
(2007) 10 PAT CK 0030

In the Patna High Court

Case No : Death Reference No. 9 of 2004; Criminal Appeal No. 788 of 2004

The State of Bihar

APPELLANT

Vs

Ranjit Kumar
 Ranjit Kumar Vs The State of Bihar

RESPONDENT

Date of Decision : 10-10-2007

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 366(1)
Explosive Substances Act, 1908 — Section 3, 5
Penal Code, 1860 (IPC) — Section 114, 147, 148, 149, 160

Citation : (2008) 2 PLJR 10

Hon'ble Judges : Chandramauli Kr. Prasad, J;Abhijit Sinha, J

Bench : Division Bench

Advocate : Lala Kailash Bihari in 9, M/s Y.V. Giri, Mahesh Narayan Parbat and Vikas Ratan Bharti in 788, 845, for the Appellant; Y.V. Giri, Mahesh Narayan Parbat, Vikas Ratan Bharti (in 9) and Mr. Lala Kailash Bihari (in 788, 845), for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—Being aggrieved by and dissatisfied with the Judgment dated 14.10.2004 and Order dated 15.10.2004 passed by Sri Paras Nath Sinha, Presiding Officer, Additional Court (Fast Track), Munger in Sessions Trial No. 571 of 1982 arising out of Jamalpur P.S. Case No. 64 of 1982 the 5 appellants of Cr. Appeal Nos. 788 of 2004 and 845 of 2004 have preferred the appeals and in view of appellant Ranjit Kumar being sentenced to capital punishment the judgment has been sent for confirmation of the capital punishment of death u/s 366(1) Cr.P.C. As the death reference and the appeals arise out of the same judgment and order they have been taken up and heard together and are being disposed of by this common judgment. Through the aforesaid judgment and order appellant Ranjit Kumar on being found guilty of the double murder of Bittan Sonar and Rajesh Kumar in broad daylight has been convicted under Sections 148 and 302 I.P.C. as also Section 27 of Arms Act and whereas he has been sentenced to

death for the offence u/s 302 I.P.C, he has further been sentenced to suffer Rigorous Imprisonment for 3 years each u/s 148 I.P.C. and Section 27 of Arms Act. Appellant Satya Narayan Prasad has been convicted under Sections 114, 148 and 302 read with Section 149 I.P.C, as also Section 27 of Arms Act and whereas he has been sentenced to suffer Rigorous Imprisonment for life and pay a fine of Rs. 2,000/- in default to undergo Simple Imprisonment for 6 months for commission of offence u/s 302 read with 149 I.P.C. he has been sentenced to suffer Rigorous Imprisonment for 10 years u/s 114 I.P.C. and Rigorous Imprisonment for 2 years u/s 148 I.P.C. He has also been sentenced to Rigorous Imprisonment for 3 years u/s 27 of Arms Act. Appellants Arun Kumar and Anant Kumar have been convicted under Sections 147, 302 read with Section 149 I.P.C. and whereas they have been sentenced to suffer Rigorous Imprisonment for life and pay a fine of Rs. 2,000/-, in default to suffer Simple Imprisonment for 6 months for the offence u/s 302/149 I.P.C. They have further been sentenced to Rigorous Imprisonment for 2 years u/s 147 I.P.C. Appellant Rajesh Kumar Soni has been convicted under Sections 148 and 302 read with Section 149 I.P.C. and whereas he has been sentenced to suffer Rigorous Imprisonment for life and pay a fine of Rs. 2,000/- in default to suffer Simple Imprisonment for 6 months for the offence u/s 302 read with Section 149 I.P.C. he has been sentenced to undergo Rigorous Imprisonment for 2 years u/s 148 I.P.C. The sentences in all cases were to run concurrently.

2. According to the prosecution case as culled out from the fardbeyan given by one Tarini Prasad (P.W. 8) at 15.30 hrs. on 23.3.1982, he was sitting in his shop at around 12.45 P.M. when deceased Bittan Sonar and his son Rajesh Kumar were proceeding homewards to take their meals and as they reached in front of the house of one Kamla Babu an altercation in front of shop of one Maya took place between Bittan and Rajesh on one hand and Satya Narayan Sonar and his 4 sons, namely, Rajesh, Arun, Anant and Ranjit and as a consequence thereof Satya Narayan Sonar brought a gun from his shop which he handed over to his son Ranjit and ordered to kill whereupon the accused persons started assaulting Bittan and Rajesh near the drain. It is said that Rajesh assaulted Bittan on his head with a weapon like a small axe. Thereafter Ranjit fired at Bittan with his gun killing him at the spot and Arun poured acid from a bottle on the face of Bittan. It is further said that Rajesh the son of Bittan started fleeing whereupon Ranjit fired at Rajesh who also died at the spot. It is said that the informant being a member of the family of the two deceased raised hulla and fled away out of fear after closing his shop. It is also said that several persons including Rajendra (P.W. 5), Suresh (P.W. 6) and Prakash (P.W. 7) witnessed the occurrence. It is the further case of the prosecution that informant Tarini Prasad and deceased Bittan had enmity with the accused Satya Narayan Prasad in respect of a shop, the suit wherefor was pending in the Court of Subordinate Judge and this allegedly also happened to be the motive for the occurrence.

3. As it transpired after the occurrence informant Tarini Prasad had allegedly fled away to Munger and returned to Jamalpur later on to give his fardbeyan (Ext. 1)

which was recorded at 15.30 hrs. by S.I. Ashok Kumar Das (P.W. 10). On the basis of the said fardbeyan, Jamalpur P.S. Case No. 64 of 1982 under Sections 147, 148, 149, 302 I.P.C, as also Section 27 of Arms Act was instituted against accused Satya Narayan Prasad and his four sons.

