

In the Court of Additional Sessions Judge-III, Gaya**Present: Sangam Singh,****Dated, Gaya, 29th August, 2022****S. Tr. No. 293/2017 & 192/2021****Wazirganj P.S. Case No. 38/2017****U/ss 147, 148, 149, 302, 201/120(B) of the I.P.C. & 27 of the Arms Act.**

Complainant: State of Bihar through (informant Shankar Singh)
Represented By: Ambasht Yoganand (A.P.P.)
Accused: 1. Nakul Singh,
 aged about 40 years, S/o Late Bachchan Singh
 2. Santan Singh @ Satyanarain Singh,
 aged about 65 years, S/o Late Rampal Singh
 3. Sujeet Singh,
 aged about 50 years, S/o Late Awadh Kishore Singh
 4. Bharat Singh,
 aged about 65 years, S/o Schchidanand Singh
 5. Lallan Singh,
 aged about 62 years, S/o Sachchidanand Singh
Represented By: Sri Arun Kumar Sharma (in S.Tr. No. 192/2021)
 Sri Bishnukant Sahay (in S.Tr. No. 293/2017)

Date of Offence: 24.01.2017
Date of F.I.R.: 24.01.2017
Date of Charge-sheet: 07.05.2017, 31.07.2017
Date of Framing of Charges: 05.02.2017, 07.03.2019 and 02.12.2021
Date of commencement of evidence: 16.02.2018, 26.03.2019 and 06.12.2021
Date on which Judgment is reserved: 16.08.2022
Date of the Judgment: 29.08.2022
Date of Sentencing Order, if any: N/A

Rank of the Accused: N/A
Name of Accused: Nakul Singh, Santan Singh @ Satyanarain Singh, Sujeet Singh, Bharat Singh and Lallan Singh
Date of Arrest: Nakul Singh surrendered on 08.05.2017
Date of Release on Bail: N/A
Offences Charged with: U/ss 147, 148, 302/149, 341/149, 120(B) of the I.P.C. & 27 of the Arms Act (Nakul Singh and Santan Singh)
 147, 148, 302/149, 120(B) of the I.P.C. and 27 of the Arms Act (Bharat Singh, Lallan Singh and Sujeet Singh)

Whether Acquitted or convicted: Acquitted
Sentence Imposed: N/A
Period of Detention Undergone during Trial for purpose of section 428: N/A

List of Prosecution Witnesses:
 P.W.-1 Chandrama Kumar,
 P.W.-2 Sunita Devi
 P.W.-3 Shankar Singh (Informant)
 P.W.-4 Dhananjay Singh

P.W.-5 Dr. Sunil Kumar Singh

P.W.-6 Manish Kumar

P.W.-7 Pradeep Kumar

List of Defence Witnesses:-

D.W.-1 Urmila Devi

D.W.-2 Ram Kishun Singh

D.W.-3 Ajay Kumar Singh

D.W.-4 Sunil Singh

D.W.-5 Arjun Kumar

Court Witnesses, if any: N/A

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| 1. Exhibit:-1, | is signature of Shankar Singh (informant) on the fardbeyan |
| 2. Exhibit:-1/1, | is signature of Dhananjay Singh on the fardbeyan |
| 3. Exhibit:-2-2/3, | are signature of Shankar Singh on the seizure lists |
| 4. Exhibit:-2/4-2/7, | are signature of Kamlesh Singh on the seizure lists |
| 5. Exhibit:-3, | is postmortem report |
| 6. Exhibit:-4, | is entire fardbeyan |
| 7. Exhibit:-4/1, | is signature of Pradeep Kumar, S.H.O. on the fardbeyan |
| 8. Exhibit:-4/2, | is endorsement on the fardbeyan of Pradeep Kumar, SHO |
| 9. Exhibit:- 4/3 | is formal FIR |
| 10. Exhibit:-5- 5/3, | are seizure lists |
| 11. Exhibit:-6, | is inquest report |
| 12. Exhibit:-6/1, | is signature of Kamlesh Singh on the inquest report |
| 13. Exhibit:-6/2, | is signature of Chandrama Kumar on the inquest report |
| 14. Exhibit:-7-7/2, | are confessional statements of Naresh Kumar, Satyanarain Singh and Ashok Kumar Singh @ Dara Singh respectively |
| 15. Exhibit:-8, | is a letter dated 26.09.2019 addressed to this court by SHO, Wazirganj regarding sending of the seized articles except motorcycle to FSL, Patna |
| 16. Exhibit:-9, | are three photos of the seized motorcycle bearing Reg. No. BR-02J6197, parked in the Wazirganj police station |
| 17. Exhibit:-10,10/1, | are FSL reports |

Defence Exhibit:-

Exhibit:-A, is certified copy of order of C.J.M., Gaya dated 19.03.2008 in Wazirganj P.S. Case No. 15/2005 u/s 302 of the I.P.C. and 27 of the Arms Act.

Exhibit:-A/1, is cognizance order dated 04.02.2021 taken by A.C.J.M.-I, Gaya in Wazirganj P.S. Case No. 149/2008, GR No. 1672/2008, State Vs. Omkar Singh & Others

Court Exhibit: N/A

Material Object: N/A

J U D G M E N T

1. The accused Nakul Singh, Satyanarain Singh @ Santan Singh, Sujeet Singh, Bharat Singh and Lallan Singh have been tried for the offences punishable u/ss 147, 148, 302/149, 120(B), 341/149 of the I.P.C. and Section 27 of the Arms Act.

2. According to the first information report registered on the basis of the fardbeyan of Shankar Singh, aged 75 years, S/o Harakdeo Singh, R/o Vill. Kolhna, P.S. Wazirganj, Distt. Gaya, recorded by S.H.O. Pradeep Kumar, P.S. Wazirganj, on 24.01.2017 at 12:30 PM, his son Ashok Singh, a Class-IV employee in Civil Court, Gaya. On 24.01.2017 Ashok Singh as a matter of routine left for his office at 9:40 AM on his motorcycle. Behind him the informant Shankar Singh, his daughter-in-law Sunita Devi wife of Ashok Singh and Chandrama Kumar son of Ashok Singh and grandson of Shankar Singh were also going to market by another motorcycle driven by Chandrama Kumar, when the trio reached a little short of the railway crossing Wazirganj they saw that Ashok Singh was surrounded by assailants. Among them Arun Singh was assaulting with 'Pasuli', Nakul Singh was striking with a sharp edged weapon, Sujeet Singh fired from his pistol, Bharat Singh was holding both the hands of Ashok Singh and Lallan Singh was striking with a stone. He (the informant) identified Arun Singh, S/o Ramjanam Singh, Nakul Singh S/o Vachchan Singh, Bharat Singh S/o Sachchida Singh, Lallan Singh S/o Sachchida Singh and Sujeet Singh S/o Awadh Kishore Singh, all R/o Vill. Kolhna who assaulted his son to death. When he went there alongwith his grandson and daughter-in-law raising an alarm, he found that apart from the above named assailants there were about three other unknown assailants whom he could not identify and they all ran away from the spot and in frantic haste left their motorcycle bearing Reg. No. BR2J-6197 Passion Plus. When he reached near his son he found that his son was dead and smeared with blood. On hearing their screams nearing villagers and police personnel reached there. The neck, throat and both the hands of his son were incised and the forehead was smashed. His son has been murdered definitely as a result of provocation by Kiran Devi W/o Arun Singh because four days before, Kiran Devi, Bharat Singh and others had threatened his son Ashok Singh that he shall be chopped into pieces and he will not be able to do anything. After four days his son has been done to death.

Before recording the fardbeyan of the complainant Shankar Singh the inquest report was prepared at 12:00 noon. The lists of articles including the motorcycle bearing Reg. No. BR2J-6197 recovered from the scene of occurrence, were also prepared. The dead body of the deceased Ashok Singh was sent for autopsy which was performed the same day at 4:30 PM. Police Station Wazirganj is about 4 km from the scene of occurrence but the first information report was registered on the same day at 11:30 pm u/ss 147, 148, 149, 302, 201 and 120(B) of the I.P.C.

