

(2005) 09 PAT CK 0076

In the Patna High Court

Case No : Criminal Appeal (DB) No. 554 of 2001

Rama Kant Singh and Siyaram Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 29-09-2005

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 144, 161

Penal Code, 1860 (IPC) — Section 114, 302, 304, 307, 324

Citation : (2006) 1 PLJR 42

Hon'ble Judges : Sadanand Mukherjee, J;Aftab Alam, J

Bench : Division Bench

Advocate : Anjana Prakash, M/s Arun Kumar, Pankaj Kumar and Vivek Kr. Singh
Amicus Curiae, for the Appellant; Ganesh Pd. Jaysawal, for the Respondent

Final Decision : Allowed

Judgement

Sadanand Mukherjee, J.—Cr. Appeal No. 554 of 2001 preferred by appellants Rama Kant Singh and Siyaram Singh is directed against the judgment and order dated 16th October, 2001 of the learned 3rd Additional Sessions Judge, Arrah, Bhojpur passed in Sessions Trial No. 70 of 1991, whereby and whereunder, the learned Judge convicted the appellants under sections 302 read with section 114 of the Indian Penal Code and sentenced them to undergo imprisonment for life. Cr. Appeal No. 568 of 2001 is directed against the same judgment and order, whereby and whereunder, the learned judge convicted the appellant Shrikant Singh u/s 302 I.P.C. and Section 27 of the Arms Act and sentenced to undergo imprisonment for life for the offence u/s 302 of the I.P.C. and rigorous imprisonment for five years for the offence u/s 27 of the Arms Act. The sentences shall run concurrently.

2. The case of the prosecution, in brief, as incorporated in the fardbeyan (Ext. 1) is that on 4.8.1989 at about 5.30 P.M. grand son of the informant, namely, Bijai Kumar Singh (P.W. 1) while returning to his house after ploughing the field

alongwith his bullocks, on the way the appellant Shrikant Singh was sitting on the side of the road, and from the tail of the bullock, some mud splashed on the body of accused Shrikant Singh, on which he started abusing P.W. 1 Bijai Kumar Singh and accused Shrikant Singh left the place after giving threatening. The grand son of the informant, namely, Bijay Kumar Singh (P.W. 1) reported the aforesaid occurrence to his grand father (PW. 7). In the meantime, all the present accused and Sukhdeo Singh, who died during pendency of the trial, came on the eastern bank of the canal in front of the house of the informant and started abusing loudly. It is further alleged that the informant saw that appellant Shrikant was armed with gun and others with lathi. In the meantime, family members of the informant, namely, Tetari Devi (deceased), Sumitra Devi (P.W. 6) and others (villagers) also came there. On the exhortation of Sukhdeo Singh, Siyaram Singh and Ramakant Singh, appellant Shrikant Singh opened fire from his D.B.B.L. gun and Tetari Devi (deceased) sustained pellet injury on her left abdomen. She fell down and thereafter accused persons fled away. The informant brought his daughter-in-law Tetari Devi with the help of villagers to the referral hospital, Sandesh from where she was referred to Arrah Hospital. The fardbeyan of the informant (P.W. 7) was recorded at Referral Hospital by Sandesh Police, VIZ, Ext. 1 and F.I.R. was drawn up against the above named four accused persons under sections 324, 307 of the I.P.C. and section 27 of the Arms Act. Offence u/s 302/34 of the I.P.C. was added subsequently as the victim Tetari Devi died at the Arrah Hospital. After investigation police submitted charge sheet and accordingly after taking cognizance, case was committed to the court of Sessions where charges u/s 302 of the I.P.C. and Section 27 of the Arms Act had been framed against accused Shrikant Singh and charge under sections 304/34 of the I.P.C. was framed against remaining three accused persons. However, at the argument stage, charge was amended, consequently Ramakant Singh and Siyaram Ram, appellants in Cr. Appeal No. 554 of 2001 were charged u/s 114 read with section 302 of the I.P.C. Accused Shrikant Singh, Ramakant Singh as well as Siyaram Singh were further charged for the offence under sections 302/34 of the I.P.C.

3. The defence case is that the accused persons had not committed any offence. The allegation against them are absolutely false and no occurrence ever had taken place in the manner as stated by the prosecution, besides that, the alleged manner of occurrence and the time of occurrence are all false. The defence case further is that accused Shrikant Singh was not present at his village home and further documents have been proved as exhibits to suggest enmity with the prosecution party. The defence case further is that allegations against them are absolutely false.

