Awadheshwar Sharma, Krishna Debi, P.W. 1, sister of the informant, Shila Devi, P.W. 2, the wife of the deceased, Rajendra Sharma, respectively. On the sound of firing when Dudheshwar Sharma, P.W. 6, and Sheo Prasad Sharma, P.W. 5, rushed towards the house of the informant, the accused Ram Subhag Singh and Sidhnath Singh fired from their guns as a result of which Dudheshwar Sharma sustained injury and went inside the Dalan of Ramnandan Sharma, P.W.7. After the said occurrence the accused persons set the Punj (heap) of straw ablaze and looted away Kutti Cutting Machine besides other articles.

4. On 23.5.1977, I.O. Nand Kumar Sinha, S.I. of Arwal RS. Gaya, recorded the fardbeyan (Ext. No. 2) of the informant, Awadheshwar Sharma. On the basis of his fardbeyan a formal F.I.R. (Ext. No. 3) was drawn up and a case was registered against the 22 accused persons under Sections 302/148/149/324/307/436/379 of the Indian Penal Code and Section 27 of the Arms Act. On completion of the investigation all the 22 accused were put on trial and out of them 5 accused persons, namely, Ramlayak Singh, Gauri Singh, Mukeshwar Misra, Ram Tawakiya Singh and Ramsewak Singh died during trial. The remaining 17 accused faced the trial which ended in the acquittal of 13 accused persons and conviction of the 4 accused-Appellants as indicated above.

5. The defence of the Appellants is denial of the occurrence and false implication in this case. According to defence in the preceding night of the alleged date there was a dacoity in the house of the informant in which his son Rajendra Sharma was shot dead and all the family members including females were injured. Incidentally the proceeding u/s 144 of the Code of Criminal Procedure pending in between the parties was decided against the prosecution side two days before the alleged occurrence of dacoity and the informant encashed the situation by falsely implicating the accused-Appellants in this case. Further defence is that at the alleged time, in Pact, bricks and not criminals were brought on two trucks and unloaded by the labourers. The specific defence of the Appellant, Ram

Subhag Singh, is that on the alleged date of occurrence he was not present in the village rather he had been in the court of the S.D.O., Jehanabad, for renewal of his gun licence. The defence has examined three witnesses, namely, Nirmal Kumar Pankaj, D.W. 1, Vijay Kumar Das, D.W. 2 and Ram Janam Singh, D.W. 3 on the point of alibi and also produced some documentary evidence in support of it.

6. In all the prosecution examined 14 witnesses to prove its case beyond all reasonable doubts. Out of them, P.W. 3, Ram Dhyani Sharma and P.W. 4, Chandeshwar Prasad, have proved the formal F.I.R. (Ext. No. 1) and Fardbeyan (Ext. No. 2) respectively. P.W. 5, Sheo Prasad Sharma is a tender witness. P.W. 7, Ram Nandan Sharma, has stated that on hearing the sound of firing he came out of the house but did not see any shootist there. He was declared hostile by the prosecution and was put to cross examination. On cross examination by the defence he has stated that in the night of about 1/1.30 A.M. he heard bulla of "Chor and Dacoits" from the house of the informant, Awadheshwar Sharma. He came out of his house and proceeded to go there but due to firing he returned back. After firing he again came out of his house and went to the house of the informant. He learnt that Rajendra Sharma was shot dead and his female members besides one Dhudheshwar Singh were injured by the miscreants. P.W. 8, Ram Sewak Sharma is a witness of inquest report. In cross examination his evidence is that the dead body of Rajendra Sharma was lying on the roof and there was blood around his dead body. P.W. 11, Bhagwan Das Mahto is also a formal witness. He brought the Bed Head Ticket of Dhudheshwar Singh from the Surgical Department of P.M.C.H. which was marked as "X" for identification. P.W. 14, Triyogi Narayan Sinha is also a formal witness. He was deputed to bring the Injury Register of the months of May and June, 1977 from the Arwal State Dispensary and to serve the notice on Dr. S.K. Prasad but neither the notice was served nor the Injury Register of the relevant month was made available to the Court. P.W. 10, Nand Kumar Sinha, is the I.O. of this case. P.W. 12, Kameshwar Prasad Sharma, is a Doctor who conducted autopsy on the dead body of Rajendra Sharma, P.W. 13, Kailash Pati Yadav, is a Doctor who examined the injured Dhudheshwar Singh.

