

(1998) 03 PAT CK 0021

In the Patna High Court

Case No : Death Reference No. 6 of 1996 and Criminal Appeals No's. 552, 565, 572, 592 and 606 of 1996

State of Bihar

APPELLANT

Vs

Vipatu Ram, Sankatha Ram and Ram Gahan Ram
 Shiv
Badan Ram and Others Vs State of Bihar

RESPONDENT

Date of Decision : 05-03-1998

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 396, 435

Citation : (1998) 3 PLJR 566

Hon'ble Judges : RK. Sarin, J;R.N. Sahay, J

Bench : Division Bench

Advocate : G.C. Sharma, in Criminal Appeals Nos. 552 and 572, S.A Iamdar Hussain and Ashok Kumar Mishra No. 2, in Criminal Appeals Nos. 565 and 606 and Basant Kumar Choudhary, in Criminal Appeals No. 592, for the Appellant; Ashiwini Kumar Sinha and Rakesh Kumar Samrendra, for Informant, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Sarin, J.—All the Criminal Appeals and Death Reference arise out of the judgment and order dated 11/16.10.1996 passed in Sessions Trial No. 81/38 of 1991/1993 by the First Additional Sessions Judge, Rohtas at Sasaram, as such all the five appeals have been heard together and are being disposed of by this common judgment.

2. Accused Vipatu Ram, Sankatha Ram and Ram Gahan Ram have been sentenced to death u/s 396 of the Indian Penal Code (hereinafter referred to as the Code). Hence, Death Reference No. 6 of 1996 has been made by the learned 1st Additional Sessions Judge. These accused have preferred Cr. Appeal No. 552 of 1996 and also Jail Appeal No. 572 of 1996. Accused Sri Ram Ram, Babulal Ram, Mangaru Ram, Shyam Narayan Ram @ Ram Narayan Ram, Banarsi Ram,

Ram Dahin Ram, Kamala Ram, Sheogahan Ram, Nagina Ram, Ram Shanker Ram, and Ram Pyare Ram (Appellants in Cr. Appeal No. 592 of 1996) and accused Shiv Badan Ram and Shanker Ram (Appellants in Cr. Appeal No. 565 of 1996) and accused Ram Bachan Ram (Appellant in Cr. Appeal No. 606 of 1996) have been sentenced to life imprisonment u/s 396 of the Code. Appellants have further been convicted u/s 27 of the Arms Act but no separate sentence has been passed under that section. Appellant Nagina Ram has further been convicted u/s 435 of the Code but no separate sentence has been passed under that section.

3. It appears that total 29 accused were put on trial. Out of which seven accused have been acquitted by the trial court while five of the accused absconded during the trial and their cases have been separated from the trial of present Appellants.

4. The prosecution case, as per fardbayan (Exhibit-5) of Kashi Singh, informant (P.W. 20) given to Sri Ram Kripal Sharma (P.W. 21), the then Officer-in-charge of Police Station Chand, District-Bhabua. at 8.00 P.M. on 1.1.1991 at his home in village Keshri under the said Police Station Chand, is that on 1.1.1994, at about 3.00 P.M. Kashi Singh, the informant was at his Khalihan. He. saw 35-40 miscreants variously armed with guns and rifles suddenly appearing from the side of Chamar Toli and surrounding his house. The miscreants started entering into the house of the Informant and started firing. The female inmates and the children started running away from the house. Smt. Phoolmati Devi, the aunt of Kashi, had come out of the house and was intending to run towards Khalihan. In the meantime, accused Mahendra Chamar (not Appellant here) fired a shot at Smt. Phoolmati Devi which hit her and she fell down. Seeing said firing the informant Kashi Singh, in order to protect the lives and property of his family members, opened fire towards the miscreants. The miscreants also responded with firing. In the meantime, informant went near the chamber of Angad Singh and from the side of Angad Singh's chamber he started firing from his licensed rifle towards miscreants. In the course of shooting the informant identified Vipatu Ram, Kamala Ram, Sankatha Ram, Sheogahan Ram, Ram Dahin Ram, Ram Gahan Ram, Shanker Ram, Banarsi Ram, Babu Lal Ram, Ram Pyare Ram, Mangaru Ram, Shyam Narayan Ram @ Ram Narayan Ram (Appellants) and Raman Ram, Dukh Dewan Ram, Mangal Lohar and Sagar Lohar (absconding accused) and one Mahabali Koeri, all armed with rifle and Nagina Ram (Appellant), Sheomuni Ram (absconding accused) and Kalapu Ram, armed with gun, who were engaged in firing by their respective weapons. The accused also exclaimed that "look Kashi, all have been shot dead". Accused Mahabali Koeri was exhorting to pull down the house. Accused Nagina Ram (Appellant) and Kalapu Ram set fire to the Khalihan as a result whereof thousands of bundle of paddy were reduced into ashes. Village people of Bararhi arrived to the help of the informant and then firing and counter firing ensued between the informant's party and miscreants. The miscreants, in course of counter firing proceeded to the south direction from east and taking advantage of the darkness due to sun set they made good their escape. Thereafter, the informant and his companions came to the house of the informant where they found Chavinath Singh, Sheo

Pujan Singh, Virendra Singh, Prabhat Kumar, Malwajo Devi, Phoolmati Devi, Sumitra Devi, Shail Kumari Devi and Brinda Devi lying dead with fire arm injuries on their bodies. Blood from nostrils and mouth of Brinda Devi was oozing out although no apparent injury ,was seen on her person. It was alleged that miscreants had taken away 315 bore licensed rifle with twenty five cartridges of the informant's cousin, Sheo Pujan Singh, and D.B.B.L. gun No. 71058 with twenty cartridges of informant's other cousin, Mohan Singh, and they had also looted and took away valuables, cash, clothes worth rupees fifty thousand. It was further alleged that the miscreants had shot dead one Ram Vijay Singh in the lane just adjacent to the house of the informant in the south direction.

5. A formal first information report (Exhibit-5) was registered on the basis of said fardebayan of Kashi Ram and the Police investigated the case. After investigation charge sheet was submitted and the Appellants were put on trial along with other co-accused persons.

