

(2013) 10 PAT CK 0003

In the Patna High Court

Case No : Death Reference No. 5 of 2010 and Criminal Appeal (DB) No. 465 of 2010

The State of Bihar

APPELLANT

Vs

Girja Singh and Others
 Ravindra Singh Vs The State
of Bihar

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 161, 162, 465
Motor Vehicles Act, 1988 — Section 163A
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 182
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)(v)

Citation : (2013) 4 PLJR 464

Hon'ble Judges : V.N. Sinha, J; Amaresh Kumar Lal, J

Bench : Division Bench

Advocate : Ranjit Kumar, Abhinav Mukerji, Ashwani Kumar Sinha, Dilip Kumar Sinha, S.C. Mishra, Abhimanyu Sharma, Ajay Mishra and Ms. S.B. Verma, apps. in D. Ref. No. 5 of 2010, Mr. Rama Kant Sharma, Lakshmi Kant Sharma, Rajesh Kumar and Ravish Chandra, in CR. app DB No. 465 of 2010 and CR. app DB No. 563 of 2010, Surendra Singh, B.P. Pandey, Pramod Kumar and Ravi Bhardwaj, in CR. app DB No. 517 of 2010, CR. app DB No. 619 of 2010, CR. app DB No. 498 of 2010 and CR. app DB No. 516 of 2010, Mr. Pushkar Narain Shahi and Mr. Patan Jali in CR. app DB No. 528 of 2010 and CR. app DB No. 471 of 2010, Mr. Krishna Prasad Singh, Manindra Kishore Singh and Smt. Meena Singh, in CR. app DB No. 565 of 2010, CR. app DB No. 499 of 2010, CR. app DB No. 501 of 2010 and CR. app DB No. 514 of 2010, Mr. Kanhaiya Prasad Singh, Atal Bihari, Birendra Kr. Singh, Love Kush Kumar and Mrs. Jyotsna Singh, in CR. app DB No. 593 of 2010, CR. app DB No. 476 of 2010 and CR. app DB No. 479 of 2010, Mr. Ram Suresh Roy, Abhay Kumar Roy, Binod Kumar Singh, Gaurav Kumar, Tripurari Sharan, in CR. app DB No. 618 of 2010 and CR. app DB No. 621 of 2010, Amarnath Singh and Ashok Kumar, in CR. app DB No. 641 of 2010 and in CR. app DB No. 658 of 2010 and Mr. Birendra Kumar in CR. app DB No. 845 of 2010, for the Appellant; Ranjit Kumar, Abhinav Mukerji, Advocate, Ashwani Kumar Sinha, Dilip Kumar Sinha, S.C. Mishra, Abhimanyu Sharma, Ajay Mishra and Ms. S.B. Verma, APPs. for State in all Cr. Appeals, for the Respondent

Judgement

V.N. Sinha, J.—The Death Reference and 20 Criminal Appeals arise out of judgment/order dated 07.04.2010 passed by 1st Additional Sessions Judge, Patna in Sessions Case No. 2 of 1999, arising out of Mehandia P.S. Case No. 126 of 1997, whereunder Accused Nos. 1 to 26, namely, Girja Singh, Surendra Singh, Ashok Singh, Gopal Sharan Singh, Baleshwar Singh, Dwarika Singh, Bijendra Singh, Nawal Singh, Balram Singh, Nandu Singh, Shatrughan Singh, Nand Singh, Pramod Kr. Singh, son of Gopal Sharan, Dharichan Singh, Chandeshwar Singh, Ram Kewal Sharma @ Kawal, Dharma Singh, Shiv Mohan Sharma, Ashok Sharma, Babloo Sharma, Mithilesh Sharma, Navin Kumar, Ravindra Singh, Sunil Kumar, Pramod Singh, son of Late Sankh Singh and Surendra Singh have been convicted for the charge under Sections 147, 148, 302 /149 read with sections 120B, 460, 307 /149 of the Indian Penal Code, Section 27 of the Arms Act and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as the "Act"). Having convicted the aforesaid accused, learned trial court sentenced accused Nos. 1 to 16, namely, Girja Singh, Surendra Singh, Ashok Singh, Gopal Sharan Singh, Baleshwar Singh, Dharma Singh, Dwarika Singh, Bijendra Singh, Nawal Singh, Baliram Singh, Shiv Mohan Sharma, Nandu Singh, Pramod Singh, Shatrughan Singh, Ram Kewal Sharma @ Kawal and Nand Singh to suffer death sentence for the offence under Sections 302 /149 read with section 120B of the Indian Penal Code. Accused nos. 17 to 26, namely, Ashok Sharma, Babloo Sharma, Mithilesh Sharma, Dharichan Singh, Chandeshwar Singh, Navin Kumar, Ravindra Kumar, Surendra Singh, Sunil Kumar, Pramod Singh have been directed to undergo R.I. for life under Sections 302 /149 read with Section 120B of the Indian Penal Code and to pay a fine of Rs. 50,000/- each. Accused nos. 1 to 26 have been further directed to undergo R.I. of one, two, five years with fine of Rs. 5,000/-, ten years with fine of Rs. 25,000/- each under Sections 147, 148, 460, 307 /149 of the Indian Penal Code respectively. Accused Nos. 1 to 26 have further been sentenced to undergo R.I. of one year, one year with fine of Rs. 1000/- each u/s 27 of the Arms Act and Section 3(2)(v) of the Act. The sentences imposed on accused Nos. 1 to 26 have, however, been directed to run concurrently. Appellants 1. Ravindra Singh, 2. Nandu Singh, 3. Shatrughan Singh, 4. Mithilesh Sharma, 5. Dharichhan Singh, 6. Babloo Sharma, 7. Pramod Singh @ Pramod Kr. Singh son of Late Sankh Singh 8. Ashok Sharma, 9. Surendra Singh, 10. Navin Kumar, 11. Sunil Kumar, 12. Nand Singh, 13. Chandeshwar Singh 14. Gopal Sharan Singh, 15. Balram Singh 16. Pramod Kumar Singh son of Gopal Sharan Singh, 17. Dwarika Singh, 18. Ram Kewal Sharma, 19. Nawal Singh, 20. Ashok Singh, 21. Bijendra Singh 22. Surendra Singh son of Mahadeo Singh 23. Girija Singh, 24. Baleshwar Singh are Accused No. 23, 10, 11, 21, 14, 20, 25, 19, 26, 22, 24, 12, 15, 4, 9, 13, 6, 16, 8, 3, 7, 2, 1, 5 respectively. The other accused Nos. 27 to 45, namely, Awani Bhushan Kumar, Ram Eqbal Sharma, Dharikshan Chaudhary, Butan Chaudhary @ Harendra Chaudhary, Chandra Shekhar Chaudhary, Arvind Kumar, Ramesh Singh, Sri Niwash Pandey, Ajay Singh, Dudul Singh, Bhagelu Singh, Munshi Singh,

Ranjeet Singh, Saroj Rai @ Saroj Singh, Bhola Rai, Sidhyanath Rai, Suresh Rai, Jata Singh and Hridaya Singh have been acquitted of the aforesaid charge. Reference of Accused No. 17, Dharma Singh is not being considered as from the judgment itself it appears that he absconded on 07.04.2010 and was not available for receiving the sentence on the same day. During the pendency of the reference, Accused No. 1, Girja Singh and Accused No. 18 Shiv Mohan Sharma died on 14.8.2012, 16.9.2010 respectively. After confirming their death, reference made, appeal filed by the two has been directed to abate against them under order dated 8.2.2012.

2. Prosecution case of Mehandia P.S. Case No. 126 of 1997, as set out in the fardbeyan of Binod Paswan, son of Ram Chela Paswan of village Laxmanpur Bathe, P.S. Mehandia, District Jehanabad recorded by S.I. Akhilendra Kumar Singh, Officer Incharge, Mehandia P.S. on 02.12.1997 at 9.30 A.M. in village Laxmanpur Bathe is that in the night of 01/02.12.1997 at about 10.30 P.M., informant, his family members as also other villagers having taken their meal were sleeping in their house(s), suddenly heard indiscriminate shots being fired. Informant, his family members awoke and were coming out of their rooms, suddenly 10-15 miscreants armed with rifle forcibly entered into his house and resorted to indiscriminate firing killing seven of his family members, namely, Kunwar Paswan, Amar Paswan, Rita Devi, Kabutari Devi, Anoj Paswan, Raj Rani Devi and Rohan Paswan. While the firing was going on, informant somehow saved himself by going behind the earthen Storage. After killing the family members of the informant, miscreants went away. After half an hour of the incident, slogan proclaiming victory of Ranvir Baba was heard whereafter informant climbed the roof and saw about 150 miscreants of Ranvir Sena armed with rifle. From amongst the miscreants informant identified in the torchlight his 19 co-villagers, namely, (1) Phanish Kumar Singh, son of Birendra Singh (2) Ashok Singh son of Indradeo Singh (3) Anjani Singh son of Dwarika Singh (4) Pramod Kumar Singh son of Gopal Singh (5) Gopal Singh son of Awadhesh Singh (6) Baliram Singh son of Awadhesh Singh (7) Dharikshan Singh son of Jhulan Singh (8) Surendra Singh son of Mahavir Singh (9) Dwarika Singh son of Bodha Singh (10) Nand Singh son of Late Kameshwar Singh (11) Chandeshwar Singh son of Kameshwar Singh (12) Kawal Singh son of Late Shital Singh (13) Nawal Singh son of Majani Singh (14) Bhukhan Singh son of Ramdhyan Singh (15) Girja Singh son of Late Patiram Singh (16) Nandu Singh son of Baleshwar Singh (17) Baleshwar Singh son of late Parshuram Singh (18) Bijendra Singh son of Sidhnath Singh (19) Shatrughan Singh son of Ram Ekbal Singh, all of village Laxmanpur Bathe and 7 miscreants of village Kamta, namely, (20) Dharma Singh son of Shiv Shamra (21) Ashok Sharma son of Naresh Sharma (22) Shiv Mohan Sharma son of Mangal Sharma (23) Surendra Singh son of Rampyare Sharma (24) Sudarshan Sharma son of Triveni Sharma (25) Babloo Sharma son of Dwarika Sharma (26) Mithilesh Sharma son of Vijay Sharma. About the other miscreants, informant claimed in the fardbeyan that he can identify them by their face. It is further claimed in the fardbeyan that miscreants while leaving the

village raised slogan proclaiming the victory of Ranvir Baba and went towards north/Chhotki Kharaon village after crossing river Sone. After about half an hour of the miscreants leaving the village informant heard weeping, wailing by the villagers and then went to the house of his neighbour, Shiv Bachan Ram where he found (1) Shiv Bachan Ram (2) Samudri Devi wife of Shiv Bachan Ram (3) Raj Kumar Ram (4) Jayant Kumar (5) Chhathiya Devi dead after having suffered gun shot injury. From the house of Shiv Bachan Ram, informant went to the house of Ganeshi Rajbansi where he found the dead body of (1) Prabha Devi wife of Ganeshi Rajbansi (2) Jaimurti Devi wife of Laxman Rajbansi (3) Kanti Devi wife of Surendra Rajbansi. From the house of Ganeshi Rajbansi, informant went to the house of Debesh Rajbansi and found the dead body of (1) Debesh Rajbansi (2) Sohar Rajbansi (3) Kamlesh Rajbansi (4) Kalawati wife of Debesh Rajbansi (5) Malti Devi wife of Kamlesh Rajbansi. From the house of Debesh Rajbansi, informant went to the house of Laxman Rajbansi and found the dead body of (1) Atwaru Devi wife of Laxman Rajbansi (2) Rupkali Devi wife of Munni Rajbansi (3) Chhotelal Rajbansi (4) Domani Devi wife of Ram Sudin Rajbansi (5) Sheela Devi daughter of Munni Rajbansi (6) Sunita Kumari daughter of Ram Sudin. All the aforesaid persons had suffered gun shot injury. From the house of Laxman Rajbansi, informant went to the house of Yaduni Rajbansi and found the dead body of (1) Raj Mania Devi wife of Yaduni Rajbansi (2) Phul Kumari Devi wife of Bindeshwar Rajbansi (3) Chania daughter of Bindeshwar (4) Raj Kumari Devi wife of Mutur Rajbansi (5) Vishwanath Rajbansi (6) Saroj Kumari daughter of Mutur Rajbansi. After having visited the house of his neighbours, informant went around the village and found the dead body of (1) Garib Chandra Chaudhary (2) Sanichar Chaudhary (3) Sona Devi wife of Sikandar Chaudhar (4) Anita daughter of Sikandar Chaudhary (5) Savita Kumari (6) Mahendra Chaudhary (7) Dhanrajia Devi wife of Mahendra (8) Om Nath Chaudhary (9) Nanhak Chaudhary (10) Munni Devi wife of Moti Chaudhary (11) Jagtar Chaudhary (12) Meena Devi wife of Mahendra Chaudhary (13) Arvind (14) Sumitra Kumari (15) Sita Kumari (16) Chunni Chaudhary (17) Manmatia Devi wife of Chunni Chaudhary (18) Rampulis Mahto (19) Wasuti Devi wife of Rampulis Mahto (20) Taregni Devi wife of Nagmani Mahto (21) Bijendra Thakur. All the aforesaid persons were killed by gun shot. It is further claimed in the fardbeyan that informant, 2-4 others raised alarm, but during the night none of the villagers came out to help them. In the morning, informant further learnt that on the northern bank of Sone river, which is within Sahar P.S., five persons have been killed by slitting their neck. Besides those killed, there are others, who have been injured and have gone for treatment. According to the informant, other victims have also been abducted. In the morning, others including police arrived and recorded fardbeyan of the informant. In the penultimate paragraph of the fardbeyan, informant claimed that the members of the Ranvir Sena in order to establish their supremacy killed 58 persons by firing shot, slitting their neck. Shyam Bihari Paswan, resident of village Injure, P.S. Mehandia, brother-in-law of the informant is a witness to the fardbeyan. On the basis of the fardbeyan, aforesaid Mehandia P.S. Case No. 126 of 1997 dated 02.12.1997 for the offence

under Sections 147, 148, 149, 452, 307, 364, 302 of the Indian Penal Code and 27 of the Arms Act was registered by S.I. Ajay Kumar Singh of Mehandia P.S. on 2.12.1997 at 3.00 P.M. with endorsement that Shri Dhar Mandal, SDPO, Arwal has already taken up its investigation at the place of occurrence. After registration of the First Information Report, Sri Ajay Kumar Singh forwarded the First Information Report to the court of C.J.M., Jehanabad on 02.12.1997 itself through special messenger but the First Information Report was received in the court of C.J.M., Jehanabad on 04.12.1997 as would appear from the endorsement made by the learned C.J.M., Jehanabad on the First Information Report itself.

3. After recording of the fardbeyan, investigation was taken up by Shri Dhar Mandal, SDPO, Arwal and on his instructions, inquest report of the 58 deceased was prepared by S.I., Mehandia P.S. and other Sub-Inspector(s) present at the place of occurrence and blood stained earth/sand, empties of the cartridges were also seized from the place of occurrence vide seizure list Exts. 7-7/13, 9-9/13, 10-10/10, 11-11/10 by the Officer Incharge, Mehandia P.S. and other subordinate police officers present at the place of occurrence. On the same day, Shri Dhar Mandal recorded further statement of the informant. Having recorded the further statement of the informant, Investigating Officer Shri Dhar Mandal instructed his subordinates to take the four injured, namely, Mahesh Rajbansi, Bimlesh Rajbansi, Ramanuj Rajbansi and Mahurati Devi to the Government hospital for treatment. In the light of the contents of the fardbeyan that the miscreants had come from the side of Sahar P.S. and had also gone towards that side i.e. village Chhotki Kharaon, Barki Kharaon, Lodipur, Investigating Officer Shri Dhar Mandal spoke to Officer-in-charge Sahar P.S. and S.P. Bhojpur at 10.35 A.M. through wireless and requested them to track the assailants who had gone towards Sahar area. Investigating Officer having taken notice of the large number of the deceased, requested the District Magistrate, Jehanabad to make available a team of doctors at the place of occurrence itself for conducting post-mortem of the deceased. At about 11 A.M. on 02.12.1997 itself, Investigating Officer Shri Dhar Mandal proceeded to inspect the 14 place(s) of occurrence, including southern, northern bank of the river Sone in presence of the witnesses, including Ramchela Paswan, father of the informant. On the southern bank of the river Sone he found three dead bodies of Chanarik Chaudhary son of Chulhan Chaudhary, his two sons, Gorakh Chaudhary and Shiv Kailash Chaudhary with sign of dragging the dead bodies till the river. On the northern bank of the river Sone he further found two dead bodies of Naresh Chaudhary and Ram Niwas Chaudhary, both sons of Mahesh Chaudhary near a hut where not only copious blood was found on the bank, but also a boat anchored smeared with blood. After inspecting the place of occurrence, including both the banks of river Sone, Investigating Officer Shri Dhar Mandal learnt through wireless at 4.05 P.M. that formal First Information Report has already been drawn and then spoke to Officer-in-charge, Sahar P.S. at 4.15 P.M. requesting him to track the assailants who having crossed the Sone river went towards Sahar area. On the same day at