4. In support of the prosecution case 13 witnesses have been examined. P.W. 1, 2, 3, 4, 6 and 7 are said to be the eye witnesses of the occurrence PW. 1 Bijai Kumar Singh, P.W. 2 Abhay Kumar Singh, P.W. 3 Ramanand Singh, P.W. 6 Sumitra Devi and P.W. 7 Awadh Bihari Singh are all related witnesses.

5. The genesis of the occurrence has been narrated by P.W. 1. He is also an witness on the occurrence. The evidence of P.W. 1 Bijai Kumar Singh is that the occurrence took place on 4.8.1989 at about 5.30 P.M. when this witness was returning from his field along with his bullock; some mud was splashed from mud stained tail of the bullock on the body of accused Shrikant Singh who was sitting on the side of the road, on which he started abusing. His evidence in chief indicates that there was exchange of hot words, whereupon, accused Shrikant Singh rushed to his house after giving threatening. This witness narrated the same to his grand father Awadh Bihari Singh (P.W. 7). In the meantime, accused Shrikant Singh, Ramakant Singh, Siyaram Singh and Sukhdeo Singh came in the eastern bank of the canal lying to the east of the house of P.W. 1, Accused Shrikant Singh was armed with gun and others with lathi. The accused persons started abusing. The evidence of P.W. 1 further unfolds that P.W. 1. Bijai Kumar Singh, P.W. 7 the informant, the grand father of P.W. 1, and further P.W. 4 Sheoji Yadav tried to cool the tempers. Further evidence of P.W. 1, is that in the meantime on hearing alarm of P.W. 1, Tetari Devi (the deceased), Sumitra Devi (P.W. 6) and cousin brother Abhay Kumar Singh (P.W. 2) and others came there. There was protest on the part of the deceased, whereupon, accused Ramakant Singh, Siyaram Singh and Sukhdeo instigated saying in abusive language that the woman be killed, whereupon, accused Shrikant Singh fired causing injury at the stomach of the deceased and fled away. Thereafter P.W. 1 with the help of the villagers brought the deceased Tetari Devi to Sandesh Hospital, but the doctor of the Hospital advised them to rush her to Arrah Hospital. Tetari Devi succumbed to injury. It transpires from the evidence of P.W. 1 that at Sandesh Hospital the police took the statement of the deceased Tetari Devi as she was conscious. But it does not appear from the evidence of P.W. 10 (I.O.) that this witness had stated before the police about the conscious stage of the deceased at Sandesh hospital. Besides that as an eye witness, he vitally contradicted the version of the informant in the F.I.R. which however informant (P.W. 7) himself also has contradicted when he stated that the other accused persons had exhorted Shrikant Singh to kill Tetari Devi but in the F.I.R., the instigation given to Shrikant Singh does not relate to Tetari Devi in particular which makes much difference on the factum of common intention or premeditated plan to kill. His evidence clearly indicates that firing was made from a distance of fifty yards. His evidence further goes to show that neighbouring people did not assemble despite the firing. It appears from his evidence that he had denied the suggestion of having not stated before the police that Tetari Devi was conscious at Sandesh hospital and was talking. He also denied of having not stated before the police that Shrikant was having the licensed gun of his father. This witness had stated that statement by Tetari Devi was not made in his presence before the police. P.W. 1 in cross examination has been confronted with his further versions before the I.O. From perusal of the evidence of P.W. 10, the I.O. it appears that P.W. 1 had not stated before police that he was coming with two bullocks from the field nor he has stated about Shrikant coming to the P.O. with gun nor he had stated that at the referral hospital, the deceased was conscious and was talking. P.W. 1

had not stated before the I.O. that accused Shrikant had licensed gun. So far as genesis and manner of the occurrence is concerned, there appears contradictions in the evidence of P.W. 1 with reference to his previous statement before the police u/s 161 of the Cr. P.C. thus impeaching the credit of this witness.