The case was initially investigated by Sub-Inspector Maneesh Kumar and subsequently the investigation was entrusted/transferred to the station officer Pradeep Kumar on 15.02.2017 vide order dated 10.02.2017 of the Deputy Inspector General of Police. Ashok Kumar Singh @ Dara Singh S/o Ram Niwas Singh, owner of the

motorcycle bearing Reg. No. BR2J-6197 recovered from the scene of occurrence, was arrested on 13.02.2017 and his statement was recorded by the I.O. On the basis of the information disclosed by him, his maternal uncle Satyanarain Singh @ Santan Singh was also arrested on the same day and Naresh Kumar S/o Ambika Yadav was arrested on 21.03.2017 and their statements were also recorded. It transpired from their statements that the plan of the murder of Ashok Singh (deceased) was engineered by Arun Singh and executed by the gang consisting of Arun Singh, Naresh Kumar, Rajesh Manjhi, Satyendra Pandey @ Giri, Tarun Manjhi, Satyanarain Singh @ Santan Singh, Akhilesh Chaudhary, Satyendra Chaudhary, Satyendra Bharti, Ashok Kumar Singh @ Dara Singh and some others on the basis of the intelligence about the location of the deceased furnished by the wife of Arun Singh.

3. The investigation against Satyanarain Singh @ Santan Singh, Ashok Kumar Singh @ Dara Singh, Naresh Kumar and Tarun Manjhi @ Karun Manjhi was completed and they were charge sheeted on 07.05.2017 u/ss 147, 148, 149, 341, 302/120(B) of the I.P.C. and Section 27 of the Arms Act and the investigation against Arun Singh, Nakul Singh, Kiran Devi, Rajesh Manjhi, Satyendra Pandey @ Satyendra Giri remained pending. On 31.07.2017 the charge-sheet was submitted against accused Nakul Singh and Rejesh Manjhi. The three accused Lallan Singh, Sujeet Singh and Bharat Singh named in the FIR were not charge-sheeted as the investigating officer came to the conclusion that there was no material to prove their participation in the crime. After submission of the two charge-sheets accused Naresh Kumar absconded and the case against Satnarain @ Santan Singh, Tarun Manjhi @ Karun Manjhi, Ashok Kumar Singh @ Dara Singh, Nakul Singh and Rajesh Manjhi was committed to the Court of Sessions which is Session Trial No. 293/2107. During the pendency of the trial accused Ashok Kumar Singh @ Dara Singh, Tarun Manjhi @ Karun Manjhi and Rajesh Manjhi have absconded.

4. On the basis of application submitted by the prosecution cognizance of the above offences was taken against Lallan Singh, Bharat Singh and Sujeet Singh u/s 319 of the Cr.P.C. vide order dated 13.02.2020 which has been numbered as Sessions Trial No. 192/2021. The charge was read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

5. The defence case in brief is denial of entire occurrence. By cross-examining the prosecution witnesses and giving suggestions to them and by examining defence witnesses the defence has tried to show that no occurrence as alleged by the prosecution has taken place.

6. The point for determination is whether the prosecution has been able to prove the charge against all the accused persons beyond all reasonable doubts?

FINDING

7. In support of the prosecution in Sessions Trial No. 293/2017:-

i. P.W.-1 Chandrama Kumar, ii. PW.-2 Sunita Devi, wife of the deceased, iii. P.W.-3 Shankar Singh, iv. P.W.-4 Dhananjay Singh, v. P.W.-5 Dr. Sunil Kumar Prasad, vi. P.W.-6 Sub-Inspector Manish Kumar and vii. P.W.-7 Sub-Inspector Pradeep Kumar have been examined.

In their defence the accused have examined altogether five witnesses.

i. D.W. 1 Urmila Devi, ii. Ram Kishun Singh, iii. Ajay Kumar Singh, iv. Sunil Singh and v. Arjun Kumar.

In S. Tr. No. 192/2021 P.W. 1 Chandrama Kumar, P.W. 2 Sunita Devi, P.W. 3 Dhananjay Singh, P.W. 4 Shankar Singh, P.W. 5 Sunil Kumar Prasad and P.W. 6 Manish Kumar were examined by prosecution. In their defence the accused examined D.W. 1 Kishori Singh, D.W. 2 Ram Vilash Singh, D.W. 3 Radha Mohan Singh, D.W. 4 Ashok Kumar Singh and D.W. 5 Karun Manjhi.

In documentary evidence the the defence has produced Exhibit:-A, which is certified copy of order of C.J.M., Gaya dated 19.03.2008 in Wazirganj P.S. Case No. 15/2005 u/s 302 of the I.P.C. and 27 of the Arms Act and Exhibit:-A/1, which is cognizance order dated 04.02.2021 taken by A.C.J.M.-I, Gaya in Wazirganj P.S. Case No. 149/2008, GR No. 1672/2008, State Vs. Omkar Singh & Others.

8. I have heard the learned counsel for the parties and have perused the record.

9. The sum and substance the evidence of P.W. 1 Chandrama Kumar in both the cases is the same. P.W. 1 Chandrama Kumar has deposed that on 24.01.2017 at about 9:40 AM, his father Ashok Singh was going on duty to the Civil Court, Gaya by his Bullet Motorcycle. Behind him he alongwith his grandfather Shankar Singh and mother Sunita Devi also left for Wazirganj market by another motorcycle and distance between both the motorcycles was 100-200 meters. When he reached at the speed breaker near village Kolhna he saw that Kiran Devi was going out from her house and while talking with someone on phone she was saying that 'Ashokva has left'. Thereafter, when he proceeded about 2 km from their village and reached at the railway crossing, he witnessed that accused Bharat Singh pulled down his father from his motorcylce and after catching hold of his hand dashed him on the ground. Accused Arun Singh was indiscriminately assaulting his father with a pasuli (sharp cutting weapon). Nakul Singh was striking with a sword like weapon. The assault was taking place at a distance of 40 meters towards west from railway gate and 10 meters to north from the railway signal. Sujeet Singh fired on the trio and Lalan Singh was smashing the head of his father with a stone. Besides the above accused they were 4-5 unidentified assailents attacking his father. The motorcycle of his father was lying towards south at a distance of 4-5 steps. He, his grandfather and mother started screaming and raising an alarm and inmates of

the neighbouring village reached there. On seeing them the accused ran away from the scene of occurrence and in frantic haste their one motorcycle and a red colour jacket of Arun Singh was left on the spot. When he went near his father, he found him lying on the ground and his neck and head was incised and his forehead was smashed. Other parts of his body were also crushed with stone. The police reached the spot after two hours of the occurrence and prepared inquest report and lists of the articles recovered from the scene of occurrence and these documents were signed by him and Kamlesh Singh. The witness has further stated that his mother had to purchase some medicines and his grandfather had to buy some goods from Wazirganj market. Regarding the motive of the incident, the witness has stated that about six months before the incident accused Arun Singh was damaging his crops with his tractor and when his father (deceased) went there Arun Singh and Nakul Singh had an altercation with him and Arun Singh fired at his father but the shot hit his uncle Bittoo Singh and a criminal case No. 221/2016 was registered regarding it in P.S. Wazirganj. About 4-5 days before the incident, his cow had trespassed into the fields of Bharat Singh and regarding it, Bharat Singh and Kiran Devi had abused his father and threatened him to cut into pieces. Bharat Singh and Lalan Singh are real brothers. Sujeet Singh had threatened his father. According to the witness he had tried to rescue his father but were prevented by Sujeet Singh who had fired on them from his pistol but nobody sustained any gun-shot injury. He alongwith his grandfather and mother remained on the scene of occurrence till the police reached there. The police station Wazirganj is situated at a distance of 3-4 KM from the scene of occurrence. The witness has further stated that on 23.01.2017 there was a warming ceremony of the new house of his elder sister Smt. Rekha Devi in village Manpur and he was also invited but only his two sisters Preeti Kumari and Shalu Kumari had gone to participate in it Wazirganj is the main market for all the neighbouring villages and on that road traffic is regular. He was going behind his father with a difference of two to four minutes and the house of Kiran Devi is situated at a distance of 10-20 paces from his house. His father as well as his mother both had mobile phones with them. The railway crossing is situated at a distance of 2 KM, from his village and at the time of incident he was present at a distance of 40-50 paces from the scene of occurrence.