about 5 P.M. he received the inquest report of the deceased, seizure list with seized articles with supplementary case diary from Akhilendra Kumar Singh and directed for safe custody of the seized blood stained earth, empty cartridges in the Malkhana of the P.S. On the same day at 6 P.M., he recorded the statement of Munni Devi wife of Kaulu Rajbansi, Raj Ganesh Rajbansi son of Laxman Rajbansi, Munni Rajbansi, son of Pappan Rajbansi, Yaduni Rajbansi son of Deo Sharan Rajbansi. Having conducted the preliminary investigation, Investigating Officer Shri Dhar Mandal on 2.12.1997 took steps to arrest the fardbeyan named accused persons of village Bathe, but they were found absconding. On 03.12.1997, Shri Dhar Mandal took steps for the arrest of fardbeyan named accused, resident of village Kamta, but they were also found absconding. On 03.12.1997 at about 8 AM, Shri Dhar Mandal recorded the statement of Muttur Rajbansi, son of Yaduni Rajbansi, Dudhnath Chaudhary son of Garib Chand Chaudhary, Sikandar Chaudhary son of Garib Chand Chaudhary and on the same day at 5.25 P.M. arrested Accused No. 3 Ashok Singh as also seized a double barrel gun from the house of Accused no. 4, Gopal Singh and forwarded the arrested accused as also seized double barrel gun to the P.S. at about 6.15 P.M. for being kept in the Hazat, Malkhana of the P.S. Having forwarded the arrested accused and the gun to the P.S., Investigating Officer Shri Dhar Mandal recorded the statement of three witnesses i.e. signatory to the inquest report, namely, Dharmendra Yadav, Kamaldeo Ram, Baijnath Prasad in the same evening at 6.30 P.M. On 03.12.1997 at about 8.30 P.M., Investigating Officer Shri Dhar Mandal proceeded to conduct raid and met officer-in-charge, Sahar P.S. During raid, all the fardbeyan named accused persons of village Bathe were found absconding. Investigating Officer, however, instructed officer-incharge, Mehandia P.S. to produce the arrested accused Ashok Singh for his judicial remand. On 04.12.1997 at about 15.10 hours, Investigating Officer recorded the statement of Belwanti Kumari, Sohrai Mahto and Anil Kumar and arrested Accused No. 23 Ravindra Kumar Singh, Awadhesh Singh. The two arrested accused were produced for judicial remand on his instruction on 05.12.1997 at 6.45 hours. He also issued instruction for obtaining warrant, attachment warrant against the absconding accused. On 05.12.1997 at about 9 AM recorded the statement of Laxman Rajbansi, Om Prakash Paswan, Surendra Rajbansi. On 06.12.1997, Investigating Officer Shri Dhar Mandal raided the school in village Kamta wherefrom arrested Accused No. 2 Surendra Singh and Accused No. 5 Baleshwar Sharma and forwarded them for obtaining their judicial remand. On the same day, Investigating Officer obtained orders for execution of attachment warrant in presence of Magistrate. On 06.12.1997, Investigating Officer also examined Pancham and Baidyanath Prasad. On 07.12.1997 at about 12.45 A.M. Investigating Officer Shri Dhar Mandal proceeded to conduct raid for the arrest of absconding accused and in village Chanda arrested Accused No. 27 Awani Bhushan Kumar, Accused No. 22 Navin Kumar, Accused No. 24 Sunil Kumar, Accused No. 26 Surendra Singh and Accused No. 18 Shiv Mohan Singh but forwarded them on 8.12.1997 for their judicial remand. Out of the five arrested accused from village Chanda, Surendra Sharma and Shiv Mohan Singh are

resident of village Kamta. On 07.12.1997, he also received supplementary case diary containing seizure list. Investigating Officer Shri Dhar Mandal recorded the statement of Yugal Ravidas and Subedar Ravidas on 08.12.1997. DIG, CID, Patna under memo no. 3829/C dated 09.12.1997, wireless message No. 3830 dated 09.12.1997 instructed Investigating Officer Shri Dhar Mandal to hand over investigation of Mehandia P.S. Case No. 126 of 1997 to Sri Mirza Maksood Alam Beg, Dy. S.P., CID, Patna who took over the investigation on 10.12.1997, but before handing over the investigation to Mirza Maksood Alam Beg, Shri Dhar Mandal recorded the statement of Krishna Chaudhary and Rama Chaudhary as also obtained surrender slip of six fardbeyan named accused. Mirza Maksood Alam Beg having taken charge of the investigation, perused the case diary of the case maintained by the earlier Investigating Officer along with his investigating team comprising of Inspector Indu Bhushan Prasad, Inspector Anant Prakash Singh, Inspector Ashok Kumar Das, Inspector Ram Sharan Chaudhary, S.I. Shyam Nandan Sharma, S.I. Deo Narayan Mahto, S.I. Ravindra Nath Sharma, S.I. Dhananjay Kumar and other A.S.Is. Second Investigating Officer Mirza Maksood Alam Beg along with his team recorded the statement of the informant as also inspected the place of occurrence in the light of the information gathered from the informant. Second Investigating Officer also recorded the statement of Raj Vinesh Rajbansi @ Ram Vinesh Rajbansi, Munni Rajbansi, Yaduni Rajbansi, Mukul Rajbansi, Sikandar Chaudhary, Dudh Nath Chaudhary, Belwanti Kumari, Sohrai Mahto, Laxman Rajbansi, Surendra Rajbansi, Ramugrah Rajbansi, Yugal Ravidas, Subedar Ravidas, Baijnath Prasad, Ram Vinay Prasad, Anil Kumar, Pappu Kumar, Kamaldeo Ram, Kamakhya Narayan, Sahindra Paswan, Om Prakash Paswan, Panchanand Paswan, Ramashray Ram on 15.12.1997. Second Investigating Officer Mirza Maksood Alam Beg also recorded the statement of Ramnuj Pandit, Dukhan Chaudhary, Bhagwan Ramani, Bhutti Ram, Sidhnath Paswan and then instructed Inspector Ashok Kumar Das and S.I. Deo Narayan Mahto, members of investigating team to obtain post-mortem, injury report and submit the same along with supplementary case diary. On 17, 18.12.1997, Second Investigating Officer Mirza Maksood Alam Beg recorded the statement of Accused No. 3 Ashok Singh, Accused No. 2 Surendra Singh, Accused No. 5 Baleshwar Sharma, Accused No. 16 Kawal Singh @ Ram Kewal Sharma, Accused No. 12 Nand Singh, Accused No. 15 Chandeshwar Singh, Accused No. 8 Nawal Singh in jail. On 18.12.1997, Second Investigating Officer Mirza Maksood Alam Beg further recorded the statement of Accused No. 21 Mithilesh Sharma, Accused No. 20 Babloo Sharma, Accused No. 19 Ashok Sharma, Bhushan Singh (died during trial), Accused No. 1 Girja Singh, Sudarshan Sharma (died during trial), Accused No. 26 Surendra Sharma, Accused No. 18 Shiv Mohan Sharma, Awadhesh Singh, Accused No. 7 Bijendra Singh, Accused No. 11 Shatrughan Singh, Accused No. 10 Nandu Singh and non-FIR accused Rabindra Kumar Singh, Ram Ekbal Sharma, Sunil Kumar, Navin Kumar, Awani Bhushan in jail. Second Investigating Officer Mirza Maksood Alam Beg also recorded the statement of Chaukidar Baleshwar Singh, Ramdhari Singh, Ram Chandra Chamar, Awadhesh Chamar, Mangal Chamar, Jawahar Mushar, Gopichand Singh, Keshlal Chaudhary,

Siyaram Chaudhary, Dashrath Sharma, Surendra Prasad, Ayodhya, Naresh Kahar, Hira Sah, Hridya Sah, Sipahi Ram, Hari Narayan Ram, Rajan Ram, Amir Chand Ram, Shiv Shankar Ravidas, Gupteshwar Kahar, Chaukidar Purnmashi Ram, Raj Kumar Ram, Nathu Tanti, Kashi Sah, Ramnath Ram, Jai Pati Paswan, Dashrath Ram and Onkar Tiwari. Having recorded the statement of the aforesaid witnesses, Second Investigating Officer Mirza Maksood Alam Beg obtained police remand of Accused No. 3 Ashok Singh and accused Sudarshan Sharma who died during trial. Accused No. 14 Dharichan Singh surrendered in the court on 23.12.1997. He further recorded the statement of Bhagera Kanu, Banshidhar Sharma and Jawahar Mushar. Second Investigating Officer Mirza Maksood Alam Beg also recorded the statement of injured Bimlesh Kumar. Second Investigating Officer Mirza Maksood Alam Beg further instructed Inspector Indu Bhushan Prasad, a member of his investigating team to record statement of the injured getting treatment in PMCH who having recorded the statement of Mahurati Devi, Mahesh Rajbansi and Manoj Rajbansi, submitted supplementary case diary containing their statement. Second Investigating Officer Mirza Maksood Alam Beg also obtained the criminal antecedent of members of Ranvir Sena, namely, Jata Singh, Vijay Singh, Suresh Rai, Bhola Rai, Bipin Bihari Rai, Goga @ Shiv Shankar Rai, Pramod Singh, Santu Singh, Chandra Keshwar Rai, Arvind Kumar Singh, Ramesh Singh, Srinivas Pandey, Sidhnath Rai being accused in different cases of Sahar, Sandesh, Udwant Nagar, P.S. Ara Town, Ara Nawada P.S. Accused Kamlesh Bhatt being accused in Charpokhari P.S. Case No. 14/79, 20/97, 40/93, 84/84, 113/84, 11/85, 71/87, 8/88, 75/90, 7/85, 91/93, 69/97, Kamakhya Singh being accused in Charpokhari P.S. Case No. 69/97, Brahmeshwar Singh Mukhia being accused in Sandesh P.S. Case No. 35/95, 45/95, Sahar P.S. Case No. 37/95, Sandesh P.S. Case No. 50/95, Udwant Town P.S. Case No. 154/95, Sahar P.S. Case No. 49/96, 67/96, 68/96, 69/96, Charpokhari P.S. Case No. 61/96, Sahar P.S. Case No. 98/96, 153/96, Sandesh P.S. Case No. 119/96, Pawana P.S. Case No. 93/97, Panjore P.S. Case No. 35/97, Vishwanath Rai being accused in Pawana P.S. Case No. 123/95, 119/96, Hridaya Singh being accused in Sandesh P.S. Case No. 43/97, Ajay Singh being accused in Sandesh P.S. Case No. 37/97.

4. Second Investigating Officer Mirza Maksood Alam Beg having collected post-mortem report, recorded the statement of witnesses, including eye-witnesses, submitted charge sheet No. 24 dated 27.2.1998 against 48 accused persons in custody citing 152 witnesses for supporting the prosecution case. He further submitted supplementary charge sheet No. 103 dated 9.7.1998 against 2 accused persons. Out of the 50 accused sent up for trial, trial of one accused was separated as he was adjudged juvenile. The case was committed to the court of sessions under order dated 6.1.1999 by C.J.M., Jehanabad whereafter the same was numbered as Sessions Trial No. 2 of 1999 and remained pending in the court of 1st Additional Sessions Judge, Jehanabad until the same was transferred to the court of 2nd Additional Sessions Judge, Patna in compliance of the instructions of the High Court contained in letter No. XVIII-1-99 dated 7.10.1999, which fact would appear from order dated 13.12.1999 passed by 2nd

Additional Sessions Judge, Patna at page 38 of Volume No. I of the paper book. Even after transfer of the aforesaid sessions trial to Patna Civil Court, trial of the accused persons of the present case did not begin until the High Court issued fresh instructions dated 29.11.2008 and 4.12.2008 directing transfer of the trial to the court of Additional Sessions Judge-III, Patna for expeditious disposal of the trial on day to day basis, which fact would appear from order dated 5.12.2008 at page 251 of Volume No. I of the paper book. After receipt of the record in the court of Additional District & Sessions Judge-III, Patna, charge was framed under order dated 23.12.2008, 28.1.2009 against 44, 2 accused persons respectively.

5. In support of the charge, prosecution examined 91 witnesses in court. Out of 91, 17 witnesses i.e. P.Ws. 1 to 12, 14, 16 to 18, 41 are the eye-witnesses of the occurrence. P.Ws. 10, 11, 17, 18 are those who suffered injury on their person. Out of 91 witnesses examined in court, 38 witnesses i.e. P.Ws. 13, 27, 33 to 40, 42 to 46, 48, 50 to 55, 57, 58, 60, 62, 65 to 67, 71 to 73, 75, 77, 78, 81, 82, 84 have been declared hostile. 15 of the prosecution witnesses, namely, P.Ws. 47, 49, 56, 59, 61, 63, 64, 68, 69, 70, 74, 76, 79, 80 and 83 have been tendered. Amongst the remaining prosecution witnesses, 8 are Doctors i.e. P.Ws. 19 to 23, 86, 89, 90. P.Ws. 19 to 23 conducted post-mortem of the 58 deceased. P.Ws. 86, 89 and 90 examined the injured. There are 4 police officers and one Chawkidar examined in support of the charge i.e. P.Ws. 85, 87, 88, 91 and 15. P.Ws. 85, 91 are the two Investigating Officers. P.W. 87 is a witness who prepared the inquest report, Ext. 18 series. P.W. 88 is the officer-in-charge of Mehandia P.S. who scribed the fardbeyan. P.Ws. 24 to 26, 28 to 32 are formal witnesses, as they are witnesses of inquest report, seizure list etc.

6. It is advantageous to first consider the evidence of eye, injured witnesses including informant in seriatim. P.W. 1 Belwanti Devi has supported the occurrence. She states in paragraph 1 of her examination-in-chief that 11 years earlier on the night of occurrence at about 10.30 P.M., she heard sound of gun fire, 5-7 miscreants armed with rifle, pistol and torch entered her house by forcibly breaking open the door. She along with her younger brother, Om Nath Chaudhary concealed herself beneath the bed. The miscreants shot at her causing death of her younger brother. The miscreants also killed her father, Mahendra Chaudhary, mother Rajmadali Devi and elder brother Nanhak Chaudhary. Amongst the miscreants, P.W. 1 identified Accused No. 12, Nand Singh, Accused No. 15 Chandeshwar Singh, Accused No. 8 Nawal Singh, Accused No. 6 Dwarika Singh. Amongst those identified during occurrence, P.W. 1 identified Accused No. 12 Nand Singh and Accused No. 8 Nawal Singh in court also as they were present during examination of P.W.-1 in court. As regards other miscreants, she stated that because of passage of time, she may not be in a position to identify them. Witness further claimed that firing continued for one hour and the miscreants while making good their escape, raised slogan proclaiming victory of Ranvir Baba.

7. P.W. 2 Sikandar Chaudhary has supported the occurrence by stating in paragraph 1 of his examination-in-chief that 11 years earlier on 1.12.1997 at about 10 P.M. while he along with his father Garib Chand Chaudhary, mother Sanichari Devi, wife Sona Devi, daughters Anita Kumari, Sunita Kumari, younger brother Dudhnath was sleeping in his house, heard sound of gun firing, miscreants began to break open his entrance door, before the door could be broken, he climbed the balcony of the room in which he stores cow dung cake and also ties his cow, oxen and buffalo with tether to a peg. Having broken the door, miscreants came inside his house and resorted to firing which continued for one and half hours. The witness further states that the miscreants by flashing torch were looking for him and others. In the torch light flashed by the miscreants, the witness claimed to have identified during the occurrence Birendra Singh, Accused No. 2 Surendra Singh and Anjani Singh. In court witness identified only Birendra Singh and claimed to identify others. Birendra Singh later absconded and trial of Anjani Singh was separated as he was found to be juvenile. In paragraph 2 of his examination-in-chief, the witness states that he came down from the balcony after half an hour and then saw the dead body of his parents in one room and the dead body of his wife and two daughters in another room. His brother Dudhnath Chaudhary, P.W. 4 had concealed himself in an earthen storage.

8. P.W. 3 Laxman Rajabansi has supported the occurrence by stating that about 11 years earlier at about 10 P.M. while he was in his house, heard sound of gun fire. The miscreants were trying to break open his door, witness came out of his house, concealed himself by going to the other side of the boundary wall, as his boundary wall and the boundary wall of his brother Ugrah Rajbansi, P.W. 16 is of the same height facing west, east respectively and there were creepers of bean on the boundary wall of his brother. Having broken the door of his house, 20-25 miscreants armed with rifle, gun and torch entered his house. Birendra Singh killed his wife Jaimurat Devi, Accused No. 2 Surendra Singh killed his daughter-in-law Malti Devi by resorting to indiscriminate firing. P.W. 5 Surendra Rajbansi, son of P.W. 3 managed to escape by scaling the boundary wall. Amongst the miscreants, witness claimed to have identified Birendra Singh, Accused No. 2 Surendra Singh, Accused No. 4 Gopal Singh, Accused No. 9, Baliram Singh, Anjani Singh (Juvenile), Accused No. 11, Shatrughan Singh (after much thought), all of village Bathe during the occurrence. In court witness identified Accused No. 9 Baliram Singh, Anjani Singh (Juvenile), Accused No. 2 Surendra Singh, Accused No. 1 Girja Singh and Accused No. 7 Bijendra Singh as also claimed that others whom he has claimed to have identified during the occurrence can identify them if produced in court. In paragraph 5 of his examination-in-chief, the witness claimed that miscreants remained in his house for 20-25 minutes. He also claimed that after the miscreants came out of his house, firing, weeping, wailing continued for one hour. According to this witness also the miscreants while departing claimed victory in the name of Ranvir Baba.

9. P.W. 4 Dudh Nath Chaudhary has also supported the occurrence by stating

that 11 years earlier on 1.12.1997 in the night at about 10.30, he was at his house and heard loud cry, sound of firing and then went to the house of his sister-in-law where his sister-in-law Sona Devi and two nieces, Savita Kumari, Anita Kumari were there. The miscreants broke open the door and entered into the house. P.W. 4, however, concealed himself in the room of his sister-in-law in the earthen storage and saw from the exit point of the earthen storage that miscreants were firing shots on the person of his sister-in-law and both the nieces. The miscreants also searched for P.W. 4, his brother P.W. 2 Sikandar in the torchlight flashed by them for 10-12 minutes. P.W. 4 further claimed in his evidence that in the torchlight flashed by the miscreants, he identified six of the miscreants, namely, Phanish Singh, Accused No. 3 Ashok Singh, Accused No. 7 Bijendra Singh, Accused No. 1 Girja Singh, Accused No. 17 Dharma Singh of village Kamta, Accused No. 23 Ravindra Singh of village Jalwaiya. In court P.W. 4 identified Accused No. 17 Dharma Singh, Accused No. 1 Girja Singh and Accused No. 7 Bijendra Singh and further claimed that he can identify the others if produced in court. In paragraph 2 of his examination-in-chief, the witness claimed that after the miscreants came out of his house, firing continued for 1 or 1 1/2 hours, thereafter whistle was sounded thrice in the orchard and miscreants went away raising slogan proclaiming victory of Ranvir Baba. After the miscreants left the village, P.W. 4 came out of the earthen storage, his brother Sikandar came down from the balcony and both the brothers began to cry having seen the dead body of their sister-in-law. In the other room, his parents were also found dead.

10. P.W. 5 Surendra Rajbansi has also supported the occurrence by stating that 11 years earlier at about 10 P.M. on 1.12.1997, the occurrence had taken place as on that day M/s. Bijendra Thakur, Kisan Rajbansi and Raj Kumar of village Kamta had come to meet him, visitors were served with dinner at about 9 P.M. in the covered verandah (Dalan) of Ramashray Paswan and thereafter P.W. 5 made them sleep and returned to his house then saw in the north ample light as also heard sound of firing. The door of his house was also attacked by firing shot whereafter the witness went towards the wall in the eastern side of his courtyard and concealed himself in the creepers. 20-22 miscreants were continuously firing as there was enough light killing his mother, Jaimurti Devi, sister Prabha Devi and wife Manti Devi. Amongst the miscreants, P.W. 5 first claimed that he identified three of them, but thereafter stated that he identified four miscreants, namely, Accused No. 6 Dwarika Singh, Accused No. 8 Nawal Singh, Accused No. 16 Kewal Singh and Awadhesh of village Bathe. In court P.W. 5 identified Accused No. 8 Nawal Singh and further stated that he can identify others, if made available. He also claimed that the miscreants were looking for him inside his house by flashing light for 15-20 minutes, but as he was not found, they came out of his house firing shots. The witness also claimed that the miscreants after the occurrence sounded whistle 3/4 times and raised slogan proclaiming victory in the name of Ranvir Sena. According to the witness firing continued in the village for about one hour. After departure of the miscreants, the witness saw

that his mother, sister and wife have been killed. In paragraph 3 of his examination-in-chief, P.W. 5 claimed that there was dispute about the quantum of wage given to the witness and others, as according to the witness, they were being given 1 1/2 Kg of food grain as wage and the demand was for 3 Kg. He also claimed that the accused persons wanted to dominate the members of the prosecution party as they were scheduled caste.