6. P.W. 2 is Abhay Kumar Singh. He had rushed to the place of occurrence and found accused Shrikant with double barrel gun. Accused Sukhdeo, Siyaram and Ramakant Singh were with lathi. He had also found grand father Awadh Bihari Singh (P.W. 7), cousin brother Bijai Kumar Singh (P.W. 1), Ramanand Singh (P.W. 3) and Sheojee Yadav (P.W. 4). His evidence shows that the deceased Tetari Devi protested, whereupon, Ramakant Singh, Siyaram Singh and Sukhdeo Singh exhorted accused Shrikant Singh to fire shot at the deceased mother of this witness who fell down on the field. Thereafter accused persons fled away and she was taken to Sandesh Hospital accompanied by Awadh Bihari Singh (P.W. 7), Bijai Kumar Singh (P.W. 1), Ramanand Singh (P.W. 3), Sheojee Yadav (P.W. 4) and Sumitra Devi (P.W. 6). He has contradicted the evidence of P.W. 1 stating therein that there was assemblage of persons on hearing the sound of firing, P.W. 1 however had stated otherwise, that nobody had assembled there except the eye witnesses mainly family members. This witness had stated that due to one firing, the clothing of her mother got burnt and there was mark of blood stains on the earth. He denied having not stated before the police that his deceased mother was shot on the right abdomen. This witness in the cross examination after charge stated that he had not seen that by firing the clothing of her mother got burnt thus contradicting his earlier statement that the same got burnt by firing. The evidence of P.W. 2 as regards manner and motive has been assailed in contradiction with his previous statement before the police to impeach the credit of this witness. His evidence in cross-examination goes to show that at the time of occurrence accused Shrikant had gun in his hand. This witness has denied having not stated before the police that the accused persons were abusing and the firing hit at the right side of the abdomen. The injured mother had been taken to the hospital by Awadh Bihari Singh (P.W. 7), Bijai Kumar Singh (P.W. 1), Sumitra Devi (P.W. 6), Ramanand Singh (P.W. 3) and Sheoji Yadav (P.W. 4).

7. From perusal of the evidence of I.O. (P.W. 10) at paragraph 22 it appears that this witness had not said that the shot fired by appellant Shrikant hit at the right side of the abdomen of mother of this witness and injured mother of this witness was brought to the hospital by Awadh Bihari Singh (P.W. 7), Bijai Kumar Singh (P.W. 1), Ramanand Singh (P.W. 3) and Sheoji Yadav (P.W. 4).

8. Ramanand Singh (P.W. 3) who is nephew of the informant supported the prosecution case. But in cross-examination he says that he had not seen the incident of firing shot and when he came to the place of occurrence shot had already been fired, he found the deceased lying on the field. This witness had not seen bloodstains on earth. He however says that there was burning mark on the clothing of the deceased. He denied not having stated before the police that the police took statement of the deceased on the maxi. This witness had

categorically stated in cross-examination that he had not seen the firing when he reached at the place of occurrence. After amendment of charge this witness was further cross-examined and he completely contradicted himself stating that he had not seen accused Shrikant in the village for the last 2-3 days. His further evidence shows that the deceased became unconscious at the P.O. itself and she died in unconsciousness. He has not supported the prosecution case disclaiming himself as an eyewitness of the occurrence.

9. P.W. 4 Sheoji Yadav has deposed as an eye witness who claims to have seen the actual occurrence of firing by Srikant Singh at the instigation of other accused persons P.W. 4 Sheoji Yadav had stated that he had seen Bijai Kumar Singh (P.W. 1) coming with two bullocks with mud stains and stated about genesis of occurrence of smearing of mud on accused Shrikant Singh.

In his examination-in-chief this witness had not indicated that exhortation on the part of Sukhdeo Singh, Ramakant Singh and Siyaram Singh was specifically directed to deceased Tetari Devi, thus deviated from the manner of occurrence as narrated by P.W. 1, P.W. 2 and P.W. 7. He was going for purchase of buffalow from informant when he was said to have seen the occurrence as chance-witness. The police took statement of the deceased at the Sandesh Hospital from where she was taken to Arrah Hospital by Maxy (vehicle). He had stated about the blood stains on the earth, P.W. 10 (I.O.) however has denied existence of blood stains on the earth. His evidence further shows the assemblage of non-related 20-25 persons, but except this witness, no other witnesses seems to have been examined. P.W. 1 however had earlier stated that no other person except eye-witnesses were present on the P.O. His evidence also dwells on the partial burning of cloth of the deceased due to firing. As regards genesis of occurrence, as stated, he was confronted with previous statement before the police. In his evidence he had categorically stated about having narrating genesis of occurrence before police which P.W. 10 (I.O.) has denied and thus his evidence is at variance with his previous statement before the police. His evidence clearly indicates that earlier there was litigation between the family of this witness and family members of the accused persons. His evidence further shows that firing was made from a distance of 50 yards, which however does not fit in with the nature of injury as will appear on the appreciation of medical evidence. On the whole his evidence does not inspire credence on the background of admitted enmity. In his evidence at para 16 he denied that he had ever stated about departure of Bijai Kumar Singh from Sandesh Hospital, that thereafter the S.I. took statement of the deceased and Awadh Bihari Singh (P.W. 7) and that thereafter the deceased was brought to Arrah Hospital by Maxy. It appears that there are contradictions in the evidence of this witness vis-a-vis the versions of P.W. 1, P.W. 2 and P.W. 3 on the genesis and manner of occurrence and its aftermath.