4. The S.I. took up investigation of the case and inspected the place of occurrence, got inquest report of Bittan Sonar and Rajesh (Exts. 5 and 5/A) prepared by A.S.I. Suraj Deo Jha who also prepared the seizure lists (Ext. 4, 4/A and 4/B) of the several articles seized from the P.O. The S.I. next sent the dead bodies of Bittan Sonar and Rajesh for post mortem examination which was held by Dr. B.N. Singh (P.W.11). Later S.I. Ashok Kumar Das made over charge of the investigation to Inspector Ram Lakhani Prasad (P.W. 9), who completed the investigation and submitted charge-sheet against the aforesaid five persons.

5. At the trial before the Sessions Court charges under Sections 148 and 302 I.P.C, as also 27 Arms Act were framed against appellant Ranjit Kumar. Appellant Rajesh Kumar Soni was charged under Sections 147, 148 and 302/149 I.P.C, and Anand Kumar and Arun Kumar were charged under Sections 147, 302/ 149 I.P.C. Appellant Satya Narayan Prasad was charged under Sections 147, 148, 302/149 and 114 I.P.C, as also u/s 27 of Arms Act.

6. It will not be out of place to mention here that for the same occurrence Jamalpur P.S. Case No. 63 of 1982 was registered on the statement of Ranjit Kumar, Son of Satya Narayan Prasad, wherein it was alleged, inter alia, that while Ranjit Kumar was sitting in his jewellery shop alongwith his father Satya Narayan Prasad and his younger brother was sitting in the utensil shop situated adjacent to the jewellery shop, Bittan Sonar alongwith his 2 sons and 2 unknown others entered into the shop of Satya Narayan and started abusing them and whereas one person assaulted the father of the first informant causing injury to him following which Bittan and his son started looting the jewellery shop at the point of pistol and in the meantime Arun the younger brother of Ranjit Kumar brought out a gun and handed it to Satya Narayan but as Bittan and his son Rajesh started fleeing alongwith the looted jewellery, Rajesh and his brother started snatching the jewellery from them the father fired from his gun causing injury to Bittan and his son and after fleeing for some distance they fell on the road and died. A loaded countrymade pistol was found inside the shop of Satya Narayan Prasad.

7. The defence in the instant Sessions Trial case is a denial of the allegation and that they have been falsely implicated in this case due to previous enmity and that the gun used by Satya Narayan was a licensed one and was used in exercise of the right of the private defence of person and property. The fardbeyan of this case too was recorded by S.I. Ashok Kumar Das (P.W. 10) who also investigated the same and submitted chargesheet against Bijay Sonar showing Bittan Sonar and his son Rajesh as being dead. In that case too cognizance was taken and on commitment has been numbered as Sessions Trial No. 91 of 1984.

8. The prosecution in support of its case examined as many as 12 witnesses of whom P.W. 3 Raghwendra Narain Singh and P.W. 4 Ramanand Singh were declared to be hostile. Whereas P.W. 1 Shanti Devi and P.W. 2 Bijay Kumar happen to be the wife and son of the deceased Bittan Sonar, P.W. 5 Rajendra Prasad is his nephew. P.W. 8 Tarini Prasad is his brother as also the informant of the case and Tarini's son, Suresh Prasad, is P.W. 6, P.W. 12 S.I. Kasinath Ram is a formal witness who produced material exhibits of Jamalpur P.S. Case Nos. 63 and 64 of 1982. Similarly P.W. 9 Ram Lakhan Prasad is also a formal witness who had taken charge from P.W. 10 and had submitted charge-sheet in both the cases.

FINDINGS

9. Dr. B.N. Singh (P.W. 11) conducted the post mortem examination on the dead body of Bittan Sonar at 10.30 A.M. on 24.3.1982 and found the following external injury:

- (1) Blackening of the body.
- (2) One circular hole W in diameter on mid abdomen 2" below the xiphi sternum bone.
- (3) Lacerated wound on right forehead 1" in size.

10. On dissection cutting the circular hole the inverted edge of the skin was found accumulated with blood on upper thorax. Both chambers of the heart were found empty, whereas both the lungs were congested as where the liver, spleen and kidney. The stomach was lacerated and damaged, 20 small pin size pellets were found in the abdominal cavity which were sealed in his presence signed by him and handed over to the constable. Nothing detected from the stomach, the viscera was badly damaged and undigested food materials were seen in the abdominal cavity.

11. In the opinion of the doctor injury No. 1 was a post mortem injury probably caused by burning substance or liquid substance such as acid and death was due to shock and haemorrhage. He also opined that injury No. 3 may be caused by hard and blunt substance such as iron rod or kulhari. However, the doctor has not assigned any cause for injury No. 2.

12. On the same day the same doctor conducted the post mortem examination of dead body of Rajesh Sonar at 11 A.M. and found the following external injury on the dead body:

- (1) One circular hole 1/4" in diameter on right abdominal wall with blackening skin and inverted margin 5" away form the right nipple and 1/2" from mid abdominal line.
- (2) One circular hole 1/4" in size on left upper abdomen 3" from left nipple at the level of 7th rib.