11. P.W. 6 Mutur Rajbansi has also supported the occurrence by stating that 11 years earlier at about 10 P.M., the witness along with his family members was sleeping in his house, heard indiscriminate shots being fired out side in the orchard and then opened the door and came to the courtyard and began to assess the direction in which firing was being made. In the meantime, miscreants began to break open the northern door of his house and then P.W. 6 asked his children to conceal themselves in a room by locking the same from inside. P.W. 6, however, climbed the thatched roof and concealed himself in the gourd creepers by sitting over ridge pole. 15-18 miscreants armed with gun, rifle and holding three-cell torch broke open the door of his house and entered the room in which his family members had concealed themselves whereafter P.W. 6 heard sound of indiscriminate firing. Amongst the miscreants, P.W. 6 identified, Accused No. 2 Surendra Singh, Accused No. 1 Girja Singh, Accused No. 5 Baleshwar Singh of village Bathe. According to the witness, the miscreants remained in his house for 10-15 minutes, the firing in the village continued for 1-2 hours. The witness heard indiscriminate firing sound from the thatched roof where he had concealed himself. The witness also heard whistle sound and slogan proclaiming victory in the name of Ranvir Baba. In paragraph 3 of his examination-in-chief, the witness confirmed that after he came down from the thatched roof, he saw the dead bodies of 6 of his family members i.e. of his wife, Dhankumari Devi, daughter Saroja Kumari and son Vishwanath Kumar who suffered gun shot injury on chest, stomach and forehead and were bleeding. In the other room of the house, witness saw the dead body of his mother, Raj Mania Devi, sister-in-law Ful Kumari Devi and niece Chania Devi. Nephew Mahesh Kumar suffered injury whereas niece Sona Kumari was saved as she concealed herself behind the earthen storage.

12. P.W. 7 Subedar Ravidas also supported the occurrence as he had stated in his examination-in-chief that about 11 years earlier, he was at his house, in the night at about 10 P.M. he heard firing sound and being scared concealed himself in bean creepers and then saw the miscreants armed with rifle flashing torch. The miscreants killed his brother, Shiv Bachan, nephew Raj Kumar, Jayant and sister-in-law Samundri Devi, mother Chhathia Devi. Amongst the miscreants, P.W. 7 identified Accused No. 19 Ashok Singh @ Sharma and Accused No. 3 another Ashok Singh (Rajput), Accused No. 1, Girja Singh, Bhushan Singh, who died during trial. In court, witness identified Accused No. 19 Ashok Singh and asserted that he is resident of village Kamta and then claimed that others whom he named but are not present can be identified by him if produced in court. Accused No. 19 Ashok Singh, however, claimed that his name is Ashok Sharma.

13. P.W. 8 Ram Vinesh Rajbansi has also supported the occurrence as he stated in the examination-in-chief that on 1.12.1997 at about 10 P.M., he was at his house having heard firing sound came out of his house in the lane then concealed himself in the dilapidated house of Ramashray Paswan and saw 15-20 miscreants armed with gun, rifle and holding torch breaking the door and forcibly entering his house resorting to firing, killing his mother Etwaria Devi at the spot, sister Mahurati Devi though suffered gun shot injury, but was saved and taken in the morning to police station by her brother. Amongst the miscreants, witness identified his co-villager Accused No. 3 Ashok Singh, Birendra Singh, Accused No. 2 Surendra Singh, Phanish Kumar Singh, Awadhesh Singh, Accused No. 4, Gopal Singh, Accused No. 9 Baliram Singh, but none of them is present in court. The witness further claimed that he can identify the miscreants, if they are produced in court. The witness also claimed that firing continued for about one hour. The miscreants 100-150 in number sounded whistle proclaiming victory of Ranvir Sena went towards Sone river. He also claimed that 53 persons were killed in the village and 5 persons on the bank of river Sone.

14. P.W. 9 Yugal Ravidas has also supported the occurrence by stating in his examination-in-chief that about 11 years earlier in the night between 9-10 P.M., he was sleeping in his hut and woke up hearing sound of indiscriminate firing coming from the north. The miscreants came from the Sone river side, 20-25 of them armed with rifle, torch entered into the house of his middle brother Shiv Bachan Ravidas and continued to fire in his house for about 10 minutes, killed his brother Shiv Bachan Ravidas, his elder son Raj Kumar, wife Samundri Devi, younger son Jayant Kumar and thereafter left. Amongst the miscreants P.W. 9 identified Accused No. 1 Girja Singh, Accused No. 15 Chandeshwar Singh, Accused No. 12 Nand Singh, Accused No. 3 Ashok Singh from his hut. He further claimed in his examination-in-chief that his mother Chhathia Devi was crying for mercy, but Accused No. 3 Ashok Singh shot her dead by firing from his rifle, brass empty cartridge whereof was lying on the ground. The witness further claimed that firing continued south of his house for one hour whereafter the miscreants assembled and went toward north from near his hut. The witness also claimed in paragraph 3 of his examination-in-chief that earlier Accused No. 3 Ashok Singh and Birendra Singh had said that they are waiting for opportune time and incident shall take place. The witness also claimed in paragraph 4 of his examination-in-chief that he can identify all the four accused persons named by him in court, but as they are not present in court, he is not identifying them and had also stated about the occurrence to the police.

15. P.W. 10 Mahurati Devi has also supported the occurrence and has stated in her examination-in-chief that 11 years earlier at about 10 P.M., she having taken dinner was sleeping with her mother, heard gun shot being fired both mother and daughter woke and stood up. Meanwhile 10-15 miscreants broke open the door, entered her house, abusively asked about the presence of her brother, after knowing that he is not present Accused No. 1 Girja Singh shot at her mother, Accused No. 9 Baliram Singh snatched her chain and earring. While she was

offering her another earring to the miscreants, Accused No. 8 Nawal Singh shot at her and she fell down. Accused No. 4 Gopal Singh, however, stated that one more shot be fired, but another miscreant restrained such shot observing that she has fallen down. After giving the aforesaid evidence, the witness began to weep and stated that she could not identify any other person amongst the miscreants. The miscreants identified by her are co-villagers. The witness claimed that she was treated and operated upon in P.M.C.H. The witness also claimed that all the miscreants were holding torch and she identified the miscreants in the torchlight flashed by them. The witness also claimed that her statement was recorded after she was operated upon at Patna.

16. P.W. 11 Bimlesh Kumar has also supported the occurrence by stating in his examination-in-chief that about 11 years earlier at about 10.30 P.M. while he was at his house along with his father and other family members, namely, Kavesh Rajbansi, Kamlesh Rajbansi, Kalawati and Meera Devi, heard sound of indiscriminate firing and woke up. 15-20 miscreants broke open the door and entered into his house armed with gun, pistol and holding torch. Accused No. 1 Girja Singh shot at his father, Birendra Singh shot at his brother Kavesh Rajbansi, Bhushan Singh shot at his brother Kamlesh Rajbansi, his two sister-in-laws were also shot dead by the miscreants, but he could not identify them. Accused No. 17 Dharma Singh shot at the witness near his cheek, who is present in court and the witness identified Dharma Singh in dock claiming that other miscreants named by him can also be identified by him, if produced in court. In paragraph 2 of his examination-in-chief, the witness claimed that Dharma Singh is of village Kamta, but the three other miscreants named by him are his co-villagers. In paragraph 3, the witness claimed that after his treatment when he returned from Patna, his statement was taken by the police.

17. P.W. 12 Munni Rajbansi has also supported the occurrence and has stated in his examination-in-chief that 11 years earlier at about 10 P.M. he was at his house, all around the village shots were being fired, he woke up. While the miscreants were firing and attempting to break open the door of his house, he climbed the thatched roof of his house and concealed himself in the gourd creepers. After breaking the door, 15 miscreants entered his courtyard. In the western, eastern side of the courtyard, there are 2, 1 room respectively. Daughter-in-law of the witness was in the southwestern room, door whereof was also broken by the miscreants who also entered the room. The miscreants were holding torch and were armed with gun and killed his daughter-in-law Domani Devi, wife Rupkalia Devi, granddaughter Sunita Kumari, grandson Chhotelal, daughter Sheela Kumari. Amongst the miscreants, witness identified Birendra Singh, Phanish Singh, Accused No. 2 Surendra Singh of village Bathe, Accused No. 17 Dharma Singh, Accused No. 19, Ashok Singh, Accused No. 18 Shiv Mohan Singh, all of Kamta, Accused No. 14 Dharichan Singh, Accused No. 11 Shatrughan Singh, Accused No. 3 Ashok Singh all of village Bathe. The witness further stated that five of his family members were killed and grandson, Manoj Kumar was injured. In paragraph 2 of the examination-in-chief, the witness

claimed that miscreants continued to fire in his house for about 15 minutes and thereafter went towards Sone river. He further claimed that all his deceased family members were in one room. In paragraph 3 of the examination-in-chief, the witness also claimed that occurrence was the result of wage dispute, as they were claiming 4 ser of grain, but they were paying 2 ser. He also claimed in the same paragraph that prior to the occurrence nothing had happened. In paragraph 4 of the examination-in-chief, the witness claimed that the miscreants identified by him during occurrence are not present in court today, but he can identify them if they are produced in court.

18. P.W. 14 Sohrai Mahto has also supported the occurrence by stating in his examination-in-chief that 10-11 years earlier in the night between 9-10 P.M. he having taken his dinner had gone to Dalan (verandah covered from three sides) of Bhikhari Thakur for sleeping, heard sound of gun firing and then came running towards his house. While he was approaching the lane, saw that the miscreants have entered his house and then he concealed himself outside the house in the lane. The firing continued for about 1-1 1/2 hours. His daughter, Taregni requested the miscreants not to kill his brother, but the miscreants shot dead his daughter, Taregni, daughter-in-law Basanti, son Rampolice. Amongst the miscreants, witness claimed that he identified Accused No. 13 Pramod, Accused No. 16 Ram Kawal, Accused No. 10 Nandu and Accused No. 5 Baleshwar Singh. The witness also claimed that he can identify the miscreants named by him in court, if produced in court. Amongst the accused persons present in court, witness identified one of the accused as Venkatesh, but the accused identified by the witness as Venkatesh asserted that he is Navin Kumar then the witness claimed that if other miscreants would have been present in court then he could have identified them. The witness also claimed that he was examined by the police.

19. P.W. 16 Ram Ugrah Rajbansi has also supported the occurrence by asserting in examination-in-chief that about 11 years earlier on 1.12.1997 at about 10-10.30 in the night he was sleeping at his house, heard two shots being fired and then woke up. To take stock of the situation, he climbed the brick wall of his house, saw blinking light in the orchard where 20-25 miscreants were standing, attempting to break open the door of the house of his brother Laxman Rajbansi which was towards north. While the miscreants were trying to break open the door of the house of his brother, which was towards north, his brother Laxman and nephew Surendra came to his courtyard where the witness himself was standing after scaling the wall. While the miscreants broke open the door, the witness climbed the wall and went to the roof and then concealed himself in gourd creepers and saw the incident from there. 20-25 miscreants holding torch were armed with gun, pistol and other weapons like fasuli, axe. The witness further claimed in paragraph 2 of his examination-in-chief that Dharma Singh of village Kamta, commander of Ranvir Sena exhorted the miscreants that the scheduled castes have become assertive whereafter Birendra Singh, Accused No. 2 Surendra Singh, Anjani Singh, Accused No. 17 Dharma Singh, Accused No. 21

Mithilesh Singh, Accused No. 20 Babloo Singh forcibly broke open the door and entered the house and resorted to firing. In the courtyard Fanish Singh, Accused No. 6 Dwarika Singh, Accused No. 4 Gopal Singh, Awadhesh Singh (presently dead), Accused No. 9, Baliram Singh, Accused No. 13 Pramod Singh, Accused No. 8 Nawal Sharma, Bhushan Sharma (presently dead), Accused No. 7 Bijendra Singh, Accused No. 1 Girja Singh, Accused No. 5 Baleshwar Singh, Accused No. 10 Nandu Singh all of village Bathe, Accused No. 22 Navin Sharma, Accused No. 24 Sunil Sharma of village Chanda, Accused No. 18 Shiv Mohan Sharma, Accused No. 17 Dharma Singh, Accused No. 21 Mithilesh Sharma, Accused No. 20 Babloo Sharma of village Kamta remained standing in the courtyard. All the miscreants were holding torch and big, small deadly weapon as also pahsul, fasuli and axe. The witness further claimed that aforesaid miscreants killed his sister-in-law Jaimurat Devi, daughter-in-law Manti Devi, niece Prabha Kumari on the bed itself. In paragraph 4 of his examination-in-chief, the witness claimed that miscreants 100-150 in number collected after whistle sound was heard thrice and went toward river Sone in the north proclaiming victory in the name of Ranvir Baba. After crossing the river Sone, some of the miscreants went towards Bhojpur and also killed 5 Chaudhary fishermen slitting their neck. In paragraph 6 of his examination-in-chief, the witness claimed that he can identify all the miscreants whom he has named in paragraph 2 of his examination-in-chief. Out of the miscreants named by the witness, Navin Sharma was present in court and was identified by the witness, for other miscreants, the witness claimed that he can identify them, if produced in court. In paragraph 7, the witness accepted that his statement was recorded by the police after 10 days of the occurrence on 12.12.1997.

20. P.W. 17 Mahesh Rajbansi has also supported the occurrence as he has stated in his examination-in-chief that he also suffered gun shot injury in his right leg in the occurrence and his mother, elder sister, grandmother, aunt, cousin sister, brother were killed in the same occurrence. The witness, however, did not identify any of the miscreants as he was quite young.

21. P.W. 18 Manoj Kumar has also supported the occurrence by stating in his examination-in-chief that 11 years earlier occurrence had taken place in his village in which he also suffered gun shot injury and in the same occurrence his mother, sister, brother, aunt, grandmother were killed.

22. P.W. 41 Binod Paswan, the informant has also supported the occurrence by stating in his examination-in-chief that on 1.12.1997 at about 10.30 P.M. he was sleeping in his house along with his father Late Ram Chela Paswan. In the other room, his mother Rajrani Devi, brother Rohan Paswan, Amar Paswan, Kunwar Paswan, Anuj Paswan and sisters Rita Devi and Kabutari Kumari were sleeping. Father of the informant having heard sound of gun shot awoke the informant and his mother. The miscreants were attempting to break open the door of his house. Father of the informant asked the informant and other family members to go into one room in which there is door and to conceal themselves. While the informant

and others went into the other room and tried to close the door, miscreants broke open the door and entered into the courtyard and then broke open the door of the room in which informant and others had concealed themselves. Mother of the informant with folded hands pleaded before the miscreants and asked about the mistake they have committed, the miscreants, however, armed with rifle, gun and holding torch shot her dead. The informant managed to conceal himself in the space between the earthen storage. The miscreants shot at his mother, both sisters and four brothers. They died at the spot. The informant amongst the miscreants identified Anjani Singh, Accused No. 6 Dwarika Singh, Accused No. 13 Pramod Singh, Accused No. 4 Gopal Singh, Accused No. 9 Baliram Singh, Accused No. 3 Ashok Singh, Phanish Singh, Birendra Singh, Accused No. 2 Surendra Singh as the one who entered the room in which informant and his other family members concealed themselves and shot in the torchlight flashed by the miscreants as also by their voice. In paragraph 4 of his examination-in-chief, the informant claimed that after the miscreants left his house, he climbed the roof of the house of his uncle Rooplal Paswan and firing continued in the village for about 1-1 1/2 hours. In paragraph 5, the informant claimed that in the south, east of his house the miscreants continued to fire, whistle was blown once or twice then miscreants began to assemble in the vacant land by the side of the house of his uncle where 150-200 miscreants finally assembled armed with iron weapon like sickle. In the torchlight flashed by the miscreants as also by their voice, informant could identify Accused No. 14 Dharichan Singh, Accused No. 16 Kawal Singh, Accused No. 11 Shatrughan Singh, Accused No. 12 Nand Singh, Accused No. 10 Nandu Singh, Accused No. 5 Baleshwar Singh, Accused No. 1 Girja Singh, Bhukhan Singh, Accused No. 7 Bijendra Singh of village Bathe, Accused No. 21 Mithilesh Singh, Accused No. 20, Babloo Singh, Accused No. 26 Surendra Singh, Accused No. 18 Shiv Mohan Singh, Sudarshan Singh of village Kamta. In paragraph 6, the informant further claimed that prior to the occurrence also Brahmeshwar Singh of village Kopila, Pramod Singh of village Ekwari, Krishna Sardar of village Pali used to hold meeting in the village, but he was not aware that they were coming to the village for organizing this occurrence. The meeting used to be held at the big Dalan (verandah covered from three sides) in the house of co-villager Accused No. 2 Surendra Singh. In the same paragraph, the informant claimed that he can identify those whom he has named in the paragraphs above and further claimed that he can also identify Brahmeshwar Singh and Krishna Sardar, but he cannot recognize Pramod Singh of village Ekwari. In paragraph 7, the informant asserted that the miscreants organized, committed the present occurrence to establish their supremacy. He also claimed in the same paragraph that they were provided 3-4 ser of paddy as wage but the demand was for giving them rice as wage. He further claimed in paragraph 8 that 53 persons were shot in the village and neck of 5 persons slit on the bank of Sone river.

23. Having considered the evidence of eye-witnesses, including injured and informant, I proceed to consider the evidence of police officers, including village

Chawkidar in seriatim.

