
(2008) 10 PAT CK 0033
In the Patna High Court

Shailendra Singh, Kishundeo Singh, Ramdeo Singh and
Ramcharan Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 16-10-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 148, 149, 302, 307

Citation : (2009) 2 PLJR 753

Hon'ble Judges : Shiva Kirti Singh, J; Dharnidhar Jha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dharnidhar Jha, J.—Appellants Shailendra Singh (appellant in Cr. Appeal No. 510 of 2002), Kishundeo Singh, Ramdeo Singh (appellants in Cr. Appeal No. 588 of 2002) and Ramcharan Singh (appellant in Cr. Appeal No. 642 of 2002) along with other persons, namely, Bimai Singh, Dipak Ram and Jogendra Singh were put on trial for the charges under Sections 148/302/149 and 307/149 of the Indian Penal Code and were found guilty of committing those offences by the Presiding Officer, Additional Court No. 2 (Fast Track Court), Patna, in Sessions Trial No. 662 of 1986/260 of 2001 by judgment and order of conviction passed on 7.8.2002. The aforesaid appellants were awarded rigorous imprisonment for two years for their individual convictions under Sections 148 and rigorous imprisonment for five years for their individual convictions u/s 307/149 of the Indian Penal Code. Appellants Shailendra Singh (appellant in Cr. Appeal No. 510 of 2002), Kishundeo Singh and Ramdeo Singh (appellants in Cr. Appeal No. 588 of 2002) were awarded rigorous imprisonment for life under Sections 302/149 of the Indian Penal Code and appellant Ramcharan Singh (appellant in Cr. Appeal No. 642 of 2002) was found guilty of committing offence also u/s 302 of the Indian Penal Code and separately sentenced to undergo rigorous imprisonment for life for committing that particular offence. The other three accused, Bimal Singh, Dipak Ram and Jogendra Singh, were not found guilty and were acquitted by the

same judgment. The above judgment and order of conviction are being assailed by these four appellants in these three appeals which are being disposed of by the present judgment.

2. The prosecution case is contained in the F.I.R. (Ext.4) lodged by P.W.7, Jag Narain Pandit in which he alleged that at about 5.30 A.M. on 26.5.1984 the F.I.R. named accused persons along with 15-20 others came out of the house of appellant Ramcharan Singh with country made guns and pistols and started dismantling his Marai. They also started firing shots from their weapons upon which Jagarnath Pandit, the brother of the informant, who was preparing soil (informant is a potter) as also Surendra Pandit, who was the nephew of the informant and was making rope, ran into their house. Ram Prakash Pandit who was the son of aforesaid Jagarnath Pandit and who was cutting tiles was shot at many times by appellant Ramcharan Singh which hit him. Appellants Shailendra Singh, Kishundeo Singh and Ramdeo Singh entered inside the house of the informant Jagarnath Pandit (not examined) who was shot at and injured by appellant Kishundeo Singh who fell down in the verandah. Phulwa Devi (not examined) the wife of Devendra Pandit was shot at and injured by appellant Shailendra Singh by his country made pistol. Appellant Ramdeo Singh fired from his country made gun at Devendra Pandit (not examined) and Sushila Devi (P.W. 5) as also at Jag Narain Pandit and they were badly injured. Jai Prakash Pandit (P.W. 1) who was attempting to get out of the Darwaja was shot at and injured badly by appellant Ramcharan Singh. It is alleged that all the accused accompanying appellant Ramcharan Singh were firing shots continuously as also threw brick bats and lastly, went away with an ox but the same was resisted by the herdsman and as such the ox was abandoned by the accused persons.

3. It was stated in the F.I.R. that the informant and his family members had erected a Marai in front of the Darwaja of the appellants and were sitting there on cots, as such the occurrence.

4. The case was investigated into and the accused persons, as indicated in the first paragraph of the judgment, were put on trial for the offences as noted above and ultimately the trial ended in the acquittal of the three accused persons and conviction of the four appellants for the offences with imposition of sentences as noted above.