10. P.W. 5 is a format witness who had proved the fardbeyan (Ext. 1).

11. P.W. 6 Sumitra Devi, sister-in-law (Gotni) of the deceased is said to be the

eye witness of the occurrence. In her evidence she deposed about exhortation by other accused persons to accused Shrikant Singh which does not specifically relate to killing of the deceased. She has further stated about the occurrence of killing the deceased and blood stain falling on the earth and assemblage of persons other than the witnesses who have deposed in this case. Attention has been drawn towards the evidence of the I.O. (P.W. 10) suggesting that this witness had deviated in her evidence in respect of presence of persons at the place of occurrence and the manner of occurrence. Although she is an eye witness, she has failed to say as to in what posture accused Shrikant Singh made firing. Her evidence is that after the shot was fired villagers had assembled which does not find support from the evidence of P.W. 1.

In view of the aforesaid facts attention has been drawn by the defence towards doubtful nature of her evidence regarding her presence at the P.O. P.W. 10 in his evidence has indicated that this witness in her previous statement had not stated that at the place of occurrence Sheoji Yadav, Ramanand Singh, Bijai and all the prosecution witnesses were present along with her father-in-law (informant).

12. P.W. 7 Awadh Bihari Singh is the informant himself. He has supported the prosecution case stating about origin of the occurrence and throwing of mud on Shrikant Singh by bullock carried by P.W. 1, whereupon, accused Shrikant Singh armed with gun, Sukhdeo, Ramakant and Siyaram armed with Lathi came at the bank of canal. Accused persons abused the informant and others, whereupon the informant (P.W. 7) tried to cool the tempers, in the meantime other family members, namely, Bijai, Tetari, Sumitra also came from the house. The deceased Tetari Devi protested against the conduct of the accused persons, on which accused Sukhdeo Singh, Ramakant Singh and Siyaram Singh instigated accused Shrikant Singh to kill her on which accused Shrikant Singh fired due to which injury was caused on the right side of abdomen of Tetari Devi who fell down. The evidence of this witness further goes to show that at Sandesh Hospital, where Tetari was brought, statement of P.W. 7 (the informant) was recorded on the basis of which F.I.R. (Ext. 1) was instituted and thereafter statement of Tetari Devi u/s 161 Cr. P.C. was recorded as Ext. 4. In the meantime, Bijai Kumar Singh had left for Sandesh Bazar and went back after statement was recorded. His evidence further indicates that thereafter the deceased was taken to Arrah Hospital where she died.

From perusal of evidence of this witness it is clear that there was family litigation in between this witness and the accused persons. This witness has stated about blood stains on the earth. His evidence further shows that 50 persons had assembled at the P.O., but except one non-related chance witness no one has been examined in this case. His evidence further indicates that some villagers had told him about the accused coming with arms, but none of such villagers has been examined in this case. Attention of this witness was drawn towards his previous statement regarding origin of the occurrence, manner of occurrence as well as presence of witnesses at the place of occurrence. He had denied having

