

(2005) 04 PAT CK 0075
In the Patna High Court
Case No : Death Reference No. 11 of 2002

State of Bihar

APPELLANT

Vs

Janak Pandey and Others

RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Arms Act, 1959 — Section 27
Constitution of India, 1950 — Article 14, 21
Criminal Procedure Code, 1973 (CrPC) — Section 366(1)
Penal Code, 1860 (IPC) — Section 114, 147, 148, 149, 302

Citation : (2005) 3 PLJR 249

Hon'ble Judges : Sadanand Mukherjee, J; M.L. Visa, J

Bench : Division Bench

Advocate : Lala Kailash Bihari Pd, for the Appellant; Akhilesh Prasad Singh and Anita Kumari, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Visa, J.—The Vth Additional Sessions Judge, Bhojpur at Ara by his judgment dated 26.7.2002 and order dated 30.7. 2002 passed in Sessions Trial No. 148 of 1998 has convicted and sentenced Janak Pandey to death u/s 302 of Indian Penal Code (in short "IPC"), Suryadeo Pandey to death u/s 302 of IPC read with Sections 114 and 149 of IPC, Sanjai Pandey @ Bundela Pandey, Rajesh Pandey and Tapeswar Pandey to death under Sections 302/149 of IPC, Dadan Singh to undergo rigorous imprisonment for life u/s 302 of IPC, Srinivas Singh, Baban Singh and Ekram Pandey @ Manhan Pandey to undergo life imprisonment under Sections 302/149 of IPC. Srinivas Singh has further been convicted and sentenced to undergo rigorous imprisonment for life u/s 307 of IPC. Besides this, Janak Pandey has further been convicted under Sections 148 and 307/149 of IPC and Section 27 of Arms Act, Suryadeo Pandey has further been convicted under Sections 148 and 307 read with Sections 114/149 of IPC, Sanjai Pandey has further been convicted under Sections 148 and 307/149 of IPC, Rajesh Pandey and Tapeswar Pandey have further been convicted under Sections 147 and

307/149 of IPC, Dadan Singh has been further convicted under Sections 148 and 307/149 of IPC and Section 27 of Arms Act, Srinivas Singh has been further convicted u/s 148 of IPC and Section 27 of Arms Act, Ekram Pandey has further been convicted under Sections 148 and 307/149 of IPC and Baban Singh has been further convicted u/s 147 and 307/149 of IPC but no separate sentence for these offences has been passed against anyone of them. The Court below has made reference numbered as Death Reference No. 11 of 2002 u/s 366(1) of Criminal Procedure Code (in short "Cr PC") for the confirmation of sentence of death awarded to the aforesaid five convicts. Convicts Baban Singh and Ekram Pandey @ Manhal Pandey have filed criminal appeal No. 483 of 2002, Srinivas Singh has filed criminal appeal No. 532 of 2002, Suryadeo Pandey, Sanjai Pandey, Rajesh Pandey and Tapeswar Pandey have filed criminal appeal No. 516 of 2002 and Dadan Singh and Janak Pandey have filed criminal appeal No. 566 of 2002 challenging the judgment and order of Court below convicting and sentencing them. Because Death Reference No. 11 of 2002 and all the aforesaid four appeals arise out of same judgment and order so Death Reference No. 11 of 2002 is also being disposed of in this judgment after disposing of the appeals. The case of prosecution, as disclosed in the Fard-e-bayan (Exhibit-5) of informant Dadan Pandey (PW 2), is that on 23.2.1997 at about 7 PM, informant was sitting in his room near the door and his father Balmiki Pandey, his grandmother and other members of his family were talking with each other sitting in Dalan when all the appellants alongwith co-accused Siyaram Pandey (since dead) and Hare Ram Pandey (since absconding) came in the Dalan of informant. Appellants Dadan Singh, Srinivas Singh and Janak Pandey were armed with guns, appellants Baban Singh, Tapeswar Pandey and co-accused Hare Ram Pandey and Siyaram Pandey were armed with lathi and Sanjai Pandey, Suryadeo Pandey and Ekram Pandey were armed with bhala. Appellant Suryadeo Pandey and co-accused Siyaram Pandey asked other appellants for killing on which appellant Dadan Singh and Janak Pandey fired on father of informant who, after receiving injuries, instantaneously died on the Chauki on which he was sitting and when informant rushed towards him, appellants Srinivas Singh fired on informant causing injury on his right leg and informant fell down. When hulla was raised by other members of the family of informant, all the appellants fled away towards south by firing firearms. On hulla and hearing sound of firing, a number of villagers assembled at the house of informant to whom the informant told about the occurrence. Old enmity between the informant's party and appellants is said to be the motive of occurrence. The Fard-e-bayan of informant was recorded on 22.2.1997 at about 1.00 hours by Sub Inspector Md. Qudratullah (PW 6) at the house of informant. On the basis of Fard-e-bayan of informant, a case under Sections 147, 148, 149, 302, 307, 324 of IPC and Section 27 of Arms Act was registered against appellants and co-accused Siyaram Pandey and Hare Ram Pandey. After investigation, chargesheet against the appellants and co-accused Siyaram Pandey was submitted. Co-accused Hare Ram Pandey was shown absconder. Cognizance of the case was taken and the case was committed to the Court of Session. Co-accused Siyaram Pandey died before

