

(2019) 08 PAT CK 0126

In the Patna High Court

Case No : Criminal Appeal (Db) No. 716, 679, 723, 628, 720 Of 2013

Ramsewak Mahto And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 302, 307, 323, 324, 364, 380, 452
Code Of Criminal Procedure, 1973 — Section 313, 317
Arms Act, 1959 — Section 27, 27(1)

Citation : (2019) 4 PLJR 551

Hon'ble Judges : Anjani Kumar Sharan, J; Rakesh Kumar, J

Bench : Division Bench

Advocate : Vikramdeo Singh, Paras Nath, Patla Kumari, Ajay Mishra, Arvind Kumar Singh, Prateek Mishra, Yogesh Chandra Verma, Anil Kumar Saxena, Kumar Narayan Jamuar, Mayanand Jha, Nawal Kishore Sharma

Final Decision : Disposed Of

Judgement

1. Thirteen appellants in all the aforesaid five appeals were tried together and were convicted and sentenced by a common judgment of the trial court, and as such, all the aforesaid five appeals were taken up together under the heading "For Hearing" and are being disposed of by this common judgment.

2. Appellant Ramsewak Mahto in Cr. Appeal (DB) No. 716 of 2013 was convicted by judgment dated 19.06.2013 for the offence under Sections

302/149, 452/149 of the Indian Penal Code, 1860 [hereinafter referred to as the "IPC"] along with Awadhesh Mahto [appellant in Cr. Appeal

(DB) No. 628 of 2013], Sadhu Das @ Mochi @ Sadhu Mochi, Mithilesh Das @ Mithilesh Mochi, Raghunandan Yadav, Jainandan Yadav and

Dularchand Das @ Mochi @ Dularchand Mochi [appellants in Cr. Appeal (DB) No.

679 of 2013], Ram Narain Mahto @ Ramayan Mahto,

Ramanand Mahto, Arvind Paswan and Ramanand Das @ Mochi [appellants in Cr. Appeal (DB) No. 723 of 2013], Chandeshwar Das @

Chandeshwar Mochi and Sanjeevan Paswan [appellants in Cr. Appeal (DB) No. 720 of 2013]. Chandeshwar Das @ Chandeshwar Mochi and

Sanjeevan Paswan have further been convicted by the same judgment for the offence under Section 27 of the Arms Act, 1959 (hereinafter referred

to as the "Arms Act").

3. All the appellants under Sections 302/149 of IPC vide order dated 22.06.2013 were sentenced to undergo rigorous imprisonment for life, and to pay

fine of Rs. 5,000/- (five thousand) each. In case of default in payment of fine, they have further been directed to undergo simple imprisonment for six

months. All the appellants under Sections 452/149 of I.P.C. vide order dated 22.06.2013 were sentenced to undergo rigorous imprisonment for three

years and to pay fine of Rs. 2,000/- (two thousand) each and in default of payment of fine, they have further been directed to undergo simple

imprisonment for three months. Appellants Sanjeevan Paswan and Chandeshwar Das @ Chandeshwar Mochi in [Cr. Appeal (DB) No. 720 of 2013]

by order dated 22.06.2013 were sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs. 2,000/- (two thousand) under

Section 27 of the Arms Act. In case of default in payment of fine, they have been directed to further undergo simple imprisonment for three years. All

the sentences were directed to run concurrently. The judgment of conviction and sentence was passed by Adhoc Additional District and Sessions

Judge-2, Jehanabad (hereinafter referred to as the "Trial Judge") in Sessions Trial No. 13 of 1993, 98 of 2009 (FTC-II) arising out of

Madkhdumpur P.S. Case No. 169 of 1990.

4. Short facts of the case is that the informant namely, Mahendra Singh (A.W.6) on 25.11.1990 at about 5.00 P.M. gave his fardbyan which was

recorded by S.I., B.N. Singh (not examined) at the door of informant. In the fardbeyan it was disclosed by the informant that on the same day at about

1.30 P.M., he was sitting at the "dalan" along with his brother Sideswar Singh (deceased), nephew Chandra Shekhar Singh, Arvind Singh and

Upendra Singh, where he heard the sound of firing from west north side. Whereupon he came out to see, then he saw that accused 1. Chandeshwar

Mochi (2) Baleshwar Mochi (3) Sanjeevan Paswan (4) Sewak Mahto (5) Awadesh Mahto (6) Ramayan Mahto (7) Ramanand Mahto (8) Sewak

Mochi (9) Ramanand Mochi (10) Mithilesh Mochi (11) Sadhu Mochi (12) Dudhan Maharaj (13) Balkeshwar Mochi (14) Bundel Manjhi (15)

Dularchand Mochi armed with rifle and gun came out at the door and accused Chandeshwar Mochi gave order to kill Sidheshwar Singh, upon this

accused Baleshwar Manjhi, Sanjeevan Paswan and Chandeshwar Mochi caught hold the deceased and took him towards north. Though the informant

went to rescue him, but the Sidheshwar Singh (deceased) was taken away in the field of one Krishna Singh where Chandeshwar Mochi, Baleshwar

Mochi and Sanjeevan Paswan opened fire with close range upon him. As a result, he sustained injury on left arm, neck, shoulder and waist-back and

died on the spot. When his brother made protest there, he was also assaulted by accused Dudhan Maharaj and Dularchand Mochi and took away by

them. Then they took the injured Sidheshwar to the 'Dalan' where he died. Awadesh Mahto and Ram Sewak Mochi entered into the house

and took away the Steel Box containing cash and ornaments. The police came and then they freed the Chandrashekhar Sharma (P.W.5). The

miscreants also looted the paddy crops of two bigha. He also identified two persons who looted the paddy namely Raghunandan Yadav and Jainandan