10. P.W.-2 Sunita Devi has in her evidence in S.Tr. No. 293/2017 deposed that accused Bharat Singh, Arun Singh, Nakul Singh, Sujeet Singh, Lalan Singh, Satyendra Singh, Santan Singh, Tarun Manjhi, Naresh Yadav and Dara Singh assaulted her husband Ashok Singh and committed his murder by inflicting multiple injuries on his person whereas in her evidence in S.Tr. No. 192/2021 specified that Arun Singh, Nakul Singh, Bharat Singh, Sujeet Singh, Lalan Singh, Santan Singh, Dara Singh, Rajesh Manjhi, Tarun Manjhi, Naresh Kumar and Satendra Bharti assaulted her husband and committed his murder by inflicting multiple injuries on his person. Regarding other

particulars the witness has supported P.W. 1 Chandrama Kumar and has stated that when she alongwith her son and father-in-law reached at the speed-breaker situate near the house of Kiran Devi, the speed of the motorcycle slowed down and she heard Kiran Devi talking to someone on her phone and saying that Ashok has left. Hearing it, she asked her son to accelerate the speed and tried to telephone her husband but it seems that because of the sound of the bullet motorcycle he could not receive the call. When she tried to save her husband, Sujeet Singh fired on them and threatened to shoot them if they advance. On hearing their alarm the assailants ran away. While running away Santan Singh and Dara Singh tried to start the red coloured motorcycle but it failed to start and therefore they left the motorcycle on the spot and ran-away. Her daughter and son-in-law had also reached the scene of occurrence on receiving the information. The assailants while running away left a pasuli, one half jacket of red colour, one shirt of blue colour, a live cartridge, one empty cartridge and a motorcycle of red colour on the spot. Her father-in-law asked someone present on the spot to inform the police and police arrived on the spot. Regarding the motive for the incident, the witness has deposed that about six months before the incident accused Arun Singh had damaged her crop with his tractor and when her husband opposed it, Arun Singh, Nakul Singh quarrelled with him and in the meantime Arun Singh fired from his pistol on her husband but the shot hit her brother-in-law Bittoo, Kiran Devi also reached there, broke her bangles and said that so long as Ashok is not killed she would not wear the bangles. Regarding this incident Bitto Singh had lodged an FIR and the case crime No. 221/2016 was registered against Arun Singh and Nakul Singh in P.S. Wazirganj. About 4 days before the occurrence her cow had strayed into the fields of Bharat Singh and Bharat Singh started abusing her husband. When her husband protested Bharat Singh threatened him that he will chop him into pieces with impunity. About 8-10 days before the incident when her husband had gone to bank, accused Sujeet Singh had threatened him that his lease of life is over and he would be killed soon. Accused Arun Singh and her husband belong to same Gotra, she knows Saraswati Devi who is wife of Bharat Singh and she had lodged a case crime No. 488/2017 in P.S. Wazirganj against her and others, she is acquainted to Rubi Devi wife of Sujeet Singh who had criminal case No. 489/2017 against her and her husband. Kiran Devi wife of Arun Singh had lodged a criminal case No. 222/2016 and 226/2016 against her and others. She does not remember whether one of these two cases relates to setting a dwelling house on fire. The cases lodged by Rubi Devi and Saraswati Devi against her and others relate to extortion. The witness has further stated that on the date of incident she was feeling pain in her legs and was going out for buying medicine. In para 45 of her evidence in S.Tr. No. 192/2021 the witness has stated that the pain in her legs was persisting for 5-6 years from before the incident but she never got it treated by any doctor nor went to

hospital for treatment.

11. P.W.-3 Shankar Singh, the informant has in his evidence in Sessions Trial No. 294/2017 reiterated the facts contained in his fardbeyan. In addition, the witness has deposed that while he was going to Wazirganj market alongwith his grandson Chandrama Kumar and daughter-in-law Sunita Devi and reached at the speed breaker situate near the house of Arun Singh, he heard Kiran Devi wife of Arun Singh talking to someone on phone and saying that Ashok has left. Regarding the names and number of the assailants, the witness has deposed that apart from Bharat Singh, Lallan Singh, Arun Singh, Nakul Singh and Sujeet Singh accused Santan Singh, Dara Singh, Tarun Manjhi, Satendra Bharti, Naresh and Rajesh Manjhi were also assaulting his son Ashok Singh. Giving further description regarding the roles of the added assailants the witness has specified that Santan Singh was armed with an iron rod, Dara Singh @ Ashok Singh was also assaulting and Tarun Manjhi, Satendra Bharti, Naresh, Rajesh Manjhi were also armed with weapons and were attacking his son Ashok Singh after bringing him to the North of the railway crossing. The witness has stated that when he raised the alarm the assailants ran away in the Southern and Western directions. After hearing the alarm some persons reached there and they informed the police. He went near his son Ashok Singh, he found that he was dead and there were multiple incised wounds on his person. On the scene of occurrence, the assailants had left a blood stained pasuli, a shirt of red colour, a white muffler, live cartridge, an empty cartridge and the motorcycle which Satyanarain Singh could not start. The police prepared a recovery memo on which he executed his signature. His statement was recorded by the police and was signed by him as well as by Dhananjay Singh and the same is exhibit 1 and 1/1. The inquest report was prepared by the police on the spot and all the four memorandums of recovery were prepared by the police which were signed by him and Kamlesh Singh and the same are Ext. 2, 2/1, 2/2 and 2/3. The witness has confirmed the testimony of P.W. 2 Sunita Devi that Arun Singh fired gunshot on Ashok Singh which hit Bittoo Singh, that four days before the incident Kiran Devi and Bharat Singh had threatened Ashok Singh that they will chop him into pieces. According to the witness he was a Class-IV employee in the Civil Court, Gaya and superannuated in 2001. The witness has further stated that while running away from the scene of occurrence, accused Arun Singh had taken off and thrown his shirt and muffler on the scene of occurrence.

P.W. 3 Shankar Singh has been examined as P.W. 4 in Sessions Trial No. 192/2021 and has deposed that in all there were eleven assailants but the witness has named only seven assailants i.e. Bharat Singh, Lallan Singh, Nakul Singh, Arun Singh, Satyanarain Singh @ Santan Singh, Dara Singh and Tarun Manjhi and has thus failed to specify the names of Rajesh Manjhi, Naresh, Satendra Bharti and Sujeet Singh who were also named by him in his evidence in S.Tr. No. 293/2017. In contrast to his

statement in S.Tr. No. 293/2017 the witness has in para 5 of his evidence (S.Tr. No. 192/2021) deposed that the information of the incident was given by him to the police station by the mobile number of another person. The witness has stated that the case crime No. 488/2017, and 489/2017 were lodged by the wife of Bharat Singh and by the wife of Sujeet Singh against him and others. In paras 27 and 46 of his evidence the witness has stated that at the time of occurrence he did not know the name of Satyanarain Singh @ Santan Singh, Dara Singh and Arun Manjhi but knew him by face. In para 33 of his evidence the witness has stated that his daughter-in-law was having pain in her legs for 5-6 months preceding the date of incident and she was receiving the treatment from P.H.C., Wazirganj for two months and on the date of incident they were going there. In para 44 of his evidence the witness has stated that at the time of incident accused Arun Singh was wearing a jacket and had thrown it away after the same was smeared with blood.