The remaining four witnesses, namely, Smt. Krishnamani Devi, P.W. 1, Shila Devi, P.W. 2, Dhudheshwar Sharma, P.W. 6 and Awadheshwar Sharma, P.W. 9, the informant, are the injured and eye witnesses to the occurrence.

7. P.W. 13 is Dr. Kailash Pati Yadav. He examined Dhudheshwar Singh on 23.5.1977 and found one gun shot injury over his right iliac crest grievous in nature caused by fire arm. On X-ray Foreign body was found shifted in the right side of his abdomen. According to him the age of injuries was beyond six hours. He proved the injury report (Ext. No. 6). Nothing material could be elicited in cross examination by the defence.

8. P.W. 12 is Dr. Kameshwar Prasad Sharma. On 24.5.77 at 11 A.M. he conducted autopsy on the dead body of the deceased, Rajendra Sharma, and found the

following pellet injuries:

I. Injuries on the right Xiphisterum junction causing entrance wound measuring 1.2 cm x 1.2 cm and the pellet passed through xiphisterum making a round hole entry to the plural cavity and through the lung tissue hitting the sixth rib lateral to its junction with the spine causing extensive laceration of the lung tissue and blood vessels.

II. There was one pellet 1/2 cm. x 1/2 cm. on the left shoulder, 1/2" above the clavicle.

III. Two other pellet marks were located on the lateral side of the chest wall on the left side measuring 2 cm. x 2 cm. in the interior axillary line. One lung size pellet lodged on the posterior chest wall was recovered from the body.

According to him all the injuries found on the person of the deceased, Rajendra Sharma, were caused by firearm within 24 hrs to 36 hrs and were sufficient to cause death in the ordinary course of nature. Further, in his opinion, the death was caused due to extensive damage of vital organs, shock and haemorrhage. He proved post mortem report (Ext. 6). In cross-examination he has deposed that the part of lung and pleural cavity was situated just below the junction as mentioned in the injury No. I and number of pellets entered through injury No. I. Some hit the lung and some hit the rib, including 6th rib. He further stated that Injury No. II, superficial in nature, was situated 1/2" above the Injury No. and no metallic substance was found. Injury No. III was situated just below injury No. in the left side. His further evidence is that the track of missiles was apparently in the straight line.

9. Now advert to the evidence of the eye witnesses to the occurrence. The evidence of the informant, Awadheshwar Sharma, P.W. 9, is that at the alleged time he was standing in his campus. He noticed that the Appellant, Ram Subhag Singh brought bricks on two trucks and unloaded the same at his khalian with the help of labourers. About 50 persons besides labourers also came on the trucks and assembled in his khalian. The accused, Ram Sewak Singh, ordered to encircle his house and kill them. Out of fear he went at the roof of his house and then miscreants resorted to indiscriminate firing at his house. His son, Rajendra Sharma, protested the Appellant, Ram Subhag Singh, from the roof of the house whereupon he fired his gun at Rajendra Sharma which hit on his throat and he fell down dead on the ground. The Appellant, Sldhnath Singh, fired from his gun at him (the informant) causing injury on his back, both arms thighs and head. The Appellants, Ram Briksh Singh and Jairam Singh, also opened fire from their guns causing injuries to Krishna Devi P.W. 1, and Shila Devi, P.W. 2 the wife of the deceased, Rajendra Sharma, respectively. The Appellants, Sidhnath Singh and Ram Subhag Singh fired their guns at Dudheshwar Sharma, P.W. 6, causing injury on his left Panjara and left leg respectively. After the occurrence of murder the accused persons looted away Kutti Cutting Machine besides other articles from his campus and set fire to the punj (heap) of straw. He has further stated