Yadav. He further mentioned in fardbeyan that there is old enmity with the accused person. He further contended that on 12.08.1982 his brother

Madan Prasad Singh was murdered by Sawar Mahto, Awadesh Mahto, Ramnandan Mahto and Ramanand Mahto. He further contended that on

08.12.1986, his another brother Shyam Manohar Singh was murdered by Ramnandan Mahto, Awadesh Mahto and Ramayan and in both case his

brother Sidheshwar Singh (deceased) was informant. Both case will be ready for hearing, therefore, they killed Sidheshwar Singh. He further

disclosed that Sitaram Singh (not examined), Basista Singh (P.W.3), Umesh Singh (P.W.5), Ram Kishore Singh (not examined) and other villagers

have seen this occurrence. The said fardbeyan was read over him and after finding it correct he put his signature in presence of the witnesses. It is

also alleged that accused persons were member of I.P.F. and liberation party, who surrounded the entire village and accused persons called liberation

Dasta. It is also alleged that the members of I.P.F. of nearby village Mehwa and Jamalpur has also come there. They looted away the paddy crops

kept in the field.

5. On the basis of the fardbeyan on the same day i.e. on 25.11.1990, a formal F.I.R. vide Makhdumpur P.S. Case No. 169 of 1990 was registered for

the offences under Sections 147, 148, 149, 302, 307, 452, 380, 324, 323 and 364 of the Indian Penal Code and 27 of the Arms Act against 17 persons.

All the appellants are named in the F.I.R.

6. After registering the F.I.R., police started investigation the case, inquest report was prepared and dead body was sent to the post-mortem

examination. F.I.R. was registered against 15 named accused persons, which are given below :

1. Chandeshwar Mochi, 2. Baleshwar Mochi, 3. Sanjeevan Paswan, 4. Sewak Mahto, 5. Awadesh Mahto, 6. Ram Narayan Mahto, 7. Ramanand

Mahto, 8. Sewak Mochi, 9. Ramanand Mochi, 10. Mithlesh Mochi, 11. Sadhu Mochi, 12. Dudhan Maharaj, 13. Balkeshwar Manjhi, 14. Bundel

Manjhi, 15. Dularchand Mochi. However, the I.O. submitted the charge sheet on 26.02.1991 against 19 accused persons showing one as absconder.

7. After submission of charge sheet, learned Judicial Magistrate, Jehanabad in consonance with the charge sheet took cognizance of the offence on

16.03.1992 and case was committed to the court of Sessions on 19.10.1992. After commitment on 23.03.2010, charge was framed against Sanjeevan

Paswan (A.2 in Cr. Appeal No. 720/13), Ram Sewak Mahto (sole appellant in Cr. Appeal No. 716/13), Ramanand Mochi (A.2 in Cr. Appeal No.

723/13), Ramnandan Mahto (A.2 in Cr. Appeal No. 723/13), Mithlesh Ravi Das (A.2 in Cr. Appeal No. 679/13), Ramayan Mahto (A.1 in Cr. Appeal

No. 723/13), Awadhesh Mahto (sole appellant in Cr. Appeal No. 628/13) under Sections 307/149, 302/149, 323, 364, 452, 380 I.P.C. and Section 27 of

the Arms Act. The accused Sadhu Mochi (A1 in Cr. Appeal No. 679/13), Chandeshwar Mochi (A.1 in Cr. Appeal No. 720/13), Dularchand Mochi

(A.5 in Cr. Appeal No. 679/13), Ramanand Das @ Mochi (A4 in Cr. Appeal No. 723/13), Arvind Paswan (A.3 in Cr. Appeal No. 723/13), Jainandan

Yadav (A.4 in Cr. Appeal No. 679/13), Raghunandan Yadav (A.3 in Cr. Appeal No. 679/13) stand charged for the offences under Sections 307/149,

364/149, 302/149, 452/149 of I.P.C. and 27 of the Arms Act. Contents of the charge was made over and explained to the accused in Hindi to which

they all separately pleaded not guilty.

8. During the trial, to establish its case, on behalf of the prosecution altogether eight (8) witnesses were examined, they are P.W.1, Shashi Bhushan

Singh (nephew of the deceased) this P.W.1 also proved his signature on the fardbeyan (Ext. 1). P.W. 2, Arvind Singh, son of the deceased

(Sideshwar Singh), P.W. 3, Basist Singh (Gotia of the deceased). P.W. 4 is Umesh Sharma. P.W. 5 is Chandra Shekhar Sharma (nephew of the

deceased). P.W. 6 is Mahendra Singh (informant as well as brother of the deceased). This witnesses proved the signature on the fardbeyan marked

as Ext. 1/1. P.W. 7, Dr,. Srinath Prasad proved the post-mortem report marked as Ext. 2. P.W. 8 is Upendra Singh (villagers Gotia). However,

prosecution filed some documentary evidence, certified copy of the Cr. Appeal No. 10686 with Cr. Appeal No. 122/86 with Cr. Appeal No. 124/86

with Cr. Appeal No. 170/86 passed through common judgment of Honâ??ble High Court, Patna marked as Ext. 3. Cr. Revision No. 1720/86

(certified copy) Chandeshwar Sharma vs. State of Bihar and others dated 30.11.2011 of Honâ??ble High Court, Patna marked as Ext. 4.