not stated before the police (I.O.) regarding P.W. 1 coming with two bullocks and the accused persons coming having been armed with lathi and gun. In his evidence I.O. (P.W. 10) has stated about the previous statement of informant that Sukhdeo Singh, Ramakant Singh and Siyaram Singh had exhorted accused Shrikant Singh to kill them at the first instance, whereupon, the accused Shrikant Singh fired shot at Tetari Devi (deceased) and further in his previous statement he had stated before the police that Tetari Devi was talking till she had been taken to hospital at Sandesh. This witness also deposed about the statement which has been made previously before the police that A.S.I. (Zamadat) interrogated the deceased Tetari Devi and recorded her statement, thereafter Bijai Kumar Singh had come from market and Tetari Devi had been taken to Arrah hospital. The evidence of P.W. 10 (I.O.) denied that this witness had given any previous statement about Bijai Kumar Singh coming with two bullocks, that he had not stated that Tetari Devi had protested, whereupon, accused Shukdheo, Ramakant and Siyaram exhorted accused Shrikant to kill the deceased at the first instance. In the aforesaid sequence he had not stated before the police that thereafter Shrikant Singh fired shot at Tetari Devi. He had not stated before the police that Tetari Devi was talking with him before arrival at Sandesh Hospital. He has also not stated before the police that he was asked by the doctor to take the deceased to Arrah and Bijai had gone to Sandesh Bazar. He had also not stated before the police that when she was interrogated her statement was recorded by the police and thereafter Bijai had come from the Sandesh Bazar. This witness seems to have contradicted his own version in the fardbeyan vis-a-vis his evidence before the court that the other accused persons as named above had exhorted accused Shrikant to kill Tetari Devi, P.W. 10 (I.O.) on the other hand has stated that at para 32 of his evidence that in the fardbeyan informant had stated that Shrikant was asked to kill all the witnesses and firing was sought to be directed not to any particular person. This witness has vitally contradicted the F.I.R. by deviating from his own statement in the fardbeyan and became specific in attributing the motive of accused Shrikant Singh to kill the deceased Tetari Devi.

13. P.W. 8 is A.S.I. of police. He is a formal witness. On 10.9.1989 he took charge of the case and after investigation and seeing the records submitted charge sheet. His evidence is not of much importance, in substance.

14. P.W. 9 is Dr. Sushil Kumar who performed postmortem examination and found the following injuries:-

1) Fire arm wound of entry size 3/4" x 3/4" on abdominal wall antemortem situated 3" to the right of umbilicus and 1/2" below the level of umbilicus wound margin was burnt partially and blackened. Corresponding tears was present in clothings. A track of projectile passed through the abdominal wall into the abdominal cavity then into small intestine and mesentery at various places causing multiple lacerations tears in gut and mesentery and major blood vessels.

2) Abdominal cavity contained dark fluid and blood clots measuring about 1500

ml pellets and one plastic cardwad were preserved and sealed and handed over to the constable.

No other external mark of injury or violence was found. The cause of death was due to haemorrhage and shock by fire arm injury. Much emphasis was given by the defence to the contact range of injury as well as condition of the injury. The doctor opined as follows:-

"In such type of injury the patient would immediately fall into a Coma. The ballistic expert would give an opinion as to whether the burning or blackening mark would be caused by fire from contact range or from within few inches. The burn was caused due to flames of fire arm, cartridge or projectile by fire arm. If the projectile is heated then it may cause such burn injury. The accumulation of pellets and cardwad at one place suggests that the injury was caused from a near range."

A suggestion put forward by the defence to the doctor that such injury might be caused by self handling or accidental handling of homicide was answered in affirmative. It is worthwhile to note that the doctor has opined that burning or blackening could only be caused by fire arm contact range or from within a few inches. There is consistent evidence of the witnesses that firing was resorted to from a distance of 50 yards. There is also consistent evidence that firing was caused by a licensed gun which was a commercially made standard gun. It is also worthwhile to point out that the firing might have been made at a very near range according to the medical evidence as stated above. The consistent evidence however is that accused Shrikant Singh fired shot from a range of 50 yards and also from an angular position. The above medical evidence read with postmortem report (Ext. 3) suggesting that the injury was caused from a close range which gives an edge to the defence to question the prosecution version of causing injury by aforesaid accused Shrikant Singh which according to prosecution case is from a distance of 50 yards.

A larger bench of the Supreme Court as reported in Santa Singh Vs. The State of Punjab, while examining a similar situation observed that if there were burnt edges of the wound, the distance between the muzzle and the victim would only be a few inches and not more than nine inches. In this context the Supreme Court has observed as follows:

"The ballistic expert, Dr. Goyle, examined as P.W. 11, said that if there were burnt edges of the wound, the distance between the muzzle and the victim would only be a few inches and not more than nine inches. This opinion is in substantial accord with what is found in some of the text books on medical jurisprudence.

For instance, it is stated in Taylor's Principles and Practice of Medical Jurisprudence, Vol. 1, 10th Edition, at page 441, under the heading "Burning of the Wound".