12. P.W. 4 Dhananjay Singh (S.Tr. No. 293/2017) who has been also examined as P.W. 3 in S.Tr. No. 192/2021, has in his evidence deposed that he is resident of Krishnapuri Colony, Gere Road, Manpur, P.S. Muffasil, Distt. Gaya. On 24.01.2017 at about 10:00 AM he received a telephonic information from his brother-in-law Chandrama Kumar that his father-in-law Ashok Singh has been murdered near Kolna railway crossing. On receiving this information he alongwith his wife Rekha Devi and other family members reached the scene of occurrence and found that his father-in-law was lying dead with multiple incised wounds on his person. On 23.01.2017 there was a house warming ceremony of the new house and he had invited all the family members of his in-laws but Preeti Kumari, sister of his wife and Neeru Devi, wife of his brother-in-law had attended the function. His statement was recovered by the police on the spot. The fardbeyan of his grand father-in-law Shankar Singh was recorded at about 12:30 PM, the inquest report was prepared on the spot. Railway crossing Wazirganj is at a distance of 25-30 KM from his house and he reached there at about 11:00 AM and the police arrived 10-15 minutes later. The police recovered a red coloured jacket, a blue shirt, a Muffler smeared in blood, a blood stained pasuli, a live cartridge, an empty cartridge and a motorcycle from the scene of occurrence. He has executed his signature on the fardbeyan of his grandfather-in-law Shankar Singh.

13. P.W. 5 Dr. Sunil Kumar Prasad has been examined as P.W. 5 in both the cases. This witness has proved the postmortem report which is Ext.-3 in both the Sessions Trials. He has deposed that on 24.01.2017 he was posted as Medical Officer, Department of FMT, ANMMCH, Gaya. He was conducted the postmortem of Ashok Singh S/o Shankar Singh, aged about 42 Yrs, and following antemortem external injuries on the body of the deceased were found:-

(A) **Incised wounds:-** (i) On right occipital region above hair line of size 8 cm x 0.5 cm

x scalp deep (ii) On mid occipital region 1 cm above and parallel to injury no. (i) of size 6cm x 0.5 cm x scalp deep (iii) On left occipital region 1.25 cm above and parallel to injury no. 2 of size 6 cm x 0.5 cm x scalp deep (iv) On left parietal region 1cm above and parallel to injury no. 3 of 2cmx0.5cmx scalp deep (v) On left parietal region near parietal prominence of 7 cm x 0.5cm x scalp deep (vi) On right cheek of 13 cm x 2.5 cm x 2 cm (vii) On left cheek of size 9 cm x 1.5 cm x 1 cm (viii) On right side of chin near mid line of size 4cm x 0.5cm x 0.3 cm (ix) On upper part of neck anteriorly between thyroid cartilage and chin of size 13 cm x 4cm x 3.5 cm with severing of underlying structures including trachea and oesophagus (x) near base of neck on right side anteriorly and laterally of size 9 cm x 3 cm x 2.5 cm (xi) On left upper chest below left clavicle of size 3cm x 0.5cm x 0.3cm (xii) On palmar surface of right hand – (a) near base of finger anteromedially of size 8cm x 3 cm x 1 cm (b) On hypothenar region of 12 cm x 4cm x 1.2cm (c) near base of right thumb of size 5cm x 1cm x 0.75cm (xiii) On palmar surface of left hand – (a) On thenar region of size 12cm x 20.5 cm x 1.2cm (b) On proximal phalanges of left index finger, middle finger, ring finger and little finger each of size 1.5cm x 0.5cm x 0.5cm (c) On proximal phalanx of left thumb of size 1cm x 0.5cm x 0.25cm. Margin of all wounds were clean cut, regular and retracted having dark blood and blood clots in and around the wounds. All incised wounds are produced by sharp cutting weapon (b) Abrasions (i) On left side of forehead of size 6cm x 3cm (ii) On lower part of right arm antero laterally of size 3cm x 0.5cm (iii) Near right iliac spine of size 3cm x 1.5cm (iv) On right knee antero laterally of size 5cm x 2cm. All abrasion of produced by hard blunt forces/surfaces.

On further dissection of neck trachea and oesophagus are found severed having dark blood and blood clots near cut ends, in and around.

Opinion:-

- (i) Death is due to injury on upper part of neck (incised wound no. ix) associated with other injuries as mentioned above.
- (ii) Time since death – 4 to 8 hours approximately since PM examination time.

Cross-examination on behalf of accused Nakul Singh :- xxx xxx xxx

2. Case number is not mentioned by me in postmortem report.
3. At the time of examination case number was not available.
4. Dead body was brought and identified by Choukidar 3/1, Sidhi Bhagwan Paswan and Choukidar 2/4, Vidya Paswan. I have no knowledge of family members who had come with the dead body.
5. No family member of deceased came to me.
6. He has not found any semi-digested and un-digested food in the stomach. Mucinous fluid was found in the stomach.
7. Normally in 3-4 hours stomach becomes empty.

8. If any person is died within 1 hour of having food than in his stomach semi-digested food will be found.
9. The bladder was empty.
10. Gas and fluid in the intestine may also be found in the body if he consumes liquor.
11. There is no feature of taking alcohol before death.
12. He has not found any abrasion over the face except on forehead.
13. There may be so many types of sharp edged weapon.
14. He can not say that what type of sharp edged weapon was used on the deceased.
15. Abrasions may be happened if any body falls down on the ground.
16. At the time conducting postmortem he was in forensic department.
17. He has done MD in Forensic.
18. It is not true that the postmortem report is not genuine and true.

(This cross-examination is adopted on behalf of the accused Santan Singh).

Cross-examination on behalf of the accused Bharat Singh, Lallan Singh and Sujeet Singh:-

Cross Examination:-

He does not posses degree of MD in forensic science. At the time of postmortem examination the case number was not available. The dead body was brought by the above two choukidars and no family members of the deceased was come to me. At the time of postmortem examination of deceased he did not find semi-digested or undigested food in the stomach. Normally in 3-4 hours stomach becomes empty after taking normal food. If any person died after one hour of taking food, semi-digested food will be found in stomach. Bladder was empty. Gas and fluid in the intestine may present if he consumes liquor. During postmortem he did not find any abrasion on the face except forehead. He has found only sharp cut injuries on the face and some of them may be caused by Garassa. Garassa is sharp edged weapon. He can not exactly tell about the sharp cut weapons by which rest of the sharp cut injuries were inflicted on the face of the deceased. Abrasions and laceration may be hapened by falling on the ground. It is wrong to say that this postmortem report is not genuine.

14. P.W. 6 Sub-Inspector Maneesh Kumar has been examined as P.W. 6 in both the cases and the sum and substance of his evidence in both the cases is the same. The witness has deposed that on 24.01.2017 he was posted as Sub-Inspector of P.S. Wazirganj, Distt. Gaya. On that day, an information was received by station officer that the dead body of Ashok Singh S/o Shankar Singh, R/o Vill. Kolhna, P.S. Wazirganj, Distt. Gaya, is lying on the railwayline near the railway crossing. After receipt of the information he alongwith station officer Pradeep Kumar and other police personnel reached the scene of occurrence at about 11:00 AM and found the dead body lying at a