9. Defence did not examine any defence witness, however, defence filed certain documentary evidence in this case. Certified copy of judgment dated

30.07.2009 passed in Sessions Trial No. 470/87/102/03/150/2001 of the court of F.T.C.I, Jehanabad of the court of A.D.J., F.T.C.II, Jehanabad

passed in Sessions Trial No. 118/94/147/09 dated 29.01.2001 marked as Ext. A/1, certified copy of charge sheet of Makhdumpur P.S. Case No. 301

of 2010 marked as Ext. B, certified copy of order dated 05.10.1960 passed in Case No. 244M/1968-60 of S.D.J.M., Jehanabad marked as Ext. B now

corrected as Ext. Certified copy of order dated 14.10.1977 passed in Title Suit No. 10/1977 Yamuna Singh vs. Ganori Mahto of the court of Sub-

Judge-II, Jehanabd marked as Ext. B/1 now corrected as Ext. D. The photo copy of the Jan Bitran Parnali marked as Ext. C now corrected as Ext.

E. This is all about the documentary evidence filed by the defence to show their false implication on account of some previous grudge and village

politics.

10. After examination of the prosecution evidence on 06.10.2012, statement of accused persons under Section 313 of the Cr.P.C. was recorded, in

which they claimed to be innocent.

11. Sri Yogesh Chandra Verma, learned senior counsel appearing on behalf of the

appellants assisted by Sri Anil Kumar Suxena, learned advocate [in Cr. Appeal (DB) No. 723 of 2013] has submitted that no occurrence has occurred as alleged by the informant and witnesses, rather, real fact is that this occurrence has been committed by unknown miscreants but due to old enmity, the accused / appellants have falsely been implicated. The occurrence has taken place on 25.11.1991 at 1.30 P.M., but the fardbeyan was lodged on same day at 5.00 P.M. He further submitted that P.W.1 has said in his deposition para-2 that the police reached at the place of occurrence after 5- 7 minutes but fardbeyan has not been recorded, because the informant and his family members, who said to be witnesses had not made plan, when they made plan, then fardbeyan written at 5.00 P.M. and implicated the appellants including Bundhal Manchi, who had died earlier before the occurrence. He submits that evidence of the witnesses are full of contradiction, no independent witnesses have been examined by the prosecution, the prosecution has not been brought the injury report of P.W. 5 and P.W. 2, who have said that they were assaulted, nor any doctor was examined.

12. Learned senior counsel further submits that 15 accused persons have committed the occurrence but all the witnesses have not identified all the accused / appellants and those materials contradiction were ignored by the trial court. Learned senior counsel further submits that P.W. 1, P.W. 2, P.W. 3, P.W. 4, P.W. 5 and P.W. 6 have also admitted old enmity from appellant no. 1, namely, Ram Narayan Mahto and others in para- 3, para-3, para-3, para-4, para-5 and para-7 of deposition of P.Ws. respectively. He further submits that all the witnesses will find that P.W. 2, P.W. 3, P.W. 5 and P.W. 6 have not identified the accused /appellants. The evidence of rest witnesses P.W. 1, P.W. 4 and P.W. 8 are not reliable trust worthy and their evidences do not corroborate from the evidence of the fardbeyan and their evidences are also contradictory to each other.

13. Sri Vikramdeo Singh, learned counsel assisted by Paras Nath in [Cr. Appeal (DB) No., 716 of 2013] and in [Cr. Appeal (DB) No. 628 of 2013] assisted by Kumar Narayan Jamuar, after placing entire evidence, has argued that the prosecution case has not been able to establish its case beyond all reasonable doubt. He has firstly argued that in this case, during the trial without any plausible explanation, the Investigating Officer of the case has not come forward to depose and his non-examination has seriously prejudiced

the case of defence. He has highlighted that due to non-examination of the Investigating Officer defence failed to ask any specific query to establish the place of occurrence since it was case of prosecution that deceased Sidheshwar Singh was taken away in the field of one Krishna Singh where Chandeshwar Mochi, Baleshwar Mochi and Sanjeevn Paswan opened fire with close range upon him.

14. Sri Vikramdeo Singh, learned counsel has further argued that no explanation has been given by the prosecution regarding non-examination of the independent witness although many villagers are present at the time of occurrence only interested (relative) witnesses have been examined by the prosecution. Learned counsel further submits that due to old enmity and grudge, the informant has been implicated in the instant case. All the witnesses have been deposited their deposition that Chandeshwar Mochi, Baleshwar Mochi and Sanjeevan Paswan opened fire one shot each which hit on left arm neck right shoulder on back to the deceased and succumbed to the injury and died on the spot. But, accordingly, to the P.W. 7 doctor has found only two shot fire injury on front side of the deceased.

15. Learned counsel has further submits that P.W. 1 (Shashi Bhushan Singh) stated in his deposition that Awadesh Mahto and Dularchand have taken box from his eastern side house. P.W. 2 (Arvind Singh), son of the deceased in his deposition stated that while dead body of Sidheshwar Singh was taking back to the house, he saw that Awadesh Mahto and Dularchand were coming out with two boxes. P.W. 3 (Basist Singh) stated in his deposition, in paragraph-2 of his chief, that Sewak Mochi taken box from the house. He has not taken the name of Awadesh Mahto for taking box.