5. The defence of the appellants in the court below was of complete denial of participation as also that, in fact, the cattle thieves had entered in the house of the prosecution party to lift the cattle and indeed the cattle was lifted which was resisted by the informant and his family members. The cattle thieves fired at the informant and others resulting in the death of the deceased and injuries to different persons and because the informant and his family members had land dispute with the appellant Ramcharan Singh and others, as such, he falsely implicated them in the present case. The defence appears from suggestion given to P.W. 3 in his cross examination, as appears from page 18 of the Paper Book and also from page 10 of P.W. 4, page 18 of P.W. 7 (informant). Some of the

appellants, like, Shailendra Singh and Ramdeo Singh took the plea of alibi by stating in their respective statements u/s 313 of the Code of Criminal Procedure that they were not present at the place of occurrence and were at different places when the occurrence allegedly took place.

6. The prosecution examined in all 12 witnesses in support of the charges. P.W. 1 Jai Prakash Pandit, P.W. 2 Vijay Kumar Pandit, P.W. 5 Sushila Devi claimed being injured in the same incident. P.W. 2 Vijay Kumar Pandit has not been named in the F.I.R. P.W. 3 Surendra Pandit, P.W. 4 Subhash Pandit, and P.W. 6 Lalti Devi were not injured but supported the allegation in full or in part as was done by P.W. 8 Nirmala Devi. P.W. 7 Jagnarain Pandit is the informant of the case. P.W.9 is Dr. Md. Afzal who held the postmortem examination on the dead body of Ram Prakash Pandit and had prepared the post-mortem examination report(Ext.2). P.W. 10 Dr. Parash Nath Sahay had prepared Exts. 3 to 3/5 the injury reports in respect of the injuries found on the injured informant and his family members after examining each of them. P. W. 11 is S.I. Lakshman Prasad Singh who was the Officer-in-charge of Naubatpur Police Station and who recorded the F.I.R. on the statement of the informant and handed over the charge of investigation to another S.I. Ram Naresh Shukla who has not been examined. P.W. 12 Jitendra Sharma is a co-villager and appears an independent person who also came out in support of the occurrence.

7. The defence has examined a solitary witness as D.W. 1 Sanjay Kumar and his evidence is not of much importance and consequence, inasmuch as he has simply given the evidence of loss of the attendance Register of appellant Shailendra Singh which was required to be produced before the learned trial Judge and stated that the same was not available on account of being destroyed in a fire.

8. On consideration of the evidence of the prosecution and the defence, the learned Judge passed the judgment in question and inflicted the sentence as indicated in the earlier part of the present judgment while acquitting the three accused, namely, Bimal Singh, Dipak Ram and Jogendra Singh.

9. Shri Rana Pratap Singh, learned Senior Counsel appearing for the appellants in all the appeals submitted that the motive as alleged does not appear substantiated. It was contended further in this regard that it was so innocuous a motive as not to be sufficient enough to impel the accused persons to commit the offence as alleged. It was contended that the P.Ws. appeared faltering on the most material point and also appeared not having made statements which they made before the learned Trial Judge. In this regard, the attention of the Court was drawn to paragraph 48 of the judgment in which the learned trial Judge discussed the contradictions allegedly brought on record by the defence and the effect thereof on the ultimate proof of the charges. It was contended that those were vital contradictions and they go to disprove the charges as the witnesses appeared not making statements on the most material part of the prosecution story. It was contended that P.W. 1 Jay Prakash Pandit had completely changed

the manner of occurrence which was initially stated in the F.I.R. Reference was made in that behalf to the evidence of other P.Ws., like, P.W. 7 in order to bring out the change in the story. It was contended that above all the evidence on the manner of occurrence was not free from doubt and that was the case in respect of all the witnesses examined by the prosecution. Learned Counsel took us through the evidence of P.Ws, 1, 2 and 7 in the above behalf and their respective depositions recorded by the learned trial Judge.

10. The further contention was that the F.I.R. was lodged on 26.5.1984 and it is indicated by the document (Ext. 4) that it was dispatched to the Magistrate on the same day, i.e., on 26.5.1984 but it was received by the office of the Chief Judicial Magistrate on 28.5.1984 and, as such, there were chances of weaving out the story so as to implicating the accused persons.