13. On dissection the upper part of the chest wali was found full of blood and the heart was damaged alongwith both lower lobes of the lungs. Lower lobes of the liver area was damaged and lacerated and stomach was found lacerated and undigested food material in the abdominal cavity was found. Urinary bladder was empty. Three big pellets was found lodged in the posterior wall of the body by the side of the right scapular bone lower part. On further search in the abdominal cavity which was full of blood 20 small size pellets were recovered which alongwith the three big pellets were kept in an envelope, sealed in his presence and was handed over to the police after he had signed the same. In the opinion of the doctor the death was due to shock and haemorrhage caused by firearm such as a gun. Post mortem report of Bittan and Rajesh have been marked as Exts. 6 and 6/1 respectively.

14. In the cross-examination by the defence the doctor confessed that he had not written in Bittan's post mortem report as to how much of the area of the body had been blackened. He also confessed that he had not written whether there was any corrosion on the face. He had also not written about any acid mark on the clothes or lips of the deceased. He denied having found any corrosion or acid in the aesophagus, larynx and trachea. He admitted that he had not written in the report that the blackening of the body was caused by acid and opined that the blackening of the body was might have been caused due to post mortem staining. He categorically stated that he did not find any corrosion or burning on the dead body of Bittan Sonar. To a question by the defence he also stated that both the deceased were shot after taking their meals.

15. P.W. 1 is Shanti Devi, wife of deceased Bittan Sonar. She stated in Court that informant Tarini Sonar was her bhaisur, and that at about 1 P.M. someone informed her that Satya Narayan and his son were quarrelling with her husband whereupon she went to the market where she saw that Ranjit, the son of Satya Narayan, had shot down her son and her husband with a gun. She also stated that Ranjit had threatened that he "would shoot her as well. She claimed that it was Ranjit who had committed the murder.

16. In the cross-examination she admitted having applied colour on her feet which is unusual for a widow. She admitted that she too was an accused in Jamalpur P.S. Case No. 133 u/s 160 I.P.C, and 3/5 Explosive Substance Act. She denied that a chargesheet had been submitted against her husband in Kotwali P.S. Case No. 42/1979 for committing dacoity and murder in the house situated near Sundar Pahari. She also denied that Bittan was an accused in Sessions Trial No. 136/1978 and was in jail custody and it was only 2-3 days back that he had been enlarged on bail in that case. She also denied of Bittan being an accused in Jamalpur P.S. Case No. 8 of 1976 as also 457/1980. She further denied that her surviving son Bijay was also known as Bikram, but she could not say whether Bijay is an accused in Munger Kotwali P.S. Case No. 40 of 1979 u/s 395 I.P.C. However, she admitted that at present her son Bijay was in jail custody in connection with a case of dacoity. She has given a topography of the area where

the alleged murder of her husband and son took place. She also stated that when she received information she was cooking food for her husband and her son as their expected time of arrival for lunch was approaching. She also stated that at the very time of her arrival at the P.O. the S.I. of Police had also arrived and was inspecting the dead bodies. She, however, denied having given her statement at that moment and stated that she had given her statement after a while. She also stated that S.I. of police went to the shop of Satya Narayan where he recorded the statement of Ranjit. She also admitted that one slipper of Rajesh was kept near Bittan's dead body and the other was kept in the shop of Satya Narayan. She denied the suggestion that her husband and her son had gone to the shop of Satya Narayan with the intention of committing dacoity.

17. P.W. 1 is not an eye witness of the occurrence and though she had denied the involvement of her husband and her son in several cases of heinous nature the same appears to be negated by the documents filed by the defence. The evidence adduced by P.W. 1 does not appear to support the prosecution case in any material particulars.

18. P.W. 2 is Vijay Kumar Swarnkar the surviving son of deceased Bittan he stated in Court that at about quarter to one while he was in the house, his uncle Tarini Prasad came running to him and informed him of an altercation going on between Satya Narayan and his father in the shop. He claimed to rush to his shop where he saw the brother and father were surrounded by 4-5 persons near the shop of Satya Narayan, whom he identified as Anant Kumar, Rajesh Kumar, Arun Kumar, Ranjit Kumar and Satya Narayan of whom Ranjit was armed with a gun. He further stated that soon as he reached at the spot Ranjit fired at his father and thereafter fired at his brother Rajesh. Ranjit thereafter pointed out the gun towards him whereupon he fled to the Police Station. However, he could not state as to what happened thereafter. On his return to the place of occurrence from the Police Station he found that both his father and brother were dead.

19. In his cross-examination he admitted that he was in jail custody in connection with a case of dacoity committed in a cloth shop at Khagaria. He also admitted that his uncle the informant and witnesses Jagarnath Shah and Ramanand Singh were present in Court. He further stated that his father owned a shop doing business in gold and silver and a license had been issued to him under Gold Control Act. He also stated that he did not possess the license for a jewellery shop rather it was a license of craftsman but he was not aware of the number of the license. He further stated that the shop of his father was located in the shop of his uncle Tarini and the shop belonged to his uncle and his father used to do the work of silver craftsman in that shop. He went on to state that the shop belonged to one Ram Ratan which has been purchased by his uncle Tarini. He denied having stated before the Police that the shop belonged to him. He admitted that his father did not possess his own shop. He denied the defence suggestion that the profession of their family including himself was to commit dacoity and theft and that they were notorious criminals. He went on to state

that the shop of his uncle was located in a portion of the house of Ram Ratan but he was not in a position to say that if Satya Narayan filed Title Suit No. 108 of 1972 against Ram Ratan and Tarini Prasad in which a preliminary decree as well as a final decree has been passed and that Satya Narayan has purchased the same and the sale had been confirmed on 22.4.1977. He also admitted that his father has been enlarged on bail four days prior to the occurrence for the marriage of his daughter. He denied the defence suggestion of his father and brother being involved in several cases the numbers whereof were furnished to him. He also denied the fact that he had not gone to the police station where although a constable was present but he did not write anything. He further stated that he remained at the police station for about 10 minutes and all staff of the Police Station were sleeping. He further stated that the constable had accompanied him to the P.O. on reaching which he found the S.I. and S.P. present. He also asserted that he had stated before the police that when he came to the place of occurrence he saw the dead body of the father and brother lying in the middle of the road. He denied the defence suggestion that he alongwith his brother and father and others committed dacoity in the shop of Satya Narayan in order to collect money for the marriage of his sister.