P.W. 4, Umesh Sharma, who has stated in his deposition, in paragraph-4 of cross examination, that he was informed by ladies of the house that box was taken by Awadhesh Mahto and Ram Sewak. P.W. 5, Chandrashekhar Sharma (nephew of Sidheshwar Singh, deceased) he did not identify Awadhesh Mahto and other by name or face. He further submits that P.W.6, Mahendra Singh (informant) did not identify any accused on dock but made allegation on Awadhesh Mahto and Ram Sewak Mahto. He further submits that P.W. 8, Upendra Singh, who supported the prosecution story but could not recognize any person by name and face. He further submits that P.W. 5, Chandrashekhar Sharma stated in his deposition that he also

assaulted him, he has sustained injury on the left and right kin, and he was admitted at Makhdumpur Hospital but no injury report or doctor has been

examined by the prosecution. The prosecution has miserably failed to prove the prosecution case beyond all reasonable doubt. He further submitted

that the trial court acquitted from the charge under Sections 364/380 and 323 of I.P.C. is concerned. On the aforesaid ground, a prayer has been

made for extending the benefit of doubt to the appellants.

16. Sri Prateek Mishra, learned Amicus Curiae in [Cr. Appeal (DB) No. 679 of 2013] and in [Cr. Appeal (DB) No. 720 of 2013] adopting the

argument of Sri Yogesh Chandra Verma, learned senior counsel and Sri Vikramdeo Singh, learned counsel and further argued that the time of

occurrence, i.e. 1.30 P.M. (day light) and appellant no.1 of the accused of the informant and P.Ws. none of the accused persons were covering their

face by any cloth. Most of the P.Ws. including the informant have failed to identify the appellants. He further argued that the genesis and manner of

the occurrence could not be proved. As per the F.I.R. version, when the police was chasing the accused persons then they fired upon them but

evidence of P.W. 6 (informant) para-1, P.W.4, para-6, police came after 30 minutes, i.e. at 2.00 P.M. the defence was denied opportunity to ask the

I.O. regarding the time of their arrival at the place of occurrence. He further submitted that the police came to know about the alleged occurrence

much later after the story was cooked up by the informant, P.W.6 and other P.Ws. and for this reason, the I.O. has not been examined in this case,

and even the inquest report which was also prepared much latter, i.e. 5.15 P.M. has been suppressed.

17. P.Ws. are consistent on the point that Chandeshwar Das, appellant no.1 in [Cr. Appeal (DB) No. 720 of 2013], Sanjeevan Paswan, appellant no.2

in [Cr. Appeal (DB) No. 720 of 2013] and Baleshwar Mochi [not appellant] fired from close range upon the deceased which hit his left arm, right rib

and on waist. The trial court has convicted 27 Arms Act only two accused persons, namely, Chandeshwar Mochi and Sanjeevan Paswan.

18. Sri Ajay Kumar Mishra, learned Additional Public Prosecutor for the State opposing the aforesaid appeals, has argued that the number of

witnesses, who have been examined on behalf of the prosecution have consisting stated as to how the appellants participated in the occurrence. He

further submitted that the oral evidence of the prosecution has also been corroborated by the medical evidence, i.e. post-mortem examination report.

He submitted that it was a consistent case of the prosecution that the deceased was given gun shot and he has not been disputed the fact that P.W.

1(nephew of the informant), P.W. 2, Arvind Singh (son of the deceased), P.W. 3, Basist Singh (co-villager), P.W. 5, Chandrashekhar Sharma

(nephew of the informant), P.W. 6, Mahendra Singh (informant and brother of the deceased) and P.W., 8, Upendra Singh, who was also eye witness

to the occurrence and specific allegation against Chandeshwar Mochi, Baleshwar Mochi and Sanjeevan Paswan and other accused / appellants.

19. Learned A.P.P. has not disputed the fact that during trial, prosecution has not produced any evidence regarding the injury of the P.W. 5 either oral

or documentary but he has emphasized that in criminal trial number of witnesses does not matter but it is a quality of the evidence which matters. He

submitted that the Investigation Officer (I.O.) is an important witness of the case, though he has not been examined in this case to substantiate the

alleged occurrence, but in instant case case-diary submitted by the I.O. is on the record, which shows that the I.O. inspected the place of occurrence,

sent the deceased for post-mortem examination obtained the post-mortem report (Ext. 2) and collected the material evidence, therefore, his non-

examination is not fatal.

20. He submitted that there is no denial of the forming of unlawful assembly, and three persons took part in the dragging the victim and shot by fire

arms by member of unlawful assembly as mentioned in the F.I.R. as well as corroborated by P.W. 1, Shashi Bhushan Singh (nephew of the

deceased). P.Ws. also identified some of the accused persons in the court, at the time of evidence. It is sufficiently established here that all these

members of unlawful assembly shared the common object. He submitted that the informant has categorically stated regarding the participation of the

appellants in the case. Accordingly, he submitted that the judgment of conviction and sentence requires no interference.

21. Besides hearing learned counsel for the parties, we have minutely examined the entire evidence on record. Before further proceeding, it is

necessary to note that, the occurrence has taken place long back in the year 1990 and this is the reason that the record of this case is completely in

dilapidated condition, even original F.I.R. which is on record, is not completely readable.

22. Fact remains that during the trial neither the Investigating Officer has been examined nor the plausible explanation has been given by the

prosecution for non- examination of the I.O.

23. We have carefully considered the evidence of P.W.1 to P.W.8 (expected P.W.4) who were the eye witness to the incident. Rather than quote

them in their entirety, we find it necessary to discuss only those aspects of their respective depositions which pertain to the role attributed to the

various accused.