6. Appellants denied the occurrence and the allegations and charges against them. Accused Appellants Nathuni Ram, Shanker Ram, Ram Bachan Ram and Shiv Badan Ram, in their statement u/s 313 of the Code of Criminal Procedure, stated that Police apprehended them from Baithka of accused Shiv Badan Ram in village Arangi under Police Station Dhina in the district of Varanasi. Accused Nathuni Ram further stated that he used to go from one place to another in search of job to earn his livelihood as such he was identified by witnesses in test identification parade. Accused Shanker Ram stated, in his statement, that he was identified at test identification parade by witnesses as they were shown his and other accused persons' photographs and the witnesses were well acquainted with him since before the test identification parade. The defence also alleged that those accused persons who were arrested from village Arang of District Varanasi, were photographed and their photographs were published in newspapers.

7. In support of the prosecution case, the prosecution examined twenty two witnesses. Out of whom P.W. 22 is Dr. Ram Govind Prasad, who held autopsy over the dead bodies of Vimala Devi, Maharaji Devi, Prabhat Kumar, Vijay Singh, Sheo Pujan Singh, Shail Kumari Devi, Chhavi Nath Singh, Virendra Singh, Phoolmati Devi and Sumitra Devi and proved their post mortem examination reports (Exhibits-8, 8/a to 8/i). P.W. 21 is Ramkripal Sharma, the then officer in-charge of Police Station Chand, who had also investigated the offence. P.W. 18, Sri Ashok Kumar, is the Judicial Magistrate, Second Class, who conducted test identification parade of some of the accused and has proved test identification parade chart (Exhibits) P.W. 2, Ramjit Singh, a Police Constable, is a formal witness. He had proved material exhibits, namely, ten cartridges of gun (material Exhibit-I) and five bullets of rifle and blood stained earth (material Exhibit-II) and proved property challan (Exhibit-I). P.W. 7, Ramasharay Singh, P.W. 13, Nanku Singh, and P.W. 19, Bimlesh Singh, have been tendered. P.W. 1, Ranjit Singh, P.W. 3, Rama Shankar Singh, P.W. 4, Angad Singh P.W. 5, Vakil Singh, P.W. 6, Chandrika Singh the brother of deceased Sheo Pujan Singh. P.W. 8 Mohan

Singh, the son of deceased Chhavi Nath Singh, P.W. 9, Uma Shankar Singh, P.W. 10, Tej Narayan Singh, the brother of informant Kashi Singh, P.W. 11, Madan Singh, P.W. 12, Atarbas Devi, mother of informant Kashi Singh, P.W. 14, Dina Nath Singh, the son of P.W. 6, P.W. 15, Baijnath Singh, the fattier of P.W. 6 Chandrika Singh. P.W. 16, Sohago Devi, the wife of P.W. 6, P.W. 17. Lal Bahadur Singh and P.W. 20, Kashi Singh, the informant, have figured as eye-witnesses. The prosecution produced some documents in evidence as well.

8. On behalf of defence D.W. 1, Rajeshwar Keshri, has been examined who has proved photostat copy of cutting of Dainik Jagran dated 14.1.1991 (Exhibit-A) and original copy of photograph (Ex-hibit-B).

9. Dr. Ram Govind Prasad (P.W. 22) stated in his evidence that ,on 2nd January, 1991, he held autopsy over the dead bodies of the deceased persons of this case from 4.05 P.M. onwards. He stated that he held the autopsy on the dead body of Vimla Devi wife of Virendca Singh and found the following antemortem external injuries:

(1) One lacerated wound 1/4" diameter with inverted and tatoo margin over right side of chest just above right nipple. Depth of the wound was chest cavity deep.

(2) On dissection chest cavity full of fluid blood with fracture and 2nd and 3rd ribs on right side on front of chest and fracture of 5th, 6th and 7th ribs on the back of left side chest with laceration and rupture of both lungs and heart. Stomach full of semi digested and semi solid food particles. Plemal, Spleen, Kidney, pale. Bladder empty, uterus pale and normal in size. injury No. (1) and (2) are communicating to each other. Hence, injury No. (1) is injury of entry and injury No. (2) is injury of exit. It is stated that injuries were caused by fire arm and death was due to excessive haemorrhage and shock caused by above wounds. Time since death within and about 24 hours. Rigor mortis present both upper and lower limbs.

10. He stated that he found the following antemortem injuries on the dead body of Maharaji Devi wife of Baijnath Singh:

(i) Lacerated wound 1/2" in diameter x abdominal cavity deep with inverted and tatoo margin over right side of chest lower portion.

(ii) Lacerated wound 4" diameter x abdominal cavity deep with inverted margin over right side of back about 4" above the waist.

On dissection brain and brain substance pale, skull bone NAD. Both lungs, heart, left kidney pale. Left chamber empty. Right chamber contains about 4 ounce of dark blood., stomach empty, liver, kidney of right side ruptured, intestine ruptured, uterus pale, bladder empty. Injury No. (i) and (ii) communicating to each other. Hence, injury No. (i) is entrance and injury No. (ii) is exit caused by fire arm. It is stated that death is due to excessive haemorrhage and shock due to rupture of liver, kidney and guts and above injuries. Time since death within and about 24 hours.

11. He stated that he found the following antemortem injuries on the dead body of Prabhat Kumar son of Mohan Singh:

(i) Lacerated wound 1/2" in diameter x chest cavity deep on the left side back adjacent to lower scapular angle with inverted and tattoo margin.

(ii) Lacerated wound 2-1/2" in diameter x chest cavity deep on the left side of chest above the nipple with everted margin.

On dissection skull bone NAD Brain substance, pale left lung, ruptured right lung, pale heart, ruptured chest cavity full of dark fluid blood with fracture of 8th and 9th ribs on the left side of back and 4th, 3rd, 2nd on the front of chest left side stomach contains 4 ounces semi digested, semi solid pulse and rice, liver, spleen kidneys pale, bladder empty, small and large intestine contains liquid, gases and faeces.

Injury No. (i) and (ii) communicating to each other. Hence, injury No. (i) wound of entry and injury No. (ii) wound of exit caused by fire, arm. It is stated that the death was due to haemorrhage and shock resulted from above injuries.