that the police came in the village, recorded his fardbeyan at the house of Ram Nandan Sharma, P.W. 7, and he put his signature on his fardbeyan (Ext. 2). He handed over the bloodstained clothes to the Daroga Ji. He has further stated that all the injured were treated in Arwal Hospital and the injured, Dudheshwar Sharma, was later on referred from Arwal Hospital to Patna. He has alleged that the Appellant, Ram Subhag Singh, claimed a piece of his land situated inside his boundary for which there was a proceeding u/s 144 Code of Criminal Procedure and hence, the present occurrence. In cross-examination he has stated that his Dalan was in the north of his house and the Hata in which he was standing at the relevant time formed the part of Dalan. The Hata was bounded with walls from south, north and east having 2/3 steps open space in the south. He has further stated that on seeing the assemblage of the persons at the Khalian of the Appellant, Ram Subhag Singh, all his female members, Rajendra Sharma and he went at the roof of his house. He along with Rajendra Sharma first went at the roof and Rajendra Sharma protested the Appellant Ram Subhag Singh his highhandedness at which he fired a shot at him. Rajendra Sharma sustained only one fire arm injury on his throat. He has further stated that the blood had oozed out from the body of Rajendra Sharma. At para 18 his evidence is that when Ram Shila Devi stood up and peeped towards north for having a view, she sustained firearm injuries. At para 19 he has stated that after the occurrence of firing 10/15 outsiders and not his co-villagers came at the roof of his house. At para 24 his evidence is that after the occurrence he and his house-inmates including females remained at the roof of the house till the arrival of Daroga Ji. He has denied to have stated in his fardbeyan or before the police that Vijay Singh and Jairam Singh shot dead his son. His further evidence is that Chandreshwar Sharma P.W. 4 is his own brother. One day prior to the occurrence Chandreshwar Sharma had brought a case against the Appellant, Sidhnath Sharma and others for damaging the wall. But, the Appellant, Ram Subhag Singh, with the connivance of the police forcibly booked his brother and two sons in a false case u/s 151 I.P.C. He has further stated that there was a proceeding u/s 144 Code of Criminal Procedure in between the parties.

P.W. 1, Smt. Krishnamani Devi, is the sister of the informant. Her evidence is that on hearing the sound of truck she went at the roof of the house of his brother Awadheshwar Sharma. She noticed that two trucks came at the Khalian of Ram Sewak Singh and a number of persons got down from the truck. They armed with guns proceeded towards the house of Awadheshwar Sharma. In the meantime her nephew Rajendra Sharma also came at the roof of the house and protested the Appellant Ram Subhag Singh whereupon he fired a fatal shot on the throat of Rajendra Sharma. Awadheshwar Sharma and the wife of the deceased, Rajendra Sharma also came on the roof. The Appellants, Sidhnath Singh, Jairam Singh and Ram Briksh Singh also fired from their guns causing injuries to Awadheshwar Sharma, to the wife of the deceased and to her, respectively. She has further stated that Dudheshwar Singh also came at the roof and when he was returning back he sustained gun shot injuries fired by the

Appellants, Ram Subhag Singh and Sidhnath Singh. In cross-examination she has stated that there was 10/11 cubits high khaprail Baithka of the informant in north one baans away from his house. The house of the informant was also of same height having 1 and 1/2 cubits high railing. There was a brick built wall in the north 1 and 1/2 baans away from the Baithka running from east to west and there was 2/3 cubits high Gaanj of Newari in the intervening space of Baithka and wall. She has further stated that there were a number of trees in the northern, eastern and western side of the wall. There was a mud built wall in north one yard away from the said trees and thereafter there was a road adjacent north of the wall. The alleged khalian of the Appellant, Ram Subhag Singh, was situated adjacent north of the intervening road. She has further stated that firing was done after crossing the road one baans away from the standing trucks. She was further stated that on her outcry other family members including Awadheshwar Sharma, the informant and the wife of the deceased came at the roof of the house. Her further evidence at paragraph No. 17 is that all the family members remained day and night at the roof of the house and came down in the morning after the removal of the dead body from there.