24. During investigation, the informant was examined as P.W. 6, Mahendra Singh (brother of the deceased), he deposed that on 25.11.1990 at 1.30

P.M., they were at their Dalan along with nephew Chandrashekhar Sharma (P.W. 5), Shashi Bhushan Singh (P.W. 1), Arvind Singh (P.W. 2) and

Upendra Singh (P.W. 8). They heard the sound of firing from the north west corner and when they got down from Dalan, they saw some 20-50

persons came at Dalan armed with the rifle and gun. Whereupon Chandeshwar Mochi told "here is master" (;gh ekLVj gS) killed him upon this

accused Baleshwar Mochi, Chandeshwar Mochi and Sanjeevan Paswan catch hold the deceased (Sidheshwar Singh) and took him towards north in

the field of Krishna Singh. He also followed them and saw the accused Chandeshwar Mochi, Baleshwar Mochi and Sanjeevan Paswan, all shot fire

on the deceased Sidheshwar Singh from their gun and when Chandrashekhar Sharma (P.W.5) opposed then, the accused Dularchand Mochi and

Dudhan Maharaj caught him and took him towards north. It is also stated that the accused Awadhesh Mahto and Ramsewak Mochi entered the house

and took away the steel box containing cash and ornaments. The police came and then they freed Chandrashekhar Sharma (P.W.5) then they took

the injured Sidheshwar to the Dalan where he died. The miscreants also looted the paddy crops of two Bigha. He further proved his signature on the

fardebayan marked as Ext. 1/1. The witnesses Shashi Bhushan, P.W. 1 and Umesh Sharma (P.W.4) also signed over it. However, this witnesses did

not claim to identify the accused Sewak Mahto, Ram Nandan Mahto, Ram Nandan Mochi, Ram Sewak Mochi, Sadhu Mochi, Dularchand, Arvind

Paswan and Raghunandan. He said in para-4 that upon he hearing the sound of

firing, some two and three persons came out, he said in para-5 that we also followed that Sidheshwar Singh (deceased), in the meanwhile, they taken out the Box, in para-7, he said that the cot was brought by his nephew Shashi Bhushan, police came after half an hour. He said in para-12 that ? He specifically said in para-4 that 4-5
? ? ?

25. P.W.1, Shashi Bhushan Singh, nephew of the informant (eye witness), who stated that Sideshwar Singh was killed on 25.11.1990 at about 1.30

P.M. He along with Sideshwar Singh (deceased) Chandra Shekhar Sharma (P.W.5), Mahendra Singh (P.W.6), Arvind Singh (P.W.2), Surendra Singh

(not examined) all were sitting at the Dalan, he heard the sound of firing from north east corner. They come at the Darwaza and saw some 20-25

peoples armed with Rifle gun came at their Dalan. He further stated that the accused Chandeshwr Mochi challenged here, the Masterwa kill him.

? Whereupon Sanjeevan Paswan, Balkeshwar Mochi,

Chandeshwar Mochi all three caught him and took him to north east to the field of Krishna Singh. He further stated that they also followed them

however all the three persons shot fire from their gun as a result his uncle deceased fell on the ground, and when his brother Chandrashekhar Sharma

(P.W.5) rushed to save, they caught him and took him towards north and beaten him. They took the deceased to the dalan where police came and

then police chased the accused persons. Then they (accused persons) free the Chandrashekhar Sharma (P.W.5) from captive, and when the police

reached at the Dalan his uncle (deceased) died at the Dalan, police recorded the statement of Mahendra (P.W.6) at the Darwaza. He signed over the

fardebayan as witnesses marked Ext.1 then the dead body of deceased was sent for postmortem examination. He further identified the accused

Awadesh, Ram Sewak Mahto, Ramanand Mahto, Ramnandan Mochi, Chandrashekhar Mochi, Dularchand Mochi. He also identified the accused

Mithilesh, Ramnandan Mochi, Ram Sewak Mochi, Sadhu Mochi. He stated that Awadesh and Dularchand took away the box and jewelry from the

house. This witnesses said that all the accused persons are of the same village. He heard the sound of firing from 400 yards distance he said in para 2

over leaf. They stayed at Dalan for 10 minutes and then took his Chacha 300 yards away. There was paddy crops. Blood was fallen there

? He said that Sideshwar Singh (deceased) filed case of murder of Chacha (father)

against Ramayan Singh, deceased Sideshwar Singh used to do pairvi in that case. He further said that accused Sanjeevan Paswan is of his village and

had a dealer of sugar and oil. He specifically said in para-4 that accused person came from northern west corner, they came with firing they were in

25-30 in numbers. He said that they people surrounded there and asked them to keep mum. They asked to kill master sahib and rest followed there.

? ? He said that 20-25 persons were there to

whom three persons caught hold the deceased. At the time of shooting, they did not hold the master sahib. 20-25 ?

? ? ? He

further denied the suggestion given by the defence that it is not correct that accused persons are innocent and have falsely been implicated on account

of some grudge and previous enmity.

26. P.W.2 Arvind Singh (son of the deceased) came and deposed before the court that deceased Sideshwar was his father who was killed on

25.11.1990 at about 1.30 P.M. he along with Shashi Bhushan Singh (P.W.1) his father, Sidheshwar Singh (deceased), Upendra Singh (P.W.8) and

Chandrashekhar Sharma (P.W.5) were there. He heard the sound of firing he tried to locate the sound in the meanwhile they (accused) come over

the Dalan, they were 15-20 in numbers and were armed with the rifle then Chandeshwar asked him, here is master, â??kill himâ?