the hearing on charge matter. Charge u/s 302 of IPC against appellant Dadan Singh and Janak Pandey and charge u/s 302/149 of IPC against remaining seven appellants, further charge u/s 307 of IPC against appellant Srinivas Singh and charge under Sections 307/149 of IPC against remaining seven appellants, further charge u/s 147 of IPC against appellant Baban Singh, Rajesh Pandey and Tapeswar Pandey and charge u/s 148 of IPC against appellant Dadan Singh, Srinivas Singh, Janak Pandey, Suryadeo Pandey, Ekram Pandey and Sanjai Pandey, charge under Sections 302/114 and 307/149 of IPC against appellant Suryadeo Pandey and charge u/s 27 of Arms Act against appellants Dadan Singh, Srinivas Singh and Janak Pandey were framed. As appellants denied the charges, they were put on trial and after trial, they were found guilty and convicted and sentenced, as indicated above. No witness on behalf of appellant's has been examined but from the trend of cross-examination of prosecution witnesses and documents filed on their behalf, the case of appellants is of complete denial of charges against them and their false implication in this case owing to previous enmity between the parties.

2. Altogether six witnesses have been examined on behalf of prosecution. Dr. Anil Kishore Prasad (PW 1) is the doctor who had held post mortem examination on the dead body of deceased. Md. Qudratullah (PW 6) is the Investigating Officer. Dadan Pandey (PW 2), son of deceased is the informant. Sobh Nath Pandey (PW 5), another son of deceased, Safeda Devi (PW 3), mother of deceased and Sumitra Devi (PW 4), wife of younger brother of deceased are said to be eye witnesses to the occurrence.

3. Dr. Anil Kishore Prasad (PW 1), in his evidence, has stated that on 23.2.1997, he was posted as Medical Officer at Sadar Hospital, Ara and on that day at 10.40 AM, he held post mortem examination on the dead body of Balmiki Pandey and found the following injuries:

On external examination:

- (1) Blood was oozing from nostrils,
- (2) Lacerated wound on chest over right side near mid zone elliptical in shape 3/4" x 1/4" x visceral deep, margin of wound inverted and charring present round the wound under the wound of entrance,
- (3) Lacerated wound over chest 1/6" x 1/6" x 1/8".

On dissection:

Brain congested, left chamber of heart empty and in right chamber of heart, blood was present. Left lung was congested and apex portion of right lung was lacerated with blood clot present. Liver pale, spleen pale, kidney pale. Digested material present in the stomach. Residual urine was present in urinary bladder.

According to him, time elapsed since death was within four hours to twelve hours and cause of death was due to firearm injuries causing injury of vital organs like

lungs resulting in shock and haemorrhage. He has said that a bullet was recovered from back underneath skin and soft tissues which was preserved under seal and cover and was deposited in office for further reference, if required. About injuries, he has said that the aforesaid injuries were sufficient to cause death in ordinary course of nature and such injuries may be caused by gunshots. He has proved his post mortem examination report which is marked Exhibit-1.

He has further said that he examined informant Dadan Pandey on the same day at 9.50 AM and found the following injuries:

- (1) Lacerated wound on right leg near chin of tibia 1/3" x 1/3" circular in nature and margin inverted (wound of entry).
- (2) One lacerated wound on right calf 4" below popliteal fossa 1/2" x 1/2" with some protruding foreign body.

