

IN THE HIGH COURT OF JUDICATURE AT PATNA
DEATH REFERENCE No.2 of 2017

Arising Out of PS. Case No.-22 Year-1999 Thana- KARPI District- Jehanabad

The State of Bihar

... .. Petitioner

Versus

1. Bachesh Kumar Singh S/o Baiju Singh Resident of Village-Kurwama, P.S.- Bansi Karpi, District-Arwal
2. Budhan Yadav Son of Late Triveni Yadav, resident of Village- Sonati, Police Station- Karpi, District- Arwal.
3. Butai Yadav son of Jagarnath Yadav, resident of Mahadeo Bigha, P.S. - Kurtha, District – Arwal.
4. Satendra Das s/o late Bhaju Das R/o Vill.- Kurmawan, P.S. karpi, District-Arwal
5. Lallan Pasi @ Lalan Pasi S/o Late Nanhak Pasi resident of village-Pondil, P.S-Kurtha, District-Arwal.
6. Gopal Sao @ Gopa Saw, son of Late Sarju Sao, both above are residents of Village- Sonati, Police Station- Karpi, District- Arwal.
7. Dwarik Paswan S/o late Shyam Paswan, R/o Vill.- Kurmawan, P.S. Karpi, District- Arwal
8. Kariman Paswan S/o Late Baldev Paswan, R/o Vill.- Kurmawan,P.S. Karpi ,Distt.- Arwal
9. Gorai Paswan S/o Late Shyam Paswan, R/o vill.- Kurmawan,P.S. Karpi Distt.- Arwal
10. Uma Paswan s/o late Baldev Paswan, R/o vill.- Kurmawan,P.S. Karpi Distt.- Arwal

... .. Respondents

with

CRIMINAL APPEAL (DB) No. 1271 of 2016

Arising Out of PS. Case No.-22 Year-1999 Thana- KARPI District- Jehanabad

1. Dwarik Paswan S/o late Shyam Paswan
2. Uma Paswan s/o late Baldev Paswan
3. Kariman Paswan s/o late Baldev Paswan
4. Gorai Paswan s/o late Shyam Paswan
5. Satendra Das s/o late Bhaju Das R/o vill.- Kurmawan, P.S. Karpi ,Distt.- Arwal
6. Lallan Pasi @ Lalan Pasi S/o Late Nanhak Pasi resident of village-Pondil, P.S-Kurtha, District-Arwal.

... .. Appellants

Versus

The State Of Bihar

... .. Respondent



with
CRIMINAL APPEAL (DB) No. 30 of 2017
Arising Out of PS. Case No.-22 Year-1999 Thana- KARPI District- Jehanabad

1. Budhan Yadav Son of Late Triveni Yadav,
2. Gopal Sao @ Gopa Saw, son of Late Sarju Sao, both above are residents of Village- Sonati, Police Station- Karpi, District- Arwal.

... .. Appellants

Versus

The State Of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 32 of 2017
Arising Out of PS. Case No.-22 Year-1999 Thana- KARPI District- Jehanabad

Bachesh Kumar Singh S/o Baiju Singh Resident of Village-Kurwama, P.S.-
Bansi Karpi, District-Arwal

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 62 of 2017
Arising Out of PS. Case No.-22 Year-1999 Thana- KARPI District- Jehanabad

Butai Yadav son of Jagarnath Yadav, resident of Mahadeo Bigha, P.S. -
Kurtha, District - Arwal.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 96 of 2017
Arising Out of PS. Case No.-22 Year-1999 Thana- KARPI District- Jehanabad

Mungeshwar Yadav S/o Pachu Yadav Resident of Village- Dhibri, P.S.-
Konch, District- Gaya.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 184 of 2017
Arising Out of PS. Case No.-22 Year-1999 Thana- KARPI District- Jehanabad

1. Arvind Kumar Son of Sakaldeo Yadav, Resident of village - Dhibri, P.S.
Konch, District - Gaya



2. Vinay Paswan, Son of Doman Paswan, Resident of village - Dhibri, P.S.
Konch, District - Gaya

... .. Appellants

Versus

The State Of Bihar

... .. Respondent

Appearance :

(In DEATH REFERENCE No. 2 of 2017)

For the Petitioner : Dr. Mayanand Jha, APP
For the Respondents : Ms. Surya Nilambari, Amicus Curiae

(In CRIMINAL APPEAL (DB) No. 1271 of 2016)

For the Appellants : Mr. Surendra Singh, Sr. Adv.
Mr. Krishna Prasad Singh, Sr. Adv.
Mr. Bhaskar Shankar, Adv.
Mr. Rakesh Singh, Adv.

For the Respondent : Dr. Mayanand Jha, APP

(In CRIMINAL APPEAL (DB) No. 30 of 2017)

For the Appellants : Mr. Ansul, Adv.
Mr. Sunil Srivastava, Adv.
Mr. Girish Chandra Sharma, Adv.

For the Respondent : Dr. Mayanand Jha, APP

(In CRIMINAL APPEAL (DB) No. 32 of 2017)

For the Appellant : Mr. Surendra Singh, Sr. Adv.
Mr. Krishna Prasad Singh, Sr. Adv.
Mr. Bhaskar Shankar, Adv.
Mr. Rakesh Singh, Adv.