24. P.W. 15 Ramanand Yadav is Chawkidar, bearing No. 5/1 of village Laxmanpur Bathe. He has stated in paragraph 2 of his examination-in-chief that in December 1997 he was assigned duty at Mehandia P.S. and came to learn about the occurrence at about 6 A.M. and, accordingly, passed on the information to P.W. 88, the officer-in-charge, who asked him to quickly get the force ready for moving to the place of occurrence. He also accompanied the officer-in-charge and reached the place of occurrence-village in between 7-8 AM whereafter the officer-in-charge visited the houses in which occurrence (killing) had taken place and saw the 58 dead bodies. In paragraph 3, P.W. 15 has stated that he knows co-villager Suryaman Upadhyay whose land was declared ceiling surplus by Sangram Samiti with direction to Suryaman Upadhyay to distribute the same amongst the poor people which is already under occupation of members of fishermen, Kahar and Barbar community. Daughters of Suryaman Upadhyay began to sell his lands, which was not objected to by Sri Upadhyay. Daughters of Suryaman Upadhyay sold the land to the members of Bhumihaar, Mahto and Yadav caste. On the vendee land, there was standing crop. Vendee of the land when proceeded to harvest the crop, members of Sangram Samiti prohibited the vendee from harvesting the crop and themselves harvested the crop whereafter vendee stopped cultivation and left the land vacant.

25. P.W. 85 Shri Dhar Mandal is the first Investigating Officer of the case, who took charge of the investigation of the case on oral instruction of the Superintendent of Police, Jehanabad on 2.12.1997 at about 10 A.M. Having taken charge of the investigation, Shri Dhar Mandal directed the officer-in-charge, Mehandia P.S. and other police officers present at the place of occurrence to prepare the inquest report of the dead bodies available at the place of occurrence and to prepare seizure list of the incriminating materials found at the place of occurrence. He also recorded the further statement of the informant in paragraph 4 of the case diary in which informant supported the prosecution case as set out in his fardbeyan and further stated that during the night between 1/2.12.1997, he along with his family members after taking dinner was sleeping, woke up between 9.30-10.30 P.M. hearing the sound of gun firing and while he was coming out of his room, 10-15 miscreants armed with rifle etc., broke open the main entrance door of his house and entered his courtyard. Having seen the miscreants entering his house, informant concealed himself behind the earthen storage in the western room situate south of the courtyard facing north. Miscreants entered eastern room facing north and resorted to indiscriminate firing. Mother, sister and brother of the informant began to weep, cry. Miscreants after resorting to firing in the eastern room also came to the western room, but they having not found anyone, left the room. After the miscreants left the house of the informant, informant in a fearful condition went to the eastern room facing north and saw that his mother Rajrani Devi, sisters, Rita Devi, Kabutari Devi, brother Amar Paswan, Kunwar Paswan, Anuj Paswan and Rohan Paswan have suffered firearm injury, are restless and died soon thereafter. In fearful condition,

informant through western exit went to the roof of the house of his uncle Rooplal Paswan. Miscreants continued to fire in the house of other co-villagers for about half an hour. Informant further disclosed in his further statement that from the roof of his uncle, he saw 150-200 miscreants in the torchlight flashed by them as by lighting torch they were trying to identify the houses. Informant further stated in his further statement that whistle sound was also heard whereafter miscreants assembled in the vacant land near the house of Rooplal Paswan and raised slogan proclaiming victory of Ranvir Sena and then went towards Sone river in the north. In the further statement also informant stated that during the occurrence as also after the occurrence while the miscreants assembled in the vacant land, he identified 19 miscreants of village Laxmanpur Bathe and 7 miscreants of village Kamta named in the fardbeyan in the torch light flashed by the miscreants themselves. In the further statement, informant also claimed that besides the miscreants named in the fardbeyan and the further statement, other miscreants were also seen and identified by the informant during the night of occurrence, but not named in the fardbeyan and further statement as their name is not known to him can also be identified by him, if produced. After recording further statement of the informant, first Investigating Officer prepared O.D. slip of the injured Mahesh Rajbansi, Bimlesh Rajbansi, Ramnuj Rajbansi, Mahurati Devi and sent them for treatment in the Govt. hospital, Arwal. Considering the 58 number of dead bodies, Investigating Officer requested the District Magistrate, Jehanabad to make available team of doctors for performing the task of post-mortem on the person of the deceased in the village itself. On 2.12.1997 at about 11 AM first Investigating Officer inspected the place of occurrence i.e. (1) House of the informant, P.W. 41, (2) house of deceased Sohan Rajbansi, (3) Dalan of Ramashray Paswan, (4) house of deceased Etwaria Devi, (5) house of Munni Rajbansi, (6) house of Yaduni Rajbansi, (7) house of Garib Chand Chaudhary, (8) house of Mahendra Chaudhary, son of Garib Chand Chaudhary, (9) house of Mahendra Chaudhary, son of Moti Chaudhary, (10) house of deceased Chunni Chaudhary, (11) house of Rampolice Mahto, (12) house of Surendra Rajbansi, (13) house of Shiv Bachan Ram, (14) southern bank of river Sone. At the place of occurrence nos. 1 to 13 Investigating Officer found dead bodies of inmates, the evidence of firing, empties, including proof of breaking open the entrance door. At place of occurrence no. 14, southern bank of river Sone, Investigating Officer found foot-prints of 100-150 persons, dead bodies of Chanarik Chaudhary, his two sons Gorakh Chaudhary and Shiv Kailash Chaudhary with further sign of dragging the dead bodies till the river. On the northern bank of river Sone, he further found two dead bodies of Naresh Chaudhary and Ram Niwas Chaudhary both sons of Mahesh Chaudhary near a hut where not only copious blood was found on the bank, but also a boat anchored smeared with blood. On the same day at about 4.05 P.M., Investigating Officer learnt through wireless message that on the basis of the fardbeyan of the informant, present case has been registered. After inspecting the place of occurrence, including both the banks of river Sone, Investigating Officer Shri Dhar Mandal spoke to Officer-in-charge, Sahar P.S. at 4.15 P.M. Statement of

Ram Chela Paswan, father of the informant was also recorded on 2.12.1997 at about 4.30 P.M., who supported the occurrence but did not claim to have identified any of the miscreants, rather, named the miscreants on the basis of the information derived from his son. Prosecution for the reasons best known to it has not produced Ram Chela Paswan for his examination in court. On the same day at about 5 P.M., Investigating Officer received the inquest report, seizure list of the deceased, seized items from the place of occurrence along with supplementary case diary from Akhilendra Kumar Singh, officer-in-charge of Mehandia P.S. and directed for safe custody of the blood stained earth, empty cartridges in the Malkhana of the P.S. Investigating Officer besides recording the further statement of the informant, statement of his father, also recorded the statement of Munni Devi wife of Kaulu Rajbansi, Raj Ganesh Rajbansi son of Laxman Rajbansi, Munni Rajbansi son of Pappan Rajbansi and Yaduni Rajbansi son of Deo Sharan Rajbansi on 2.12.1997 itself at about 6.00 P.M., but none of the aforesaid witnesses have been examined in court. Having conducted the preliminary investigation, Investigating Officer Shri Dhar Mandal took steps to arrest the fardbeyan named accused persons of village Bathe at 9 P.M., but they were found absconding. On 03.12.1997, Shri Dhar Mandal took steps for the arrest of fardbeyan named accused, resident of village Kamta, but they were also found absconding. On 03.12.1997 at about 8 A.M. Shri Dhar Mandal recorded the statement of Mutur Rajbansi son of Yaduni Rajbansi, Dudhnath Chaudhary, Sikandar Chaudhary both sons of Garib Chand Chaudhary and on the same day at 5.25 P.M. arrested Accused No. 3 Ashok Singh as also seized a double barrel gun from the house of Accused no. 4 Gopal Singh and forwarded the arrested accused as also seized double barrel gun to the P.S. at about 6.15 P.M. for being kept in the Hazat, Malkhana of the P.S. Having forwarded the arrested accused and the gun to the P.S., Investigating Officer Shri Dhar Mandal examined three witnesses, who are signatory to the inquest report, Dharmendra Yadav, Kamaldeo Ram, Baijnath Prasad in the evening at 6.30 P.M. on 03.12.1997 itself as they are witnesses to the inquest report of the deceased. On 03.12.1997 at about 8.30 P.M., Investigating Officer Shri Dhar Mandal proceeded to conduct raid and met officer-incharge, Sahar P.S. During raid, all the fardbeyan named accused persons of village Bathe, except accused no. 3 Ashok Singh, were found absconding. Investigating Officer, however, instructed officer-incharge, Mehandia P.S. to produce the arrested accused Ashok Singh for his judicial remand. On 04.12.1997 at about 3.10 P.M., Investigating Officer recorded the statement of Belwanti Kumari, Sohrai Mahto and Anil Kumar and thereafter arrested Accused No. 23 Ravindra Kumar Singh and Awadhesh Singh with direction to produce the arrested accused for judicial remand on 05.12.1997 at 6.45 P.M. as also issued instruction for obtaining warrant, attachment warrant against the absconding accused. On 05.12.1997 at about 9 AM first Investigating Officer Shri Dhar Mandal recorded the statement of Laxman Rajbansi, Om Prakash Paswan, Surendra Rajbansi. On 06.12.1997, Investigating Officer Shri Dhar Mandal raided the school in village Kamta wherefrom arrested Accused No. 2 Surendra Singh and Accused No. 5 Baleshwar Sharma as also forwarded them for obtaining their

judicial remand. On the same day, Investigating Officer obtained orders for execution of attachment warrant in presence of Magistrate. On 06.12.1997, Investigating Officer also examined Pancham and Baidyanath Prasad. On 07.12.1997 at about 12.45 AM Investigating Officer Shri Dhar Mandal proceeded to conduct raid for the arrest of absconding accused and in village Chanda arrested Accused No. 27 Awani Bhushan Kumar, Accused No. 22 Navin Kumar, Accused No. 24 Sunil Kumar, Accused No. 26 Surendra Sharma and Accused No. 18 Shiv Mohan Singh as also forwarded them for their judicial remand. Out of the five arrested accused from village Chanda, Surendra Sharma and Shiv Mohan Singh are resident of village Kamta. On 07.12.1997, Investigating Officer also received supplementary case diary containing seizure list. Investigating Officer Shri Dhar Mandal recorded the statement of Yugal Ravidas and Subedar Ravidas on 08.12.1997. DIG, CID, Patna under memo no. 3829/C dated 09.12.1997, wireless message No. 3830 dated 09.12.1997 instructed Investigating Officer Shri Dhar Mandal to hand over investigation of Mehandia P.S. Case No. 126 of 1997 to Sri Mirza Maksood Alam Beg, Dy.S.P., CID, Patna who took over the investigation on 10.12.1997, but before handing over the investigation to Mirza Maksood Alam Beg, Investigating Officer Shri Dhar Mandal recorded the statement of Krishna Chaudhary and Rama Chaudhary as also obtained surrender slip of six fardbeyan named accused.

26. P.W. 87 Azahar Husain is a police officer who was posted in Arwal P.S. on 2.12.1997 and had reached the place of occurrence of the present case on 2.12.1997 between 8-9 A.M. along with officer-in-charge and Dy.S.P. Shri Dhar Mandal and under orders from Shri Dhar Mandal, he began to prepare the inquest report by opening supplementary case diary of Devesh Rajbansi, Johar Rajbansi, Kamlesh Rajbansi, Kalawati Devi, Malti Devi, Mahendra Chaudhary, Dhanrajia Devi, Om Nath Chaudhary, Nanhak Chaudhary, Etwaria Devi, Bijendra Thakur by carbon process, which was marked as Exts. 18-18/10. Having prepared the inquest report, P.W. 87 also recorded the statement of Anil Kumar, Pappu Kumar and submitted the same along with supplementary case diary to the Investigating Officer Dy.S.P. Shri Dhar Mandal.

27. P.W. 88 Akhilendra Kumar Singh is also a police officer, who was posted as officer-in-charge of Mehandia P.S. on 2.12.1997. In the morning, P.W. 88 heard the rumour that extremists have killed most of the villagers of Bathe village. Information about the rumour was given to the superior police officers by P.W. 88 and thereafter with the available officers, constables as also armed force, P.W. 88 proceeded for village Bathe. In paragraph 2, P.W. 88 states that fardbeyan of P.W. 41 was scribed by him on 2.12.1997 at 9.30 A.M. as also proved by him as Ext. 19. The forwarding over the fardbeyan is also under the signature of P.W. 88 and marked as Ext. 20. On the instruction of P.W. 88, S.I. Abhay Kumar Singh drew formal FIR. P.W. 88 also identified the signature and writing of Abhay Kumar Singh over the formal FIR, which was marked as Ext. 21. At the time of recording of the fardbeyan, Superintendent of Police, Jehanabad, Aurangabad and officer-in-charge of the adjoining P.S. along with armed force as also Dy.S.P.

Arwal, Shri Dhar Mandal was present at the time of recording of the fardbeyan. In the occurrence, 58 persons were killed. On the instructions of the Superintendent of Police, Jehanabad, investigation of the case was taken up by Dy.S.P., Shri Dhar Mandal. On the fardbeyan, besides the informant Binod Paswan, witness Shyam Bihari after having heard/learnt about the contents, put his signature. Informant put his signature on the fardbeyan in presence of the witness Shyam Bihari. In paragraph 5 of his examination-in-chief, P.W. 88 stated that Dy.S.P. Shri Dhar Mandal at the place of occurrence itself asked the witness as also S.I. Abhay Kumar Singh, S.I. Bhuneshwar Yadav, A.S.I., Raghuraj Kishore Pandey all posted in Mehandia P.S. and S.I. Ashok Ram, S.I. Anil Kumar, A.S.I. Azahar Husain, all of Arwal P.S. to prepare inquest report and to seize blood stained earth/empty cartridges as also other incriminating articles and prepare the seizure list. In paragraph 6, P.W. 88 stated that he prepared the inquest report of deceased Kunwar Paswan, Amar Paswan, Rita Devi, Kabutari Devi, Anoj Paswan, Rajrani Devi, Rohan Paswan, Rampolice Mahto, Basanti Devi, Taregni Devi in his own handwriting and signature by carbon process, which was marked as Exts. 22 - 22/9. In paragraph 7, the witness further stated that he prepared the seizure list of incriminating articles found at the place of occurrence in his own handwriting and signature by carbon process, which was marked as Exts. 23-23/10, as would appear from his statement made in paragraphs 8 to 18. Having prepared the inquest/seizure list, the witness also recorded the statement of P. W. 30 Om Prakash Paswan and P.W. 31 Panchanand Paswan, the seizure list witnesses and submitted the inquest report, seizure list and the statement of the witnesses along with supplementary case diary to the first Investigating Officer Dy.S.P. Shri Dhar Mandal. This witness has also proved inquest/seizure list prepared by S.I. Abhay Kumar Singh, S.I. Bhuneshwar Prasad Yadav, S.I. Ashok Ram, S.I. Anil Kumar, A.S.I. Raghuraj Singh, which was marked as Exts. 24 - 24/4, 25-25/6, 26-26/10, 27-27/5, 28-28/7 and 29-29/10. and submitted the same along with the supplementary case diary to first Investigating Officer Shri Dhar Mandal, P.W. 85.

28. P.W. 91 Mirza Maksood Alam Beg, Dy.S.P., C.I.D., Patna took over the investigation on 10.12.1997 from first Investigating Officer Shri Dhar Mandal, Dy.S.P., P.W. 85 in the light of instruction of DIG, CID, Patna under memo no. 3829/C dated 09.12.1997, wireless message No. 3830 dated 09.12.1997. Mirza Maksood Alam Beg having taken charge of the investigation, perused the case diary of the case maintained by the earlier Investigating Officer along with his investigating team comprising of Inspector Indu Bhushan Prasad, Inspector Anant Prakash Singh, Inspector Ashok Kumar Das, Inspector Ram Sharan Chaudhary, S.I. Shyam Nandan Sharma, S.I. Deo Narayan Mahto, S.I. Ravindra Nath Sharma, S.I. Dhananjay Kumar and other A.S.Is. Second Investigating Officer Mirza Maksood Alam Beg along with his team recorded the statement of the informant as also inspected the place of occurrence in the light of the information gathered from the informant. Second Investigating Officer also recorded the statement of Raj Vinesh Rajbansi @ Ram Vinesh Rajbansi, Munni

Rajbansi, Yaduni Rajbansi, Mukul Rajbansi, Sikandar Chaudhary, Dudh Nath Chaudhary, Belwanti Kumari, Sohrai Mahto, Laxman Rajbansi, Surendra Rajbansi, Ramugrah Rajbansi, Yugal Ravidas, Subedar Ravidas, Baijnath Prasad, Ram Vinay Prasad, Anil Kumar, Pappu Kumar, Kamaldeo Ram, Kamakhya Narayan, Sahindra Paswan, Om Prakash Paswan, Panchanand Paswan, Ramashray Ram on 15.12.1997. Second Investigating Officer Mirza Maksood Alam Beg also examined Ramnuj Pandit, Dukhan Chaudhary, Bhagwan Ramani, Bhutti Ram, Sidhnath Paswan and then instructed Inspector Ashok Kumar Das and S.I. Deo Narayan Mahto, members of investigating team to obtain post-mortem, injury report and submit the same along with supplementary case diary. On 17, 18.12.1997, Second Investigating Officer Mirza Maksood Alam Beg recorded the statement of Accused No. 3 Ashok Singh, Accused No. 2 Surendra Singh, Accused No. 5 Baleshwar Sharma, Accused No. 16 Kawal Singh @ Ram Kewal Sharma, Accused No. 12 Nand Singh, Accused No. 15 Chandeshwar Singh, Accused No. 8 Nawal Singh in jail. On 18.12.1997, Second Investigating Officer Mirza Maksood Alam Beg further recorded the statement of Accused No. 21 Mithilesh Sharma, Accused No. 20 Babloo Sharma, Accused No. 19 Ashok Sharma, Bhushan Singh (died during trial), Accused No. 1 Girja Singh, Sudarshan Sharma (died during trial), Accused No. 26 Surendra Sharma, Accused No. 18 Shiv Mohan Sharma, Awadhesh Singh, Accused No. 7 Bijendra Singh, Accused No. 11 Shatrughan Singh, Accused No. 10 Nandu Singh and non-FIR accused Rabindra Kumar Singh, Ram Ekbal Sharma, Sunil Kumar, Navin Kumar, Awani Bhushan in jail. Second Investigating Officer Mirza Maksood Alam Beg also examined Chaukidar Baleshwar Singh, Ramdhari Singh, Ram Chandra Chamar, Awadhesh Chamar, Mangal Chamar, Jawahar Mushar, Gopichand Singh, Keshlal Chaudhary, Siyaram Chaudhary, Dashrath Sharma, Surendra Prasad, Ayodhya, Naresh Kahar, Hira Sah, Hridya Sah, Sipahi Ram, Hari Narayan Ram, Rajan Ram, Amir Chand Ram, Shiv Shankar Ravidas, Gupteshwar Kahar, Chaukidar Purnmashi Ram, Raj Kumar Ram, Nathu Tanti, Kashi Sah, Ramnath Ram, Jai Pati Paswan, Dashrath Ram and Onkar Tiwari. Having recorded the statement of the aforesaid witnesses, Second Investigating Officer Mirza Maksood Alam Beg obtained police remand of Accused No. 3 Ashok Singh and accused Sudarshan Sharma who died during trial. Accused No. 14 Dharichan Chaudhary surrendered in the court on 23.12.1997. He further recorded the statement of Bhagera Kanu, Banshidhar Sharma and Jawahar Mushar. Second Investigating Officer Mirza Maksood Alam Beg also recorded the statement of injured Bimlesh Kumar. Second Investigating Officer Mirza Maksood Alam Beg further instructed Inspector Indu Bhushan Prasad, a member of his investigating team to record statement of the injured getting treatment in PMCH who having recorded the statement of Mahurati Devi, Mahesh Rajbansi and Manoj Rajbansi, submitted supplementary case diary containing their statement. Second I.O. Mirza Maksood Alam Beg also obtained the criminal antecedent of members of Ranvir Sena, namely, Jata Singh, Vijay Singh, Suresh Rai, Bhola Rai, Bipin Bihari Rai, Goga @ Shiv Shankar Rai, Pramod Singh, Santu Singh, Chandra Keshwar Rai, Arvind Kumar Singh, Ramesh Singh, Srinivas Pandey, Sidhnath Rai, who

have been found accused in different cases of Sahar, Sandesh, Udwant, Ara Town, Ara Nawada P.S. Accused Kamlesh Bhatt was found accused in Charpokhari P.S. Case No. 14/79, 20/97, 40/93, 84/84, 113/84, 11/85, 71/87, 8/88, 75/90, 7/85, 91/93, 69/97, Kamakhya Singh was found accused in Charpokhari P.S. Case No. 69/97, Brahmeshwar Singh Mukhia was found accused in Sandesh P.S. Case No. 35/95, 45/95, Sahar P.S. Case No. 37/95, Sandesh P.S. Case No. 50/95, Udwant Town P.S. Case No. 154/95, Sahar P.S. Case No. 49/96, 67/96, 68/96, 69/96, Charpokhari P.S. Case No. 61/96, Sahar P.S. Case No. 98/96, 153/96, Sandesh P.S. Case No. 119/96, Pawana P.S. Case No. 93/97, Panjore P.S. Case No. 35/97, Vishwanath Rai was found accused in Pawana P.S. Case No. 123/95, 119/96, Hridaya Singh was found accused in Sandesh P.S. Case No. 43/97, Ajay Singh was found accused in Sandesh P.S. Case No. 37/97. Second Investigating Officer Mirza Maksood Alam Beg having collected post-mortem report, examined witnesses, including eye-witnesses, submitted charge sheet No. 24 dated 27.2.1998 against 48 accused persons in custody citing 152 witnesses which is in his handwriting and signature marked as Ext. 33. He further submitted supplementary charge sheet No. 103 dated 9.7.1998 against 2 accused persons, which is in his handwriting and signature marked Ext. 33/1.