He has said that he advised x-ray A/P and lateral view of right leg.

According to him, the aforesaid injuries were caused by a firearm and which may be a gun and age of injuries was within 6 hours to 18 hours. He has further said that from x-ray report, he found that there was fracture of shaft of fibula on right left and one radiopaque foreign body resembling bullet was found as per report of Radiologist. He has further said that operating note of Surgeon stated that foreign body like bullet was recovered from wound of right leg and saved in a glass vial and was handed over to Incharge, Sadar Hospital, Ara. According to him, injury was grievous in nature and he has proved injury report and supplementary injury report which are marked Exhibits-1/A and 1/B. From his evidence, it is established that death of deceased Balmiki Pandey was homicidal death and informant had received injuries caused by firearm.

4. Dadan Pandey (PW 2), in his evidence, has said that on 22.2.1997 at about 7 PM he was in his Dalan alongwith his father and grandmother Safeda Devi (PW 3), aunt Sumitra Devi (PW 4) and elder brother Sobh Nath Pandey (PW 5) and they were having household talks when appellants Dadan Singh, Srinivas Singh and Janak Pandey armed with guns, appellants Baban Singh, Rajesh Pandey, Tapeshwar Pandey and co-accused Siyaram Pandey and Hare Ram Pandey armed with lathis and appellants Sanjai Pandey, Suryadeo Pandey and Ekram Pandey armed with bhala came to his Darwaza where appellant Suryadeo Pandey and co-accused Siyaram Pandey asked other appellants to kill otherwise no better chance would be available and, thereafter, appellants Dadan Singh and Janak Pandey fired from their guns on his father who was sitting on chauki and who, after receiving gun shot injuries, fell down on the chauki and and gun shots had hit his chest and when he proceeded towards his father, appellants Srinivas Singh fired from his gun causing injury on his right leg and he trembled. Other members of his family raised hulla and the appellants thereafter fled away towards north and south. A number of villagers, on hearing the sound of firing, came there to whom he told about the occurrence. About the motive of

occurrence, he has said that prior to occurrence, his uncle was killed in which except appellants Dadan Singh and Baban Singh, other appellants of this case were accused persons and in that case, his deceased father used to take steps and had also deposed and all the accused in that case were sentenced to life imprisonment and at the time of occurrence, they were on bail granted by High Court. He has further said that he identified the appellants in the light of a lantern which was in Dalan and in the moonlit night. He has further said that his Fard-e-bayan was recorded by the police on the same day in the night at about 1 O'clock and it was read over to him and he put his signature (Exhibit-2). In para-6 of his evidence, he has said that he had filed a protest petition in this case. He has proved the protest petition which is marked Exhibit-3. Safeda Devi (PW 3) is the mother of deceased and grandmother of informant. As she did not appear for her further cross-examination, therefore, her evidence was not considered. Sumitra Devi (PW 4), who is the wife of brother of deceased, has said that at the time of occurrence, she was at her Darwaza alongwith deceased and informant, Sobhnath Pandey (PW 5) and her mother-in-law Safeda Devi (PW 3) were also there and a lantern was blowing there and it was a moonlit night. She has further said that all on a sudden, eleven persons came to her Darwaza who were her neighbours of whom appellants Dadan Singh, Janak Pandey and Srinivas Pandey were armed with guns, appellants Bundela Pandey @ Sanjai Pandey, Ekram Pandey @ Manhan Pandey and Suruj Pandey were armed with bhala and appellant Tapeswar Pandey, Rajesh Pandey and co-accused Hare Ram Pandey and Siyaram Pandey were armed with lathis came there and appellant Suruj Pandey and co-accused Siyaram Pandey ordered their companions to kill the deceased with guns on which appellants Dadan Singh and Janak Pandey fired from their guns on deceased who was sitting on a chauki and who, after receiving firearm injuries, instantaneously died. Srinivas Singh fired from his gun on the informant and, thereafter, all the appellants after firing fled away towards north and south of the house. She has said that because it was moonlit night so she identified all the appellants. Sobhnath Pandey (PW 5) is the son of deceased and brother of informant and he has said that at the time of occurrence, he alongwith informant, his grandmother Safeda Devi (PW 3), his deceased father, his aunt Sumitra Devi (PW 4) was in Dalan and they were talking household matters when eleven persons of her village all on a sudden came to his Dalan. Out of whom appellants Dadan Singh, Srinivas Singh and Janak Pandey were armed with guns, appellant Suryadeo Pandey, Ekram Pandey and Sanjai Pandey were armed with bhala, appellants Tapeswar Pandey, Rajesh Pandey, Baban Singh and co-accused Hare Ram Pandey and Siya Ram Pandey were armed with lathis. Appellant Suryadeo Pandey and co-accused Siya Ram Pandey asked their companions to kill on which appellants Dadan Singh and Janak Pandey fired on his father who received injuries on his chest and fell down on the chauki on which he was sitting. Appellant Srinivas Singh fired from his gun on informant who being injured fell down. He has said that he and his other family members raised alarm on which appellants fled away towards orchard. He has said that after occurrence, a number of villagers came to whom he and his family