? whereupon Baleshwar Mahto and Sanjeevan caught hold the deceased and took him at some

distance about 400 yards in the field of Krishan, they shot fired on him, Baleshwar Manjhi, Sanjeevan Paswan and Chandeshwar Mochi shot him with

fire arm and when they protested the accused assaulted them. Baleshwar Manjhi assaulted (Arvind Singh) with butt of rifle and then they caught

Chandrashekhar Sharma (P.W.5) and took away, in the meanwhile police arrived there. Thereafter, they took his father (Deceased) to the Dalan then

he saw Awadesh Mahto and Dularchand carried away the Box from his house. The deceased (father) died at the Dalan. They traced the

Chandrashekhar Sharma (P.W.5) on arrival of police it is further stated that they looted the paddy crops also. Dead body was taken to the police

station from where it was sent to hospital for post-mortem examination. He further identified the accused Ramanand Mahot, Ramayan Mahto,

Chandeshwar Mochi, Gulab Chand Mochi and Sadhu Mochi of the rest accused who did not identify by name however he identified by the face. This

witnesses said in its para-2 that Dalan is facing north 5-6 persons entered inside the dalan. Three persons caught and taken him when they were

returning some two persons carried away the box and fled to western side of the village. He said that there were three shot fired from rifle. Blood

was fallen on the paddy crops. He further said that at the time of firing shooting, they were there. He further admitted that two cases are pending in

between them. He said in para-4 that they also assaulted him with butt causing injury on the knee. He further denied the suggestion given by the

defence that it is not correct to say that he had deposed falsely and accused were implicated in this case on account of personal grudge.

27. P.W. 3, Basist Sharma came and stated before the court that Sideshwar was killed some 20 years ago. It was 12.00 P.M (Day), he was at his

house and heard the sound of firing he came at the Dalan of Sideshwar (deceased) and saw some 20-25 persons armed with gun came there and

caught hold the Sideshwar Singh, Baleshwar Manjhi, Chandeshwar Das, Sanjeevan Paswan and Chandeshwar told ordered to take out the Sideshwar

Singh and kill him, whereupon they took the Sideshwar to the field of Krishan where they killed with fire arm.

? ----- Then they caught hold the Chandrashekhar Sharma (P.W.5) and

took him towards north they also assaulted Arvind with Kunda. Thereafter, they took deceased at Dalan on cot where he died and when police

arrived and chased the accused, later freed the Chandrashekhar Sharma (P.W.5). It is also stated that they looted the paddy crops of Sideshwar

(Deceased), it is also stated that Sewak Mochi taken out the box and fled away. Police then took the dead body to the police station. However, the

witnesses not identify the accused. Chandeshwar Das, Dularchand, Ramsewak Mochi, Mithilesh Mochi, Sadhu Mochi, Sewak Mahto, Awadesh

Mahto, Ramanand Mochi, Ramayan Singh, Raghunandan Yadav, Arvind Paswan also did not claim to identify the accused who are represented under

Section 317 Cr.P.C. this witnesses said in para-2 in its cross examination that when he reached there, some 20-25 peoples (accused) were there,

extremist surrounded the Dalan he did not see, he said that 25-30 ?

? He said in para-3, that deceased Sideshwar filed three sets of cases against Ramayan Singh,

this witnesses said in para-5 that 50 ?

? ? This witnesses very assertively asserted

in para-6 of the cross examination that he told about the occurrence to the police as narrated here and to this extent the defence not specifically drawn

the attention towards his previous statement made before the police in suggestive manner.

28. P.W.4, Umesh Sharma (co-villager) stated in his deposition that Sideshwar was killed on 25.11.1990 at 1.00 P.M. (day) he was at his residence he

heard the sound of firing and when he came out he saw there was huge crowd at the Darwaza he stated that they were armed, and Chandeshwar

told the men "here is the Sideshwar", whereupon Chandeshwar Mochi, Baleshwar Manjhi and Sanjeevan Paswan caught hold the hand and

dragged him (deceased) and taken him together and later they all shot fire and killed him and when Chandrashekhar Sharma resisted, they took him

towards north side later on they took the injured Sideshwar at the darwaza on cot where he died at the darwaza they also took box from their house.

Awadesh Mahto and Ram Sewak Mochi carried away the Box. They also looted the paddy crops thereafter the police arrived. Police chased and

taken back the Chandrashekhar Sharma (P.W.5) then the police recorded the statement of Mahendra Singh, informant (P.W.6) and sent the dead

body for post-mortem examination. He claimed to identify the accused Chandeshwar Mochi, Ram Sewak Mochi, Ramanand Mahto, Ramayan Mahto,

Sadhu Mochi, Mithilesh Mochi and Ram Sewak Mochi, also identify the accused Awadesh Mahto and Ramanand Mochi, he also claimed to identify

the accused who are represented under Section 317 Cr.P.C. In para-2 in his deposition that the Dalan of Sideshwar is facing towards north he heard

the sound of 2-4-5 rounds of firing and then went there he was standing at 10 feet from Dalan, some 10-15 peoples were at the inside of Dalan and

some 10-15 peoples were outside the Dalan.

He specifically said in para-3 that he heard

the sound of firing he said in para-4, that he heard about the theft of Box from the house. He further asserted in para-7 in his cross examination about

the fact, what he had stated here, he had told to the police also and, I find that the defence has not given or drawn its attention towards his previous statement what he had made before the police.