29. Having considered the evidence of the police officials, it is also necessary to examine the evidence of the medical officers, P.Ws. 86, 89 and 90 who examined the injured on 2.12.1997 and referred them for better treatment to Patna and other places. On 2.12.1997 while P.W. 86 Dr. Rajendra Prasad was posted as Medical Officer, Primary Health Centre, Arwal, he examined injured Bimlesh son of Lodhar Rajbansi, Mahesh, son of Ram Biresh Rajbansi, Ramnuj Rajbansi son of Sudhin Rajbansi and Mahurati Devi C/o Laxman Rajbansi at 11.30, 11.35, 11.40 and 11.45 A.M. respectively and referred the injured for treatment at PMCH. Their injury reports have been marked as Exts. 6 - 6/3.

30. P.W. 89 Dr. G.C. Jha while posted at PMCH, Patna in the department of Plastic Surgery, examined Bimlesh Kumar son of Sohrai Rajbansi on 2.12.1997 at 4.30 P.M. after the injured was referred from Govt. hospital, Arwal under reference No. 4587 dated 2.12.1997 and found lacerated wound just below right lower eye lid, charring all around. The injury report has been marked as Ext. 30.

31. P.W. 90 Dr. Jainendra Kumar was serving as Surgical Registrar, PMCH, Patna on 2.12.1997 and in that capacity examined Mahurati Devi wife of Vidya Nand at 4.30 P.M. after she was referred from State dispensary, Arwal and found foreign body shadow at the level of L-1, L-2 on the right side just below the costal margin. Another foreign body was also seen at anterior chest. The injury report has been marked as Ext. 31. On the same day, P.W. 90 examined Mahesh Rajbansi son of Ram Binay Rajbansi, Ramanuj Rajbansi, son of Ram Sudhin Rajbansi at 4.35 P.M. Their injury reports have been marked as Exts. 31/1, 31/2.

32. P.Ws. 19 to 22 are the Medical Officers posted at Sadar Hospital, Jehanabad and P.W. 23 is the Medical Officer posted at Additional Primary Health Centre, Mandil, Jehanabad, on 2.12.1997 they conducted post-mortem on the dead

bodies of 58 deceased and found 53 deceased killed in village Bathe were shot by fire arms and the 5 deceased whose bodies were found on the southern bank of river Sone were killed after slitting their neck. Post-mortem reports have been marked as Exts. 1-1/57.

33. Learned counsel for the appellants submitted that the assailants were from Sahar area in Bhojpur district and were stranger to the informant and the witnesses. In order to establish their identity, the fardbeyan, Ext. 19 and the formal FIR, Ext. 21 has been antedated, which would be evident from the following facts:

Fardbeyan of P.W. 41 was scribed by P.W. 88 Akhilendra Kumar Singh on 2.12.1997 on 9.30 A.M. After recording of the fardbeyan, the same was forwarded to the P.S. for institution of the case. It appears from Column No. 3 of the FIR that the fardbeyan reached the P.S. on 2.12.1997. The column in the FIR for indicating the time of receipt of the fardbeyan in the P.S. has been kept blank, but from the evidence of P.W. 88, paragraph 52, it appears that fardbeyan reached Mehandia P.S. on 2.12.1997 at about 3.00 P.M., which fact is also corroborated from column no. 3 of the FIR as in the said column, it has been stated that fardbeyan was received at the P.S. vide Station Diary Entry No. 38 at 15.00 hours. It further appears from the FIR that after receipt of the fardbeyan, instant Mehandia P.S. Case No. 126 of 1997 was registered on 2.12.1997 and dispatched to the court through special messenger on 2.12.1997 itself. Information about registration of the fardbeyan was also transmitted to P.W. 85 first Investigating Officer Dy. S.P. Shri Dhar Mandal on 2.12.1997 at about 4.05 P.M. through wireless, which fact would appear from his evidence in paragraph 5 yet the FIR reached CJM, Jehanabad on 4.12.1997, which is evident from the endorsement made by the CJM on the FIR. It is submitted by the counsel for the appellants that neither P.W. 88, who has scribed fardbeyan, in paragraphs 54 and 56 of his evidence at page 660 of the paper book nor P.W. 85 first Investigating Officer in paragraphs 46 to 49 at pages 639, 640 of the paper book nor P.W. 91 Second Investigating Officer Dy.S.P. Mirza Maksood Alam Beg in paragraphs 85 at page 686 of the paper book has explained as to why the FIR did not reach the court on 2, 3.12.1997 although the distance between Mehandia P.S. and the Jehanabad Civil Court is about 50 Kms. and the two are connected by motorable road over which vehicular traffic is always available as has been admitted by the first Investigating Officer P.W. 85 himself in paragraph 45 of his evidence yet P.Ws. 85, 88 and 91 failed to explain the delay in receipt of the FIR in court. Learned counsel also pointed out that 2,3.12.1997 being working days, it was incumbent upon the prosecution to have explained the delay in reaching the FIR of Mehandia P.S. Case No. 126 of 1997 dated 2.12.1997 to Jehanabad Civil Court on 4.12.1997.

34. It is submitted, with reference to the judgment of the Supreme Court in the case of Bhajan Singh @ Harbhajan Singh and Others Vs. State of Haryana, , Shivalal and Another Vs. State of Chhattisgarh, that delay alone in receipt of the

FIR in court cannot be a factor for rejecting the prosecution case, but delay in receipt of FIR in court coupled with other circumstance like delay in recording the statement of the eye-witnesses may persuade the court to reject the prosecution case. In a given case if a number of dead or injured persons is very high, delay in dispatching the FIR is natural. In the instant case, fardbeyan was recorded on 2.12.1997 at 9.30 AM, which was received in the P.S. on 2.12.1997 at 3.00 P.M. and soon thereafter FIR was drawn and dispatched to Civil Court, Jehanabad on 2.12.1997 itself through special messenger, but the same reached the Jehanabad Civil Court on 4.12.1997 which delay having not been explained by the four police officers examined in the case, who were part of the investigating team, coupled with other circumstance that eye-witnesses, P.Ws. 1, 2, 4, 6, 7, 9, 10, 11, 12, 14, 16 were also not examined on 2.12.1997, this Court should reject the evidence of the eye-witnesses for the reason that if those witnesses had any clue about the assailants, they must have disclosed their name to the first Investigating Officer P.W. 85 or the scribe of fardbeyan P.W. 88 who visited the houses of the deceased and met their relatives soon after the occurrence. In this connection, it is pointed out, with reference to the judgment of the Supreme Court in the case of Marudanal Augusti Vrs. State of Kerala, AIR 1980 Supreme Court 638, that where the FIR is antedated, the entire fabric of the prosecution case would collapse. Learned counsel for the appellants then submitted that the evidence of informant Binod Paswan, P.W. 41 is fit to be discarded as just before the occurrence he was sleeping in the room situated west of the courtyard. On instructions from his father, informant along with other family members went to the other room in the east of the courtyard which has door, bolt and it is in that room occurrence took place. It is his evidence that while he had concealed himself in the other eastern room, he identified 9 of the accused persons, who entered that room. First Investigating Officer PW. 85 has stated in paragraphs 3, 72 at page 624, 644 of the paper book respectively that informant did show him the spot where he concealed himself inside the room situated west of the courtyard where no occurrence took place. Similar is the evidence of Second Investigating Officer P.W. 91 in paragraph 88 at page 687 of the paper book. In paragraph 12 at page 552 of the paper book, P.W. 41 claimed that he did show the place where he concealed himself to the police officers. P.W. 41 did not state in his fardbeyan or his case diary statement that he concealed himself in the eastern room and that he identified 9 accused who entered that room by their voice. Aforesaid omission made by the informant has been proved through Second Investigating Officer Mirza Maksood Alam Beg P.W. 91 in paragraph 121 of his evidence at page 691, 692 of the paper book. In the said paragraph, P.W. 91 denied that P.W. 41 claimed before him that he identified 9 accused persons in the room through their voice which is also evident from the case diary statement of the informant P.W. 41 recorded by Second Investigating Officer Mirza Maksood Alam Beg P.W. 91 annexed with the written submission filed on behalf of the State. P.W. 41 has stated in paragraph 18 that he came out of his house after five minutes of the assailants leaving the house and then went to the roof of his uncle. Aforesaid statement is not found either in the fardbeyan or case diary

statement of P.W. 41. In this connection, it is further submitted that the evidence of the informant P.W. 41 in paragraph 18 is highly improbable as it is unlikely that informant would leave the place where he concealed himself to the risk of being seen by the assailants, who were freely roaming in the village. It is further submitted that in the fardbeyan and the case diary statement, informant stated that he went to the roof when the assailants were retreating and leaving the village. In such situation, he could not have identified the accused persons as their back would be towards him and there was no source of light.

35. In this connection, it is further pointed out that prosecution witnesses being completely unaware, clueless about the identity of the assailants did not furnish the name of the assailants to P.W. 88 when he reached the place of occurrence and visited their houses for preparing the inquest report which he submitted to the Investigating Officer along with supplementary case diary, as would appear from his evidence in Paragraph 40 at page 660 of the paper book. In this connection, learned counsel for the appellants further referred to the evidence of P.W. 85, first Investigating Officer Dy. S.P. Shri Dhar Mandal in paragraph 3 of his evidence at page 633 of the paper book that first Investigating Officer began inspection of 1-14 place of occurrence on 2.12.1997 at 11 A.M. and after completing the inspection recorded in paragraph 3 at page 633 of the paper book that he found 3, 2 dead bodies of fishermen on the southern, northern bank of the river Sone as also foot prints of 100-150 persons on the sandy bank of the river Sone coming towards Bathe from Sahar area as also returning to Sahar. In this connection, counsel for the appellants further submitted that Investigating Officer having noticed the contents of the fardbeyan that assailants having crossed the river Sone went towards village Chhotki Kharaon within Sahar P.S. contacted S.P. Bhojpur and Officer-in-charge, Sahar P.S. at 10.35 A.M. requesting them to make raid in Sahar area to apprehend the assailants, which fact would appear from the evidence of P.W. 85 in paragraph 36. It was also pointed out that having given said instruction, Investigating Officer P.W. 85 at 11 A.M. proceeded to inspect all the 14 place(s) of occurrence including southern, northern bank of the river Sone and found three dead bodies of Chanarik Chaudhary son of Chulhan Chaudhary, his two sons, Gorakh Chaudhary and Shiv Kailash Chaudhary on the southern bank and two dead bodies of Naresh Chaudhary and Ram Niwas Chaudhary both sons of Mahesh Chaudhary on the northern bank of the river Sone near a hut where copious blood was also found on the bank together with a boat anchored also smeared with blood. In the light of the dead bodies and the evidence of violence on both the banks of the river Sone, Investigating Officer P.W. 85 again contacted Officer-in-charge, Sahar P.S. at about 4.15 P.M. and requested him to make raid and track the assailants who had gone towards Sahar area to village Mathia, Chhotki Kharaon, Barki Kharaon, Lodipur, which fact would appear from paragraphs 6, 40 of the evidence of P.W. 85 at pages 634, 639 of the paper book.

36. Learned counsel for the appellants with reference to the evidence of P.Ws. 1, Belwanti Devi, P.W. 2- Sikandar Chaudhary, P.W. 4 Dudh Nath Chaudhary, P.W. 6

Mutur Rajbansi, P.W. 7 Subedar Ravidas, P.W. 9 Yugal Ravidas, P.W. 10 Mahurati Devi, P.W. 11 Bimlesh Kumar, P.W. 12 Munni Rajbansi, P.W. 14 Sohrai Mahto, P.W. 16 Ram Ugrah Rajbansi, all eye witnesses submitted that the aforesaid witnesses met the police officials on 2.12.1997 yet their case diary statement was not recorded. The only reason for not recording their statement could be that these witnesses had not identified the assailants and had no information/clue about the occurrence, which was required to be given to the police. In this connection, he referred to paragraph 8 of the evidence of P.W. 1 Belwanti Devi at page 416 of the paper book where she has admitted that police came to the place of occurrence in the morning which followed the occurrence and she recorded her statement but her statement recorded on 2.12.1997 is not available in the case diary which fact is evident from the evidence of first Investigating Officer P.W. 85 paragraph 20 where he has categorically stated that P.W. 1 recorded her statement on 4.12.1997. Learned counsel next referred to the evidence of P.W. 2 Sikandar Chaudhary in paragraph 16 at page 422 of the paper book wherefrom it appears that P.W. 2 Sikandar Chaudhary and his brother P.W. 4 Dudh Nath Chaudhary recorded their police statement in the morning at 8 A.M. which followed the occurrence in the orchard in presence of 250 villagers but the said statement is not available in the case diary as according to the first Investigating Officer P.W. 85 in paragraph 13 at page 635 of the paper book the evidence of P.Ws. 2,4 was recorded at 8 A.M. on 3.12.1997. P.W. 6 Mutur Rajbansi in paragraphs 13,14 at page 437 of the paper book has also admitted that in the morning which followed the occurrence administration i.e. Collector, police, Minister etc. had come to the place of occurrence and he made his police statement but the authorities did not verify his claim that he concealed himself over his thatched roof. The police statement of the witness referred to in paragraph 14 of his evidence is not available in the case diary as according to the first Investigating Officer P.W. 85 he was examined on 3.12.1997 at 8 A.M. which is also evident from paragraph 13 of the evidence of P.W. 85. P.W. 7 Subedar Ravidas in paragraph 15 of his evidence at page 439 of the paper book has also accepted the fact that police came to the place of occurrence in the morning which followed the occurrence and made enquiries from him. The witness, however, is not aware as to when his statement was recorded by the police. From the evidence of first Investigating Officer P.W. 85 paragraph 31 at page 637 of the paper book it appears that the police statement of P.W. 7 Subedar Ravidas was recorded on 8.12.1997. From the evidence of P.W. 9 Yugal Ravidas paragraph 16 at page 446 of the paper book it appears that P.W. 9 also admitted the fact that police came to the place of occurrence village in the morning which followed the occurrence but denied the suggestion that he recorded his police statement after 5-6 days of the occurrence. From the evidence of the Investigating Officer P.W. 85 in paragraph 31 at page 637 of the paper book, it is evident that P.W. 9 recorded his police statement on 8.12.1997 and not in the morning which followed the occurrence. Learned counsel with reference to the evidence of P.W. 10 Mahurati Devi and P.W. 11 Bimalesh Kumar submitted that both were injured and sent for medical examination by the first Investigating

Officer P.W. 85 on 2.12.1997 as he found them injured during the occurrence, but the two witnesses did not record their case diary statement. From the evidence of second Investigating Officer P.W. 91, Dy.S.P. Mirza Maksood Alam Beg in paragraphs 29, 113 it appears that police statement of Bimallesh Kumar was recorded by P.W. 91 after 18.12.1997 on 22.12.1997 vide paragraph 94 of the evidence of Second Investigating Officer Mirza Maksood Alam Beg P.W. 91 and police statement of P.W. 10 Mahurati Devi was recorded by Inspector Indu Bhushan Prasad on instruction from second Investigating Officer Mirza Maksood Alam Beg (P.W. 91) who took charge of the investigation after 10.12.1997 on 18.12.1997. P.W. 10 has not named anybody in her statement recorded before the police. Her evidence in paragraph 7 at page 449 rules out the presence of her brother Ram Vinesh Rajbansi. Learned counsel for the appellants then referred to the evidence of P.W. 12 Munni Rajbansi, son of Pappan Rajbansi in paragraph 12 of his evidence at page 456 of the paper book where he has accepted that police came to the place of occurrence in the morning which followed the occurrence, saw the dead bodies but did not draw any document. All his family members were killed during the occurrence but he did not make any statement though he was present in the village. First Investigating Officer P.W. 85 in paragraph 10 of his evidence has stated that he recorded the statement of P.W. 12 Munni Rajbansi, son of Pappan Rajbansi on 2.12.1997. Aforesaid evidence of first Investigating Officer P.W. 85 is required to be considered in the light of the evidence of P.W. 12 in paragraph 9 of his evidence where he states that his statement was recorded by the police after 8-10 days of the occurrence and it is incorrect to state that in his police statement he had not named accused no. 14 Dharichan and accused no. 11 Shatrughan Singh. Second Investigating Officer P.W. 91 in paragraph 118 of his evidence has stated that P.W. 12 had not named Dharichan and Shatrughan before him. P.W. 14 Soharai Mahato in paragraph 3 at page 462 of his evidence has stated that police arrived in the village in the morning following the occurrence between 8-10 A.M. when he was weeping. His statement was recorded by the police after 6-7 days of the occurrence. The witness further stated that he has not named accused no. 5 Baleshwar, Accused No. 16 Kawal, Accused No. 10 Nandu before the police. From the evidence of first Investigating Officer P.W. 85, paragraph 20 also it appears that this witness was examined by him on 4.12.1997. P.W. 16 Ram Ugrah Rajbansi in paragraph 21 of his evidence at page 469 of the paper book has stated that the police came to the place of occurrence village in the morning following the occurrence at about 8-8.30 A.M. He further stated that he is not aware who recorded their statement before the police on that day. P.W. 16 accepts in the same paragraph that he did not inform the police that he has seen the occurrence and his statement be recorded. His statement appears to have been recorded by the second Investigating Officer P.W. 91 after he took charge of the investigation on 10.12.1997 and made inspection of the place of occurrence on 11.12.1997 some time thereafter.