It is impossible to state rules as to the precise distance from which it is possible

to produce marks of burning, for this depends on the quantity & nature of the powder, the method of charging, and the nature of the weapon. It is unusual, however, to get marks of burning beyond a yard or a yard and a half with a shot gun, or at more than half a yard with a revolver.

It has been contended on behalf of the defence that the nature of injury evinced in the "burnt edges" is not possible if the distance made out in the prosecution case is believed.

15. In the present case gun was a licensed gun and the recovery was made of a double barrel gun A/1-5622. Hence the defence convincingly raised a doubt over this part of the manner of occurrence as the distance of firing shot is 50 yards as consistently made out in the prosecution evidence by means of commercially made weapon as the behaviour of a standard gun mostly conforms to the above norms in contradistinction with a country made gun. It was opined in the Book "Medical Jurisprudence and Toxicology" (M.V. Cox-5th Edition page-291) that antique and homemade country made guns may not have the characteristic of commercially made weapon and therefore wounds from these guns may not correspond to the usual description.

But in this case the firing was made from a commercially made weapon, as given in the prosecution case and therefore convincingly a reasonable doubt has been raised.

16. The defence has assailed the investigation of the I.O. (P.W. 10) who has investigated the case stating that the investigation was started without instituting the case. P.W. 10 recorded the fardbeyan of P.W. 1 and also took statement of the witnesses including the deceased (Ext. 4). P.W. 10, the I.O., visited the place of occurrence at 8 A.M. on 5.8.1989. He did not find any sign of blood on earth in P.O. Thus, doubt is raised in the version of the witnesses regarding blood falling on the earth. He found the P.O. damp. The shot was said to have been fired from a height. The defence has raised the points that the nature of injury does not fit in also in the context of height and the place from where firing was said to have been done. There was recovery of double barrel gun, as stated above, from the house of the accused persons. Seizure list (Ext. 6) was prepared. The Sergeant Major examined the double barrel gun. P.W. 10, the I.O. has stated that the gun was got examined by the Sergeant Major. There was no pin in the seized gun. The I.O. did not find any pellet on the place of occurrence. Infirmities in the investigation have been brought to the notice, in as much as, no injury report was prepared and there was no O.D. Slip. No dying declaration was got recorded by any Magistrate or any Officer, nor statement of Tetari Devi was recorded in presence of any hospital employee. Gun was not examined by any ballistic expert nor any reason has been assigned for delayed examination of the gun by Sergeant Major. This witness has deposed that the informant had stated in the fardbeyan that Shrikant Singh has been exhorted by the accused persons to "kill", which indicates that there was no specific reference of killing the deceased in the F.I.R. as well as in the subsequent statement u/s

161 Cr. P.C. The fact that gun was not effective and there was no blood stains on the earth and there was inconsistency between the contact range from the commercially made weapon and the injury caused supports the defence contention regarding the reasonable doubt in the manner of occurrence.

17. P.W. 11 a constable has produced the gun which was marked as material Ext. I. The gun did not have any firing pin and accordingly it was suggested that the gun was ineffective.

18. P.W. 12 is the witness on the inquest report (Ext. 7) of the deceased and P.W. 13 proved requisition for examination of gun (Ext. 8.).

19. Purshottam and Another Vs. State of Madhya Pradesh, has been relied upon by the defence laying emphasis on the preference to medical testimony, if there is inconsistency in the ocular evidence and contradiction between medical evidence and ocular testimony. Further Gurdial Singh Vs. State of Punjab, has been relied upon to show that in view of family feud actuating interest in false implication, injuries in conflict with ocular evidence confirm serious infirmity in the prosecution case. Further Ram Narain Singh Vs. State of Punjab, has been cited to show that if prosecution evidence is inconsistent with the medical evidence, the same cannot be brushed aside lightly and the same shall be extremely damaging to the prosecution case. So far as statement of the deceased u/s 161 Cr. P.C. is concerned, the prosecution had relied upon the statement of the deceased u/s 161 Cr. P.C. recorded by the police (Ext. 4). It has been submitted on behalf of the defence that the prosecution has led doubtful evidence regarding consciousness of the deceased after she was taken to hospital. It has also been emphasized with reference to the prosecution evidence that the medical evidence also indicates that on such injury the injured immediately falls into a coma, therefore, it is submitted that such statement cannot assume the character of dying declaration in absence of certificate showing the deceased to be medically fit and as such the statement u/s 161 of the Cr. P.C. cannot be relied upon. In this connection State of Orissa Vs. Parasuram Naik, has been relied upon by the defence.