P.W. 2, Shila Devi, is the wife of the deceased, Rajendra Sharma. On hearing that her husband was shot dead she went on the roof of the house and found her husband lying unconscious on the ground. She alongwith her Phua Saas, P.W. 1 and father-in-law, the informant, sustained fire arm injuries but failed to identify the assailants as well as any of the accused persons. Her further evidence at para 6 is that when she went at the roof of the house her husband was lying injured on the ground and none else was present there. Thereafter her Phua Saas, Krishnamani Devi, P.W. 1 and father-in-law, Awadheshwar Sharma, P.W. 9 came there.

P.W. 6, Dhudheshwar Sharma, has stated that at the alleged time he went at the roof of the house of Ram Nandan Sharma, P.W. 7 and saw that the Appellants, Ram Subhag Singh and Sidhnath Singh, were firing at Rajendra Singh, standing at the roof of the house of Awadheshwar Singh, the informant, P.W. 9. The firing of Ram Subhag Singh hit Rajendra Singh on his chest. Awadheshwar Singh, Krishnamani Devi and the wife of the deceased, Rajendra Singh also sustained fire arm injuries. Then he came out for going to the house of Awadheshwar Sharma but he was shot at by the Appellants, Ram Subhag Singh and Sidhnath Singh causing injuries on his leg and abdomen as a result of which he became unconscious. He was first treated in the Arwal Hospital and then he was referred to Patna Hospital where he remained hospitalised for about 22 days. At para 6 he has clearly stated that he had not seen the Appellants, Ram Briksh Sharma and Jai Ram Sharma in the assembled mob of 50/ 60 persons and at para 14 his evidence is that he had identified only the Appellants, Ram Subhag Singh and Sidhnath Singh in the mob. But in the same breath at para 15 he has stated that all the other accused persons are known to him but he failed to identify them because he was injured. At para 19 his evidence is that the khalian of the Appellant, Ram Subhag Singh was situated in the north at a distance of 150

yards from the house of the informant, Awadheshwar Sharma, P.W. 9.