members told about the occurrence. According to him, he identified the appellants in the light of lantern hanging in his Dalan. He has further added that his father died at the spot. About the motive of occurrence, he has said that his uncle Nageshwar Pandey had been killed earlier and except appellants Baban Singh and Dadan Singh, all other appellants were accused in the case which was lodged for the murder of his uncle and in that case, his deceased father used to take steps and had also deposed and all the accused persons were convicted and sentenced and some days prior to occurrence, they had been released from jail. In para-4 of his evidence, he has said that police came to his house at about 1 O'clock in the night and prepared inquest report in his presence and in presence of Birendra Mahto and he and Birendra Mahto both put signatures (Exhibits-4 and 4/1) on the inquest report. He has further said that witness Birendra Mahto, out of fear of appellants, was avoiding to give evidence in this case.

5. Md. Qudratullah (PW 6) is the Investigating Officer of this case. He has said that on 22.2.1997 when he was posted as Officer-in-charge of Ara Mufassil Police Station, he, at about 11 PM received the news that a man had been killed at Amarpur Marwatia village and he then proceeded towards the village and reached there at about 1 O'clock and recorded the Fard-e-bayan of informant. He has proved the Fard-e-bayan (Exhibit-5) of informant and has said that he took up the investigation of the case. He has also proved the formal first information report (Exhibit-6). He has further said that he inspected the place of occurrence which is a verandah of the house of informant and has said that he found a lantern blowing with bright light in verandah and found the dead body of deceased on chauki kept in the verandah with sufficient quantity of blood on chauki and verandah. He has further said that he found injuries on the dead body of informant and issued memo of injury (Exhibit-7). He has further said that he prepared inquest report (Exhibit-8) of the dead body of deceased and sent the dead body to Sadar Hospital for post mortem examination. He has further said that after completing investigation, he submitted chargesheet.

6. On the point of occurrence, besides informant Dadan Pandey (PW 2), the other two witnesses are Sumitra Devi (PW 4), wife of younger brother of deceased and Sobhnath Pandey (PW 5), son of deceased. Md. Qudratullah (PW 6), who is the Investigating Officer of this case, in para-19 of his evidence, has said that Sumitra Devi (PW 4) had not named appellants Bundela Pandey @ Sanjai Pandey, Manhan Pandey @ Ekram Pandey, Baban Singh, co-accused Hare Ram Pandey, appellants Dadan Singh, Tapeswar Pandey and Rajesh Pandey among the persons taking part in the commission of offence and she had also not stated that co-accused Siya Ram Pandey and appellant Suryadeo Pandey asked their companions for killing. In para-23 of his evidence, he has further said that witness Sobhnath Pandey (PW 5) had not, besides the names of appellants Janak Pandey and Dadan Singh, named other appellants and had not stated which appellant was carrying which arm. He has further said that he simply said that first information report named accused had committed the occurrence and he had not stated that who was carrying lathi and had also not stated that co-