20. Apparently P.W. 2 appears to be a liar since he in his examination-in-chief had stated that when he reached the P.O. on receiving information from Tarini he found his father and brother surrounded by the accused persons near the shop of Satya Narayan and that Ranjit had fired at his father and brother whereupon he had fled to the Police Station. If that be the situation he obviously would not have stated before the Police that his father and brother were lying dead in the middle of the road. It also appears from its deposition that his father had no shop of his own and that he worked as a craftsman in the shop of Tarini. There is another aspect of the matter, he claims to have run to the Police Station, remained there for about 10 minutes and returned to the P.O. where he found the S.I. and S.P. present. Obviously he is again lying since according to the I.O. (P.W. 10) in his cross-examination he had received telephonic message at 13.15 hrs. and had recorded the fardbeyan of Ranjit at 14.15 hrs. and had prepared the inquest report of Bittan and Rajesh at 14.20 hrs. and 14.30 hrs. respectively.

21. P.W. 3 Raghwendra Nr. Singh and P.W. 4 Rama Nand Singh have been declared to be hostile as they have not sought to support the prosecution case. Therefore, their evidence is of no help to either party.

22. P.W. 5 is Rajendra Prasad who owns a shop of silver ornaments and according to him at about 1.00 P.M. while he was in the shop a boy came from the direction of the shop of Satya Narayan and informed him that an altercation was going on near the shop of Satya Narayan. He claims to have come out of his shop and saw that altercation was taking place between Bittan and Anant the son of Satya Narayan Babu. He also claims to have seen Ranjit armed with a gun from which he fired, the first of which hit Bittan and he fell down and the second fire hit Bittan's son who also fell down, whereafter he claims to have fled away. The

witness identified Ranjit in the dock by pointing at him. He also stated that a long drawn dispute was going on between Tarini and Satya Narayan in respect of a house. In his cross-examination the witness stated that he had not stated before the Police that Bittan and Tarini on one hand had filed a Title Suit against Satya Narayan. He categorically stated that the shop did not belong to Ram Ratan. He was not in a position to say whether Ram Ratan had borrow Rs. 7500/- from Satya Narayan under a sudbharna deed and whether the latter had filed a Title Mortgage Suit against Ram Ratan or whether suit was decreed in favour of Satya Narayan who got delivery of possession over the same. He denied defence suggestion that another suit was" pending between Tarini and Satya Narayan in respect of the shop at the time of the occurrence. He admitted that Bittan was his own uncle. However, he denied that articles of dacoity and theft were recovered from the possession of Bittan and his son. He was also not in a position to say whether many cases of dacoity and theft were pending against them. He denied that the case under Sections 379 and 411 I.P.C, and another case u/s 414 I.P.C, had been filed against him. He also denied the fact that a case relating to theft of articles had been filed against him.

23. P.W. 5 stated that he had come out of his shop and had proceeded 3-4 steps ahead and that the altercation was going on in front of the shop of Maya which is a place situated a little diagonally beyond the shop of Satya Narayan. He also stated that Bittan had fallen down some 5 steps ahead of the shop of Maya and not in front of the shop of Satya Narayan and Bittan's son had fallen a little ahead of him and both were lying close to each other. He claimed not to have seen any suitcase near the son of Bittan. He admitted that he was not present at the P.O. when the S.I. of Police had arrived and he also could not say that whether the S.I. had seen the suitcase. He denied having stated before the police that he had seen Rajesh fleeing towards his house with a suitcase in hand. He could not recall to mind whether he had stated before the police that he had seen gold and silver scattered in the shop of Satya Narayan. He denied having stated before the Police that the bodies of Bittan and Rajesh were lying in the distance of 2-3 steps each other. He also could not recall to mind whether he had stated before the Police that Rajesh Soni, son of Satya Narayan had assaulted Bittan with axe like weapon. He admitted that deceased son of Bittan was known by both name namely Ranjit and Rajesh. He also could not recall to mind whether he had given any statement before the S.P. wherein he had stated that Satya Narayan handed over gun to Arun and it was he who had fired. He also could not recall to mind whether he had stated before the S.I. that Satya Narayan took out the gun and handed over the same to Ranjit from which he had fired. He stated that there were about 10 shops in between his shop and Satya Narayan and not 25 shops. He gave out the names of the shop owners whose shops were located between his shop and that of Satya Narayan. He denied giving false evidence. He also denied that Bittan had gone to commit dacoity in order to collect money for daughter's marriage and was killed in course thereof and had fallen in front of the shop of Satya Narayan. He also stated Vijay the

other son of Bittan was present in Court.