11. The next contention was that the story of recovery of the bullock appears absurd. The contention was that the evidence of P.W. 7, the informant Jay Narayan Pandit indicates as if he had not seen anything and, as such, there is nothing stated by him in his F.I.R. about P.W. 2 Vijay Kumar Pandit being injured or having received any injury. It was contended in the above connection that he has stated in his evidence that when he came back to the Police Station he saw other injured, like, Devendra Pandit (not examined, Phulwa Devi (not examined), Jagarnath Pandit (not examined) and Sushila Devi (P.W. 5) lying injured but the F.I.R. contains the story of individual assault on each of them and that indicates as if the F.I.R. were a document created subsequent to the time at which it has been shown to be lodged.

12. Learned Additional Public Prosecutor Shri Ashwini Kumar Sinha, arguing for the prosecution, supported the findings recorded by the learned trial Judge and submitted that the three witnesses, namely, P.Ws. 1, 2 and 3 had injuries on their persons along with other persons as per the evidence of Dr. Paras Nath Sahay (P.W. 10) and the time of receiving those injuries by those witnesses probabilises that they had been injured in the same incident in course of the same transaction and their presence at the scene of the occurrence could not be doubted. It was contended that the evidence was available on the record indicating reasons for non-examination of Jagarnath Pandit and that is quite acceptable under the special facts of the case.

13. One of the most important aspects of the case is that the occurrence took place on 26.5.1984 and the charges could be framed by the trial court on 28.9.1999, i.e., after more than 15 years. On consideration of the evidence of each witness what one could find is that on the date of occurrence the witnesses of the case who are the close relatives of the deceased and also of each other were of very small age. The age of P.W. 1 has been assessed by the court as 27 years and, as such, on the date of occurrence P.W. 1 Jay Prakash Pandit would be aged about 12 years. Likewise, P.W. 2 Vijay Kumar Pandit was 30 years of age on the date of his deposition in the case and he could be aged about 15 years on the date of occurrence. Similarly, Surendra Pandit (P.W. 3) was aged 40 years

and was aged about 25 years of age on the date of the occurrence. Subhash Pandit (P.W. 4) was of 35 years of age on the date his deposition was recorded by the trial court and he could be around 20 years of age on the date of the occurrence. Likewise, P.W.5 Sushila Devi and P.W. 6 Lalti Devi were also aged about 26 years and 35 years as per their own statements and could be aged 11 years and 20 years on the date the occurrence took place. The only senior member of the family was P.W. 7 Jag Narayan Pandit who was 70 years of age on the date of giving his evidence in the case and could have been aged about 55 years on the date of the occurrence. Nirmala Devi (P.W. 8) could be aged about 15 years on the date of the occurrence, her age being 30 years on the date of recording her evidence. By considering the above dates as regards the age of the prosecution witnesses one could find that most of the witnesses were in their tender age on the date on which the occurrence took place and when they were deposing, 15 years had already elapsed in between. Their depositions could indicate that most of them were illiterate persons whose capability to retain the facts of such horrendous an incident in which one of their family members had been killed and most of them had been injured, would have been very slender. As such, it could safely be said that their capabilities to reproduce the facts which had occurred 15 years back could also diminish over the years.

14. What the Court has, under the above background, to consider is as to whether their evidences corroborate the material parts of the occurrence. If the witnesses are coming to depose after such a long period of time and after about 7 years of the framing of the charges, it is possible that their evidence may be containing some statements which could be an addition to what really they could have stated before the I.O. of the case. At the same time, could not it be another possibility that they could have missed narrating the minor details of the incident with precision and clarity. In the above background, the appearance of statements in the prosecution evidence as contradictions, appears natural and part of the human frailty. Besides, the I.O. of the case could not be examined. The witnesses have stated, as may appear from the evidence of P.W. 1, in paragraph 6, P.W. 2, in paragraph 1 and P.W. 3, in paragraph 1 that the I.O. of the case was in collusion with the accused persons and was distorting the statements of the witnesses which was recorded by him. P.W. 1 has stated in the above paragraph that the I.O. had received some bribe from the accused persons for destroying the case. This is also evident from the evidence of the above noted witnesses and other witnesses as well that they had to go to a Magistrate for giving their statements u/s 164 Cr.P.C. because the I.O. was not conducting the investigation fairly and honestly. If the I.O. of the case was not investigating the case fairly, properly and honestly then in that situation the appearance of contradictions in the statements of the witnesses, in our opinion, do not have any effect on the veracity of the witnesses as exhibited by the evidence.