accused Siya Ram Pandey and appellant Suryadeo Pandey asked their companions to kill the deceased. So I find that, so far appellants Dadan Singh and Janak Pandey are concerned, they have been named by informant and remaining two witnesses, namely, Sumitra Devi (PW 4) and Sobhnath Pandey (PW 5) and so far other appellants are concerned, evidence is not consistent because Sobhnath Pandey (PW 5) had not named them and Sumitra Deyi (PW 4) had also not named appellants Bundela Pandey, Manhan Pandey, Baban Singh, Dadan Singh, Tapeswar Pandey, Rajesh Pandey, Suryadeo Pandey and co-accused Hare Ram Pandey in their statements made earlier before Investigating Officer. Out of these remaining appellants, the case of appellant Srinivas, Singh appears different because according to informant, Srinivas Singh fired on him causing firearm injury on his leg. Since informant is injured and PW 1, who is the doctor, had found firearm injuries on his right leg and right calf and his name appeared in the statement of Sumitra Devi also because no contradiction in respect of his name before the Investigating Officer by her is there. I, therefore, find that case of Srinivas Singh is like the case of Dadan Singh and Janak Pandey who are said to have taken part in the commission of offence. But so far other appellants are concerned, I find that in this case, there is evidence of only three witnesses, who are closely related with deceased and are highly interested persons having inimical terms with appellants and their evidence not consistent because there is contradiction in their evidence and in their previous statement recorded by Investigating Officer about names of persons who took part in the commission of offence. I, therefore, find that case of prosecution against appellants, except appellants Dadan Singh, Janak Pandey and Srinivas Pandey, becomes quite doubtful and they are entitled to benefit of doubt.

7. Shri Akhilesh Prasad Singh, learned Senior Counsel appearing on behalf of appellants has argued that the case of appellants is that they have been falsely implicated in this case owing to enmity because earlier they had lodged first information report against the members of prosecution party and had also deposed against them. Certified copies of first information report of Ara Mufassil Police Station Case No. 152 of 1996 (Exhibit-A), Ara Mufassil Police Station Case No. 202 of 1991 (Exhibit-B), Ara Mufassil Police Station Case No. 199 of 1999 (Exhibit-C) and deposition of appellant Suryadeo Pandey (Exhibit-D), deposition of appellant Baban Singh (Exhibit-E), deposition of one Ram Singari Devi (Exhibit-F) and deposition of Lalan Singh (Exhibit-G), all given in Sessions Trial No. 127 of 1997 have been filed. Exhibit-A, the first information report of Ara Mufassil Police Station Case No. 152 of 1996 was lodged by appellant Dadan Singh against informant Dadan Pandey, deceased Balmiki Pandey and others under Sections 302/34 of IPC, Exhibit-B is the first information report of Ara Mufassil Police Station Case No. 202 of 1991 which was lodged by appellant Srinivas Singh against deceased, brother of deceased and others, Exhibit-C, the first information report of Ara Mufassil Police Station Case No. 199 of 1999 was lodged by Lalan Singh against deceased, appellant Tapeswar Pandey and others, Exhibits-D to G include depositions of some of the appellants in Sessions Trial No.

127 of 1997 which was lodged for the murder and attempt to commit rape on Guriya niece of appellant Dadan Singh against Madan Pandey, brother of informant Dadan Pandey and Sudama Pandey, full brother of deceased Balmiki Pandey in which according to appellants, accused persons were convicted by Court below and their conviction was upheld with certain modifications by this Court. According to prosecution, in that case, all accused were finally acquitted by Supreme Court. Copy of the judgment of Supreme Court passed in Criminal Appeal Nos. 654-655 of 2000 (Exhibit-10) has been filed by prosecution. Exhibit-9 filed by prosecution is the copy of judgment passed by 1st Additional Sessions Judge, Ara in Sessions Trial No. 93 of 1995 showing that most of the appellants of the present case were sentenced to life imprisonment for the murder of Nageshwar Pandey, uncle of informant. All these documents, as well as the admission of prosecution witnesses that there were cases between them prior to occurrence, show that enmity was existing between the parties on the day of occurrence.