Time since death within and about 24 hours.

12. On the same day the doctor examined Vijay Singh son of Nanhaku Singh and found the following ante-mortem injuries:

(i) Lacerated wound 1/4" in. diameter x chest cavity deep with inverted and tattoo margin on the right side of chest just below the right clavicle.

(ii) Lacerated wound 4" in diameter x chest cavity deep with inverted margin on the right side of back below the right scapular angle.

On dissection skull bone NAD substance pale, fracture of 1st and 2nd ribs on the right side of chest on front and fracture of 7th, 8th and 9th ribs on the back of right side, right lung ruptured, left lung pale, chest cavity full of dark blood, heart both chambers empty, liver ruptured, spleen kidneys pale, bladder full of urine, stomach contains about 10 ounces semi digested, semi solid food particles, intestines contains liquid, gases and faeces.

injury No. (i) and (ii) communicating to each other. Hence, injury No. (i) is wound of entrance and injury No. (ii) is wound of exit, caused by fire arm. It is stated that the death was caused by haemorrhage and shock due to above injuries.

Time since death approximately within 24 hours.

13. On the same day the doctor examined Sheopujan Singh son of Baijnath Singh and following ante-mortem injuries were found on his person:

(i) Lacerated wound 1/2" in diameter x deep to the bone on the left arm on front and middle portion with inverted and tattoo mark.

(ii) Lacerated wound 2-1/2" diameter x deep to bone with fracture

of left humerus over the posterior aspect of the arm with everted margin.

(iii) Lacerated wound 1/4" diameter x deep chest cavity with inverted and tattoo over the left side of chest in lower portion.

(iv) Lacerated wound 4" diameter x chest cavity deep on the right side of chest below the axilla with everted margin.

(v) Lacerated wound 3/4" in diameter x deep to mouth cavity with inverted and tattoo margin over left side of face below the angle of mouth.

(vi) Lacerated wound 2-1/2" in diameter x deep mouth cavity with everted margin on the right side of cheek.

On dissection skull bone NAD brain pale, fracture of left mandible and axilla with teeth and alveolous and right maxilla with teeth and alveolous fracture of left humerus with laceration of muscle and blood vessels, fracture of 7th and 8 ribs on the left side of chest in front and fracture of 4th, 5th and 6th ribs on the right lungs ruptured, spleen ruptured. liver and kidney pale, stomach contains 8 ounces semi digested, semi solid food particles. Intestine contains liquid, gases and faeces, bladder empty.

Injury No. (i), (iii) and (v) are communicating to injury No. (ii), (iv) and (vi) respectively. Hence, injury No. (i), (iii) and (v) are entrance and injuries No. (ii), (iv) and (vi) are of exit. Injuries were caused by fire arm. It is stated that the death was due to haemorrhage and shock due to combined effect of above injuries. Time since death within and about 24 hours.

14. The doctor held post mortem examination on the dead body of Shail Kumari wife of Mohan Singh and found the following ante-mortem injuries:

(i) Lacerated wound 3/4" in diameter x deep to mouth cavity with inverted and tattoo margin over the left cheek 1" away the left angle of mouth.

(ii) Lacerated wound 2-1/2" in diameter x deep to mouth cavity with everted margin on the right side cheek 2" away from the right ear;

On dissection skull bone NAD brain pale, fracture of mandible and axilla in both side into multiple pieces with teeth alveolous, except two teeth in upper Jaw and three teeth in upper Jaw, chagumotic bone of right side fractured, tongue lacerated. Heart both chamber empty and pale, both lungs pale, stomach contains 4 ounces semi digested, semi solid food particles, liver, kidneys and spleen pale, stomach contains 4 ounces semi digested, semi solid food particles, liver, kidneys and spleen pale, intestines contains liquid, gases and faeces, uterus normal in size and pale bladder 4 ounces of urine.

injuries No. (i) and (ii) communicating to each other. Hence, injury No. (i) is of

entrance and No. (ii) is of exit caused by fire arm. It is stated that the death was due to excessive haemorrhage and shock due to above injuries. Time since death within and about 24 hours.

15. He held post mortem examination on the dead body of Chhavi Nath Singh and found the following ante-mortem injuries:

(i) Lacerated wound 3/4" in diameter x deep to chest cavity inverted and tattoo margin on the front of chest on upper portion of left side above the nipple.

(ii) Lacerated wound 3-1/2" in diameter x deep to chest cavity with everted margin on the left side of chest on mid axillary line.

(iii) Lacerated wound 1/2" in diameter x deep to bone on the right thigh on the outer part fracture of femur bone in the middle with inverted and tattoo margin.

(iv) Lacerated wound 2-1/2" in diameter x deep to bone on the right thigh with everted margin on medial aspect.

On dissection skull bone NAD brain pale, chest cavity full of dark clotted blood, fracture of 3rd, 4th ribs in front left side of chest, fracture of 8th, 9th, 10th ribs in midaxillary line. Heart and left lung ruptured. Right lung pale, stomach contains semi digested, semi solid food particles liver, kidney spleen pale, intestine contains liquid, gases and faeces, bladder empty.

Injury No. (i) and (ii) are communicating to each other and injury No. (iii) and (iv) are communicating to each other. Hence, Injury No. (i) and (iii) are entrance and injury No. (ii) and (iv) are exit caused by fire arm. It is stated that the death was due to haemorrhage and shock due to rupture of heart and lung and above injuries. Time since death within and about 24 hours.

16. On the same day post mortem examination was done on the dead body of Virendra Singh son of Sheonath Singh and following ante-mortem injuries were found:

(i) Lacerated wound 3/4" in diameter x deep to skull cavity with inverted and tattoo margin fracture of mastoid and parietal on the left side.

(ii) Lacerated wound 4" in diameter x deep to skull cavity with everted margin with fracture of occipital bone in multiple pieces with brain substance lacerated and thrown away. This wound is exit of wound No. (i), both injuries are communicating to each other.

On dissection fracture of mastoid and parietal occipital bone in left side into pieces, brain matter lacerated and thrown away. Heart both chambers empty and pale, both lungs pale, stomach contains 10 ounces semi digested, semi solid food particles, liver, spleen, kidney pale, bladder empty. Intestines contains liquid, gases and faeces.