15. The learned trial Judge has discussed the above aspect of the matter, that is, the appearance of contradictions in the evidence of the witnesses, in paragraph 48 of the judgment and has rightly rejected the contention and has held that it

was not of much consequence.

16. It may appear from the evidence of the witnesses, like, P.W. 7 in paragraph 4 that initially the family was residing in village Chandaus, P.S. Bikram within the District of Patna and migrated to the present village Jagdishpur, when P.W. 7 was aged 13-14 years. It is stated by P.W. 7 that it was his father who had first migrated to the place of occurrence Village Jagdishpur. The witness has further stated in the same paragraph at pages 35 and 36 of the Paper Book that he did not hold any landed property in that village and had purchased the homestead land from one Ram Bihari Sharma and erected a Jhopara (hut) and subsequently appears to have purchased some more part of the property from another person, named, Baidyanath Sigh through a saledeed. This part of the story is almost admitted. It may appear from the evidence of the witness (P.W. 7) in paragraph 7 that of the informant's caste, there were only two families, that is, P.W. 7 and his brother Jagarnath Pandit and other residents of the village were of other castes. The further story of purchase has been stated by him in paragraph 8 of his evidence. It is indicated by the evidence on record including the evidence of P.W. 12 that some part of the property had been purchased by accused Ramcharan Singh and some part by P.W. 7 and his brother Jagarnath Pandit. It is indicated further by P.W. 1 and others that after purchasing the land they had constructed their residential house, cattle shed and were also utilizing it for carrying on their caste profession of pottery. At a particular part of that land they had erected a Jhopari which was being used by the prosecution party as a Baithaka and they used it as a place of relaxation either by sitting on cots or sleeping there. The motive is that the prosecution witnesses, who were potters, used to sit in the Jhopari which was in front of the house of the accused persons who are Bhumihars, (P.W.7, Paragraph 17) a high caste people, which used to cause heartburn and envy in their minds and they had earlier objected to the prosecution witnesses about the sitting on cots in the Jhopari in their presence in front of their residential house.

17. We have a society comprised by various castes which are engaged in different vocations. In spite of the principle of equality and equal protection of law enshrined in our system of democracy besides a time tested legal mechanism to regulate our acts and behaviour towards our brethren in society, the fact remains that we still are not free from grudges and biases which we carry in our hearts as per our belief and social upbringing for other fellow countrymen who are lowly placed or are treated as low-caste-people. It is still a reality that many in the villages of our country carry a conceit for them and do not like such persons who belong to the so-called low castes to enjoy decent life. This has been causing some sort of consternation in the hearts of such people, and further, they are often found indulging in violent acts only because they could not accept the parity the people belonging to the unprivileged lot draw with other people who take pride in treating themselves as privileged persons of so-called high castes. This is the reason that there are often reports from any corner of our country of killing of persons of the downtrodden class of the society and,

as such, it does not appear unusual that the accused persons had been nursing a grudge and dislike in their minds and were not accepting that the people of the exploited and unprivileged lot were sitting on cots in their Jhopari in front of the house of the appellants in their sight or presence. I do not have any hesitation in accepting the motive. I find in the light of the evidence on record of P.W. 4 para 3, P.W. 7 paras 2 and 17 that the accused persons were feeling uneasy and were not digesting the parity the prosecution witnesses were drawing with them by enjoying the privilege of sitting on cots and, as such, they had been impelled by their prejudicial thought to teach the prosecution party a lesson.