8. Shri Akhilesh Prasad Singh has argued that Dr. Anil Kishore Prasad (PW 1), in his evidence, has said that he held autopsy on the dead body of deceased on 23.2.1997 at about 10.40 AM and according to him time elapsed since death was within four to twelve hours which does not tally with the time of occurrence which, as per Fard-e-bayan, took place on 23.2.1997 at about 7 PM. It is true that PW 1, the doctor who held autopsy, has given the time elapsed since death as within four hours to twelve hours and autopsy was held by him on 23.2.1997 at 10.40 AM but at the same time his evidence shows that at the time of holding autopsy, rigor mortis was present and in para-5 of his deposition, he has said that time elapsed since death might be four to twenty four hours if the rigor mortis was in maintenance stage. Although he is silent on the point whether rigor mortis was in maintenance stage but then from his evidence, it is not conclusively proved that time elapsed since death was squarely within the limit of four hours to twelve hours and in no circumstance it can exceed. I, therefore, find that this evidence of PW 1 on the point of time elapsed since death is not very material. The further argument on behalf of appellants is that the informant in his Fard-e-bayan has stated that at the time of occurrence, he was sitting in his room near the door but in his evidence, the informant has stated that at the time of occurrence, he was sitting in his Dalan. From the judgment of Court below, I find that this argument was raised before the Court below also which considered it in details and has given its finding observing that there is no contradiction on this point. Md. Qudratullah (PW 6), the Investigating Officer in his evidence, has stated he inspected the place of occurrence which is verandah of the pucca house of informant. He has further said that there were two rooms in the verandah and informant pointed the doors of western room where according to him, he was sitting at the time of occurrence. In Fard-e-bayan also, informant has stated that he was sitting in his room near the door. If the opening of the door is verandah of the house, I find no contradiction in the statement of informant as made in the Fard-e-bayan and in his evidence according to which he

was sitting near the door of his room or he was sitting in verandah.

9. Next argument on behalf of appellants is that Fard-e-bayan (Exhibit-5) of informant was recorded on 23.2.1997 at 1.00 hours in the night and formal first information report (Exhibit-6) was registered on 23.2.1997 but it was sent to Court on 26.2.1997 and there is delay in sending the first information report to Court which creates a doubt that the first information report has been anti-timed particularly in view of the evidence of Investigating Officer in para-21 of his evidence that distance of Court of Chief Judicial Magistrate from Mufassil Police Station is about two and half kilometres. He has relied upon a decision of the Supreme Court in the case of Meharaj Singh (L/Nk.) Vs. State of U.P., . In that case, matter as to delay in lodging the first information report was considered and it was observed that "12... on account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the Courts generally looks for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate." In the present case, Fard-e-bayan of informant was recorded on 23.2.1997 at 1 AM for an occurrence which had taken place on 22.2.1997 at about 7 PM. Informant has said that on 22.2.1997 which was the day of occurrence, it was Saturday. In this view of the matter, the Fard-e-bayan was recorded on the night between Saturday and Sunday. Evidence of PW 1, who is doctor, shows that he held post mortem examination on the dead body of deceased on 23.2.1997 at 10.40 AM. The Fard-e-bayan was brought to Police Station where formal first information report was drawn and, thereafter, Fard-e-bayan and formal first information report must have been sent in Court. The dead body must have been sent from the place of occurrence to Sadar Hospital at Ara where autopsy was held in the morning of 23.2.1997. All these facts do not suggest that there was any delay in lodging the first information report. The another decision of Supreme Court in the case of Thanedar Singh Vs. State of Madhya Pradesh, cited on this point is also not helpful to appellants because in that case, occurrence had taken place on the intervening night of May, 18 and 19, 1982 and complaint was lodged in the morning following the night of the occurrence but the first information report was received in Court on 21.5.1982 and the prosecution, in spite of being given more than one opportunity for producing evidence of the date of sending the copy of first information report to Magistrate's Court, failed to do so.

10. The learned counsel of appellants has argued that there is no independent witness in this case and barring the informant, the other witnesses, who have deposed on the point of occurrence, are closely related to deceased and informant. Citing judgment of Supreme Court in the case of Anil Phukan Vs.

State of Assam, , the learned counsel of appellants has submitted that independent corroboration of the testimony of interested witnesses is required in such type of cases. The facts of the present case are different than the facts of that case because that case was based on the testimony of a single eyewitness who was PW 3 In that case, it was observed that "3 ... Indeed, conviction can be based on the testimony of a single eye-witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eye-witness is a wholly reliable witness, the courts have no difficulty in passing conviction on his testimony alone. However, where the single eye-witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony in material particulars, before recording the conviction." In that judgment, it was further held "4 ... Ajoy PW 3,- on his own showing, is the nephew of the deceased. He had accompanied the deceased to the place of occurrence when the latter went to recover the loan from Anil, appellant. This witness, therefore, is a relative of the deceased and an interested witness. Of course, mere relationship with the deceased is no ground to discard his testimony, if it is otherwise found to be reliable and trustworthy. In the normal course of events, a close relation would be the last person to spare the real assailant of his uncle and implicate a false person. However, the possibility that he may also implicate some innocent person alongwith the real assailant cannot be ruled out and, therefore, as a matter of prudence, we shall look for some independent corroboration of his testimony, to decide about the involvement of the appellant in the crime. Since, there are some doubtful aspects in the conduct of Ajoy PW 3, it would not be safe to accept his evidence without some independent corroboration, direct or circumstantial." In the present case, informant is not the only eye-witness to the occurrence. Besides him, PWs 4 and 5 are other witnesses who are claiming to have seen the occurrence. No doubt these two witnesses are close relations of deceased and informant but then occurrence is said to have taken place in the Dalan of the house of informant at about 7 PM when informant and his family members were sitting there and talking with each other. In this circumstance, if the occurrence was not seen by any outsider there is nothing unusual to it because generally after sunset villagers return to their houses and remain there for the night and do not move in village in night except under compelling circumstances. On the contrary, presence of any outsider at the house of informant in the night would have been an exception.