It is stated that the injuries were caused by fire arm, death was due to excessive haemorrhage and shock due to damage of brain, resulting from injury No. 1.

Time elapsed since death approximately within and about. 24 hours.

17. On the same day the doctor held post mortem examination on the dead body of Phoolmati Devi wife of Chhavi Nath Singh and found the following antemortem injuries:

(i) Lacerated wound 3/4" in diameter x chest cavity deep with inverted and tatoo margin on the right side of chest 1-1/2" above the nipple.

(ii) Lacerated wound with inverted margin 3-1/2" x deep to chest cavity on right side of back 2" below the right scapular angle.

On dissection skull bone NAD brain substance pale, chest cavity full of dark clotted blood, right lung and liver ruptured. Heart both chambers: empty and pale. Fracture of 3rd and 4th ribs on the front of chest and fracture of 4th. Bin and 9th ribs on the right side of back, spleen kidney pale, stomach contained about 6 ounce semi digested and semi solid food particles. Intestine filled with liquid, gases and faeces, bladder filled with urine. Uterus normal and pale.

Injury No. (i) is entrance and No. (ii) is exit and communicating to each other, injuries were caused by fire arm. It is stated that the death was due to haemorrhage and shock due to above injuries. Time elapsed since death within and about 24 hours.

18. On the same day post mortem examination was done by the doctor on the dead body of Sumitra Devi wife of Sheopujan Singh and found the following ante mortem injuries:

(i) Lacerated wound 3/4" in diameter x deep to abdominal cavity over the left flank of abdomen with inverted and tatoo margin. (ii) Lacerated wound 3-1/4 in diameter x deep to abdominal cavity on right side of back with everted margin.

On dissection skull bone NAD brain matter pale. Heart, left chamber empty right chamber contains 2 ounce dark blood, both lungs pale. Rupture of spleen and liver, laceration of stomach and intestine, gutts piled out through injury No. (ii) kidney pale, uterus normal in size, pale bladder full of urine.

Injury (i) is entrance and (ii) is exit communicating to each other caused by fire arm. It is stated that the death was due to haemorrhage and shock due to above injury.

Time since death within and about 24 hours.

19. The statement of Dr. Ram Govind Prasad (P.W. 22) read with post mortem reports (Exhibits 8, 8/a to 8/i), prepared by him, proved that the deceased died on account of antemortem injuries caused by fire arms. It proves that the death was homicidal. The time of death, as assessed by the doctor also indicates that the death would have taken place at the time and date, as alleged by the prosecution.

20. Now, the question remains whether the Appellants participated in committing

the crime as has been alleged by the prosecution.

21. P.W. 20, Kashi Singh, is the informant. He has stated that on 1.1.1991. at about 3.00 P.M. he along with his brother, Tej Narayan Singh, (P.W. 10) and cavillager Angad Singh (P.W. 4) was at his Khalihan, which was at a distance of 15-20 yards north to his residential house. He stated that he saw 35-40 miscreants, variously armed with gun and rifle coming from the side of Chamar Toli. They surrounded his house and some of the miscreants entered into his house. Thereafter, sound of firing and cries of female and children started coming out from his house. He stated that his aunt, Phoolnati, Devi, was coming out of the house and she intended to run towards Khalihan when one of the accused, Mahendra Ram (since deceased) shot Phoolnati Devi by his gun whereupon she fell down and died in the verandah of the residential house. P.W. 20 stated that he started firing by his licensed rifle towards miscreants and miscreants responded by firing towards Khalihan. Thereupon he (P.W. 20), Angad Singh and Tej Narayan Singh went towards the chamber of Angad Singh and taking position behind the said chamber, he started firing towards miscreants who were also firing towards him. He stated that accused Mahendra Ram and Nagina Ram were exclaiming that "Kashi, look we have finished your family". He stated that during the course of incident miscreants were going into and coming out from his house. He stated to have identified Appellants Nagina Ram, Babulal Ram, Ram Gahan Ram, Sheogahan Ram, Vipatu house of Kashi Singh and Khalihan burnt to ashes. He stated that the Sub-inspector of Police, after arrival, collected blood stained earth besides ten cartridges of gun and five empties of rifle from the house of Kashi Singh and drew two separate seizure lists (Exhibits 2 and 2/a.)

24. P.W. 15, Baijnath Singh, who is the father of deceased Sheopujan Singh, stated that on the relevant date and time he was at his Baithka and he saw 30-40 persons, variously armed with guns and rifles, proceeding towards his house from the direction of Chamar Toli. He stated that he identified accused Sagar Lohar, Vipatu Ram, Kalapu Ram, Nagina Ram, Ram Gahan Ram, Sheogahan Ram, Sheomuni Ram, Sankatha Ram, Shanker Ram, Banarsi Ram, Payare Ram and Man-gal Lohar amongst those persons. He stated that out of fear he fled to southeast direction and remained in hiding. He stated that he heard sound of firing and cries coming from his house.

25. P.W. 8, Mohan Singh, the son of deceased Chhavi Nath Singh, stated that on 1.1.1991 at about 3.00 P.M. he was at the roof of his Baithka while his father, Chhavi Nath Singh, and Sheopujan Singh were under the roof and Baijnath Singh was feeding the cattle. He stated that 20-25 miscreants came to his Dalan while about 20 miscreants went towards his residential house. He stated that his uncle, Baijnath Singh fled from that place. He further stated that accused Mahendra Ram, Kalpu and Sankatha Ram took his father, Chhavi Nath Singh and Sheo Pujan Singh to his Zanani Cita. He stated to have identified accused Mahendra Ram, Nagina Ram, Kalpu Ram, armed with guns and Bihari Ram, Sheomuni Ram, Ram Dahin Ram, Dukh Daman Ram, Raman Ram, Vipatu Ram, Kamala Ram,

Sankatha Ram and Sagar Lohar armed with rifles. He had stated that on seeing miscreants he jumped down and ran away.