18. As regards the manner of occurrence, some of the witnesses examined in the case are injured. This appears indicated by the evidence of P.W. 10 who has stated that he had examined six injured persons who were brought before him on 26.5.1984 at different hours of time. On perusal of the evidence of P.W. 10, it is found that he had found as many as 10 gun-shot-injuries on Jagarnath Pandit (not examined), the father of Jay Prakash Pandit P.W. 1 and the deceased Ram prakash Pandit and those injuries had been caused by firearms and were dangerous to life. P.W. 10 has not stated as to when the injuries could have been caused but after looking to Ext. 3 which is the injury report issued by P.W. 10 in respect of Jagarnath Pandit, it is indicated that the injuries could be caused in between 2 to 4 hours of his examination. Similarly, P.W. 10 examined Jay Prakash Pandit (P.W. 1) and found three pellet injuries on his right upper arm, on deltoid region, and an abrasion measuring 1/2" x 1/10" on his right foot. Injury No. 1 was grievous and 2 was simple in nature. The very discussion of injury No. 1 indicates that on account of being pellet injury it could have been caused by a firearm and within 2 to 4 hours of examination of P.W. 1. Smt. Phulo Devi, another injured was examined by P.W. 10 and he recorded pellet injuries quite good in number on her person and those were also caused by firearms, as may appear from Ext. 3/2 within 2 to 4 hours of the examination of the lady. Likewise, P.W. 2 Vijay Kumar Pandit was examined by P.W. 10 and two pellet wounds on left side and upper part of the chest were found which were caused by firearms and it is indicated by Ext. 3/3 that those injuries were caused within 6 to 12 hours of the examination of the witness. P.W. 5 Sushila Devi had two pellet injuries on her upper calf caused by firearm and Ext. 3/4 indicates that it was also caused within 2 to 4 hours of the examination of the witness. Another injured Devendra Pandit(not examined)had a total number of four pellet injuries described under three distinct heads by P.W. 10 and those were caused by firearm, within 2 to 4 hours of his examination.

19. The witnesses who have come forward in support of the prosecution story have all stated that after having shot and killed Ram Prakash Pandit, the accused persons caused injuries to P.W. 1 Jay Prakash Pandit and P.W. 2, Vijay Kumar Pandit. Accused persons entered into the house and fired indiscriminately causing injuries to other witnesses including the lady-P.Ws. The injuries, as indicated above, were found caused within the time which probabilities the story as also the same being caused simultaneously during the course of the incident. Thus,

the presence of P.Ws. 1, 2 and 5 and others who were injured could not be doubted. They were injured. They did not have any reason to falsely implicate the accused persons or to replace the real culprits by the appellants. The manner of occurrence as stated by the above witnesses is also consistent. The witnesses examined have stated as to how the accused persons came and killed Ram Prakash Pandit and caused injuries to them and other persons of their family. The evidence of P.W. 9 Dr. Afzal who held post-mortem examination on the dead body of Ram Prakash Pandit indicates that more than one shot were fired at him and his death was caused on that account. The witnesses, P.Ws 1 to 4 and 7, have all stated that appellant Ram Charan fired one shot followed by another shot, when appellant Shailendra Singh stated that he was still alive and thereon appellant Ramcharan Singh fired the second shot killing the deceased. Likewise, the injured witnesses who have been examined in the case, gave a consistent story about the manner as to how they received injuries and at whose hands.

20. The non-examination of Jagarnath Pandit, one of the injured witnesses, was highlighted by Sri Singh, the learned senior Counsel for the appellants. It was contended that, he being the father of the deceased and injured P.Ws. 1 and 2, was withheld by the prosecution. It could really be a matter of enquiry for the court as to why the above named witness was not produced and examined, when the prosecution story indicated that he was among the first few persons, who had been hit, and who as per the evidence on acquisition of land as given by some of them including P.W. 7, could have been the most material witness. Is there any explanation for non-examination of Jagarnath Pandit?

21. Though the learned trial Judge has not placed reliance on the evidence of P.W.12 Jeetendra Sharma, as regards the occurrence, I feel that his evidence on some aspects of the case could be utilized as the defence did not challenge those statements of P.W.12 and, rather, appears introducing those facts through cross-examining the witness. P.W. 12 was cross-examined on the genealogy of the vendor of the land to the informant and Jagarnath Pandit and the acquisition of the land by the prosecution side. The state of health of Jagarnath was stated to by P.W. 12 in his examination-in-chief in paragraph 1. He was cross-examined on this fact in paragraph 8, wherein the witness was indicating his lack of knowledge about Jagarnath Pandit being treated for insanity. The witness stated in his examination-in-chief that after the death of his son, that's, the deceased, Jagarnath had become mentally ill. There was no challenge even by a suggestion to P.W.12 that his above statement was false. Thus, it could safely be held that the reason for the non-examination of Jagarnath Pandit may not be false rather the explanation appears on record for his non-production in court.