11. The next argument on behalf of the appellants is that witnesses, in their evidence, have stated that at the time of occurrence, a lantern was lighting in the verandah and they, in the light of lantern as well as because it was a moonlit night, identified the appellants and Investigating Officer has also stated that when he visited the place of occurrence, he found a lantern hanging in the verandah but that lantern was not seized and it has not been produced before

the Court and, therefore, the claim of prosecution witnesses to have identified the appellants in the light of lantern becomes doubtful. The Court below, after consulting Panchang, has found that the day of occurrence was day of full moon night and the full moon had risen at early evening. Appellants are not only co-villagers of informant but they are distinctly related to each other which is apparent from the evidence of informant given in paras-11 and 13. In this view of the matter, the identification of appellants at the time of occurrence by informant and his family members does not leave scope for any doubt.

12. In this case, appellant Janak Pandey has been sentenced to death u/s 302 of IPC whereas Dadan Singh has been sentenced to rigorous imprisonment for life u/s 302 of IPC and appellant Srinivas Singh has been sentenced to undergo rigorous imprisonment for life under Sections 302/149 of IPC. Appellant Srinivas Singh has further been convicted and sentenced to undergo rigorous imprisonment for life u/s 307 of IPC for causing grievous hurt to informant. Although Janak Pandey has been further convicted under Sections 148 and 307/149 of IPC and Section 27 of Arms Act, Dadan Singh has further been convicted under Sections 148 and 307/149 of IPC and Section 27 of Arms Act but no separate sentences have been passed for these offences in the light of sentence of death and life imprisonment already awarded to them. For imposing death penalty to appellant Janak Pandey alongwith Sanjai Pandey @ Bundela Pandey, Rajesh Pandey and Tapeswar Pandey, the Court below has given reason that they have been previously convicted and sentenced to life imprisonment for committing the murder of Nageshwar Pandey, uncle of informant and husband of Sumitra Devi (PW 4) in Sessions Trial No. 93 of 1995 (Exhibit-9). It was further observed that soon after their release from jail, they, alongwith other, committed the cold blooded murder of Balmiki Pandey, deceased of the present case who was a Government Teacher in a middle school and was the earning member of the family and attempted to commit murder of informant. It has also observed that deceased Balmiki Pandey was taking steps in making pairvi in the case filed against appellants and others and there was dispute about flow of water in a drain passing in the street. Considering all these aspects and observing that awarding punishment for life imprisonment twice or thrice would be nothing but travesty of justice and they, after release on bail, may again commit murder of other member of said family and sentence of life imprisonment has been proved to be inadequate to them, it awarded capital sentence to the aforesaid appellants finding the case falling in the category of rarest of rare cases. During trial, appellants Janak Pandey and Dadan Singh both were facing charges u/s 302 of IPC for committing the murder by intentionally causing the death of deceased Balmiki Pandey. Although the Court below has observed that the case of convicts falls in the category of rarest of rare cases but so far appellant Dadan Singh is concerned, he has not been sentenced to death and has been sentenced to undergo rigorous imprisonment for life u/s 302 of IPC. The reason that appellant Janak Pandey has been sentenced to death is only that earlier he had been awarded life imprisonment in another case by the Court of learned Sessions