37. With reference to the aforesaid evidence, learned counsel for the appellants

submitted that where the eye-witnesses are available Investigating Officer has to record their statement without any delay whatsoever. Even a delay of few hours in recording their statement amounts to a serious infirmity in prosecution case. In this connection, he placed reliance on the judgment of the Supreme Court in the case of Ganesh Bhavan Patel and Another Vs. State of Maharashtra, and submitted that delay in recording the statement of eye-witnesses may amount to a serious infirmity in the prosecution case. If there are concomitant circumstance to suggest that investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witnesses to be introduced, unexplained delay of two days i.e. 2,3.12.1997 in reaching the F.I.R. to the court on 4.12.1997 suggest that fardbeyan was not only ante-dated but investigator was marking time by not recording the statement of P.Ws. 1, 2, 4, 6, 7, 9, 10, 11, 12, 14, 16. Normally, in a case where the commission of the crime is alleged to have been seen by the witnesses who are easily available, a prudent investigator would give precedence to recording the statement of the eye-witnesses over the evidence of other witnesses. In the instant case, first Investigating Officer P.W. 85 should have recorded statement of P.Ws. 1, 2, 4, 6, 7, 9, 10, 11, 12, 14, 16 on 2.12.1997 itself as all these witnesses were available in the village and had met him but for the reasons best known to the Investigating Officer, their statement has not been recorded.

38. Learned counsel for the appellants further assailed the evidence of P.W. 11 Bimlesh Kumar on the ground that P.W. 11 in his evidence in court has stated that he identified the assailants when he came outside the room into the courtyard. His case diary statement is that he sustained the injury inside his room. Aforesaid contradiction has been proved by Second Investigating Officer Mirza Maksood Alam Beg P.W. 91 in paragraph 117 at page 691 of the paper book. In paragraph 5, P.W. 11 admitted that he felt frightened and covered himself with a cotton sheet. According to the learned counsel, he would not be able to identify the assailants. It is further submitted that in paragraph 10 at page 451, P.W. 11 claimed that he was shot by Dharma Singh, which fact is not stated by him in his case diary statement as proved by Mirza Maksood Alam Beg P.W. 91 in paragraph 117. It is also submitted that P.W. 89, Dr. G.C. Jha examined P.W. 11 and found that P.W. 11 suffered lacerated wound just below the right lower eye-lid, which according to the learned counsel could not be caused by a direct firearm shot as claimed by the witness. Learned counsel assailed the evidence of P.W. 10 Mahurati Devi and P.W. 8 Ram Vinesh Rajbansi on the ground that P.W. 10 in her case diary statement recorded on 18.12.1997 by Indu Bhushan Prasad on the instruction of Second Investigating Officer Mirza Maksood Alam Beg P.W. 91 did not name any of the miscreants, which fact was confirmed by the Second Investigating Officer Mirza Maksood Alam Beg P.W. 91 in paragraph 114 of his evidence. In view of confusion made in the said paragraph by using two negatives, we asked the counsel for the State to produce the case diary statement of P.W. 10 recorded by Indu Bhushan Prasad, but such statement was not produced before us. It is further submitted that evidence of

P.W. 10 in paragraph 7 at page 449 of the paper book rules out the presence of P.W. 8 in the village on the date and time of occurrence. In this connection, it is also pointed out that P.W. 8 Ram Vinesh Rajbansi admitted in paragraph 6 of his evidence that he permanently resides in his matrimonial village for the last 4-5 years which is at a distance of 5 Kosh and that he heard about the occurrence on the radio. In view of the aforesaid evidence of P.W. 8, learned counsel submitted that it is quite evident that on the date, night of occurrence, P.W. 8 was not available in the village. Learned counsel further assailed the evidence of P.W. 12, Munni Rajbansi on the ground that his case diary statement was recorded on 12.12.1997. In this connection, it is pointed out that first Investigating Officer P.W. 85 has admitted in paragraph 76 at page 645 that he met the witness on 2.12.1997 and that the witness did not record his statement. In this connection, learned counsel also referred to paragraph 12 at page 456 of the paper book of the evidence of P.W. 12 Munni Rajbansi where he has admitted that he met the police in the morning of the occurrence.

39. Learned counsel assailed the evidence of P.W. 6 Mutur Rajbansi on the ground that his case diary statement was recorded on 3.12.1997 in which he has admitted that he concealed himself in the gourd foliage/creepers on the top of his roof and according to the learned counsel, it would be difficult for anyone to identify the miscreants from such position. Learned counsel also assailed the evidence of P.W. 2 Sikandar Chaudhary and P.W. 4 Dudh Nath Chaudhary as their case diary statement was recorded on 3.12.1997 though they admitted that they met the Investigating Officer on 2.12.1997 and yet their case diary statement was not recorded. It is further submitted that both the witnesses have concealed themselves and were not in a position to identify the assailants. Learned counsel then assailed the evidence of P.W. 1 Belwanti Devi on the ground that her case diary statement was recorded on 4.12.1997 in which she admitted that she concealed herself under a bed which had covering on the top of it. According to the learned counsel from that position it would only be possible for her to see the feet of the person who entered the room. Learned counsel next challenged the evidence of P.W. 14 Sohrai Mahto on the ground that his case diary statement was also recorded on 3.12.1997 in which he did not name any of the assailants, which fact is admitted by him in court vide paragraph 3 at page 462 of the paper book. Learned counsel also challenged the evidence of P.W. 3 Laxman Rajbansi, P.W. 5 Surendra Rajbansi and P.W. 16 Ram Ugrah Rajbansi on the ground that the case diary statement of P.W. 3 and P.W. 5 was recorded on 5.12.1997 whereas the statement of P.W. 16 Ram Ugrah Rajbansi was recorded after 12.12.1997. According to the learned counsel, aforesaid witnesses having concealed themselves were not in a position to identify the assailants. Learned counsel further assailed the evidence of P.W. 7 Subedar Ravidas and P.W. 9 Yugal Ravidas on the ground that their case diary statement was recorded on 8.12.1997 though they had met the police on 2.12.1997 and had not disclosed the name of the miscreants vide paragraph 15 of P.W. 7 and paragraph 16 of P.W. 9 at page 439 and 446 of the paper book respectively.

40. Learned counsel for the State in opposition submitted that in the present occurrence, 58 persons have been selectively killed in village Laxmanpur Bathe on 1.12.1997 at about 10.30 P.M. while they were asleep and 7 injured in 13 different houses located in a line. Out of the 58 killed, 53 belong to Dalit section of the society and 5 were fishermen. The motive for the occurrence as stated by the prosecution witnesses is that members of the Ranvir Army wanted to establish their hegemony in the village and for establishing such hegemony, they struck terror on the selected members of the Dalit community who demanded due wages from the members of the Ranvir Sena. The incident was perpetuated selectively to teach lesson to the labourers who persisted with their demand for due wages.

41. According to the learned State counsel, fardbeyan was recorded by P.W. 88 at the instance of the informant, P.W. 41 at 9.30 A.M. on 2.12.1997 after the police arrived in the place of occurrence village. 7 members of the family of the informant were killed in his presence. He named 26 assailants in the fardbeyan and they are all accused in the case. Those who were not named in the fardbeyan have been acquitted by the trial court. The fardbeyan was registered as FIR on 2.12.1997 at 3.00 P.M. by S.I. Abhay Kumar Singh.

42. The occurrence was investigated by Dy.S.P., P.W. 85 during the period between 2.12.1997 till 9.12.1997 after which the investigation was handed over to P.W. 91, the Dy.S.P., CID, who according to the learned counsel for the State, took up investigation from 10.12.1997. P.W. 87, S.I. Incharge of Arwal P.S. recorded the statement of few witnesses. According to the learned counsel for the State, the investigation revealed as follows:

The accused and victim were known to each other living in the same village or the adjoining village within a radius of 1 kilometre. Many of the eye-witnesses have deposed that they identified the miscreants with the help of three cell torch carried by the miscreants for identifying their targets. Light was also available during the firing by the miscreants. According to the learned counsel for the State recognition of the miscreants was fully possible as they saw the members of their family i.e. father, mother, brother, sister, wife, daughter, son being killed in front of them. The eye-witnesses, however, managed to conceal themselves from the assailants. In this connection, it is submitted, with reference to the judgment of the Supreme Court in the case of Siddique and Others Vs. State of U.P., paragraphs 6, 7, State of U.P. Vs. Sukhpal Singh and Others, Sone Lal and Others Vs. The State of U.P., , paragraph 16 and Suraj Pal and Others Vs. State of Haryana, , that it is settled law that the accused can be identified even in darkness with the help of torchlight, lantern.

43. Learned counsel for the State further submitted that the Supreme Court in a catena of cases has sustained conviction even where source of light was not disclosed. In the case of Nathuni Yadav and others Vs. State of Bihar and another, Supreme Court sustained the conviction even when there was absence of artificial light. In the case of S. Sudershan Reddy and Others Vs. State of

Andhra Pradesh, it has been held that as the accused were known to the witnesses, identification in faint darkness was possible. Learned counsel, with reference to the judgment of the Supreme Court in the case of State of U.P. Vs. Babu and Others, , paragraph 7, Kedar Singh and Others Vs. State of Bihar, submitted that it has been held that identification of known persons is possible from the manner of speech, walking and gesticulating. Learned counsel further submitted, with reference to the judgment of the Supreme Court in the case of Sheo Shankar Singh Vs. State of Jharkhand and Another, and Dana Yadav @ Dahu and Others Vs. State of Bihar, that conviction can be sustained even where witness identified the accused for the first time in court and the witness is not part of TIP especially when the witnesses knew the accused from before.

44. Learned counsel for the State further submitted that after the incident accused persons were absconding and raids were conducted to arrest them as has been stated by the Investigating Officers P.Ws. 85 and 91 in the deposition before court. The deposition in the trial was recorded after 12 years in January, 2009 after the High Court intervened and passed orders to expedite the trial and transferred the matter to the court of 1st Additional Sessions Judge, Patna as prior thereto the trial kept getting transferred from one court to another and charges were framed only in December, 2008. The trial was delayed because the accused obtained bail during long interregnum and did not want the trial to proceed.

45. According to the learned counsel, the question that follows for consideration is whether the evidence of the eyewitnesses should or should not be believed as the counsel for the accused has not challenged the incident or the medical and other evidence on record. What is denied is participation and identification of the accused persons by the injured victims and the eye-witnesses on the specious ground that the names of the accused had not been taken by the witnesses before the police and that the name in the fardbeyan, FIR dated 2.12.1997 has been concocted by antedating the fardbeyan, FIR which reached the CJM, Jehanabad 36 hours later on 4.12.1997. According to the State counsel, delay in receipt of the fardbeyan, FIR in court is because of the trauma of the loss of the near and dear family members of the injured and other eye-witnesses. Learned counsel further submitted that the minor contradictions pointed out in the deposition of the Investigating Officer and the prosecution witnesses by the counsel for the appellants that the witnesses did not name the miscreants before the Investigating Officer is hardly of any consequence as witnesses had categorically stated in court that they had named the miscreants before the Investigating Officer. The informant P.W. 41 also did not mention in detail all the facts which he had stated before P.W. 85 in his subsequent statement to P.W. 91 and such omission is also of hardly any significance. Learned counsel for the State also submitted that according to the two Investigating Officers, some of the witnesses did not mention the source of light for identification which is also of no consequence. The witnesses have stated in court that they had spoken to the Investigating Officer about the source of identification. According to the

learned counsel, aforesaid contradictions in the evidence of the two I.Os., P.Ws. 85, 91 and the eye-witnesses is because of delay in deposition made after 12 years of the occurrence and may not be taken as a factor to reject the evidence of the eye, injured witnesses.

46. To support the aforesaid submission, learned counsel submitted that omission in statement recorded u/s 161 Cr.P.C. is not a contradiction in terms of Section 162 Cr.P.C. unless what is actually deposed in court contradicts the statement made u/s 161 Cr.P.C. For the aforesaid submission, he relied on the judgment of the Supreme Court in the case of Ram Bali and others v. State, AIR (39) 1952 All 289 Muninajappa and Others Vs. State of Mysore, He further contended that merely because there was lapse on the part of the Investigating Officer in not taking further statement of the witnesses injured, their testimony in court with substantive evidence cannot be ignored or discarded even if they have made certain improvements and there are certain major contradictions in their testimony. In this connection, reliance is placed on the case of Rajubhai Dhamirbhai Baria, Pankaj Virendragir Gosai, Sanjay Ratilal Thakkar and Bahadursinh @ Jitu Chandrasinh Chauhan Vs. The State of Gujarat and Others, . Learned counsel further pointed out that it is the duty of the Investigating Officer to record the statement of the injured witnesses by visiting the hospital after ascertaining whether they were in a fit condition to give their statement. He further submitted that only because the name of the accused have not been mentioned in the statement recorded by the police and that their description is not given, the evidence of the eyewitnesses cannot be discarded on that ground. Reliance in this connection is placed on the case of Simon and Others Vs. State of Karnataka, and Malkhansingh and Others Vs. State of Madhya Pradesh, Rizan and Another Vs. State of Chhatisgarh, through The Chief Secretary, Govt. of Chhatisgarh, Raipur, Chhatisgarh, Munshi Singh Gautam (D) and Others Vs. State of M.P., , Rajubhai Dhamirbhai Baria and others v. The State of Gujarat and others, 2012 114 (6) Bom.L.R. 3549.

47. Learned counsel, with reference to the judgment in the case of Ramji Ram and Others Vs. The State of Bihar submitted that when the point for consideration is whether statement of the eye-witnesses or that of Investigating Officer is true, worthy of credence and acceptable, the courts have held that if the testimony of the witnesses are consistent then it is presumed that they would have stated the relevant material facts to the Investigating Officer. Learned counsel further submitted that expression "statement or any part of such statement" in Section 162 Cr.P.C. is not to be construed to mean single statement given by a witness to a particular officer but takes within its sweep all the statements given by the witness at different stages or on different dates to different Investigating Officers or to the same Investigating Officer. Reliance in this connection is placed on the judgment of Asan Tharayil Baby Vs. State of Kerala,

48. Learned counsel for the State further submitted, with reference to the

judgment of the Calcutta High Court in the case of Emperor Vs. Ajit Kumar Ghosh and Others, that the court needs to first consider whether the omission in the statement recorded u/s 161 Cr.P.C. amounts to contradiction of stand taken by the witness in court. If it does then the court will have to go into the question of proving the fact as to whether the Investigating Officer actually omitted the statement of the witness or not. It is submitted that an omission to state a fact by itself can never be a contradiction.

49. Learned counsel then referred to the judgment of Ramji Ram and Others Vs. The State of Bihar and submitted that the High Court refused to rely on the words of the Investigating Officer that witnesses had not deposed the material facts in front of him during the investigation taking into account the conduct of the Investigating Officer. The High Court further stated that the witnesses in question being eye-witnesses of the event, their testimony being consistent, it does not appear from their conduct that they would not have stated the relevant material facts to the Investigating Officer. The accused persons in the case were convicted on the basis of their testimony, which according to the Investigating Officer was not stated before him during investigation.

50. Learned counsel for the State next submitted that most important aspect of the matter is that why injured witnesses i.e. P.Ws. 10, 11, 17 and 18 be disbelieved. They having suffered firearm injury, their presence at the time of incident is fixed and those whom they have recognised are identified and ought to be believed as per settled legal pronouncements. According to learned counsel, where a witness to the occurrence has himself been injured in the incident, the testimony of that witness is generally considered to be reliable, as he is a witness that comes with a built-in guarantee in his presence at the scene of crime and is unlikely to spare the actual assailant(s) in order to falsely implicate others. Reliance in this connection is placed on the judgment of the Supreme Court in the case of Abdul Sayeed Vs. State of Madhya Pradesh,

51. Learned counsel then submitted that there is no justifiable reason to disbelieve P.W. 41. He has stuck to his evidence and at the earliest point of time names have been furnished by him to the police authorities. He has lost his near and dear ones. According to the learned counsel, why should it be felt that he and other witnesses are leaving out the actual culprit and falsely implicating the accused persons. According to the learned counsel, the submission of the counsel for the appellants that on account of delay of 36 hours in reaching the FIR to the court of CJM, Jehanabad, the entire prosecution case should be rejected is wholly specious and travesty of justice for not only to the terror stricken society and the victims, but would also show the callousness of the institutions of not being sensitive to the plight of the Dalit victim but the hard realities of the influence the forward caste can exercise in an agrarian rural background.

52. Learned counsel for the State also submitted that the evidence of the eye-witnesses who have lost their kith and kin, near and dear ones like son, daughter, father, wife, uncle etc. and who were shot in their very presence should

be believed as against any other evidence. The ocular evidence in the instant case is such that having seen their kith and kin killed in their presence, the eyewitnesses would not protect the real culprit and seek to falsely implicate any other person, which is not a normal human conduct and the prosecution witnesses should be believed. In the instant case, prosecution witnesses who lost their several closest relatives, near and dear, kith and kin (between 3 to 7 family members) are P.Ws. 1 to 12, 14, 16 to 18 and 41. There is no reason absolutely, not even on account of the contradiction with their case diary statement as also shoddy and defective investigation by P.Ws. 85, 91, to disbelieve the aforesaid witnesses.