22. All the witnesses examined in the case by the prosecution are related by blood among each other as also to the deceased. P.W. 7, the informant of the case, is none else than the uncle of the deceased and father of P.W. 4 Subhash Pandit. P.W. 6 Lalti Devi is the wife of P.W. 4 Subhash Pandit. P.W. 1 Jai Prakash Pandit, P.W. 2 Vijay Kumar Pandit and P.W. 3 Surendra Pandit are sons of

Jagarnath Pandit and brothers of deceased Ram Prakash Pandit. The lady witnesses are the wives of the witnesses who are either the sons or nephews of the informant P.W.7 and Jagarnath Pandit. Thus, their interestedness could be inferred not because they are related to each other by blood, but because they had an interest in the result of the present case also as they could be impelled by an urge within them to see that the accused persons were convicted and sentenced. This situation of interestedness is not sufficient in itself to reject their evidence in its entirety rather the Court is required to appreciate their evidence with care and caution and to search for some such features in the evidence which could stand them out as truthful witnesses. There could be many parameters for evaluating the value of the evidence of the interested witnesses and holding them truthful or untruthful. Being injured makes their presence probable; which never makes them truthful witnesses. Truthfulness of evidence of a particular witness has always to be judged on other parameters, like, the very facts narrated by the witness, could render him untruthful or some other circumstances appearing from his evidence in that behalf, like implicating a man who could never have been implicated under any circumstance and that too for a graver charge. The other circumstances could be that the witness has taken a complete u-turn to come up with a completely new story which could be different from the basic prosecution version or whose evidence does not inspire the confidence of the Court. A witness whose presence is doubted by the court, could also be an untruthful witness. These are some of the illustrative circumstances which could not be exhaustive.

23. Keeping the above in mind and reading the evidence with care and caution, what has struck me the most to hold the witnesses as truthful was that the witnesses have not claimed themselves to be the witnesses to the whole of the occurrence. If one could carefully consider the evidence of P.Ws. 1, 2, 3 and 4 and others except P.W. 7, what one may find could be that they did not appear to claim that they had seen the entire occurrence. This could not come out clearly unless one is very much alert in reading the evidence. One could find that they had claimed themselves to be the witnesses to the occurrence which had taken place outside the lady Section of the house and at the darwaja and its sahan where the deceased was cutting tiles or P.W. 3 Surendra Pandit was making rope or any third man, like, Jagarnath Pandit (not examined) was preparing soil for making the tiles. They have honestly stated that after having shot and killed the deceased Ram Prakash Pandit and having injured Surendra Pandit and Jagarnath Pandit, the accused persons entered inside the lady Section of the house and injured the lady witnesses and Jagarnath Pandit (not examined) as also Devendra Pandit. These witnesses have consistently narrated the same sequence except for the minor aberrations here and there, like, P.W. 1 having introduced the fact that he was hit and injured by Shailendra Singh, whereas, in the F.I.R. the informant stated that it was accused Ramcharan who had injured him. Similarly, at page 33 of the Paper Book, P.W. 7 has introduced a story of P.W. 2 being fired at and injured outside the house whereas P.W. 2 Vijay Kumar Pandit

claimed that he was injured when he was inside the house. These are very minor omissions or aberrations. As already pointed out earlier in the present judgment, the witnesses were narrating the incident after 15 years of the occurrence and, as such, they might be faltering on the details of such an incident where as many as six persons were injured and the seventh was killed. The incident, as it occurred, and the manner in which the witnesses were being targeted by a group of armed persons must have made them to run for their lives. The honesty of the witnesses could further be gathered from one evidence of Lalti Devi who stated that when she saw her family members being shot at and hit she was frightened and closeted herself inside the room and when the firing had died down, she came out of the room and found her family members lying injured. Similarly, P.W.8 Nirmala Devi in paragraph 4 of her cross examination has stated that while she was returning after attending to the call of nature and was in a Gali just near the outer Section of her house, she heard the sounds of firing and found that the injured persons were writhing in pain. These features in the evidence of the witnesses make them reliable inasmuch as if they were to create any story, they could have created it by stating that some of them were inside the house and saw the occurrence and could very well have stated that he or she was hit inside it. But they have not brought in any such improvement which could be unnatural. They appear coming with clear facts which describes the occurrence as seen individually by them. They might be appearing to the learned defence Counsel faltering on some material points, but I find them trustworthy witnesses and their evidence acceptable. The above discussions of evidence takes care of the contention that the witnesses were making contradictory statements on the manner of occurrence. I have pointed out a couple of aberrations in the evidence of P.Ws. 1 and 7 and having gone through the evidence of the witnesses, I find a consistency and a ring of truth in it and their evidence inspiring confidence.