24. P.W. 6 is Suresh Prasad, who claims to be the nephew of Bittan. He stated that at about 1.00-1.30 P.M. while he was sitting in his shop he heard hulla of mamomaro and on coming out he saw scuffle going on between Bittan Sonar and Anant Prasad Soni and Anant fell down. Whereupon Rajesh Soni dealt a blow on the head of Bittan with a tangi like instrument. He also stated that Satya Narayan came out from his shop and handed over gun to Ranjit and Ranjit fired and killed Bittan. He went on to state that on seeing this Bittan's son Rajesh started fleeing when Ranjit again fired at Rajesh who died at the spot. He also stated that Bittan's son was carrying a suitcase in his hand and as Bittan died Arun sprinkled acid on him. He identified the accused standing in the dock and stated that Bittan's daughter's marriage was to be held on 26.3.1982. In course of his cross-examination he stated that Vijay was present in Court and pointed at a person going out from the Court room. He also stated that Vijay was his cousin (chachera bhai) and that he was a witness in this case. He also stated that Bittan was his uncle and that he had seen Bittan and Rajesh sustaining firearm injury. He stated that he had not gone to the police but returned to his house. He also stated that he had not offered water to Bittan and Rajesh but claimed to have raised hulla. He could not say whether the S.I. of police had arrived just after the occurrence since he had gone to his house leaving the shop open and it was his servant who had closed it. He stated that he had came out from his shop and had travelled about one cubit from his shop when he saw the occurrence taking place on the other side of the road. He could not recall to mind that he had stated before the S.P. that he had seen the occurrence from his verandah. He admitted that Bittan had been released from jail two days prior to the occurrence. He could not say whether some dacoits were apprehended from his house. He also stated that Bittan lived separate from him but could not say why his father separated from Bittan. He denied the defence suggestion that Bittan was committing theft and dacoity and, therefore, his father had separated himself from Bittan. He admitted that stolen articles were recovered from the house of Bittan and a case had been filed for retaining stolen articles. He stated that he had separate shop but he could not say why his father had separated from his brother Rajendra. He was also not aware of the fact that the Sub-Inspector of Police had arrived just after the occurrence and Satya Narayan had filed a case. He denied having deposed falsely and that his shop was closed and that he had not seen the occurrence.

25. P.W. 7 Prakash Sao happens to be the Bhagina of Bittan and he claims that at about 12.30 P.M. on that day he was at the shop of Tarini when he heard hulla coming from the north of Tarini's shop. On going there alongwith Tarini he saw an altercation taking place between Anant and Bittan in front of the shop of Maya. He also saw Rajesh assaulting Bittan with an iron rod. He also saw that Anant's father Satya Narayan handover a gun to Ranjit who had fired at Bittan who fell down on sustaining firearm injury. He also saw Bittan's son Rajesh fleeing when Ranjit fired at him who fell on the front of shop of Satya Narayan

and as Ranjit next pointed gun to him he fled away. He identified the accused in the dock. In his cross-examination he admitted that Tarini was his Mama but could not remember whether on 12.12.1980 he had put his signature on the paper relating to delivery of possession of Tarini's shop. He also stated that he has no connection whatsoever with Tarini's shop and he had never tried to purchase Tarini's shop. He also denied having given any advance for the shop and even feigned ignorance as to the location of Tarini's shop. He could not recall to mind that he had filed a suit for specific performance of contract against Ram Ratan and Satya Narayan and when he was faced with the same question he denied that he was lying on that issue. He also admitted that Bittan was his Mama though he denied that he and his son were criminals involved in theft and robbery. He claims ignorance about the release of Bittan on bail 3-4 days prior to the occurrence. He also denied that Bittan and his son had gone to commit dacoity in the shop of Satya Narayan and that they carried a suitcase with them. He admitted that they had stated before the Police that Rajesh was assaulting Bittan with iron tangi and not a Tangi like instrument. He also stated that he had given his statement on the following day and though the police station was on a distance of about 500 yards from the P.O. he did not go to the Police Station.

26. P.W. 8 is the informant Tarini Prasad Swarnakar who stated in Court that at about 12.45 P.M. he was in his shop and saw Bittan and Rajesh were going home for taking meal. He also stated that their shop was situated in front of his shop and that a hulla was raised at the north of his shop and hearing which he came out of his shop and proceeded a little ahead of his shop and saw Satya Narayan and his 4 sons exchanging hot words with Bittan and his son in front of the shop of Maya. He saw Anant and Bittan scuffling with each other, whereupon Rajesh assaulted Bittan on his head with iron rod which was like an axe. He further stated that in the meanwhile Satya Narayan Babu took out a gun from his shop and handed over the same to Ranjit and Ranjit fired at Bittan who fell down at the spot on sustaining gun fire injury and Arun poured acid on the body of Bittan. He further stated that Bittan's son Rajesh tried to flee away but Ranjit shot him too and he fell down and both Bittan and Rajesh died at the spot which was the road in front of the shop of Maya. He further stated that Satya Narayan ordered Ranjit to shoot him and hurled abuses whereupon he fled away out of fear and went to the Police Station where none was present. He claims to have gone to the station where he hired a taxi and went to Munger and met the S.P. who asked him to go back and he would follow, whereupon the deponent hired another taxi and returned to Jamalpur. He stated that he had given his statement at about 3.00-3.30 P.M. to the S.I. when he came to his shop and he got his statement read over and finding the same to be correct signed the same. He identified his statement which has been marked as Ext. 1. He also stated that he has purchased a house and shop from Ram Ratan in which Bittan was running his shop. He also stated that Satya Narayan had filed a civil suit against Bittan, Shyam, Vijay and himself and it was the enmity over the suit which had been the motive for killing Bittan and Rajesh. He further stated that Bittan was his full

brother. He also identified the accused standing in the dock by name and by pointing at them.