10. P.W. 10, Nand Kumar Sinha, is the I.O. of this case. His evidence is that on 23.5.77 he was posted, as A.S.I, of Arwal Police, Gaya. On that day at 8.30 A.M. he received information about some occurrence of assault in P.O. village-Itwan. On receipt of the information he alongwith the police party preceded for the P.O. village and at about 10 A.M. arrived there. He recorded the fardbeyan of the informant, Awadheshwar Sharma on the basis of which a formal F.I.R. was drawn up by him (Ext. 3). He visited the P.O. The P.O. was Baithka and north facing house of the informant. Northern and eastern side of the Baithka was open and there was mud built wall at a distance of 8/9 steps in the east of the Baithka. There was 2-1/2 high newly brick built wall in the north of the baithka running from east to west and some bricks of which were found removed. He also found two Nads adjacent south of the wall and Punj (heap) of straw in the east of the Nad and a burning punj of straw in the west of the Nad. He found trees of different varieties in the north of the newly brick built wall and in the north of the house there was also a wall of 2 1/ 2" high. He found the alleged Khalian to the north of this wall where two trucks bearing Nos. BRB 3259 and BRA 9772 were standing. On the northern wall of the house of the informant he found damaged plaster and pellet marks. He also found bloodstains on the Chaukhat of the darwaza, bricks, in the angan and on the earth. There was a field in the north of the brick built house of the informant where bricks were found. His further evidence is that from that field firing was possible at the house of the informant. He found the [dead body of Raiendra Sharma lying on the roof of the house and dried blood. He also found blood stained earth near the wall situated in the angan. He prepared the inquest report of the deceased, Rajendra Sharma in presence of the witnesses. He proved the contents of the inquest report mentioned in para 5 of the case diary (Ext. 4). The dead body of the deceased was sent for post-mortem examination. He recorded the statements of witnesses Ram Sewak Sharma, Ram Nandan Singh and others. All injured were sent to the State Dispensary Arwal Hospital for treatment. He examined the injuries of Dudheshwar Sharma P.W. 6, who was unconscious at that time. He also examined injuries on the persons of Awadheshwar Sharma, Krishnamani Devi and Ram Shila Devi and prepared the injuries reports. On 3.6.70 (sic) he obtained the post mortem report and injuries reports of the injured, but injuries reports were not found attached to the case diary. He has further stated that all the injuries reports attached to the case diary were made available at the time of submission of the chargesheet. On completion of the inquest report he submitted chargesheet. He proved the entire case diary (Ext. 5). He seized bloodstained earth, pellets and upper portion of the empty cartridges and prepared seizure list but the same were not available in the case diary. He was declared hostile by the prosecution because of missing of injury reports of the injured and inquest report of the deceased from the case diary, and was put to cross-examination. On cross examination by the prosecution he has stated that on 23.5.77 he seized both the trucks. On the cross-examination by the defence his evidence is that he did not

find any trampling mark in the brick bats stored field of Ram Vinay Sharma. He has further stated that for the first time he recorded the statement of Dudheshwar Sharma, P.W. 6 on 25.7.77. The attention of this witness was drawn to the statement of the witnesses before him. The witness, Krishnamani Singh has not stated before him that all the miscreants were armed with guns. Ramshila Devi had not stated before him that the informer had not disclosed the name of the Appellant, Ram Subhag Singh, as a assailant of her husband. The informant had stated before him that Vijay Singh, Jairam Singh had fired from their guns which caused death of his son.

11. After hearing the learned Counsel for the parties find myself at-one with the learned Counsel for the Appellants that implicit reliance cannot be placed on the testimony of the eye witnesses to the occurrence.

It appears from the F.I.R. that all the named 22 accused persons and other miscreants, with lathi, guns, bhala, garasa, bags etc. surrounded the house of the informant and Ram Nandan Singh, P.W. 7 and began to fire indiscriminately. The informant along with his entire family members went on the roof of the house and Rajendra Sharma, the son of the informant protested whereupon the accused, Ram Subhag Singh fired from his gun at him. The accused, Vijay Singh and Jairam Singh also fired from their guns at Rajendra Sharma and he died at the spot. The Appellants, Sidhnath Singh, Ram Briksh Singh and Jairam Singh, fired from their guns causing injuries to the informant, Awadheshwar Sharma, P.W. 9, Smt. Krishnamani Devi, P.W. 1, the sister of the informant and Shila Devi, P.W. 2, the wife of the deceased, Rajendra Sharma, respectively. On the sound of firing when Dudheshwar Sharma, P.W. 6 and Sheo Prasad Sharma, P.W. 5 rushed towards the house of the informant, the Appellants, Ram Subhag Singh and Sidhnath Singh fired causing injury to Dudheshwar Sharma and he went back inside the Dalan of Ramnandan Sharma, P.W. 7. The evidence of the eye witnesses to the occurrence reflects that the deceased Rajendra Sharma and the injured P.W. 1, Smt. Krishnamani Devi, P.W. 2, Shila Devi and P.W. 9, Awadheshwar Sharma, the informant, sustained injuries while they were at the roof of the house. A topography of the place emerged from the evidence shows that there was a 10 cubits high Khaprail Baithka of the informant about one Baans away in the north of his house. His house was also of same height having one and half cubits high-rulings. There was a brick built wall at a distance of 1 and half Baans in the north of the Baithaka running from east to west. In the intervening space of Baithka and wall there was 2/3 cubits high Gaaz of Newari and there were a number of trees of different varieties in the north, east and west of the wall. There was a mud built wall in the north of the trees at a distance of one yard and a road adjacent north of the wall. The alleged Khalihan of the Appellant, Ram Subhag Singh, was situated adjacent north of this intervening road. The evidence of P.W. 1, Krishnamani Devi is the indicative of the fact that the firing was done after crossing the road, one Baans away from the standing trucks. As per the evidence of P.W. 6, Dudheshwar Sharma the Khalihan of Ram Subhag Singh was situated at a distance of 150 yards in the