53. Learned counsel next submitted that true it is that Accused Nos. 22, 23, 24, 25 and 26 have been identified by one witness only, but it is settled law that the evidence of single eyewitness is enough to convict the accused. Reliance in this connection is placed on the judgment of Supreme Court in the case of Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, Bhimappa Chandappa Hosamani and Others Vs. State of Karnataka, State of M.P. Vs. Laakhan @ Lakhan, Jhapsa Kabari and Others etc. Vs. State of Bihar, . According to the learned counsel, in the case of Krishna Mochi and Others Vs. State of Bihar, , death sentence was awarded in similar facts and Supreme Court held that the test propounded in the judgment of Masalti Vs. State of U.P., is not a cast iron rule.

54. Learned counsel further pointed out during the hearing of the case that many of the prosecution witnesses have not been cross-examined in detail on various aspects of their depositions regarding identification of accused. In fact the identification of the accused in court by the prosecution witnesses during recording of their testimony was not disputed by the counsel for the accused who were present in court. It is settled law that where a witness is not cross-examined on any relevant aspect, the correctness of the statement made by a witness cannot be disputed. Reliance in this connection is placed on the judgment in the case of State Vs. Sushil Sharma, paragraph 26. According to the learned counsel, the unimpeached testimony of the witness on this score has to be accepted as has been rightly done by the trial court.

55. According to the learned counsel, the submission of the defence that prosecution witnesses have not ascribed a concrete role to many of the accused persons during their statement before the Investigating Officer or before the learned trial court. In this regard, it is submitted that it is settled law that where a crowd of assailants who are members of an unlawful assembly proceed to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for the witnesses to describe accurately the part played by each one of the assailants. Reliance in this connection is placed on the judgment of the Supreme Court in the case of Abdul Sayeed Vs. State of Madhya Pradesh, , paragraphs 25-27, Gangadhar Behera and Others Vs. State of Orissa,

56. Learned counsel further submitted that the period during which P.W. 85

carried out the investigation i.e. for 8 days, the prosecution witnesses were attending to the last rites of their kith and kin and were under tremendous shock and trauma as so many persons have been killed in a small hamlet in the same night. The witnesses were scared and scarred for life. The manner of investigation of P.Ws. 85, 91 indicates the defective investigation carried out by them. According to learned counsel for the State, present occurrence is a clear-cut case of murder of so many persons and trial, identification as deposed by the witnesses without any ill will should be believed and the two Investigating officers who carried out the faulty investigation should be prosecuted under Sections 182 and 195(A) of the Indian Penal Code.

57. According to learned counsel for the State there were eye-witnesses who had their own relatives killed or injured. The injured would be taking treatment and getting their injuries attended to. They may also not have been in a position to give their detailed statement, inasmuch as the Investigating Officer has remained within the parameters of the village while the injured were taken to the hospital. There is absolutely no reason to disbelieve P.Ws. 1 to 12, 14, 16 to 18 and 41 qua their deposition with reference to the accused persons. Even if a major portion of the evidence is found to be deficient, residue is sufficient to prove guilt of an accused, it is the duty of the court to separate grain from the chaff. In the present case the contention of the defence that the said witnesses were tortured is *ex facie* erroneous. A reading of the testimony of all witnesses shows that they have each given vivid description of the events and named the accused whom they came across and could recognize. They have also reiterated their statement during the recording of their testimony in court 12 years later and withstood sustained cross-examination.

58. Learned counsel further submitted that merely because of some exaggeration or embellishment, the court cannot discard the testimony of eye-witnesses. There would hardly be a witness whose evidence does not contain some amount of exaggeration or embellishment. Reliance in this connection is placed on the judgment of the Supreme Court in the case of Sukhdev Yadav and Others Vs. State of Bihar, 3 Ramesh Harijan Vs. State of U.P., 24, Rizan and Another Vs. State of Chhatisgarh, through The Chief Secretary, Govt. of Chhatisgarh, Raipur, Chhatisgarh,

59. Learned counsel for the State further submitted that testimony of the witnesses ought not to be rejected merely on the ground that they have committed certain factual omissions at some point of time. This Court should take into account that mental tension can lead to omission to state everything on the first occasion by a witness and the same should not be a ground to reject the deposition entirely. Reliance in this connection is placed on the judgment of the Supreme Court in the case of Abdul Sayeed Vs. State of Madhya Pradesh, Jhapsa Kabari and Others etc. Vs. State of Bihar,

60. Learned counsel for the State further submitted that the evidence of hostile witness if it finds corroboration from the facts of the case may be taken into

account while judging the guilt of the accused. Reliance in this connection is placed on the judgment of the Supreme Court in the case of Lella Srinivasa Rao Vs. State of Andhra Pradesh, , Lahu Kamlakar Patil and Another Vs. State of Maharashtra,

61. Learned counsel for the State also submitted that the principle underlining section 465 Cr.P.C. has to be adhered to and ocular evidence of the witnesses to be believed if reliable and points a definite finger to the accused who participated in the crime. Then there is no reason to disbelieve that evidence merely because of the contradiction vis-?-vis case diary statement on account of defective investigation by the Investigating Officer. The view that the accused should not be prejudiced has undergone a sea change in terms of the judgment taking into account the hard reality prevailing in the society today. According to the learned counsel for the State time has come that the entire prosecution case could be jeopardised by a compatible Investigating Officer where the accused are in a position to influence the Investigating Officer to investigate in a particular manner. The victims are as much important and their case should not be jeopardised only because the accused may say that there is some prejudice caused to them. In terms of long line of decisions referred to above the accused and the victims are at par for the purpose of consideration of the evidence of the eye-witnesses in order to reach the correct conclusion. Learned counsel then submitted that the points raised by the appellants that there is delay of 36 hours in reaching the F.I.R. to the court of C.J.M. which is 60 Km. away from the P.S. and therefore, the prosecution case is false as during the interregnum of 36 hrs. appellants were falsely implicated, is wholly misconceived. In this connection, it is submitted that first Investigating Officer P.W. 85 has stated in his evidence at page 634 of the paper book that F.I.R. was ready for dispatch to the court of C.J.M. on 2.12.1997 itself as recorded in the F.I.R. itself and found correct by the trial court at page 1168 of the paper book and the delay stands explained as Investigating Officer had a very hectic schedule to follow in view of the magnitude of the crime i.e. sending injured to hospital, preparation of post-mortem and inquest-reports, seizure of materials and sending the material for forensic examination, recording of statement of witnesses, securing the place of crime, restoring law and order, attending to visits by senior government and political functionaries, conducting raids and arresting the accused.

62. Learned counsel for the State further submitted that from the evidence of P.W. 88 at page 654, 655 it is clear that the person who scribed the F.I.R. was also assigned to complete various tasks. These tasks were important and could not be left out for being carried out on a later date. According to learned counsel the delay of approximately 36 hours in sending the F.I.R. to the C.J.M. is very well explained. Learned counsel also referred to the judgment of the Supreme Court in the case of State of U.P. Vs. Gokaran and Others, , Pala Singh and Another Vs. State of Punjab, and submitted that mere delay in sending the special report to the C.J.M. is not fatal to the case of the prosecution.

63. Learned counsel for the State finally submitted that in the present case the counsel for the appellants have not put any question to the prosecution witnesses disputing the fact that the accused were known to the witnesses. Many of the prosecution witnesses have categorically stated that there was light from three cell torch to identify the accused while firing there would be additional light from the weapon. None of the counsel for the accused has impeached or challenged the identification of the accused in court despite being present which has also been taken note by the trial court. The factum of incident having occurred is not in dispute. Prosecution witnesses have only questioned on the specific role being ascribed to each of the accused. The witnesses have not questioned at all or disputed the fact that the accused took part in the carnage. According to learned counsel for the State the accused persons were absconding after the incident and raids were conducted to arrest them. It is in this scenario the High Court has to judge the culpability of the accused which in the respectful submission of the State is writ large. The judgment of the trial court deserves to be confirmed.

64. In the light of the submission made on behalf of the appellants, State, I proceed to consider the merit of the prosecution case as set out in the fardbeyan of the informant P.W. 41, Binod Paswan, Ext. 19 and the evidence led in support thereof.

65. It appears, fardbeyan of the informant P.W. 41, Binod Paswan was scribed by P.W. 88, Akhilendra Kumar Singh on 2.12.1997 at 9.30 A.M. After recording of the fardbeyan, the same was forwarded to Mehandia P.S. for institution of the case. It appears from Column No. 3 of the FIR, Ext. 21 that the fardbeyan reached the P.S. on 2.12.1997. The column in the FIR for indicating the time of receipt of the fardbeyan in the P.S. is blank, but from the evidence of P.W. 88, paragraph 52, it appears that fardbeyan reached Mehandia P.S. on 2.12.1997 at about 3.00 P.M., which is also evident from column no. 3 of the FIR that fardbeyan was received at the P.S. vide Station Diary Entry No. 38 at 15.00 hours. It further appears from the FIR that after receipt of the fardbeyan, present Mehandia P.S. Case No. 126 of 1997 was registered on 2.12.1997 and dispatched to the court through special messenger on 2.12.1997 itself. Information about registration of the fardbeyan was also transmitted to P.W. 85 first Investigating Officer Dy.S.P. Shri Dhar Mandal on 2.12.1997 at about 4.05 P.M. through wireless, which fact would appear from his evidence in paragraph 5. The FIR, however, reached CJM, Jehanabad on 4.12.1997, as is evident from the endorsement made by the CJM on the FIR. Aforesaid delay caused by the prosecution in not reaching the FIR on 2,3.12.1997 in the court of CJM, Jehanabad appears to be a serious lapse on the part of the prosecution as none of the prosecution official witnesses, especially the police officers examined in the case during trial, namely, P.Ws. 85, 88, 91 even attempted to explain the delay in receipt of the FIR in court though distance between Mehandia P.S. and the Jehanabad Civil Court is about 50 Kms. and the two are connected by motorable road over which vehicular traffic is always available as has been

admitted by the first Investigating Officer P.W. 85 in paragraph 45 of his evidence.

66. The delay simplicitor caused in receipt of the FIR in court cannot be a factor for rejecting the prosecution case. Delay in receipt of the FIR in court is required to be considered in the light of the omission of the prosecution to examine the witnesses whose statement was recorded by the first Investigating Officer P.W. 85 on 2.12.1997 at 6.00 P.M. i.e. Munni Devi wife of Kaulu Rajbansi, Raj Ganesh Rajbansi son of Laxman Rajbansi, Yaduni Rajbansi son of Deosharan Rajbansi, which is evident from his evidence in paragraph 10 at page 634 of the paper book yet without giving any explanation for not examining them, the prosecution has chosen to withhold those witnesses from coming to court, is indicative of the fact that aforesaid witnesses had not disclosed the name or identity of the miscreants. Aforesaid delay in reaching the FIR as also failure of the prosecution to examine the prosecution witnesses who made their statement before the first Investigating Officer P.W. 85 on 2.12.1997 is further required to be considered in the light of the fact that eyewitnesses of the occurrence, P.Ws. 1, 2, 4, 6, 7, 9, 10 to 12, 14, 16 though available in the village on 2.12.1997, but their statement was not recorded by the first Investigating Officer P.W. 85 or the scribe of fardbeyan, P.W. 88 on 2.12.1997, who visited the houses of the deceased and met their relatives, P.Ws. 1, 2, 4, 6, 7, 9, 10 to 12, 14, 16 and also prepared the inquest report of the deceased after identification of the dead bodies by the inmates of the house who managed to escape death by concealing themselves from the miscreants, is also indicative of the fact that aforesaid prosecution witnesses were not aware about the name of the assailants on 2.12.1997.

67. Now I proceed to consider the evidence of the informant P.W. 41, Binod Paswan. It appears, just before the occurrence, P.W. 41 was sleeping in the room situate west of the courtyard. On instructions from his father, informant along with other family members went to the other room in the east of the courtyard which has door, bolt. It is in eastern room where his mother and other family members were killed. It is his evidence that while he concealed himself in the eastern room, he identified 9 of the accused persons, who entered that room and killed his mother and other family members. First Investigating Officer P.W. 85 has stated in paragraphs 3, 72 at page 624, 644 of the paper book respectively that informant did show him the spot where he concealed himself in the room situate west of the courtyard where no occurrence took place. Similar is the evidence of Second Investigating Officer P.W. 91 in paragraph 88 at page 687 of the paper book. P.W. 41 in paragraph 12 at page 552 of the paper book has also claimed that he did show the place where he concealed himself to the police officers. P.W. 41 did not state in his fardbeyan or his case diary statement that he concealed himself in the eastern room and that he identified 9 accused who entered that room by their voice. Aforesaid omission made by the informant has also been proved by the Second Investigating Officer P.W. 91 in paragraph 121 of his evidence at page 691, 692 of the paper book. In the aforesaid background, I further proceed to consider the evidence of P.W. 41 in paragraph 18, page 553 of

the paper book that after five minutes of the occurrence in his house when the miscreants left, the informant came out of his house using western exit and went to the roof of his uncle, Rooplal Paswan and therefrom identified the 26 miscreants named in the fardbeyan in the torchlight flashed by the miscreants while they assembled in the adjoining vacant land after committing the occurrence in the houses of other co-villagers. Aforesaid evidence of the informant appears to be quite improbable as it is unlikely that informant would leave the place where he concealed himself on the risk of being seen by the assailants, who were freely moving in the village. The night of the occurrence was dark. Admittedly no source of light was available with the informant and his aforesaid claim that he identified the 26 miscreants from the roof of his uncle in the torchlight flashed by the miscreants is required to be examined in the light of the evidence of the other witnesses who also belatedly claimed that they identified the assailants committing the occurrence in their houses.

68. From the evidence of P.W. 1, Belwanti Devi, P.W. 2 Sikandar Chaudhary, P.W. 4 Dudh Nath Chaudhary, P.W. 6 Mutur Rajbansi, P.W. 7 Subedar Ravidas, P.W. 9 Yugal Ravidas, P.W. 10 Mahurati Devi, P.W. 11 Bimlesh Kumar, P.W. 12 Munni Rajbansi, P.W. 14 Sohrai Mahto, P.W. 16 Ram Ugrah Rajbansi, all eye witnesses of the occurrence who lost their near and dear ones met the police officials, P.Ws. 88, 85 on 2.12.1997, but their case diary statement was not recorded on that day. P.W. 1 Belwanti Devi in paragraph 8 of her evidence at page 416 of the paper book has admitted that police came to the place of occurrence in the morning which followed the occurrence and her statement was recorded on 2.12.1997, but the said statement is not available in the case diary which fact is evident from the evidence of first Investigating Officer P.W. 85 in paragraph 20 where he has admitted that P.W. 1 recorded her statement on 4.12.1997. P.W. 2 Sikandar Chaudhary in paragraph 16 at page 422 of the paper book has stated that he and his brother P.W. 4 Dudh Nath Chaudhary recorded their police statement in the orchard in presence of 250 villagers in the morning which followed the occurrence at 8 A.M. but the said statement is not available in the case diary as according to the first Investigating Officer P.W. 85 in paragraph 13 at page 635 of the paper book, the statement of P.Ws. 2, 4 was recorded at 8 A.M. on 3.12.1997. P.W. 6 Mutur Rajbansi in paragraphs 13,14 at page 437 of the paper book has also admitted that in the morning which followed the occurrence, administration i.e. Collector, police, Minister etc. came to the place of occurrence and he made his police statement but the authorities did not verify his claim that he concealed himself over his thatched roof. The police statement of P.W. 6 recorded on 2.12.1997 referred to in paragraph 14 of his evidence is not available in the case diary, as according to the first Investigating Officer P.W. 85 he was examined on 3.12.1997 at 8 A.M. P.W. 7 Subedar Ravidas in paragraph 15 of his evidence at page 439 of the paper book has also accepted that police came to the place of occurrence in the morning which followed the occurrence and made enquiries from him. P.W. 7, however, is not aware as to when his police statement was recorded. From the evidence of first Investigating

Officer P.W. 85, paragraph 31 at page 637 of the paper book, it is evident that P.W. 7 Subedar Ravidas recorded his statement before the police on 8.12.1997. From the evidence of P.W. 9 Yugal Ravidas, paragraph 16 at page 446 of the paper book it is evident that P.W. 9 also admitted the fact that police came to the place of occurrence village in the morning which followed the occurrence but denied the suggestion that he recorded his police statement after 5-6 days of the occurrence. From the evidence of the Investigating Officer P.W. 85 in paragraph 31 at page 637 of the paper book, it is evident that P.W. 9 recorded his police statement on 8.12.1997 and not in the morning which followed the occurrence. The two injured P.W. 10 Mahurati Devi and P.W. 11 Bimalesh Kumar were sent for medical examination by the first Investigating Officer P.W. 85 on 2.12.1997, but the two witnesses did not record their case diary statement on 2.12.1997. From the evidence of second Investigating Officer P.W. 91, Dy.S.P. Mirza Maksood Alam Beg in paragraphs 29, 113 it appears that police statement of Bimalesh Kumar was recorded by P.W. 91 on 22.12.1997 vide paragraph 94 of the evidence of Second Investigating Officer P.W. 91 and police statement of P.W. 10 Mahurati Devi was recorded by Inspector Indu Bhushan Prasad on instruction from second Investigating Officer P.W. 91 on 18.12.1997. P.W. 10 did not name any of the miscreants in her statement recorded before the police, which fact is confirmed by the second Investigating Officer P.W. 91 in paragraph 114 of his evidence. Perusal of paragraph 114, however, indicates that second Investigating Officer P.W. 91 has used two negatives in the said paragraph. In order to confirm the contents of the case diary statement of P.W. 10, I called upon learned counsel for the State to produce the case diary statement of P.W. 10 recorded by Inspector Indu Bhushan Prasad, but such statement was not produced for perusal. P.W. 11 Bimalesh Kumar has stated in his evidence that he identified the assailants when he came out side the room in the courtyard. His case diary statement is that he sustained injury inside his room. Aforesaid contradiction has been proved by Second Investigating Officer P.W. 91 in paragraph 117 at page 691 of the paper book. In paragraph 5, P.W. 11 further admitted that he felt frightened and covered himself with a cotton sheet. It further appears that in paragraph 10 at page 451, P.W. 11 claimed that he was shot by Dharma Singh, which fact is not stated by him in the case diary statement as proved by P.W. 91 in paragraph 117. It also appears that P.W. 11 was examined by P.W. 89, Dr. G.C. Jha who found that P.W. 11 suffered lacerated wound just below the right lower eye-lid, which could not be caused by a direct firearm shot as claimed by the witness. In view of the aforesaid infirmity in the evidence of P.W. 11, it is difficult to hold that he was in a position to identify the miscreants. Similarly P.W. 10 Mahurati Devi and P.W. 8 Ram Vinesh Rajbansi are also not to be relied upon as P.W. 10 recorded her case diary statement on 8.12.1997. P.W. 8 admitted in paragraph 6 of his evidence that he permanently resides in his matrimonial village for the last 4-5 years, which is at a distance of 5 kosh and that information was given in his matrimonial village about the occurrence on radio. In view of the aforesaid evidence of P.W. 8, it is quite evident that on the date, night of occurrence, P.W. 8 was not available in the place of occurrence village. Aforesaid fact was also