27. In his cross-examination he denied that he was not in possession of any shop on the day of the occurrence and that the delivery of possession of that shop was effected. He admitted that Satya Narayan had brought a Title Suit against him, the number whereof he did not remember. He could not say that the suit was numbered as 108/73. He admitted that the house in which his shop was situated was previously owned by Ram Ratan but could not say whether Satya Narayan had taken that house from Ram Ratan in 1963 for Rs. 7500/- in sudbharna. He admitted that Satya Narayan had filed a Money Suit against Ram Ratan wherein he was a defendant which was pending in the Court of Subordinate Judge and that Bijay and Bittan, Shyam and Prakash are party in that suit. He claimed to be in possession of papers to prove it. He could not say whether preliminary decree had been prepared in that suit in favour of Satya Narayan on 19.6.1975 and the final decree on 30.6.1975. He could not also say whether the house had been auctioned on 23.3.1977 and that Satya Narayan had purchased it and the auction sale was confirmed on 22.7.1977 and delivery of possession was effected on 12.12.1980. He claimed that his shop is still running in that very shop. He denied having filed Misc. Case No. 13/1977 for cancellation of auction and that the same has been dismissed. He admitted that Prakash Shah was his bhagina but denied that Prakash possessed receipt of articles which had been handed over at the time of delivery of possession. He also stated that he had not filed Misc. Case No. 3 of 81 in the Court of Sub-Judge for cancellation of auction and delivery of possession but admitted that Ram Ratan had appealed in the High Court which was still pending. He denied having preferred any appeal. He also denied having filed T.S. No. 41/81 which had been dismissed. He also denied that he had not instigated his bhagina Prakash to file T.S. 2/81 which had been dismissed on 3.6.82. He also denied the defence suggestion that after loosing the case he had taken help of undesirable friends and that articles of theft of Sandalpur P.S. Case No. 15/79 such as gold jewellery, asharfi etc. were recovered from his house, and that in respect of the same occurrence Om Prakash Mittal @ Kaila Prasad had also been arrested. He also denied that he had been arrested by the Police on 24.4.1983 in connection with Jamalpur P.S. Case No. 3/79. However, he admitted that he had been made an accused on suspicion in Jamalpur P.S. Case No. 11/68 which had been disposed of. He could not say whether Bittan had been caught red handed while stealing idol from temple for which Barh P.S. Case No. 10/75 had been registered. He denied having stated before the Police that decree had been passed in favour of Satya Narayan in T.S. No. 108/82 by Sub-Judge, Munger and that Satya Narayan had filed Money Execution Suit No. 19/76 for realization of money which had been decided and possession was effected in favour of Satya Narayan on 12.12.80. He also denied having stated before the Police that he had filed Misc. Case No. 3/81 for cancellation of delivery of possession which had been dismissed. He stated that Bittan was sitting in his shop and it was not a fact that Bittan was working in his

shop. He stated that Bittan's daughter marriage was fixed for 26.3.82 and that Bittan was enlarged on bail on the ground of the said marriage but he could not identify the case in which he had been enlarged on bail. He has further stated that Bittan was living separately from him for last 25 years and was in no way concerned with his business.

28. He stated that his shop was situated in the house of Ram Avatar the brother of Etwari Sao and that he had not got the sale deed executed. He stated that he was running the shop in that house for about 25-30 years and that Ram Avatar had filed a suit for eviction against him which was pending in the High Court and that Ram Prakash had not deposed on his behalf in that case. He stated that Bittan had met him at 8 A.M. on that day when he had opened the shop but had never mentioned that he was in need of Rs. 5000/- more and was unable to manage the same. He denied giving a different statement in this regard before the Police. He also denied having given a second statement before the S.I. wherein he has stated that it was Arun who brought out a gun from shop and gave it to Ranjit. He admitted that he had given another statement before the A.S.P. but denied having stated that it was Satya Narayan who had fired at Bittan and Rajesh. He also denied that he had not stated that Bittan owned his shop. He also denied that he had not stated that Bittan's shop was situated in front of his shop. He stated that Rajesh had fallen on the road in front of Annapurna Steel shop and the Bittan's dead body lay at a distance of 6-7 feet to the south of the dead body of Rajesh. He denied that the Bittan's dead body was lying at a distance of 70 feet north of the dead body of Rajesh. He admitted that there was an empty briefcase lying besides the dead body of Rajesh and that Rajesh had kept the same to get it repaired as the lock was defective. He denied that Bittan and Ranjit had gone to the shop of Satya Narayan with the empty briefcase with the intention to commit dacoity so as to manage Rs. 5000/- required for the marriage of the daughter. He also denied having stated before the Police that Rajesh had assaulted Bittan on the head with iron rod which was bent like an axe rather he had stated that Rajesh assaulted Bittan on the head with an axe like weapon. He also denied that he had not stated in his fardbeyan when he went to the Police Station none was present there. He also denied that having gone to Munger first met an advocate and got a false case set up by him and did not meet the S.P. He also denied the fact that his statement before the S.I. of Police was recorded in the presence of the A.S.P. he denied that his family members were professional dacoit and purchased looted articles.

29. P.W. 9 Ram Lakhan Prasad, Inspector, as stated earlier is a formal witness, who has submitted the charge-sheet, has proved the formal F.I.R. (Ext. 2) and the endorsement on the fardbeyan (Ext. 3).