distance of 20-25 meters from the railway crossing on the Northern side of railwayline. On interrogation it was learnt that the deceased was posted as an employee in Civil Court, Gaya. Thereafter, the inquest report was prepared and the dead body was sent for autopsy. The fardbeyan of the father of the deceased was recorded by S.H.O. Pradeep Kumar at about 12:30 PM near the railway crossing. The witness has proved the fardbeyan of Shankar Singh and the same is marked as Ext. 4. It also bears the signature of witness Dhananjay Singh. A live cartridge, a blood stained pasuli, a red coloured half jacket stained with blood, a brown coloured Muffler, a blood stained blue coloured full shirt, an empty cartridge, a pellet, a red coloured Hero Honda Passion Plus Motorcycle bearing Reg. No. BR2J6197 were recovered from the spot and 4 memorandums of recovery were prepared by him in his writing and signature and witnesses Shankar Singh and Kamlesh Singh have executed their signatures on them and they are marked exhibits 5, 5/1, 5/2 and 5/3. The inquest report in triplicate with carbon copies was prepared in his own writing and signature which is marked exhibit 6. There were multiple incised wounds on the person of the deceased. The inquest report bears signatures of Kamlesh and Chandrama is marked exhibit 6/1 and 6/2. The dead body was dispatched for post-mortem at 13.05 PM. He returned to the police station at 20.30 PM and the FIR was registered by station officer Pradeep Kumar and the investigation was entrusted to him. On 25.01.2017 he again recorded the statement of the informant Shankar Singh and the statements of witnesses Sunita Devi, Chandrama Kumar and Dhananjay Singh who inspected the scene of occurrence. The motorcycle recovered from the spot was not registered with the D.T.O. It was disclosed by the agency that the said motorcycle was purchased by Ashok Singh, S/o Ram Nivas Singh, R/o Village Shiv Nagar, P.S. Khizersarai, Distt. Gaya from Niranjana Prasad, S/o Late Bachhu Sao, R/o Mohalla Mangla Gauri, Post office Chand Chaura for a consideration of Rs. 23,500/- on a stamp paper of Rs. 50 and the same has been signed by the vendor and purchaser and has also been signed by witness Arun Singh. He reached the village Shiv Nagar and arrested the accused Ashok Kumar @ Dara Singh from his house. The statement of accused Ashok Singh was recorded and on that basis accused Satyanarain @ Santan Singh was arrested from his house. Thereafter the investigation was transferred to S.I. Pradeep Kumar. The witness has stated that in the margin of para-7 of the case diary, the time of receipt of the information has not been mentioned. The inquest report was prepared by him at 12.00 noon. The witness has further stated that Chandrama Kumar had not stated that there was a distance of 100-200 meters between the two motorcycles. The witness has proved that in their statements u/s 161 of the Cr.P.C. witnesses Chandrama Kumar, Sunita Devi and Shankar Singh had not stated that when they

reached at Kolhna speed breaker they saw Kiran Devi going from her house and talking to someone on phone that Ashok has left. In her statement, Sunita Devi had not stated that while running away Santan Singh was trying to start the motorcycle but it failed to start and therefore he ran away on foot. Shankar Singh not stated that there were 11 accused. He had also not stated that accused threatened him to shoot if he advanced. Shankar Singh has also not stated that Ashok Singh @ Dara Singh, Tarun Manjhi, Satendra Bharti, Naresh Yadav and Rajesh Manjhi were all with weapons and were assaulting his son. According to the witness neither the informant nor any of the witnesses had named Satyanarayan @ Santan Singh, Ashok Kumar Singh @ Dara Singh, Naresh Kumar, Tarun Manjhi, Rajesh Manjhi and Satendra Pandey in their statements u/s 161 of the Cr.PC.

15. P.W.7, Pradeep Kumar has deposed that on 24.01.2017 he was posted as S.O. of P.S. Wazirganj. On that day on receiving an information that a person has been murdered near Punama Railway crossing he alongwith sub-inspector Manish Kumar and other police personnel reached the scene of occurrence and found the dead body of a person surrounded by a huge crowd. It transpired that deceased was Ashok Kumar Singh, S/o Shankar Singh, R/o village Kolhna, P.S. Wazirganj, Distt. Gaya. He recorded the fard-beyan of Shankar Singh father of the deceased at 12.30 PM on 24.01.2017. Under his instructions memorandums of recovery of the articles recovered from the spot and inquest report were prepared by sub-inspector Manish Kumar and fardbeyan was recorded by him in his writing and signature signed by the informant and witness Dhananjay Singh which is marked ext. 4/1. The dead body was sent for autopsy. He came to the police station and registered the case crime u/ss 147,148,149,302,201 and 120-B of the IPC and sections 27 of the Arms Act. The formal first information report bears his signature. The investigation was entrusted to sub-inspector Manish Kumar. The articles recovered from the spot were kept in the Malkhana and the motorcycle was parked in the compound of the police station. On 10.02.2017 the investigation was transferred from sub-inspector Manish Kumar. Statements of the accused Naresh Kumar was recorded on 21.03.2017, according to his instructions by sub-inspector Manish Kumar. The investigation against Satyanarayan @ Santan Singh, Ashok Kumar @ Dara Singh, Naresh Kumar and Tarun Manjhi @ Karun Manjhi was completed and they were charge-sheeted on 07.05.2017. The investigation against Arun Singh, Nakul Singh, Kiran Devi and Naresh Manjhi, Satendra Pandey @ Satendra Giri, Lallan Singh, Sujeet Singh and Bharat Singh could not be completed. The witness has proved the statement of accused Naresh Kumar, ext.7, statement of Satyanarain Singh exhibit 7/1 and the statement of accused Ashok Singh @ Dara Singh exhibit 7/2. After investigation, the allegations against Bharat Singh, Lallan Singh and Sujeet Singh were

not found to be true and therefore final report was submitted against them.

16. In his statement u/s 313 of the Cr.PC accused Satyanarain Singh @ Santan Singh has stated that at the time of incident he was at his home in Patna and he came to know about the incident after two-three days through newspaper and he has been falsely implicated.

Accused Nakul Singh has stated in his statement u/s 313 of the Cr.PC that at the time of occurring he was carrying 'Kutti' (fodder) from his threshing floor.

17. D.W. 1, Urmila Devi R/o Kolhna has deposed that on 24.01.2017 she had gone to the school situate in village Kolhna to cook mid-day meal. She knows accused Nakul Singh who is an inmate of the same village. On 24.01.2017 Nakul Singh was carrying fodder from his field from 8:00 AM to 2:00 PM. The same day it was heard that Ashok Singh was murdered. Nakul Singh is brother of Arjun Singh. She has come to depose in the court on the request of the mother of Arjun Singh. The witness has denied the suggestion that she is giving a false evidence in the Court.

18. D.W. 2, Ram Kishun Singh is a resident of village Kolhna. In his evidence, he has stated that on 24.01.2017, he was present in the school situate in village Kolhna from 9:00 AM to 11:00 AM, he had observed that accused Nakul Singh and his brother Arjun Singh were carrying fodder (chopped straw) from their threshing floor to their house between 9:00 AM and 11:00 AM. At that time he had heard that Ashok Singh had been murdered. In the cross-examination the witness has stated that the name of his grand father is Nand Kishore Singh who had three sons named Ram Balak Singh, Surajdeo Singh and Shivbachan Singh. Nakul Singh is son of Shivbachan Singh and he is son of Rambalak Singh. Thus, according to the witness he is a cousin of Nakul Singh. The witness has further stated that he has come to depose in the Court on the request of Arjun Singh brother of Nakul Singh.

19. D.W. 3, Ajay Kumar Singh who is an inmate of village Kolhna has in his evidence stated that on 24.01.2017 he was at the door of his house between 9:00 AM to 12:00 noon. His real brothers Nakul Singh and Arjun Singh, who reside separately, were carrying fodder from their threshing floor to their house between 9:00 AM to 12:00 noon. Accused Nakul Singh has been falsely implicated in this case.

20. P.W. 4, Sunil Singh, an inmate of village Kolhna has in his evidence stated that on 24.01.2017 he was present in his 'Dalan' (Drawing room) between 9:00 AM to 12:00 noon and he has observed that on that day between 9:00 AM to 12:00 noon accused Nakul Singh alongwith his brother was carrying fodder from their threshing floor to their house. He knows Arun Singh who is an inmate of his village and the name of his wife is Kiran Devi. Before the incident Kiran Devi had lodged two cases against the deceased Ashok Singh and his family members and in both the cases, the mother and brother of accused Nakul Singh are witnesses. According to the witness he is a cousin

of accused Nakul Singh. The witness has denied the suggestion that he is a permanent resident of Hazaribagh and does not reside village Kolhna.