reiterated by his sister, P.W. 10 before the police, but when she made contrary statement in court, her attention was drawn towards her police statement in paragraph 7, which has also been proved by Second Investigating Officer P.W. 91 in paragraph 116 where P.W. 91 has categorically stated that in case diary statement, P.W. 10 had stated that during the night of occurrence, his brother P.W. 8 was in his matrimonial village as he is residing there for the last 4-5 years. P.W. 12 Munni Rajbansi, son of Pappan Rajbansi in paragraph 12 of his evidence at page 456, 457 of the paper book has accepted that police came to the place of occurrence village in the morning which followed the occurrence, saw the dead bodies but did not draw any document. All his family members were killed during the occurrence but he did not make any statement though he was present in the village. First Investigating Officer P.W. 85 in paragraph 10 of his evidence has stated that he recorded the statement of P.W. 12 Munni Rajbansi son of Pappan Rajbansi, Munni Devi wife of Kaulu Rajbansi, Raj Ganesh Rajbansi son of Laxman Rajbansi, Yaduni Rajbansi son of Deosharan Rajbansi on 2.12.1997 but such assertion of Investigating Officer P.W. 85 is required to be considered in the light of the evidence of P.W. 12 in paragraph 9 that he recorded his police statement after 8-9 days of the occurrence as also in the light of the fact that other three eye-witnesses of the occurrence, namely, Munni Devi wife of Kaulu Rajbansi, Raj Ganesh Rajbansi son of Laxman Rajbansi, Yaduni Rajbansi son of Deosharan Rajbansi who made their police statement before the first Investigating Officer P.W. 85 on 2.12.1997 at 6 P.M. vide paragraph 10 of the evidence of P.W. 85 have not been produced in court for recording their evidence. P.W. 14 Sohrai Mahato in paragraph 3 of his evidence at page 462 of the paper book has stated that police arrived in the village in the morning following the occurrence between 8-10 A.M. when he was weeping and his police statement was recorded after 6-7 days of the occurrence. First Investigating Officer P.W. 85 in paragraph 20 of his evidence has, however, stated that police statement of P.W. 14 was recorded by him on 4.12.1997. P.W. 16 Ram Ugrah Rajbansi in paragraph 21 of his evidence at page 469 of the paper book has stated that the police came to the place of occurrence village in the morning following the occurrence at about 8-8.30 A.M. but he is not aware who recorded his police statement on that day. In the same paragraph P.W. 16 accepts that he did not inform the police that he has seen the occurrence and his statement be recorded. Second Investigating Officer P.W. 91 who took charge of the investigation on 10.12.1997 and made inspection of the place of occurrence on 11.12.1997 recorded the police statement of P.W. 16 either on 11.12.1997 or any time before 15.12.1997 when he recorded the statement of other witnesses.

69. From consideration of the prosecution evidence made above, it would appear that prosecution witnesses, P.Ws. 1, 2, 4, 6, 7, 9, 10 to 12, 14, 16 were available in the village in the morning which followed the occurrence on 2.12.1997 and also met the first Investigating Officer P.W. 85 as also P.W. 88, the scribe of the fardbeyan, who also prepared the inquest report, but the witnesses did not furnish the name of the miscreants to either P.W. 85 or P.W. 88 on 2.12.1997,

but they are said to have named the miscreants in their police statement recorded on 2,3.12.1997 and subsequent dates. In this connection, it is interesting to note that on 2.12.1997, first Investigating Officer P.W. 85 recorded the police statement of 5 persons, namely, Ramchela Paswan son of Late Bhura Paswan, Munni Devi wife of Kaulu Rajbansi, Raj Ganesh Rajbansi son of Laxman Rajbansi, Munni Rajbansi son of Pappan Rajbansi, Yaduni Rajbansi son of Deosharan Rajbansi. Amongst the aforesaid 5 persons, Ramchela Paswan son of Late Bhura Paswan, Munni Devi wife of Kaulu Rajbansi, Raj Ganesh Rajbansi son of Laxman Rajbansi, Yaduni Rajbansi son of Deosharan Rajbansi have not been produced as witness in court. P.W. 12 Munni Rajbansi has been produced in court, but he has categorically stated in paragraph 9 of his evidence at page 456 of the paper book that his police statement was recorded after 8-10 days of the occurrence.

70. In view of the conduct of the prosecution not to record the police statement of the eye-witnesses on 2.12.1997, there appears substance in the submission of the learned counsel for the appellants that had the witnesses been aware about the name of the miscreants, their police statement ought to have been recorded on 2.12.1997. Failure to record the police statement of the eye-witnesses on 2.12.1997 becomes relevant in the light of the unexplained delay in reaching the FIR, Ext. 21 to the court of CJM, Jehanabad on 4.12.1997. Reliance in this connection is placed on the judgment of the Supreme Court in the case of Ganesh Bhavan Patel & another Vrs. State of Maharashtra, AIR 1979 Supreme Court 135. It appears in the said case, three prosecution eye-witnesses of the occurrence recorded their statement before the Investigating Officer on the following day of the occurrence as Welji Harkha, P.W. 3 was examined at 8 AM, Pramila at 9.15 or 9.30 AM and Kuvarbai at 1 P.M. In the aforesaid background, Hon'ble Supreme Court observed in paragraph 15 that delay of a few hours simplicitor in recording the statement of eye-witnesses may not by itself amount to a serious infirmity in the prosecution case. Delay, however, may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witness to be introduced. In the present case, failure to examine P.Ws. 1, 2, 4, 6, 7, 9, 10 to 12, 14, 16 on 2,3.12.1997 coupled with the concomitant circumstance of the prosecution failing to explain the delay in receipt of the FIR, Ext. 21 in the court of CJM, Jehanabad on 2,3.12.1997 is indicative of the fact that names included in the fardbeyan were not available with the investigator on 2,3.12.1997. If the investigator, P.W. 85 was aware about the identity of the miscreants on 2.12.1997 by 9.30 A.M. when the fardbeyan was recorded, there was no difficulty for him to have recorded the statement of P.Ws. 1, 2, 4, 6, 7, 9, 10 to 12, 14, 16 on 2,3.12.1997, but such is not the case in hand as on 2.12.1997 at 10.35 A.M., P.W. 85 in the light of the contents of the fardbeyan that the assailants have gone towards village Chhotki Kharaon across Sone river in Sahar area of Bhojpur district, spoke to Officer-in-charge, Sahar P.S. and S.P. Bhojpur on wireless and requested them to track the

assailants who have escaped in their area vide paragraph 36 of his evidence. After speaking to S.P. Bhojpur and Officer-in-charge, Sahar P.S. on wireless, Investigating Officer P.W. 85 went for inspection of all the 14 place(s) of occurrence of the case on 2.12.1997 at 11 A.M. including southern bank of the river Sone and found on the southern bank three dead bodies of Chanarik Chaudhary, his two sons Gorakh Chaudhary and Shiv Kailash Chaudhary with sign of dragging the bodies till the river, footprints of 100-150 men going across the river, P.W. 85 then went to the northern bank of the river Sone and found two more dead bodies of Naresh Chaudhary and Ram Niwas Chaudhary both sons of Mahesh Chaudhary near a hut where not only copious blood was found, but also a boat anchored smeared with blood. In the light of the footprints of 100-150 men found on the southern bank of the river Sone going across the river, dead bodies, evidence of violence found on both the banks of the river Sone, Investigating Officer P.W. 85 concluded that most of the assailants belong to Sahar area of Bhojpur district and have gone towards village Mathia, Chhotki Kharaon, Barki Kharaon, Lodipur and then again contacted Officer-in-charge, Sahar P.S. at 4.15 P.M. on 2.12.1997 vide paragraph 6 of his evidence and requested him to track the assailants who went towards village Mathia, Chhotki Kharaon, Barki Kharaon, Lodipur after crossing the river Sone. From perusal of the aforesaid evidence of first Investigating Officer P.W. 85 in paragraphs 36 and 6 of his evidence, it is evident that right from the time fardbeyan was recorded, he was of the view that the assailants belong to Sahar area of Bhojpur district and to fix their identity, apprehend them P.W. 85 contacted S.P. Bhojpur and Officer-in-charge, Sahar P.S. through wireless at 10.35 A.M. on 2.12.1997. Aforesaid opinion of P.W. 85 was further reiterated when he visited the 14th place of occurrence on the bank of the river Sone and found footprints of 100-150 men going across the river together with dead bodies and evidence of violence on both the banks of the river Sone and then again contacted Officer-in-charge, Sahar P.S. at 4.15 P.M. on 2.12.1997 and repeated the request to track the assailants in village Mathia, Chhotki Kharaon, Barki Kharaon, Lodipur of Sahar P.S. After having made the request on 2.12.1997 at 10.35 A.M. and 4.15 P.M., P.W. 85 did not take any further steps to track the assailants who having crossed the river Sone had gone towards different villages of Sahar P.S. within Bhojpur district perhaps for the reason that the Officer-in-charge, Sahar P.S. and S.P. Bhojpur could not succeed in ascertaining the identity of the assailants who had crossed the river Sone and had gone towards Sahar area. Investigating Officer P.W. 85, however, in order to avoid further delay in dispatch, receipt of the FIR in court perhaps thought appropriate that the FIR with 26 names of the villagers of Bathe, Kamta and Chanda be dispatched even belatedly so that it may reach the court at least on 4.12.1997. In this connection, evidence of P.W. 85, paragraph 5 is relevant where he has admitted that he received information about institution of the FIR on 2.12.1997 at 4.05 P.M., yet the same did not reach the court of CJM, Jehanabad on 2,3.12.1997 though distance between Mehandia P.S. and Jehanabad Civil Court is about 50 Kms. and the two are connected by motorable road over which vehicular traffic is always available, which fact is also admitted

by the Investigating Officer P.W. 85 in paragraph 45 of his evidence.

71. There is yet another circumstance, which is indicative of the fact that the prosecution had no clue about the identity of the miscreants until 3.12.1997, 5 P.M. as by then the investigation had not begun as per the evidence of P.W. 87 Sub-Inspector Azhar Hussain, paragraph 7, who came to the place of occurrence along with P.W. 85 in the morning of 2.12.1997, as according to P.W. 87 the investigation of the case began only after arrival of the Chief Minister on 3.12.1997 at 5 P.M. From evidence of P.W. 85, paragraph 14, it would appear that first arrest in the case of Accused No. 3 Ashok Singh was made on 3.12.1997 at 5.25 P.M. and double barrel gun recovered from the house of Accused No. 4 Gopal Singh on the same day i.e. 3.12.1997 at about 6.15 P.M. In case prosecution had information about the identity of the accused on 2.12.1997, they could have very well arrested Accused No. 3 Ashok Singh and recovered gun from the house of Accused No. 4 Gopal Singh on 2.12.1997 itself when P.W. 85 along with police force raided the house of the fardbeyan named accused of village Bathe on 2.12.1997 at 9 P.M. It appears quite ridiculous that Accused No. 3 Ashok Singh was not available at his residence on 2.12.1997 at 9 P.M. and the gun was also not seized from the house of Accused No. 4 Gopal Singh when the same was raided on 2.12.1997 at 9 P.M., but became available for arrest and seizure on 3.12.1997 at 5.25 P.M. Besides the gun seized by the Investigating Officer from the house of Accused No. 4 Gopal Singh on 3.12.1997 at 6.15 P.M. and sent to the Malkhana of the Police Station for safe custody was never sent for test by the expert to confirm whether the same was used in the occurrence. Similarly Accused No. 2 Surendra Singh son of Mahadeo Singh, who at the relevant time served as a Teacher in the Government school in village Kamta and Accused No. 5 Baleshwar Singh were arrested on 6.12.1997 from the school. Similarly Accused No. 18 Shiv Mohan Sharma, Accused No. 22 Navin Kumar, Accused No. 24 Sunil Kumar and Accused No. 26 Surendra Singh were arrested in village Chanda on 7.12.1997. Accused No. 8 Nawal Singh, Accused No. 16 Ram Kewal Sharma, Accused No. 19 Ashok Sharma, Accused No. 20 Babloo Sharma and Accused No. 21 Mithilesh Sharma surrendered on 8.12.1997. Accused No. 10 Nandu Singh and Accused No. 11 Shatrughan Singh surrendered on 10.12.1997. Accused No. 12 Nand Singh, Accused No. 15 Chandeshwar Singh surrendered on 12.12.1997. Accused No. 7 Bijendra Singh surrendered on 12.1.1998. Accused No. 4 Gopal Sharan Singh, Accused No. 6 Dwarika Singh, Accused No. 13 Pramod Kumar Singh son of Gopal Sharan Singh and Accused No. 14 Dharichhan Singh surrendered on 17.1.1998.

72. It would thus appear that once the appellants learnt about their implication in the case after arrest of Accused No. 3 Ashok Singh and seizure of gun from the house of Accused No. 4 Gopal Singh on 3.12.1997, further arrest of Accused No. 2 Surendra Singh and Accused No. 5 Baleshwar Singh from Govt. school on 6.12.1997 and Accused No. 18 Shiv Mohan Sharma, Accused No. 22 Navin Kumar, Accused No. 24 Sunil Kumar, Accused No. 26 Surendra Singh on 7.12.1997, the other accused persons themselves surrendered in the court

below. It also appears that Investigating Officer having secured the arrest, surrender of the fardbeyan named accused, stopped further investigation to track the accused persons who crossed river Sone and went towards Sahar area in village Mathia, Chhotki Kharaon, Barki Kharaon, Lodipur. Aforesaid conduct of the Investigating Officer is indicative of the fact that he was absolutely clueless about the identity of the assailants who having perpetrated heinous crime causing death of 58 innocent persons crossed the river Sone and went towards Sahar area. There was absolutely no reason for the Investigating Officer not to pursue the lead, evidence found on both the banks of the river Sone to track the assailants who crossed the river Sone and went towards Sahar area with the help of Officer-in-charge, Sahar P.S. and S.P. Bhojpur with whom he was already in contact as is evident from his own evidence in paragraphs 36, 6. It appears the effort to track the assailants in Sahar area met dead end, the first Investigating Officer P.W. 85 thought it appropriate to implicate these appellants residents of place of occurrence village Bathe, adjoining village Kamta and Chanda by antedating the fardbeyan, as there is no viable explanation for the delayed receipt of the FIR in Jehanabad court on 4.12.1997.

73. Higher police authorities not being satisfied with the investigation conducted by first Investigating Officer P.W. 85, DIG, CID, Patna instructed P.W. 85 under wireless message No. 3830, bearing Memo No. 3829/C dated 09.12.1997 to hand over investigation of the case to Sri Mirza Maksood Alam Beg, Dy.S.P., CID, Patna who took over the investigation of the case on 10.12.1997, but could not salvage the situation as by 10.12.1997 the footprints found on the southern bank, evidence of violence found on both the banks of the river Sone disappeared and the assailants who escaped in Sahar area of Bhojpur District could not be brought to justice. It is thus evident that even after intervention of the Dy.S.P., CID, Patna to investigate the case, assailants could not be tracked and the FIR named accused persons of place of occurrence village Laxmanpur Bathe and two adjoining villages, Kamta and Chanda were only sent up for trial and have been convicted in the light of the evidence of the eye-witnesses, which is hardly reliable to prove their guilt in the light of discussion about the merit of their evidence discussed in paragraphs 67 to 71.

74. The motive suggested by the prosecution i.e. wage dispute between the land-holders and the agricultural labourers employed to conduct various agricultural operations in the field of the land-holders vide paragraph 3, 7 of the evidence of P.W. 5, 41 respectively, declaration of ceiling surplus land of Suryaman Upadhyay by Sangram Samiti which was purchased by the members of Bhumihaar, Mahto and Yadav caste, diktat issued by the Sangram Samiti to the vendee of the land not to harvest the standing crop on the vended land purchased from the daughters of Suryaman Upadhyay vide paragraph 3 of the evidence of Chawkidar Ramanand Yadav P.W. 15 also does not connect the appellants with the occurrence, as hardly any concrete evidence indicating labour dispute between the appellants and the deceased or the witnesses including purchase of lands of Suryaman Upadhyay by these appellants has been placed on record and thereby

it is absolutely farfetched to connect the appellants with the motive suggested by the prosecution.

75. In the light of discussion made in paragraphs 65 to 75, I am of the view that the prosecution witnesses are not reliable, appellants deserve grant of benefit of doubt, which is, accordingly, granted. Reference is answered in negative. The impugned judgment/order dated 07.04.2010 passed by 1st Additional Sessions Judge, Patna in Sessions Case No. 2 of 1999 is set aside and the appeals are allowed.

76. Appellants Nandu Singh, Shatrughan Singh, Dharichhan Singh, Nand Singh, Gopal Sharan Singh, Balram Singh, Pramod Kumar Singh son of Gopal Sharan Singh, Dwarika Singh, Ram Kewal Sharma, Nawal Singh, Ashok Singh, Bijendra Singh, Surendra Singh son of Mahadeo Singh and Baleshwar Singh are in jail custody, they are directed to be released forthwith, if not wanted in any other case. Appellants Ravindra Singh, Mithilesh Sharma, Babloo Sharma, Pramod Singh @ Pramod Kr. Singh son of Late Sankh Singh, Ashok Sharma, Surendra Singh son of Sri Ram Pyar Singh, Navin Kumar, Sunil Kumar and Chandeshwar Singh are on bail, they are discharged from the liabilities of their respective bail bond. Before parting with this judgment, placing reliance on the judgment of the Supreme Court in the case of Ankush Shivaji Gaikwad Vs. State of Maharashtra, , I would like to observe that there being no dispute about the factum of death, injury having been caused to 58, 4 members of the weaker sections of the society in village Laxmanpur Bathe in the night of 01.12.1997, the State is obliged to pay compensation to the next of kin of the 58 deceased and 4 injured from its fund. The amount of compensation is to be calculated by the trial court taking into account the age, income of the deceased and the injured in the light of the provisions of Section 163-A and Second Schedule of the Motor Vehicles Act, 1988. In absence of any documentary proof of any of the victim, trial court will calculate the income of the victim on the basis of minimum wage payable on the date of occurrence. After calculating the amount of compensation, appropriate order for payment of compensation shall be passed by the trial court within twelve weeks of the receipt of this judgment directing the Collector, Arwal to make payment to the next of the kin of the 58 deceased and 4 injured, of course after adjusting ex gratia amount already paid to the next of the kin of the 58 deceased and the 4 injured. Payment in compliance of this judgment be made to the concerned by the Collector, Arwal within four weeks from the date of receipt of the order for payment of compensation from the trial court.