26. P.W. 6, Chandrika Singh, the brother of deceased Sheo Pujan Singh, stated that on 1.1.1991 he was at the tube well of one Hargen Singh. He stated that he saw that 35-40 miscreants, variously armed, surrounded his house and some of the miscreants entered his house. He stated that thereafter he heard hue and cries of females and children. He further stated that his aunt, Phoolmati Devi, attempted to come out of his Zanani Qita when accused Mahendra Ram shot at her by his gun and she fell down there. He further stated that accused Nagina Ram and Kalpu Ram set fire to his Khalihan. He stated to have identified Mahendra Ram. Kalpu Ram, Nagina Ram, armed with guns and Kamala Ram, Sankatha Ram. Ram Gahan Ram, Vipatu Ram, Payare Ram, Rama Shanker Ram, Mangal Lohar, Sagar Lohar, Ram Bachan Ram and Mahabali Koeri, armed with rifles. He stated that Mahabali was instigating other miscreants. He further stated that at that time Kashi Singh was at his Khalihan wherefrom he went to the chamber of Angad Singh and he (Kashi Singh) also fired (by his fire arm). P.W. 6 further stated that people of Bararhi and Kharanti also arrived and fired towards miscreants. He stated that the rifle looted in the incident was recovered at the place where accused Kalpu Ram and Mahendra Ram were killed in Police encounter and the said rifle has been released in his favour by the court. He stated that dacoits had looted away ornaments, clothes, cash, besides rifle and cartridges from the Zanani Qita and double barrel gun from the Dalan and that miscreants killed nine persons inside his house while Ran Vijay Singh was killed in the lane.

27. P.W. 12, Atar Baso Devi, the mother of P.W. 20, Kashi Singh, stated that at the time of occurrence she was sitting in eastern verandah of her Zanani Qita when dacoits appeared in her court yard. She stated to have identified accused Sankatha Ram and Ram Gahan Ram among those miscreants. She stated to have seen accused Sankatha Ram and Ram Gahan Ram firing by their rifle at Chhavi Nath Singh who was hit on his thigh and chest and died then and there. She stated that she hide herself behind Kothli (used for storing grains) and came out from that place when dacoits left. She stated that when she came out of hiding she found that Sheo Pujan Singh, Virendra Singh, Prabhat Singh, Maharaji Devi, Phoolrmati Devi, Shail Kumari Devi, Brinda Devi and Sumitra Devi had also been killed by the dacoits. She stated that she came to know that Ran Vijay Singh was also killed by the dacoits and that dacoits had set her Khalihan on fire.

28. P.W. 16. Smt. Sohago Devi, is the wife of P.W.6, Chandrika Singh. She stated that at the time of incident she was at the courtyard of her house when 10-20 miscreants armed with rifles and guns, entered the house through western door. She stated that she identified accused Mangal Lohar, Sagar Lohar, Vipatu Ram, Kalpu Ram, and Raman Ram amongst those miscreants. She stated that Kalpu Ram and Vipatu Ram shot at Sumitra Devi by rifles and accused Raman Ram shot at Sheo Pujan Singh by his rifle as a result whereof all the said victims died

then and there. She stated that being frightened she remained in hiding in her house and came out when it fell dark and she heard the voices of her family members. She stated that on coming out she also saw the dead bodies of Chhavi Nath Singh, Virendra Singh, Prabhat Singh, Phoolnati Devi, Shail Kumari Devi. and. Brinda Devi inside her house. She stated that dacoits had looted away rifle, gun and ornaments and also had set fire to the Khalihan. She stated to have witnessed the occurrence through the window while she was hiding under a cot in the room.

29. P.W. 1, Ranjit Singh, P.W. 5, Vakil Singh, P.W. 9 Uma Shanker Singh, P.W. 11 Madan Singh, all inhabitants of village Bararhi, stated that they were at their village Bararhi when sound of firing was heard and hulla was raised in the village that dacoits had attacked the house of Baijnath Singh in village Keshari whereupon they and other persons of their village went to Keshari to the help of Baijnath Singh. They stated that they (Ranjit Singh, Vakil Singh and Uma Shanker Singh and Mukhram Singh, Vim-lesh Singh, Bansh Narayan Singh) with their respective guns and rifles and other persons of the village with lathi went towards village Keshari. They stated that when they were about 250 yards away from village Keshari miscreants started firing towards them whereupon they (these prosecution witnesses) concealing themselves, proceeded ahead and taking position in the fields also fired towards miscreants. They stated that they saw the Khalihan of Baijnath Singh in flames and the house of Baijnath Singh surrounded by 30-40 miscreants. It was further stated that exchange of firing continued till sun set and miscreants, on falling of darkness, fled away in south-west direction. They stated that thereafter they went to the house of Baijnath Singh and found five females, three males and one child killed and one Ran Vijay Singh was found dead in lane. P.W. 1, Ranjit Singh, stated to have identified accused Vipatu Ram, Mangal Lohar and Sagar Lohar amongst the miscreants while P.W. 5, Vakil Singh, stated to have identified accused Mahabali Koeri, who was armed with rifle and Mahendra Ram. Kalpu Ram and Nagina Ram, who were armed with guns, P.W. 9, Uma Shanker Singh, stated to have identified accused Vipatu Ram, who was armed with rifle, accused Nagina Ram and Mahendra Ram, who were armed with guns, amongst the miscreants. P.W. 11, Madan Singh, stated to have identified accused Mahendra Ram, Kalpu Ram, Nagina Ram, armed with guns and Sankatha Ram armed with rifle amongst the miscreants.

30. P.W. 17, Lal Bahadur Singh, stated that on 1.1.1991 at 3.00-3.30 P.M. he was at his Khalihan in village Kharanti when Rama Shanker Singh (P.W. 3) of village Keshari came and told him that dacoits had invaded the house of Baijnath Singh in village Keshari. He stated that on getting this information he, with his gun, one Tribhuwan Singh with his rifle, and seven other persons; went running towards village Keshari and reached near the chamber of Angad Singh. He stated that he saw 30-40 persons surrounding the house of Kashi Singh from east and north direction. He stated to have identified accused Mahendra Ram, armed with gun, and accused Ram Bachan Ram, armed with rifle, amongst the miscreants. He stated that he had also fired shots towards the miscreants. He stated that

after miscreants fled away he went to the house of Kashi Singh where he found that five females, three males and one child had been killed and Ran Vijay Singh was lying dead in the lane.