21. P.W. 5, Arjun Kumar, an inmate of village Kolhna and real brother of accused Nakul Singh. In his evidence the witness has stated that on 24.01.2017 he alongwith his brother accused Nakul Singh was carrying fodder from his threshing floor to his house between 8:00 AM to 12:00 noon. The witness has further stated that Kiran Devi W/o Arun Singh had lodged criminal cases No. 222/2016 and 226/2016 in P.S. Wazirganj against the deceased Ashok Singh and others and in that case Smt. Lalita Devi mother of Nakul Singh and Ajay Kumar Singh were cited as witnesses. In the cross-examination the witness has stated that he can not tell as to where he was and what he was doing on 24.01.2018. In S.Tr. No. 192/2021 D.W. 1 Kishori Singh S/o Bhagwan Das, R/o Vill. Kolhna has in his evidence stated that on 24.01.2017 between 9:00 AM to 10:00 AM he was present at this threshing floor. On hearing an uproar, he came to his house and found that Sunita Singh W/o Ashok Singh was crying and a huge crowd had assembled there. Sunita was going from her house and several persons of the village were following her. At that time all other family members of Sunita Devi had gone to participate in the ceremonial entry to the new house of the daughter of Sunita Devi at village Manpur. At that time he had observed that accused Bharat Singh was irrigating his field, accused Lallan Singh alongwith his servant was folding the pipe used for irrigating the fields and Radha Mohan Singh was sitting at his adjoining threshing floor. Ram Vilash Singh was cutting grass for his cattle, he told accused Sujeet Singh and others that something had happened in the family of Sunita Devi and all of them should go there. Thereafter all of them went to the scene of occurrence near the railway crossing situate at a distance of 2-3 km and found the dead body of Ashok Singh lying there. Shankar Singh and other family members came by train from Manpur to the scene of occurrence. Manpur is situate at a distance of 25 km from the spot. Police also reached there. When police wanted to record the statement of Shankar Singh he said that he would give his statement after reaching the police station. The police carried the dead body and a blood stained motorcycle with them. All the three accused have been falsely implicated in this case. The witness has stated that the accused Bharat Singh and Lallan Singh are his cousins. It was winter season and he was all alone at his threshing floor. Police reached the scene of occurrence at 1:00 PM but the statement of Shankar Singh was not recorded there by the police. He had stated these facts to the D.S.P.

22. D.W. 2, Ram Vilash Singh S/o Late Krishna Singh R/o Vill. Kolhna, P.S. Wazirganj has in his evidence stated that on 24.01.2017 at about 9-10 AM when he was cutting grass in his fields, he heard an uproar from his village. At that time at a distance of about 10 meters from his field, Lallan Singh and Bharat Singh alongwith their servant were irrigating their wheat crop. There is a threshing floor of Radha Mohan

Singh, adjoining his field and Radha Mohan Singh was sitting there. He alongwith Lallan Singh, Bharat Singh and Radha Mohan Singh moved towards the places origin of the uproar and reached near the school. Kishori Singh was coming towards him from the side of the house of Ashok Singh. He asked him about the uproar and the crowd had assembled there. Sujeet Singh was also present near the school. Kishori Singh informed that someone has committed murder of Ashok Singh. In the meantime, he observed that the wife of Ashok Singh was crying and going and a crowd was following her. They (the witness and others) also went in the same direction. When they reached the scene of occurrence they found the dead body of Ashok Singh drenched in blood. After sometime police also reached there. Shankar Singh and other members of his family who had gone to the matrimonial home of the daughter of Ashok Singh situate in village Manpur to participate in ceremonial entry to the new house also returned with entire family by train and reached the scene of occurrence. When police wanted to record his statement, Shankar Singh told them that he would give his statement after reaching the police station. The dead body of Ashok Singh was taken away by the police. According to the witnesses he alongwith Sujeet Singh, Bharat Singh and Lallan Singh had gone to place of occurrence but because of his very old age Radha Mohan Singh had not gone there. The police had recorded his statement. The witness has stated that his grandfather and the grandfather of Bharat Singh and Lallan Singh were real brothers. He had remained on the place of occurrence for 2-3 hours and next day he learnt that Bharat Singh, Lallan Singh and Sujeet Singh have been implicated as accused in this case. He had given his statement to D.S.P. and the station officer after 4-5 days of the occurrence.

23. P.W. 3, Radha Mohan Singh R/o Vill. Kolhna has in his evidence fully confirmed the facts mentioned by D.W. 2 Ram Vilash Singh in his evidence. The witness has also stated that after one hour he had also gone to the place of occurrence and found dead body of Ashok Singh lying there. The witness has also stated that Shankar Singh alongwith his grandson and granddaughters returned from the house of the daughter of the deceased after participating in ceremonial entry to new house.

24. P.W. 4, Ashok Kumar Singh R/o Vill. Kolhna has in his evidence stated that on 24.01.2017 at about 10:00 AM he was present at his village school. Sujeet Singh came there from his house and Bharat Singh and Lallan Singh were irrigating their nearby field. Ram Vilash Was cutting grass for his cattle and Radha Mohan Singh was also sitting there. A person came there and informed that Ashok Singh has met with an accident. Five minutes thereafter wife of Ashok Singh came out from her house and was crying. She told him that someone has killed her husband and she moved ahead. He also went behind her. Several persons from the village gathered there. Lallan Singh Bharat Singh, Sujeet Singh, Ram Vilash Singh, Radha Mohan Singh and Kishori Singh also

reached the place of occurrence when he reached the spot he observed the dead body of ashok Singh lying there in a pool of blood. Sunita Devi W/o Ashok Singh was crying, she was all alone. Other members of her family had gone to the matrimonial home of her daughter in Manpur to attend ceremonial entry to the new house. At about 12:00 noon Shankar Singh alongwith his grandson and grand daughters returned by train and reached the place of occurrence. After 10-20 minutes police also reached there. The witness has further stated that the accused in this case have been falsely implicated. According to the witness Kishori Singh is his real brother.

25. D.W. 5 Karu Manjhi, R/o Vill. Kolhna, has in his evidence stated that on 24.01.2017 at about 10:00 AM he was present in his village. He heard that a fight was going on and reached the place of occurrence. He found that Ashok had fallen in the northern side. On hearing the alarm very many persons of the village also reached there. Adhaar Singh, Bharat Singh, Kishori Singh, Lallan Singh, Vilash Singh and Sujeet Singh had also came there. After 10-15 minutes wife of Ashok Singh also reached there. He remained there for half an hour but by then police had not reached there. No other member of the family of Ashok Singh except his wife was there. The witness has stated that his house is in village Raghunathpur which is a hamlet of village Kolhna. The witness has stated that he does not know as to who were parties to the fight.

Appreciation of the evidence

26. The first and the foremost point for consideration is the possibility and proof of presence of P.W.1 Chandrama Kumar, P.W.2 Sunita Devi and P.W.3 Shankar Singh, son, wife and father respectively of the deceased Ashok Singh. The theory propounded by the prosecution is that all the three witnesses mentioned above were going to Wazirganj market by another motorcycle soon after the deceased left for his office. P.W.1 Chandrama Kumar (S.Tr. No. 192/21) has in Para 1 stated that his mother had to purchase medicine and his grand father had to make some day-to-day purchase. In para 23, the witness has further stated that his mother had pain in her legs and she was going to consult a doctor and purchase medicine. P.W.3 Shankar Singh has in para 3 (S.Tr. No. 293/17) of his evidence has stated that they were going to market for purchasing the goods of daily requirement and clothes. The witness has (in S.Tr. 192/21) in para 31 stated that on the date of incident his daughter-in-law was indisposed and she had to consult a doctor whereas he had some bank work. P.W.2 Sunita Devi has in para 45 (S.Tr. 192/2021) deposed that she was having pain in her legs for precealing 5-6 years. Whenever she felt pain, she used to take medicine from medical store. She never went to hospital or any doctor for treatment. On the date of incident she was going to medical store. It was 24th January on the date of incident when there remains severe cold in the

morning there was no pressing or urgent requirement for the witnesses to go to in the morning just behind the deceased. Moreover the deceased was the sole earning member of the family who travelled from his village to Civil Court, Gaya every working day to attend his office and he was supposed to bring the medicine and other articles of daily requirement for his wife, son and father. There was no exceptional circumstance or occasion for his wife son and father to altogether follow him on the date of incident. Therefore the theory put forward by the prosecution is not plausible and can not be accepted without a pinch of salt.