30. P.W. 10 is the Investigating Officer, Ashok Kumar Das, who has been cross-examined at length. He was confronted by the defence regarding the case instituted on the fardbeyan of Ranjit being Jamalpur P.S. Case No. 63/82. He has admitted his shortcomings in respect of the investigation in that case and as

would appear from paragraph 61 onwards the witness was not very clear about his role in the investigation of Jamalpur P.S. Case No. 63/82. First he mentioned that it was Anant who received injury but thereafter when he was confronted about the injury report of Anant he retracted his statement and said that he had prepared injury report of Arun Kumar and Anant which was in para No. 40 of the case diary of Jamalpur P.S. Case No. 64/82 but when he was asked to show the injury report the same was not available. He also claims to have recorded the statement of Arun Kumar in para 30 of the case diary of Jamalpur P.S. Case No. 64/82 the time whereof he had not mentioned. Curiously he had not mentioned about the injury sustained by Anant in the case diary of Jamalpur P.S. Case No. 64/82. He admitted that Jamalpur P.S. Case No. 63/82 was in respect of the entrance into the shop but he failed to mention regarding the injury sustained by Anant and Arun. He also admitted having seized the blood stained flying shirt of Ranjit Swarnakar but had not mentioned the father's name in the seizure list. He could not say whether alias name of Rajesh Sonar was Ranjit Sonar. He also admitted that a country made pistol loaded with a live cartridge was found lying in the guddi of the jewellary shop of Satya Narayan. He admitted that the statement of Mewa Lai, Gopal, Maya Sonar, Ram Autar, Om Prakash and Arjun Sao was recorded on 23rd in the case diary of Jamalpur P.S. Case No. 63/82 all of whom are shopkeepers of the vicinity of the place of occurrence. In respect of Jamalpur P.S. Case No. 64/82 he stated that he had searched for witnesses but none was available and although he stated that he made inquiries about this case from the shopkeeper of the vicinity he has not mentioned any names of the witnesses from whom he had made inquiries. He confirmed about the several cases in which Bittan and his sons had figured as accused. He admitted that the place of occurrence of both the cases were the same i.e, the jewellery shop and Annapurna Steel Utensil shop of Satya Narayan.

31. It is strange that when two cases arose out of the same occurrence namely Jamalpur P.S. Case Nos. 63/82 and 64/82 the two cases were not tried together as is the normal procedure and curiously both the cases for reasons best known were tried separately. It would also appear from the deposition of the witnesses that, contradictions apart, all those witnesses who have supported the prosecution case are in some way related with the deceased and one may not feel shy to state that they are interested witnesses. Even otherwise there are glaring contradictions in the depositions of these witnesses.

32. P.W. 1 the wife of deceased Bittan Sonar does not appear to be an eye witness to the occurrence. It is apparent from her deposition in Court that when she arrived at the spot she saw that Ranjit the son of Satya Narayan had shot down her son and her husband with a gun which would mean that she had arrived after the shooting incident and at best she was only a hearsay witness. This would also be apparent from the fact that in her cross-examination she states of arriving at the P.O. after the S.I. of Police had already arrived and was inspecting the dead bodies. One fails, to understand why when she was present at the P.O. she had not given the fardbeyan and had waited for Tarini to return

and give the fardbeyan. It would also appear that though P.W. 1 denied the involvement of her son and husband in several cases of heinous nature the fact remains otherwise. It would also appear that she herself was involved in a few cases.

33. p.w. 2 in his deposition in Court has stated that on reaching the P.O. he found his father and brother surrounded by Satya Narayan and his sons and Ranjit was armed with gun. This is in conflict with the prosecution case of Satya Narayan bringing out a gun from his shop and handing over the same to Ranjit who immediately resorted to firing resulting in death of Bittan and Rajesh. He also stated that Ranjit fired as soon as he reached the spot if that be the position then he obviously could not have seen his father and brother being surrounded by Satya Narayan and his sons. This witness is also lying when he says that the shop of his uncle Tarini is located in the house of Ram Ratan whereas Tarini himself in his deposition has stated that his jewellery shop is located in the house of Ram Awatar. This witness again appears to be lying when he says that he was not aware of T.S. No. 108/72 when he was a party therein. The denial of this witness about himself and his deceased father and brother being involved in several cases is again in the realm of falsehood as the documents produced by the defence speaks otherwise. This witness has also stated that he had rushed to the police station where he found a constable who accompanied him back to the P.O. where he found the S.I. and S.P. present. To the contrary when Tarini had rushed to the P.S. he had not found anyone present there. One of the two P.W. 2 or Tarini is lying. Another interesting feature that has come in the testimony of P.W. 2 was that his father had no shop of his own and worked as a craftsman in the shoo of Tarini.

34. Yet another aspect of the matter which renders the deposition of PWs. 1 and 2 questionable and their not being eye witnesses to the occurrence is that where as P.Ws. 5, 6, 7 and 8 testify of scuffle between Bittan and Anant taking place prior to the shooting incident P.Ws. 1 and 2 are completely silent on this point.

35. P.W. 5 also does not appear to be an eye-witness of the occurrence. He does not say anything about Rajesh Soni assaulting Bittan on the head with a tangi like instrument or of Satya Narayan bringing the gun from his shop and handing over the same to Ranjeet. He also is silent about Arun sprinkling acid on the dead body of Bittan. He denied having stated before the S.I. that he had seen Rajesh running homewards with a suitcase in hand but the S.I. (P.W. 10) in his deposition admits that P.W. 5 did make such a statement before him. Even P.W. 6 speaks of Rajesh carrying a suitcase.

36. P.W. 7 also appears to be speaking in untruthful terms. He does not say anything about Arun sprinkling acid on the dead body of Bittan. In his examination-in-chief P.W. 7 states of being present in the shop of Tarini wherefrom he came out on hearing hulla and yet in course of his cross-examination he feigns ignorance about the location of Tarini's shop. It is also curious that being the bhagina of Bittan he was unaware of Bittan's release from

jail.