31. P.W. 18, Ashok Kumar, Judicial Magistrate, has stated that on 6th February, 1991, he conducted the test identification parade in respect of accused Shanker Chamar, Shiv Badan Ram, Lakshman Chamar, Ramashish Ram, Nathuni Ram, Sheopati Ram. Balkishun Ram and Heera Ram. According to his statement accused Shanker Chamar and Shiv Badan Ram were identified. Angad Singh (P.W. 4), Lal Bahadur Singh (P.W. 17) and Tej Narain Singh (P.W. 10) had identified accused Shanker Chamar and Shiv Badan Ram (Appellants in Cr. Appeal No. 565 of 1996) apart from some other cused (who are not Appellants here). According to the statement of Uma Shanker Singh (P.W. 9) he had identified accused Shiv Badan Ram along with other accused persons. P.W. 18 has stated that the witnesses who identified the accused stated that they all were firing by guns. He proved the test identification memo. (Exhibits) also which was prepared by him at the time of test identification parade.

32. P.W. 21, Sri Ram Kripal Sharma. the then Officer-in-charge of P.S. Chand investigated the case. He stated that on 1.1.1991 at about 6.00 P.M. he received, information that an occurrence of murder and dacoity had taken place in village Keshari and this information was entered as S.D.E. No. 10 and 11 on the same date at the Police Station. He stated that thereafter he along with Police Force went to village Keshari and recorded Fardbayan (Exhibit-5) of Kashi Singh and it was sent to Police Station for registering the case. He stated that he inspected the dead bodies of Virendra Singh, Prabhat Kumar, Chhavinath Singh, Sheopujan Singh, Ranvijay Singh, Shail Kumari Devi, Maharaji Devi, Sumitra Devi, Phoolmati Devi and Brinda Devi and prepared in-quest reports (Exhibits-3, 3/A to 3/I). He stated that the blood stained earth (Exhibits) from near the dead bodies were seized and seizure lists were prepared. He also seized ten empty cartridges of 12 bore and five empty cartridges of 315 bore from courtyard house, verandah of Baijnath Singh and lane and prepared its seizure list (Exhibit-2/A). P.W. 21 inspected the place of occurrence. According to him, first place of occurrence was brick built Baithka (sic) Kushi Singh which was situate in the middle of south-east of the village. The Baithka was west facing having five rooms and having Sahan and small Marat, Naad. He found mark of bullet by the side of drain near railing of the roof of the Baithka and second mark of bullet was found on the room. He stated that to the south of this Baithka is Chamar Tola and to the north of this Baithka lies the lane and the female apartment of the informant. The second place of occurrence inspected by P.W. 21 is the lane to the south-west corner of the female apartment of the informant where dead body of deceased Ran Vijay Singh was found. He stated that blood was found at that place which was seized. According to the description given by P.W. 21 the said lane was in between the female apartment of the informant and the Baithka situate to the south (the place of first occurrence). P.W. 21 inspected the third place of occurrence which was the female apartment of the informant. He found the dead body of Shail

Kumari Devi in the Verandah lying in front of the main door. He found dead body of deceased Brinda Devi at the door of middle room situated in the northern portion of the house. He found inside the said room broken box wherefrom the articles had been removed. P.W. 21 found the dead body of Maharaji Devi in the Verandah in front of the second room of the eastern portion of the house. The dead body of Sumitra Devi was found in the middle room of the southern portion of the house. He found dead body of Virendra Singh in the thatched portion on the first floor. P.W. 21 found dead body of Prabhat Kumar in a room in the western portion of the house. The dead bodies of Chhavinath Singh and Sheopujan Singh were found in the verandah adjoining to the exit door to the west. In front of the house of the informant there was Sahan land to the north and a banayan tree was standing on it. The dead body of Phoolmati Devi was found at a distance of about fifty yards towards east near the house of Ram Murat Pandey. The fourth place of occurrence inspected by P.W. 21 is the Khalihan which was at a distance of about one hundred yards to the north of the informant's house. The bundles of paddy were found to be burnt and the flame of the fire was found. P.W. 21 stated that in the same night he searched for the named accused of the village but they all were found absconding. In the same night he recorded the statements of informant and other witnesses. He stated that the dead bodies were not allowed to be taken for post mortem examination by the informant and other co-villagers as they demanded that the District Magistrate and the Chief Minister should come to that place. The dead bodies were allowed to be taken for post mortem examination when District Magistrate and Superintendent of Police arrived at the place of occurrence. He stated that on 13.1.1991 he went along with Police force in village Arangi (in the District Varanasi) and raided the house of accused Shiv Badan Ram where named accused Ram Bachan Ram and other suspected accused Shankar Ram, Shiv Badan Ram and other co-accused were found and apprehended. After completing the investigation P.W. 21 submitted charge sheet against the accused persons including the present Appellants.

33. It has been contended on behalf of Shiv Badan Ram and Shankar Ram (Appellants in Criminal Appeal No. 565 of 1996) that they are not named accused in the case. They were arrested from the house of Shiv Ram at village Arangl in the district of Varanasi wherefrom some other co-accused had been arrested. It has been contended that Shiv Badan Ram has been implicated in the case as some of the co-accused are said to have been apprehended from his house at village Aran-gi and the Appellant Shanker Ram has been implicated as he is brother of co-accused Ram Bachan Ram (Appellant in Criminal Appeal No. 606 of 1996). It has been contended that these two Appellants were identified at the test identification parade by some witnesses. It has been pointed out that the learned trial court itself disbelieved the evidentiary value of the test identification parade and acquitted other co-accused who were identified at the test identification parade. The learned Counsel for the Appellants has referred to the statement of P.W. 21. Shri Ram Kaipal Sharma, the investigating Officer, wherein