27. Apart from the above, it is admitted by witnesses for prosecution (P.W.1, P.W.2, P.W.3 and P.W.4) that on 23.01.2017 there was a ceremonial entry to the new house of Rekha Devi, W/o Dhananjay Singh in which all the family members of Shnakar Singh father of the deceased were invited. According to the prosecution only two daughters of the deceased and wife of Chandrama Kumar had gone to participate in the ceremony and rest of the family members remained at home. In this regard the evidence of D.W.1 Kishori Singh, D.W.2 Ram Vilash Singh, D.W.3, Radha Mohan Singh, D.W.4 Ashok Kumar Singh (S.Tr. No. 192/21) is noteworthy. All the four witnesses are inmates of village Kolhna. According to them Shnakar Singh alongwith his grand son Chandrama Kumar and grand daughters had gone to Manpur to attend the ceremony and after receiving the information of the incident returned on 24.01.2017 therefrom by train alongwith his grandson and grand daughters and reached the spot at about 12.00 noon. There is nothing in the cross-examination of above witnesses to disbelieve the veracity of the above statements. The above evidence of the defence witnesses finds support from the evidence of P.W.2 Sunita Devi (S.Tr. No. 192/21) in para 54 of her evidence the witness has stated that the police reached the scene of occurrence after one and half hours of incident and that time she alongwith her son Chandrama Kumar, father-in-law, son-in-law Dhananjay Singh, daughter Rekha Devi and two other daughters Gunjan Kumari and Preeti Kumari was present there. Although the witness has stated that her son-in-law, daughters Rekha Devi, Gunjan Kumari and Preeti Kumari had came to the place of occurrence from Manpur after attending the ceremony but the presence of all the three daughters, son-in-law Dhananjay Singh, father-in-law Shankar Singh and son Chandrama Kumar on the spot when the police arrived there lends credence to the version of the defence witnesses. Furthermore, the incident is alleged to have taken place at about 10.00 AM and the police arrived on the spot after two hours at 12.00 noon. Admittedly, Sunita Devi was having a mobile phone with her and all the three Sunita Devi, Chandrama Kumar and Shankar had reached the place of occurrence by motorcycle. The distance of the police station from the spot is four K.M. Admittedly Dhananjay Singh son-in-law of the deceased alongwith his wife Rekha Devi had reached the spot from his home place Manpur which is about 25-30

K.M. from the place of occurrence. There is no plausible explanation by the prosecution as to why no effort was made by Shankar Singh and Chandrama Kumar to inform the police on phone or to reach the police station by motorcycle and to lodge the F.I.R. This leads to the inference that Shankar Singh and Chandrama Kumar (and obviously Sunita Devi) were not present on the spot at the time of occurrence. The statement of P.W.3 Shankar Singh in para 29 of his evidence (S.Tr. No. 193/17) that on his request some other person informed the police, does not inspire confidence as he is a retired employee of the civil court and his son was done to death, therefore it was expected of him that he should have moved heaven and earth to inform the police immediately or to reach the police station without wasting any moment of time to lodge the FIR. Thus, his conduct is unnatural and his statement does not appear to be sacrosanct.

28. All the three witnesses P.W.1 Chandrama Kumar, P.W.2 Sunita Devi and P.W.3 Shnakar Singh have in their evidence stated that when they tried to rescue the deceased accused Sujeet Singh fired shots and threatened to shoot them if they advance but none of them sustained any gun-shot injury but P.W.6 sub-inspector Manish Kumar has in paras 37 and 49 stated that witnesses Sunita Devi and Shnakar Singh in their statements u/s 161 of the Cr.P.C had not stated that when they moved ahead to save the deceased accused Sujeet Singh fired at them and threatened to shoot them if they advance. Thus the above statements made by Sunita Devi and Shankar Singh in court are material improvements and do not inspire confidence. Moreover P.W.1 Chandrama Kumar had in para 28 (S.Tr. No. 192/2021) of his evidence stated that they were at a distance of 40-50 paces from the spot at the time of incident. The deceased was father, husband and son respectively of Chandrama Kumar, Sunita Devi and Shankar Singh and it is highly untrustworthy and improbable that all the three were standing helplessly at a long distance of 50 paces from the scene of occurrence and did not hazard any risk to intervene and tried to save their dearest one. Regarding the number of assailants and their identity the versions given by the three witnesses P.W.1 Chandrama Kumar, P.W.2 Sunita Dvi and P.W.3 Shankar Singh are conflicting and irreconcilable. P.W.1 Chandrama Kumar has in his evidence in both the sessions trials deposed that Bharat Singh, Arun Singh, Nakul Singh, Lallan Singh, Sujeet Singh and 4-5 unknown assailants committed the murder of his father. P.W.2 Sunita Devi has in S.Tr. No. 293/17 stated that Bharat Singh, Arun Singh, Nakul Singh, Sujeet Singh, Lallan Singh, Satendra Singh, Santan Singh, Tarun Manjhi, Naresh Yadav and Dara Singh committed the murder of his husband whereas in session trial No. 192/2021, P.W.2 Sunita Devi has deposed that Arun Singh, Nakul Singh, Bharat Singh, Sujeet Singh, Lallan Singh, Santan Singh, Dara Singh, Rajesh Manjhi, Tarun Manjhi, Naresh Kumar, Satendra Manjhi and others whose name she does not know had encircled and killed her husband. Thus witness had added the name of accused Rajesh Manjhi and increased the

numbers of assailants to more than eleven in S.Tr. No. 192/21 but his name does not find mention in the statment of the witness in S.Tr. No. 293/17. As regards the informant Shankar Singh, he has in S.Tr. No. 293/17 stated that Bharat Singh, Lallan Singh, Arun Singh, Nakul Singh, Sujeet Singh, Santan Singh, Dara Singh, Tarun Manjhi, Satendra Bharti, Naresh and Rajesh Manjhi, committed the murder of his son Ashok Singh whereas in S.Tr. 192/21 this witness has named only seven accused and failed to name the remaining four accused Sujeet Singh, Satendra Bharti, Naresh and Rajesh Manjhi specifically named by him as assailants in S.Tr. 293/17. In the First Information Report, only the names of Bharat Singh, Lallan Singh, Nakul Singh, Sujeet Singh, Arun Singh and Kiran Devi have been mentioned. P.W.6 Sub-inspector Manish Kumar has in para 42 of his evidence in S.Tr. No. 293/17 stated that neither the ifnormant nor the other two witnesses had specified the names of Satyanarain Singh @ Santan Singh, Ashok Kumar Singh @ Dara Singh, Naresh Kumar, Tarun Manjhi, Rajesh Manjhi @ Raju and Satendra Pandey in their statements u/s 161 of the Cr.P.C. Thus the witnesses have made measure and material improvement in their evidence before the court in the case of murder. Thus, it is evident that the witnesses Sunita Devi and Shankar Singh have not acted with responsibility and trust expected of them. Therefore, the veracity and trustworthyness of these two witnesses is vitiated and their evidence is unworthy of credence.