37. P.W. 8 also does not appear to be speaking the truth. He speaks of Rajesh assaulting Bittan with iron rod whereas others have stated of such assault being executed with an axe like instrument. He also speaks of rushing to the P.S. but found none present there although P.W. 2 speaks of the presence of a constable. He also speaks of having purchased a house and shop from Ram Ratan in which Bittan was running his shop. This appears to be contrary to what P.W. 2 stated of his father not having a shop of his own and was working as a craftsman in the shop of Tarini. This witness also appears to be speaking in untruthful terms when he feigns ignorance about Satya Narayan buying the shop of Ram Ratan and of delivery of possession being effected when he himself was a party therein. His statement before the A.S.P. and S.I. appear to be in conflict.

38. It is curious that when the occurrence took place in broad daylight, the only witnesses who appeared for the prosecution were such persons who were closely related to Bittan and Rajesh and all of whom had an axe to grind with Satya Narayan. The two independent witnesses have turned hostile. As such all the P.Ws. who have supported the prosecution case are interested/partisan witnesses. Even the I.O. appears to have sided with them and has left many links of the chain unexplained. The chain should be complete to exclude all reasonable hypothesis consistent with the innocence of the accused.

39. It appears that Satya Narayan, Anant and Arun had sustained injuries at the occurrence. It was for the prosecution to have explained these injuries specially when the defence had raised a plea of private defence. From the facts and the items recovered at the P.O. it only appears that the materials in the shop of Satya Narayan had been disturbed, snow-case glasses broken and items of jewellery were strewn all over the place.

40. That apart blood stained glass pieces were found which actually goes to show that some violent occurrence had taken place within the shop which had been cause for the accused to exercise the right of self defence, and which the prosecution has attempted to suppress. The injuries on the two deceased appear to have been sustained from the front. If the prosecution case of the two deceased being shot while attempting to flee is to be believed then the injuries would be available at the back. Firing appears to have taken place from close range which could only be possible inside the shop. Secondly, if the firing took place outside the shop, how were the empty cartridges recovered from within the shop.

41. According to the I.O. the P.O. in both the cases is the same i.e. the jewellery shop of Satya Narayan Prasad and Annapurna Steel Utensil shop. The I.O. inspecting the P.O. found glasses of the showcases broken and shattered and many silver ornaments were lying on the guddi near the showcase. He also found blood stain on the glass pieces lying on the guddi. There were also blood stains on the show case and stairs. He also found a loaded countrymade pistol on the

guddi and an iron rod with blood stains. He recovered 3 empty cartridges from the utensil shop and a black leather chappal of left foot in the jewellery shop. The right foot slipper was found near the platform. He also found a 12 bore gun loaded with two live cartridges. The gun does not appear to have been sent for examination. Even the bottle of acid recovered was full. All these facts have remained unexplained by the prosecution. It was for the prosecution to have explained these discrepancies. From the above it would only seem that the defence story of Bittan and Rajesh attempting to commit dacoity in the shop of Satya Narayan was more probable and a story in view of the grudge harboured by Tarini against Satya Narayan for having purchased the house of Ram Ratan was cooked up taking advantage of the death of Bittan and his son to implicate Satya Narayan and his sons and thereby take revenge. Why else did none of the other witnesses who had arrived at the P.O. at or after the occurrence give their statement before the S.I. and wait for Tarini to return.

42. As stated earlier all the witnesses including the informant had axe to grind since Satya Narayan had purchased the shop in the house of Ram Ratan in auction sale and delivery of possession had been effected. On the other hand the prosecution has failed to establish a motive to commit the crime. The absence of motive coupled with the evidence of the witnesses who primarily are partisan or interested witnesses go against the prosecution case.

43. There is another aspect of the matter the doctor conducting post mortem examination had found undigested food particles in the stomach of both the deceased which would negate the prosecution version of Bittan and Rajesh going home for afternoon meal. Had that been the situation half digested food particles would not have been found in the stomach. There is another aspect of the matter the doctor himself though stating that injury No. 1 on the body of Bittan namely blackening of the body may have been caused by acid burn has not found any sign of acid and he has also stated that such blackening may be due to post mortem staining. He also did not find any corrosion or burning on the dead body of Bittan Sonar and categorically stated that both the deceased were shot after taking their meals.

44. Before parting I must express my sincere condemnation of the action of the learned A.P.P. who has appeared for the prosecution in both Jamalpur P.S. Case Nos. 63/82 and 64/82. It goes without saying that the accused of Jamalpur P.S. Case No. 63/82 are the prosecution party in Jamalpur P.S. Case No. 64/82 and vice versa. In these circumstances the same prosecutor could not have appeared for the prosecution in both the cases.

45. From the evidence on record I am of the opinion that the prosecution has failed to establish that there had been a motive to commit the crime and that the evidence adduced was unimpeachable. Accordingly I am of the considered view that the appellants are entitled to a benefit of doubt and acquittal. Accordingly the appeals are allowed and the death reference is answered in the negative. Appellants Satya Narayan Prasad, Rajesh Kumar Soni @ Rajesh Soni, Anand

Kumar Soni and Arun Kumar appear to have been enlarged on bail by this Court. They on their acquittal are discharged from the liabilities of their respective bail bonds. Appellant Ranjit Kumar sentenced to the gallows on being found not guilty is directed to be released from custody forthwith.

Chandramauli Kr. Prasad, J.

I agree.