he has admitted that on 12.1.1991 after apprehending suspected accused (including the Appellants Shiv Badan Ram and Shankar Ram) he brought them to Police Station Syed Raja (discript Varanasi) where a group photograph of the apprehended accused persons along with him and the Officer-in-charge of Police Station Syed Raja were taken. He further admitted that the news of arrest of such apprehended accused along with the photograph was published in a daily newspaper. P.W. 21 further stated that on 6.2.1991 (the date of holding of test identification parade) all the witnesses had come to him at the Police Station at about 8 A.M. and he had sent those witnesses along with the Assistant Sub-Inspector of Police to the Court of Additional Chief Judicial Magistrate. P.W. 18, Shri Ashok Kumar, Judicial Magistrate, who conducted the test identification parade on 6.2.1991, stated that the witnesses were brought in his chamber by the Investigating Officer and he had introduced those witnesses to him. Shri Ashok Kumar further stated that he had marked some serial number on the palm of each suspected accused which was entered into the test Identification memo. D.W. 1, Rajeshwar Kesari, at the time of his deposition, produced a photograph and a photostat copy purporting to be of daily newspaper "Dainik Jagran" of 14th January, 1991. The trial court also observed that it was admitted fact that the accused persons had been photographed along with the Investigating Officer, Ram Kripal Sharma, soon after their apprehension and that photograph was published in newspaper with news item and the accused persons were put to test identification parade after about twenty two days of their apprehension. The trial court has also referred to the discrepancy between the statement of witnesses in court and the statement made before Magistrate about the overt act of the accused who were identified. Considering all these materials the trial court did not place reliance on the test identification and giving benefit of doubt acquitted seven co-accused but he did not give that benefit to the Appellants Shiv Badan Ram and Shanker Ram. He appears to have convicted these two appellants only on the basis of evidence of P.W. 4 Angad Singh, whose testimony was found to be consistent with what he had stated at the time of test identification" parade. It may be pointed out that out of the four witnesses, who identified Appellant Shiv Badhan Ram at the test identification, three of them Uma Shankar Singh (P.W. 9), Tej Narain Singh (P.W. 10) and Lal Bahadur Singh (P.W. 17), were disbelieved on the point of test identification. Out of the three witnesses identifying Shanker Ram son of Jagrup Ram at the test identification parade, Tej Narain Singh (P.W. 10) and Lal Bahadur Singh (P.W. 17) were disbelieved by the trial court in respect of their evidence regarding identification of the co-accused put in test identification parade. The judgment of the trial court shows that the trial court only relied on the statement of Angad Singh (P.W. 4) on the point of identification of these two Appellants. Thus, there remains only testimony of single witness on the point of identification of these Appellants. It is significant to note that Angad Singh is said to have stated that informant Kashi Singh and Tej Narain Singh were at the Khaliyan at the time of incident and after firing began he along with informant and Tej Narain Singh went to his chamber wherefrom cross-firing started by the informant and other witnesses who reached there.

Therefore, identifying these two Appellants, who were not shown to Angad Singh, from a distance appears to be doubtful particularly when firing was going on. Further, the test identification parade lost its value when it has been shown on record that these two Appellants and other apprehended accused persons were photographed and that photo was published in a daily newspaper alongwith the news item. In these circumstances, possibility of the witnesses having seen the photograph in the newspaper or having been shown the photograph by the Investigating Officer cannot be ruled out. Therefore, benefit of doubt ought to have been given to these two Appellants, Shiv Badan Ram and Shanker Ram also as the benefit of doubt had been given to other co-accused who had been put on test identification parade on account of group photograph and its publication in newspaper. Considering the entire facts and circumstances on record, in my opinion, Shiv Badan Ram and Shanker Ram (Appellants in Criminal Appeal No. 565 of 1996 are entitled to get benefit of doubt and are entitled to be acquitted of the charges framed against them as their participation in the occurrence is not proved beyond all reasonable doubt.

34. It has been contended on behalf of remaining Appellants that P.W. 1, Ranjit Singh. P.W. 5. Vakil Singh and P.W. 9, Uma Shankar Singh, are relatives of the informant and the remaining eye-witnesses excepting P.W. 4 Angad Singh, are the family members" of the informant and are closely related to each other as such the entire evidence is of interested witnesses and no reliance should be placed on such interested testimony.

35. It is well settled that the evidence of interested witnesses or witnesses related to the informant cannot be discarded merely on the ground that they are relatives of family members of the informant. Only caution is that the statement of such witnesses are to be scrutinised with greater care and if, after such scrutiny, their evidence inspires confidence she same may be relied upon. Keeping in view the said principle the statement of the eye-witnesses, who are family members of the informant or related to the Informant, have been scrutinised. Their statements are consistent and nothing has been brought out in their cross examination so as to discredit their testimony. The eyewitnesses have given the account as to what happened on the fateful day and who were the members of the unlawful assembly. They have also given overt act of some of the accused Appellants. There appears to be no valid ground for discrediting the testimony of such witnesses.

36. It has been contended that P.W. 12, Smt. Atarbaso Devi, in her statement, stated that accused Ram Gahan and, Sankatha shot at Chhavinath Singh by their rifles but the Investigating Officer; found only empty cartridges of 12 bore as such the statement of P.W. 12, about shooting Chhavinath Singh by rifle by the said two accused is not correct and should not be relied upon The statement of Ram Kripal Sharma, P.W. 21. shows that he found ten empty cartridges of 12 bore and five empty cartridges of 3.15 on which 8 mm was written. Therefore, it cannot be said that only empty cartridges of 12 bore were found. Moreover the

injuries found on the person of Chhavinath Singh, deceased, shows that there were two wounds of entry with two wounds of exit. The dimension of the wound of entry and wound of exit show that it could not have been caused by 12 bore cartridge. No pellets were found inside the body. The statement of P.W. 12, Atarbaso Devi, regarding shooting by rifle by accused Ram Gahan and Sankatha cannot be said to be inconsistent with the injuries found on the person of the deceased Chhavinath Singh. The contention to the contrary by the learned Counsel for the Appellants does not carry any force.

37. It has been contended on behalf of the Appellants that the presence of P.Ws. who state to have come from village Barhari appears to be doubtful. It is contended that village Barhari is at a distance of about half kilometer from the place of occurrence and the witnesses from the village state to have come on receiving information of firing as such they would have arrived very late and would not have been in a position to see the occurrence regarding shooting of the deceased persons and would not have been in a position to identify any accused from a distance when firing and cross firing was taking place. It is difficult to uphold this contention. Those witnesses have stated that on receiving information they came to the village of occurrence and saw the firing being done by the miscreants and these witnesses also took position and started firing towards miscreants. It has not been brought out in their statements that there was any obstruction between the place where the witnesses were and the place of occurrence and that they could not be in a position to see the miscreants. These witnesses have not named all the accused persons against whom prosecution went on. They had identified only some of the accused. It shows that they identified only such of the miscreants whom they could see during the course of firing.