29. P.W.5, Chandeshwar Sharma came and deposed before the court and stated that deceased Sideswar Singh was his uncle, he was killed on

25.11.1990 at 1.30 P.M. (Day) he was sitting at Dalan of the deceased. Sideswar Singh, Upendra Singh, Shashi Bhushan Singh, Arvind Singh were

also at the Darwaza. Some 20-25 peoples arrived with rifle came over there and they fired, Chandeshwar Mochi told "here is the Master."

whereupon Sanjeevan Paswan, Chandeshwar Mochi, Baleswar Manjhi took the Sideswar

towards the field with beating. Thereafter, they fired three round. Sanjeevan Paswan, Chandeshwar Mochi caught him and took him but on seeing the

police they fled away. They also assaulted him. He had sustained injuries on left hand and right knee, and treatment was done at Makhdumpur

Hospital. He said then he heard, that miscreant also took Box from the house of Sideswar. He stated that he gave statement to the police in the

hospital. He further stated that accused also took the paddy crops. However, the witness did not identify the accused Sewak Mochi, Ramanand

Mahto, Ramayan Mahto, Ramanand Mochi, Chandeshwar Mochi, Sadhu Mochi, Mithilesh Mochi, Dularchand Mochi, Awadesh Mahto, Sewak

Mahto, Arvind Paswan and Raghvendra, Jainandan Yadav. He said in para-2 that they taken him 1½ K.M. away from the I.O. he said in para-8 that

.....

" ? ? ? ? ?

20-25 ? ?

30. P.W. 7 is Dr. Srinath Prasad, who came and deposed before the court that on 26.11.1990 at about 2.30 P.M., he had conducted the post-mortem

examination of deceased Sideswar Singh, son of Yamuna Singh and following antimortem injury was found. During post-mortem of the deceased;

(i) Lacerated wound 1" diameter over inverted margin over left shoulder (wound of entry),

(ii) Lacerated wound 3"x 1½" over back of right side of the abdomen with inverted margin (wound of Ext.) both wound are communicating

to each other.

(iii) Lacerated wound 1½" in diameter with black margin over right side of spigastrium (wound of entry).

(iv) Lacerated wound 2" x 1" with inverted margin on back of right side of chest (wound of Ext.) both wounds are communicating each other.

(v) On dissection heart was empty chest cavity was full of blood clot. Both lungs lacerated abdominal cavity was found full of clots. Intestine

look lacerated at many places, stomach empty and lacerated. Fracture of head of left humerus bone. Both scapula and ribs of chest. Mode

of death shock and haemorrhage caused by fire arms. Rigour mortis found in all limbs. Time since death within 24 hours. They opined that

death is caused by shock and haemorrhage. Caused by fire arms the above injury is sufficient to cause of death during normal course of life.

31. This witnesses further proved the photo copy of post-mortem report marked Ext.2. He said in cross that stomach was empty coloured not

mentioned. Laceration may be by fire arm, penetrating wound may be Refile. He said he did not find black margin in jury no.1.

32. P.W.8, Upendra Singh examined in this case as last witnesses who came and deposed before the Court and stated that Sideshwar was killed on

25.11.1990 at 12.00 noon. The Sideshwar was sitting at his Darwaza. Mahendra (P.W.6), Chandrashekhar (P.W.5) and Arvind (P.W.2) were also with

him. He stated that he was also there when he heard sound of firing from north west corner and when they came to watch, he saw some 30-35

people came at their Darwaza and Chandeshwar Mochi told, "see here is master". ? "kill

him" then Chandeshwar, Sanjeevan Paswan and Balshwar caught hold the deceased and took him at the west of Krishan Singh fired Chandeshwar

asked them to kill whereupon Chandeshwar, Balshwar and Sanjeevan fired from their gun and the deceased fell on the ground. Thereafter, they

caught hold the Chandrashekhar Sharma (P.W.5) and took him toward north side and Ramanand also accompanied with them they picked up the

deceased Sideshwar and took them at the cot. Police come after half an hour. The extremist surrounded them "

" police restored the peace. However, police could not apprehend them, they

(extremist) later freed the Chandeshwar (P.W.5) from

captive. In his deposition, he stated that both accused Awadesh Mahto and Ramsewak Das entered in the house of Sideswar Singh (Deceased) and

took away the steel box. He identified the accused Chandeshwar Mahto, Ramayan Mahto, Ramanand Mochi and Sadhu Mochi in the Dock. He also

identified the rest accused by face in his deposition in its para-4 that the Dalan of deceased Sideswar is facing north. He was there at Dalan for one

hour before firing. The miscreant reached thereafter 10-15 minutes of firing. - ?

? 200-300 ? ? He said in Para 4 that three persons

caught hold the Sideswar and taken him. He said in Para 5 that ? ?

? Further he denied the suggestion as given by the defence in para-6.

33. The charges were framed under Sections 307/149, 364/149, 302/149, 452/149, 380 of the Indian Penal Code and 27(1) of the Arms Act and during

the trial, falsity of the prosecution case has come to force, since the learned trial court has passed the judgment of acquittal for the offences under

Sections 364, 380 and 323 of the I.P.C. is concerned. On aforesaid ground, a prayer has been made for extending the benefit of doubt to the

appellants.