20. The defence has taken a plea of "alibi" with regard to the accused, Shrikant Singh, who was a Military Personnel. The defence case was that the accused Shrikant was not present in village home rather he was in Meerut to meet his brother on way to joining his duty at Meerut and he was ailing from 3.8.1989 to 7.8.1989. P.W. 10, the I.O., in para 33 of his cross-examination has stated that he had not verified the "alibi" of the accused. Defence has examined Dr. P.K. Sharma of Meerut and also filed relevant papers on the inquiry held by Lalkaurati P.S. of Meerut regarding alibi of the accused Shrikant Singh.

21. D.W. 1 Dr. P.K. Sharma of Meerut deposed that on 3.8.1989 he had examined Shrikant Singh at Meerut and on 9.5.1991 he had granted certificate in support of the aforesaid to the police at Lalkaurati P.S. of Meerut. The report of Officer Incharge of Lalkaurati P.S. of Meerut has been proved as Ext. A and it testifies

that Dr. P.K. Sharma had issued certificate showing the treatment of Shrikant Singh on 3.8.1989. Inquiry was made at the instance of Senior S.P.

22. It appears that the trial court has not placed reliance on the aforesaid plea of alibi as the report was not corroborated by the material document. Further, documentary evidence have been proved by the defence. Ext. B is the order dated 19.5.1961 passed in G.R. Case No. 270/60, Ext. B/1 is the order dated 26.11.62 passed in a proceeding u/s 144 Cr. P.C. whereby the said proceeding was dropped, Ext. C is the order dated 2.1.81 granting bail to present accused persons in G.R. Case No. 257/80, Ext. C/1 is the order dated 15.2.92 passed in land ceiling case No. 46/88-89, Ext. D is certified copy of chargesheet in connection with Sandesh P.S. Case No. 18/85, Ext. E is cadestral survey khatian, Ext. F is fardbeyan of the aforesaid case, Ext. G is endorsement on the fardbeyan and Ext. G/ 1 is format F.I.R. of Sandesh P.S. Case No. 8/1980. These documents have been proved to show enmity between the prosecution party and the accused persons. The aforesaid plea of alibi, if not taken into consideration, the fact remains that the case on its own. It is well settled that the court will be justified in separating the grains from the chaffs in the evidence but in this case the grains and the chaffs are so intermixed that it is difficult to separate the grains from the chaffs as the versions of the prosecution witnesses have been marked by contradictions exposing the credit of the witnesses to doubt.

23. As stated above, in view of the admitted enmity the evidence of the related witnesses is to be scrutinized with caution.

The defence contention that the statement of the deceased u/s 161 Cr. P.C. cannot be treated as dying declaration appears to be well founded in view of the discussion made above. The defence contention regarding the veracity of the place of occurrence in absence of blood stains on the earth and pellets at the place of occurrence damaging the prosecution case cannot be brushed aside. The defence contention regarding the doubt cast on prosecution evidence of the instigation given by other accused persons to kill the deceased in particular could not be answered in the prosecution evidence considering the version in the Fardbeyan (Ext. 1) and previous statements of the witnesses before the police.

24. Various authorities of the medical jurisprudence as also the decision of the Apex Court as stated above in the context of evidence of the prosecution that firing was made from a distance of 50 yards give an edge to the defence contention casting reasonable doubt on the nature of injury on the deceased as discussed above. The defence contention regarding contradictions in the prosecution evidence vis-a-vis previous statements of the witnesses has not been explained away by the prosecution beyond doubt. In the above facts and circumstances of the case, the prosecution has not been able to prove the case beyond all reasonable doubts.

Accordingly, the conviction and sentence on the appellants Ramakant Singh and Siyaram Singh on bail in Cr. Appeal No. 554 of 2001 and appellant Srikant Singh

in Cr. Appeal No. 568 of 2001 are set aside. They are discharged from the liabilities of their bail bonds.

The appellant Shrikant Singh is in jail custody, therefore, we direct that the appellant Shrikant Singh be set at liberty forthwith, unless not required in any other case.

In the result the judgment and order passed by the trial court is set aside and both the appeals are allowed.

Aftab Alam, J.

25. I agree.