38. It has been contended that the accused Appellants were implicated on account of enmity. However, there does not appear to be any evidence in support of the plea of false implication. There is consistent version about the incident which took place in the day time and the possibility of wrong identification cannot be expected. The eye-witnesses have consistently stated about the incident and the participation of the various accused. The statements of P.Ws. show that Appellants Sri Ram Ram and Babula Ram were identified by P.Ws. 10 and 20 and Appellant Mangaru Ram and Shyam Narayan Ram were identified by P.Ws. 3, 10 and 20. The Appellant Banarsi Ram was identified by P.Ws. 15 and 20 while Appellant Ram Dahin Ram was identified by P.Ws. 3, 8 and 20. Appellant Kamala Ram was identified by P.Ws. 3, 4, 6, 8, 10, 14, 20 and Appellant Sheogahan Ram was identified by P.Ws. 3, 4, 15 and 20. Appellant Nagina Ram was identified by P.Ws. 3, 4, 5, 6, 8, 9, 11, 14, 15, 20 and Appellant Ram Shanker Ram was identified by P.W. 20. Appellant Ram Pyare Ram was identified by P.Ws. 6, 14, 15 and 20. Appellant Vipatu was identified by P.Ws. 1, 3, 4, 6, 8, 9, 14, 15, 16 and 20. Appellant Sankatha Ram was identified by P.Ws. 4, 6, 8, 11, 12, 14 and 20. Appellant Ram Gahan Ram was identified by P.Ws. 3, 6, 10, 12, 14, 15 and 20. Appellant Ram Bachan Ram has been identified by P.Ws. 4, 6, 17 and 20. The

participation of all these accused Appellants in the crime is well established by the statements of the eye-witnesses as has been referred to earlier.

39. It has been next contended that deceased Maharaji had only one injury. P.W. 16, Smt. Sohago Devi stated that Kalpu Ram and Vipatu Ram shot by their rifles at Maharaji Devi. It is further con-tended that according to the own statement of P.W. 16, Smt. Sohago Devi, she remained in hiding in her house and came out when it fell dark and she heard the voices of her family members. It has been pointed out that according to the statement of P.W. 16 she was hiding under a cot in the room. It is contended that in this situation P.W. 16 could not have been in a position to have seen the occurrence outside the room through the window in the position lying under a cot as such her statement regarding identification of some of the accused persons are regarding shooting Maharaji by Vipatu Ram is not worth reliance. It has not come as to what was the height of the cot and what was the height of the window from the ground level. Merely because P.W. 16 was lying under a cot in a room it cannot be said that she was not in a position to see any occurrence outside the room through the window of the room. Moreover, even if the statement of P.W. 16 is excluded regarding identification of some of the accused Appellants it does not affect the prosecution case as their participation is well established by the testimony of other witnesses.

40. It has been contended on behalf of the Appellants that according to the prosecution case itself the unlawful assembly was formed by 35-40 persons including the present Appellants and the murders are said to have taken place by the action of the unlawful assembly. The accused Appellants Vipatu Ram, Sankatha Ram and Ram Gahan Ram may be said to have acted in prosecution of the common object of the unlawful assembly or may be said to have participated in the dacoity in which murders also took place. It is urged that in these circumstances, it does not appear to be rarest of rare cases to warrant imposition of death sentence on the Appellants Vipatu Ram, Sankatha Ram and Ram Gahan Ram.

41. In the case of Shamshul Kanwar Vs. State of U.P., it has been held by the Apex Court that number of death ipso-facto would not be a ground to bring cases in category of rarest of rare cases. In the said case ten deaths had taken place and apart from accused sentenced to death other accused, was armed with rifle and he had fired. The Apex Court, considering the facts and circumstances of the said case, set aside the sentence of death and con-, verted the same to life imprisonment. In the present case also Sankatha Ram and " Ram Gahan Ram are said to have shot at Chhavinath Singh. The ante morterh injuries of Chhavinath Sihng show that he had received one wound of entry on his chest and one wound of entry on thigh. It cannot be said with certainty as to whose shot, out of these two accused-Appellants, had hit the chest. The cause of death of Chhavinath Singh was stated to be the haemorrhage and shock due to rupture of heart and lung and the above injuries.

42. Simillary, Vipatu Ram Appellant and one Kalpu Rani (not Appellant here) are

said to have shot by their rifles at Maharaji Devi deceased. Only one wound of entry was found on the person of Maharaji Devi deceased. The other wound was wound of exit, it cannot be said with certainty as to whose shot out of Vipatu Ram and Kalpu Ram had hit Maharaji Devi.

43. In these circumstances, keeping in view the observations of the Apex Court in the case of *Shamshul Kanwar v. State of U.P.* (supra) the cases of Appellants Vipatu Ram, Sankatha Ram and Ram Gahan Ram cannot be said to come within "rarest of rare cases" so as to warrant death sentence against them. In my opinion, the learned trial court has erred in awarding death sentence to Appellants Vipatu Ram, Sankatha Ram and Ram Gahan Ram. The death sentence may be altered to the sentence of life imprisonment.

44. In the result the Criminal Appeal No. 565 of 1996 is allowed and the Appellants Shiv Badan Ram and Shanker Ram of the said appeal are held not guilty of the charges against them and they are acquitted of the said charges.

45. The Death Reference is not accepted. While upholding the conviction of Appellants Vipatu Ram, Sankatha Ram and Ram Gahan Ram, who are Appellants in Criminal Appeals No. 572 and 552 of 1996, the death sentence awarded to them is commuted to life imprisonment. The Criminal Appeals No. 572 and 552 of 1996, thus, stands allowed partly only in respect of sentence and is dismissed for remaining part.

46. The Criminal Appeals No. 592 and 606 of 1996 are dismissed.

R.N. Sahay, J.

I agree.