34. Having regard to the materials on record including the colour testimony of the witnesses, we are of the considered opinion that the trial court was

not justified in convicting any of the accused other than the accused Chandeshwar Das and Sanjeevan Paswan for the offences under Sections 302

and 452 of the Indian Penal Code by taking of the help of Section 149 I.P.C. We have also find that 11 (eleven) of the accused, namely, Ramnarayan

Mahto @ Ramayan Mahto, Ramanand Mahto, Arvind Paswan, Ramanand Das @ Mochi in [Cr. Appeal (DB) No. 723 of 2013], Awadhesh Mahto in

[Cr. Appeal (DB) No. 628 of 2013], Sadhu Das @ Sadhu Mochi, Mithilesh Das @ Mithilesh Mochi, Raghunandan Yadav, Jainandan Yadav,

Dularchand Das in [Cr. Appeal (DB) No. 679 of 2013], Ram Sewak Mahto in [Cr. Appeal (DB) No. 716 of 2013] (hereinafter referred to as the

â??11 accusedâ??). The evidence of the eye witnesses pertaining to the 11 accused have been adduced to prove that they were part of the mob

that killed the deceased, however, we find that there is nothing on record to show that these accused had actually taken part in the occurrence of that

they had any common object of the committing murder along with other accused. The evidence with respect to their presence, participation and complicity incident is its entirety and, therefore, even in sharing a common object for the commission of any of the acts that occur during the incident, is vague, scanty, in consistence and unbelievable, and necessities giving them the benefit of doubt. Thus these 11 accused are liable to be acquitted of all charges levelled against them.

35. I am, therefore, of the view that there is cogent evidence only in respect of role of the accused Chandeshwar Mochi and Sanjeevan Paswan, appellants in [Cr. Appeal (DB) No. 720 of 2013] whereas in respect of other member of the assembly it is difficult to come to the specific conclusion

as to whether they were knowing that any such offence was likely to be committed in prosecution of such common object. This issue has already

been determined by the Honâ??ble Supreme Court in the case of Dharam Pal vs. State of Uttar Pradesh reported in 1975(2) SCC 596 and Roy

Fernandes vs. State of Goa reported in 2012(2) SCC (Cr.) 119. In the instant case, it is evident that the accused Chandeshwar Mochi gave order to

kill Sidheshwar Singh upon this, accused Baleshwar Mochi (not appellant), Sanjeevan Paswan and Chandeshwar Mochi, appellants in [Cr. Appeal

(DB) No. 720 of 2013] caught him, and deceased Sidheshwar Singh was taken away in the field, where Chandeshwar Mochi, Sanjeevan Paswan and

Baleshwar Mochi opened fire from close range upon him. It is, thus, evident that the murder of the deceased was itself not with common object of

unlawful assembly though, other accused had followed the accused Chandeshwar Mochi, Sanjeevan Paswan and Baleshwar Mochi. In my considered

opinion, the evidence on record and circumstance of this case does not, conclusively and beyond all reasonable doubt, show common object being

shared by the other accused, in the commission of the offence for murder by the accused Chandeshwar Mochi, Sanjeevan Paswan and Baleshwar

Mochi. It is no doubt true that the evidence on record may create grave suspicion in the mind of Court about the complicity of other accused also, with

the help of Section 149 I.P.C., however, such grave suspicion cannot taken the place of prove. It is for the prosecution to prove its case beyond

reasonable doubt. Even if the evidence on record create suspicion in the mind of the Court, though grave, the same could not be sufficient to conclude

that other accused are liable to be convicted for the offences under Sections 302 and 452 I.P.C. along with accused Chandeshwar Mochi, Sanjeevan

Paswan with the help of Section 149 of I.P.C.

36. In such circumstance, I am of the opinion that except Chandeshwar Mochi and Sanjeevan Paswan other accused, namely, Ramnarayan Mahto @

Ramayan Mahto, Ramanand Mahto, Arvind Paswan, Ramanand Das @ Mochi in [Cr. Appeal (DB) No. 723 of 2013], Awadhesh Mahto in [Cr.

Appeal (DB) No. 628 of 2013], Sadhu Das @ Sadhu Mochi, Mithilesh Das @ Mithilesh Mochi, Raghunandan Yadav, Jainandan Yadav, Dularchand

Das in [Cr. Appeal (DB) No. 679 of 2013], Ram Sewak Mahto in [Cr. Appeal (DB) No. 716 of 2013] cannot be said to have shared any common

object for the murder of the deceased and cannot be held liable for the same.

37. Having regard to the totality of the facts and circumstances, the judgment of the trial court is to be modified as under :

(a) The conviction and sentence to Chandeshwar Mochi and Sanjeevan Paswan in [Cr. Appeal (DB) No. 720 of 2013 under Sections 302/149,

452/149 I.P.C. and 27(1) of Arms Act is confirmed in Sessions Trial No. 113 of 1993, 98 of 2009 (F.T.C.-II) arising out of Makhdumpur P.S. Case

No. 169 of 1999.

(b) The other accused persons, namely, Ramnarayan Mahto @ Ramayan Mahto, Ramanand Mahto, Arvind Paswan, Ramanand Das @ Mochi in

[Cr. Appeal (DB) No. 723 of 2013, Awadhesh Mahto in [Cr. Appeal (DB) No. 628 of 2013, Sadhu Das @ Sadhu Mochi, Mithilesh Das @ Mithilesh

Mochi, Raghunandan Yadav, Jainandan Yadav, Dularchand Das in [Cr. Appeal (DB) No. 679 of 2013, Ram Sewak Mahto in [Cr. Appeal (DB) No.

716 of 2013 are acquitted from all the charges and the judgment of conviction and sentence passed by the above Additional District and Sessions

Judge-2, Jehanabad in Sessions Trial No. 13 of 1993, 98 of 2009 (F.T.C.-II) arising out of Makhdumpur P.S. Case No. 169 of 1999 regarding the

aforesaid accused persons is set aside. They are discharged from liability of their bail bonds.

(c) The appellant Ram Sewak Mahto in [Cr. Appeal (DB) No. 716 of 2013] is in jail, it is directed to release him forthwith, if not wanted in any other

case.

38. All the appeals are disposed of.