29. The fardbeyan of the informant Shankar Singh purports to have been recorded at 12.30 PM in the noon but first information report has been registered at 11.30 PM after eleven hours of the fardbeyan. The distance of the police station is 4 KM from the spot. P.W. 6 Sub-inspector Manish Kumar has in para 19 of his evidence (S.Tr. No. 192/21) stated that because of murder of the deceased a problem of law and order had arisen and therefore the FIR was registered belatedely. The explanation does not seem to be plausible because P.W.6 Manish Kumar has in Para 4 of his evidence (in S.Tr. No. 293/17) stated that the dead body of the deceased was sent for post-mortem at 13.05 hours that is 1.00 PM in the noon just after half an hour of recording the fardbeyan. Likewise some police personnel should have been deployed with the fardbeyan to ensure the prompt registration of the crime in an offence of murder. This has not been done. This leads to inference that the fardbeyan was actually recorded later on much after 12.30 noon and the same has been anti-timed. Thus the FIR is dealyed and in these curcumstances the possibility can not be reuled out that none had seen the actual assault and in order to implicate someone because of enmity, the FIR was delayed only to make out a probable story to show that the witnesses had seen the incident.

30. From the evidence of P.W.1 Chandrama Kumar, P.W.2 Sunita Devi and P.W.3 Shankar Singh it is evident that Arun Singh and Nakul Singh had an altercation with the deceased and Arun Singh had fired at the deceased but the shot hit Bittu Singh, brother

of the deceased and regarding that incident case crime no. 221/16 was registered. Kiran Devi, W/o Arun Singh had also reached there, shattered her bangles and bowed a revenge that she would not wear the bangles till Arun Singh kills Ashok Singh. The above case was registered against Arun Singh and Nakul Singh. Before 4 days of the incident a cow of the deceased had strayed into the field of Bharat Singh and Bharat Singh had aggressively abused the deceased and threatened him to chop into pieces with impunity. Bharat Singh and Lallan Singh are real brothers. About 8-10 days before the incident when the deceased had gone to bank, accused Sujeet Singh had threatened him that his lease of life has expired and he would be killed soon. Rubi Devi, W/o Sujeet Singh has lodged criminal case no. 489/2017 against the informant side. Saraswati Devi, W/o Bharat Singh had lodged criminal case no. 488/2017 against the informant side. Kiran Devi, W/o Arun Singh had lodged criminal case no. 222/2016 against the informant side.

31. Thus, admittedly all the five accused Arun Singh, Nakul Singh, Bharat Singh, Lallan Singh and Sujeet Singh are the sworn enemies of the deceased. In S.Tr. No. 192/2021, D.W. 1 Kishori Singh, D.W.2 Ram Vilash Singh and D.W.3 Radhe Mohan Singh have been also cited as witnesses for the prosecution in charge-sheet of Sessions Trial No. 293/17 and their statements were recorded u/s 161 of the Cr.P.C but they were not produced by the prosecution in evidence. These three defence witnesses have deposed that at the time of incident Bharat Singh and Lallan Singh were irrigating their wheat crop and sujeet Singh was also present in the village and all the three accused that is Bharat Singh, Lallan Singh, Sujeet Singh on coming to know that Ashok Singh has been murdered, had followed Sunita Devi who was going to the place of occurrence and was crying and other members of her family had gone to the matrimonial home of the daughter of the deceased to attend ceremonial entry to her new house. There is nothing in the cross examination of these witnesses to discredit their testimony. In S.Tr. No. 293/17 it appears from the evidence of D.W.1, Urmila Devi, D.W.2 Ram Kishun Singh, D.W.3 Ajay Kumar Singh, D.W.4 Sunil Singh and D.W.5 Arjun Kumar that on the date of incident accused Nakul Singh was carrying fodder from his threshing floor to his house between 8 AM to 12.00 Noon. In their cross examination nothing has been elicited to shake their creditability.

32. It has been contended by the prosecution that all the defence witnesses in both the trial are interested witnesses and their evidence can not be relied upon. In this regard it is noteworthy that in **State of Hariyana Vs. Ram Singh and Rail Saheb and another Vs. State of Hariyan, 2002 SCC (Cr.) page 350**, the Hon'ble Apex Court has held that “ *The evidence tendered by defence witnesses cannot always be termed to be a tainted one – the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also*

to be attributed to the defence witnesses on a par with that of the prosecution”.

33. From evidence of defence witnesses examined in both the trials, presence of the accused Nakul Singh, Bharat Singh, Lallan Singh and Sujeet Singh on the spot at the time of incident becomes doubtful and appears that these four accused have been falsely implicated on account of enmity which is admitted by the prosecution witnesses in their evidence. So far as accused Satyanarain Singh is concerned it is evident that neither he has been named in the FIR nor in the statements of the prosecution witnesses recorded u/s 161 of the Cr.P.C. The name of this accused appears to have been imported from the confessional statement of the accused Satyanarain Singh himself contained in Ext. 7/1 and from the confessional statement of the accused Ashok Kumar Singh @ Dara Singh contained in Ext. 7/2. Both these statements were recorded by the I.O. during the course of investigation. The Ld. Counsel for the defence has contended that if two view are possible on the evidence adduced in the case one pointing to the guilt of the accused and other to innocence, the view which favours accused should be adopted. The Ld. Counsel for the defence has cited **Ghurelal Vs. State of U.P., 2009 (2) BCCR 350 (SC)**, in this case the Hon’ble Apex Court has held as follows:-

“If in a criminal trial, two views possible on evidence adduced in a case one pointing towards innocence of accused and other two his guilt, view favorable to accused should be adopted”.

34. The prosecution witnesses Chandrama Kumar, Sunita Devi and Shankar Singh in their evidence has stated that when they moved to save the deceased, accused Sujeet Singh fired at them and threatened to shoot if they advance but none of them had stated these facts in their statements u/s 161 of the Cr.P.C. Moreover, in the evidence of these three witnesses during trial there are conflicting version regarding names and number of the assailants as has been mentioned in para above paras. The above improvement and contradictions are measured and material and adversely affect the veracity of the witnesses.

35. The **Hon’ble Apex Court in State of U.P. Vs. Naresh, (2011) 4 SCC 324**, after considering the large number of its earlier judgments held as follows:-

“In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the trustworthiness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.

The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence”.

A similar view has been re-iterated by the Hon’ble Apex Court in Tehsildar Singh & Anr. Vs. State of U.P., AIR 1959 SC 1012; Pudhu Raja & Anr. Vs. State of Rep. by Inspector of Police, JT 2012 (9) SC 252; Lal Bahadur Vs. State (NCT of Delhi), (2013)4 SCC 557 and also in a recent case Karan Singh Vs. the State of Uttar Pradesh & Ors. Cr. Appeal No. 327/2022.”

36.. In the light of preceding discussion and the legal position enunciated by the Hon’ble Apex Court the prosecution has failed to prove the charges against the accused Satyanarain Singh, Nakul Singh, Bharat Singh, Lallan Singh and Sujeet Singh beyond all reasonable doubts and they are entitled to acquittal.

37. So far as the charges against Ashok Kumar Singh @ Dara Singh and Arun Singh are concerned the trial against them is yet to be completed as both of them are absconding. There is material to show that the blood stained jacket and blood stained blue shirt belonging to Arun Singh and motorcycle bearing Reg. No. BR2J-6197 allegedly belonging to Ashok Kumar Singh @ Dara Singh were recovered from the scene of occurrence and this evidence is relevant when these two accused who are at present absconding, are apprehended and tried.

ORDER

The accused Satyanarain Singh, Nakul Singh, Bharat Singh, Lallan Singh and Sujeet Singh are acquitted of the charges u/ss 147, 148, 302/149, 120(B), 341/149 of the I.P.C. and Section 27 of the Arms Act. Accused Santan Singh @ Satyanarain Singh, Bharat Singh, Sujeet Singh and Lallan Singh are on bail. Their bail bonds are cancelled and sureties are discharged. The accused Nakul Singh is in custody. He is directed to be released forthwith if he is not detained in any other case.

The judgment is signed, dated
and pronounced in open court

(Dictated and corrected by me)

Sd/-

(Sangam Singh)

Addl. Sessions Judge-III, Gaya
Dated: 29.08.2022

Sd/-

(Sangam Singh)

Addl. Sessions Judge-III, Gaya
Dated: 29.08.2022