north of the house of the informant.

Thus, as per the prosecution the firing was done from a distance of more than 400 feet from the ground at the prosecution side standing on the 10/11 cubits high roof of the house of the informant. It was intervened by the high trees and Khaprail Baithka of the informant.

As per the medical jurisprudence ordinarily gun shot is effective within a range of 30 to 40 yards and the death is rare from the direct effects of shot beyond that range.

In view of the above topography it is very difficult to believe that after covering more than 400 feet distance pellets could have hit the deceased, Rajendra Sharma on his throat. The identification of the assailants from the roof also becomes doubtful. Further, according to Dr. Kameshwar Prasad Sharma, P.W. 12, who conducted autopsy on the dead body of the deceased, Rajendra Sharma, found three injuries on his person but as per the prosecution version there was only one firing on the deceased, Rajendra Sharma. The two injuries remained unexplained by the prosecution. Further according to the evidence of P.W. 12, Dr. Kameshwar Prasad Sharma, the missile hit the deceased horizontally and not vertically which is inconsistent with the prosecution version.

12. An analysis of the evidence further reveals that P.W. 1, Smt. Krishnamani Devi, gave a detailed prosecution story in which she excluded the presence of the three Appellants, namely, Ram Subhag Singh, Ram Briksh Singh and Jairam Singh. P.W. 2, Shila Devi, did not identify any of the Appellants. P.W. 6 excluded the presence of Ram Briksh Sharma and Jai Ram Singh. P.W. 9, Awadheshwar Sharma, also excluded the presence of Appellant, Sidhnath Singh. Further their consistent evidence is that after the occurrence they remained at the roof of the house for the whole day and night till the arrival of the police and removal of the dead body of the deceased, Rajendra Sharma from there.

The evidence of Nand Kumar Sinha, P.W. 10, the I.O. of this case further gives a death-blow to the prosecution case. On inspection of the P.O. he found blood all over the roof where the deceased and injured sustained injuries and dried bloods near the dead body. He also found blood in Angan near the well of the informant, on the chaukhat of the Darwaza down stairs and on the bricks etc. There is no evidence that the accused persons had entered in the courtyard/house of the informant after crossing the boundary wall of the deceased/injured came down from the roof of the house before arrival of the police. The prosecution has not furnished any credible explanation of these objective findings of the I.O. this casts a serious doubt to the veracity of the prosecution case and the evidence of the eye witnesses of the occurrence.

13. The settled principle of law is that on the evidence adduced by the prosecution an accused can be convicted only when the Court comes to the definite conclusion beyond all reasonable doubts that he committed the offence and on mere possibility no conviction can be based.

14. On the basis of the above discussions, it is established that the incident in question never took place in the manner and in the circumstances as alleged by the prosecution. The Appellants are, therefore, entitled to the benefits of all reasonable doubts.

15. In the result, this appeal is allowed. The order of conviction and sentence passed against the Appellants is set aside and they are acquitted of the charges. All the four Appellants, namely, Ram Subhag Singh, Ram Briksh Singh Sidhnath Singh and Jai Ram Singh, are on bail, so they stand discharged from the liability of their executed bail bonds.

A.K. Sinha, J.

16. I agree.