Judge. Informant himself has admitted that in that case, Janak Pandey and other appellants were released on bail meaning thereby that their appeal against their conviction was pending. Till today, prosecution has not come up with the plea that the appeal preferred by appellants in that case has finally been disposed of meaning thereby that it is still pending. No body can predict the result of that appeal preferred by the appellants including appellant Janak Pandey in another case. Notwithstanding this fact, Court below found appellant Janak Pandey and appellant Dadan Singh guilty for the same offence for committing the murder of deceased u/s 302 of IPC but while awarding punishment, it separated the case of appellant Janak Pandey and taking into consideration the fact that he was also sentenced life imprisonment in another case, imposed death penalty on him whereas appellant Dadan Singh has been sentenced to undergo life imprisonment. By doing this, Court below, while awarding punishment to appellant Janak Pandey, has applied, although not in specific words, Section 303 of IPC which has been struck down as unconstitutional for being violative of Articles 14 and 21 of the Constitution of India by Supreme Court in the case of Mithu Vs. State of Punjab, . The case of appellant Janak Pandey and Dadan Singh, who were found guilty for the same offence of committing murder of deceased, would not have been distinguished by the Court below only on the ground that appellant Janak Pandey was earlier sentenced to life imprisonment in an another case in view of the following observations of the Supreme Court in the case reported in Mithu Vs. State of Punjab, :

"10. The first question which we would like to examine is whether there is any valid basis for classifying persons who commit murders whilst they are under the sentence of life imprisonment as distinguished from those who commit murders whilst they are not under the sentence of life imprisonment, for the purpose of making the sentence of death mandatory in the case of the former class and optional in the case of the latter class. We are unable to see any rational justification for making a distinction, in the matter of punishment between these two classes of offenders."

13. Considering the entire evidence on record, I find that so far appellants Baban Singh and Ekram Pandey @ Manhan Pandey, appellants of Criminal Appeal No. 483 of 2002 and appellants Suryadeo Pandey, Sanjai Pandey, Rajesh Pandey and Tapeswar Pandey, appellants of Criminal Appeal No. 516 of 2002 are concerned, prosecution has not been able to prove its case beyond all reasonable doubts. So giving benefit of doubt to them, they are acquitted and Criminal Appeals No. 483 and 516 of 2002 are allowed and judgment of conviction of aforesaid appellants is hereby set aside.

14. As appellants Suryadeo Pandey, Sanjai Pandey @ Bundela Pandey, Rajesh Pandey and Tapeswar Pandey are in jail custody so issue release order for their release from jail forthwith, if not wanted in any other case. Since appellant Baban Singh and Ekram Pandey @ Manhan Pandey are on bail, they are discharged from the liabilities of their bail bonds.

15. So far appellants Dadan Singh, Janak Pandey and Srinivas Singh are concerned, the case of prosecution stands proved against them and their conviction by Court below is upheld. The death sentence of appellant Janak Pandey is reduced to life imprisonment u/s 302 of IPC. Appellant Srinivas Singh has been sentenced to life imprisonment u/s 302/149 of IPC but then the prosecution case has been found proved in respect of only against him and appellants Dadan Singh and Janak Pandey and it is proved that they, armed with firearms, went to the house of informant where appellants Dadan Singh and Janak Pandey fired on deceased and when informant proceeded towards deceased, he (appellant Srinivas Singh) fired on him causing injury on his right leg and calf suggesting that they all had a common intention to commit the murder of deceased. The sentence of life imprisonment of Srinivas Singh is, therefore, converted to under Sections 302/34 of IPC instead of Sections 302/149 of IPC. About his further conviction for life imprisonment u/s 307 of IPC for causing injuries to informant by firearm, I find that the sentence of five years will be adequate. Accordingly, the sentence of life imprisonment of appellant Srinivas Singh u/s 307 of IPC is reduced to five years rigorous imprisonment and both the sentences passed against him will run concurrently. As he is on bail, his bail bonds are cancelled and he is directed to surrender before the Court below to serve the sentence passed against him.

16. With the aforesaid modification, Criminal Appeals No. 532 and 566 of 2002 are dismissed. Since appeal of appellants Suryadeo Pandey, Sanjai Pandey, Rajesh Pandey and Tapeswar Pandey who were sentenced to death has been allowed and they have been acquitted and death sentence of appellant Janak Pandey has been reduced to sentence of life imprisonment, Death Reference No. 11 of 2002 in respect of all these five appellants is rejected.

S. Mukherjee, J.

I agree.