24. The contention was that the F.I.R. was lodged on 26.5.1984 and the Chief Judicial Magistrate received the copy of the same on 28.5.1984 and, as such, there was every chance of weaving out a false story so as to implicating the innocent persons. There does not appear any reason to accept the contention inasmuch as the background of the witnesses is such that they could not have influenced things in their favour. They are poor potters who are generally found belonging to the lowest level of the society, economically. They were share-croppers, having no landed properties of their own (P.W.3, paragraph 3). They live their lives everywhere in this State by creating pots and selling them all around. They are the congenial lot, peacefully pursuing their vocation. The witnesses have stated as to how the investigating Officer of the case was distorting facts by not recording them truly and was creating records so as to destroying the case. I have discussed it in the earlier part of the judgment. The accused persons, I find, are wealthy persons having licensed arms and belonged to a community (as per P.W. 7 Paragraph 17) which is known for its might. It still continues to be some part of our social realities that the wealthy, the mighty and the influential are getting investigation and even prosecution influenced for their

benefit. The Investigating Officer was not produced and the Officer who was examined in the case was not cross-examined on the reasons as to why the F.I.R. was received late by the Chief Judicial Magistrate. The Investigating Officer could have been the real person to explain the delay. It could not be on account of the witnesses or the informant who could not be accountable for dispatch or receipt of the copy of the F.I.R. It could be the Police Officer, like the Officer-in-charge of the police Station or the Investigating officer who could be accountable for it and if the I.O. of the case or the Officer-in-charge of the Police Station were acting under the influence of the accused persons, as appears the case from the evidence of the witnesses, then the accused persons could not be allowed to derive advantage out of such lapses.

25. The contention was that the story of taking away an ox and its recovery was absurd. The evidence on record indicates that it was the villagers who protested to the accused persons that having caused the murder of his family member, they could not be as cruel as to moving the property of the informant as well (P.W.4, Paragraph-1). The manner in which the house of the informant was ransacked and a member of his family was killed and many injured, there could not be any absurdity merely because the recovery memo was not prepared by the Investigating Officer. Besides, the defence also appears not denying that the ox was attempted to be taken away; what they say is that the act was done by some thieves in the night and when the informant and his family members resisted them the firing was done and while Ram Prakash was killed, others were injured. The defence version appears not acceptable and probable because, the Doctors who either held the post-mortem examination or examined the injured have given the time of death or injuries and that overrules the time suggested by the defence to P.W. 7 in Paragraph 18.

26. Shri Singh, learned Senior Counsel for the appellants, was arguing that if at all the accused persons had any grievance or dislike for the informant and his family members for erecting the Jhopari and sitting there on cots, they could have very well objected to the very erection of the Jhopari on the day it was done. Why after so many years the accused persons could vandalize it. It could be very difficult for the Court to answer the argument of the learned Senior Counsel merely for the reason, that it could be very difficult for anyone to say as to what was moving in others minds and hearts. An accused could better know as to why they did not do any act on a particular day or prior to the day, they really did it. The reasons for doing or not doing the act, as complained of, could best be known to the accused persons because this could be relatable to their mental state.

27. On consideration of the evidence on record, I find that the judgment and order of conviction were properly passed under the evidence on the record.

28. There does not appear any illegality in appreciation of the evidence and arriving at the findings. The conviction appears properly recorded. The sentences also appear proper.

29. In the result, the three appeals are found to be of no merit and the same are dismissed. Appellants Kishundeo Singh, Ramdeo Singh and Shailendra Singh are on bail.

30. They shall surrender to their bonds in the court below, as their bonds are cancelled, to serve out their sentence with appellant Ramcharan Singh who is already in custody.

Shiva Kirti Singh, J.

I agree.