For the Respondent : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 62 of 2017)

For the Appellant : Mr. Ansul, Adv.
Mr. Upendra Kumar, Adv.

For the Respondent : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 96 of 2017)

For the Appellant : Mr. Surendra Singh, Sr. Adv.
Mr. Krishna Prasad Singh, Sr. Adv.
Mr. Bhaskar Shankar, Adv.
Mr. Rakesh Singh, Adv.

For the Respondent : Mr. Sri Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 184 of 2017)

For the Appellants : Mr. Ansul, Adv.

For the Respondent : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 21-05-2021

The appellants in these appeals challenge the
common judgment of conviction dated 27.10.2016 and order of



sentence dated 15.11.2016 passed by the learned 3rd Additional Sessions Judge, Jehanabad in Sessions Trial No. 93/2013 / 281/2015. By the aforesaid judgment dated 27.10.2016, the appellants have been convicted for the offences punishable under Sections 148, 302/149, 307/149 of the Indian Penal Code, 27 of the Arms Act and 3/4 of the Explosive Substances Act. Consequent upon conviction, vide aforesaid order dated 15.11.2016 the appellants Bachesh Kumar Singh in, Budhan Yadav, Gopal Sao, Butai Yadav, Satendra Das, Lalan Pasi, Dwarik Paswan, Kariman Paswan, Gorai Paswan and Uma Paswan have been sentenced to death and the appellants Mungeshwar Yadav, Vinay Paswan and Arvind Paswan have been sentenced to undergo imprisonment for life and a fine of Rs.1,00,000/- for the offence punishable under Section 302/149 of the Indian Penal Code and in default of payment of fine to undergo further imprisonment for two years. All these appellants have been further sentenced to undergo R.I. for three years and a fine of Rs.10,000/- for the offences punishable under Section 148 of the Indian Penal Code and in default of payment of fine to undergo further imprisonment for six months, R.I. for ten years and a fine of Rs.50,000/- for the offence punishable under Section 307/149 of the Indian Penal Code and in default of



payment of fine to undergo further imprisonment for two years, R.I. for three years and a fine of Rs.10,000/- for the offence punishable under Section 27 of the Arms Act and in default of payment of fine to undergo further imprisonment for six months and R.I. for three years and a fine of Rs.10,000/- for the offence punishable under Section 3/4 of the Explosive Substances Act and in default of payment of fine to undergo further imprisonment for six months. It is directed by the Trial Court that all the sentences shall run concurrently.

2. After passing the impugned judgment and order, the Trial Court made a reference under Section 366 of the Code of Criminal Procedure (for short "Cr.P.C") for confirmation of death sentence awarded to the convicts Bachesh Kumar Singh, Budhan Yadav, Gopal Sao, Butai Yadav, Satendra Das, Lalan Pasi, Dwarik Paswan, Kariman Paswan, Gorai Paswan and Uma Paswan, which has been registered as Death Reference No. 2 of 2017.

3. The appeals preferred by the appellants and the reference made by the Trial Court have been heard together and are being disposed of by a common order.

4. The Sessions Trial in which the impugned judgment and order were passed relates to the First Information



Report (for short 'FIR') that had been registered at 10:00 AM on 19th March, 1999 in Karpi Police Station under Section 154 of the Cr.P.C in respect of an incident that had occurred at Senari situated at a distance of 18 km from the Police Station between 07:30 PM to 11:00 PM on 18th March, 1999. The formal FIR would indicate that the police had received the information regarding the occurrence through wireless message at 11:40 PM on 18th March, 1999.

5. The FIR giving rise to the Sessions Trial was registered on the basis of the oral statement of Chintamani Devi, wife of late Awadh Kishore Sharma, one of the persons, who died in the occurrence, which was reduced into writing by Jamuna Singh, the Sub-Inspector of Police-cum-Officer-in-Charge of Karpi Police Station on 19th March, 1999 at 2:30 AM at the house of Chintamani Devi situated at Senari under the police station area Karpi of district Arwal, which was then part of Jehanabad district.

6. In her oral statement, the informant Chintamani Devi stated as under:-

“My name is Chintamani Devi, wife of late Awadh Kishore Sharma, resident of Senari, P.S.- Karpi, District- Jehanabad (Arwal). Today, on 19th March, 1999, at 02:30 AM, I am giving my



statement before the SHO of Karpi Police Station that last evening at 7.30 PM, my son Madhukar @ Jhabbu was reading in the light of lantern on the roof and I was also there. My husband came out of the house after hearing some commotion. I and my son saw that many persons had reached in the lane near the house of Engineer Saheb Radhe Shyam Sharma and started knocking his door. At this point in time, my son informed them that there was no male member in the house. One person among them called my son. My son, under the impression that they intend to ask about someone, came down the roof taking lantern with him and opened the door. I also followed him and saw co-villagers (1) Ramashish Bhuiyan, son of Sona Bhuiyan, (2) Ramlakhan Bhuiyan, son of not known, (3) Sadhu Bhuiyan, son of not known, (4) Venkatesh Bhuiyan, son of Mati Bhuiyan, (5) Bhoda Bhuiyan, son of not known, (6) Biphan Bhuiyan son of Kulanjan Bhuiyan, (7) Murgi Bhuiyan, son of not known, (8) Genda Bhuiyan, son of not known and (9) Radhe Shyam Ramani son of Nathun Rawani and (10) Suresh Bhuiyan, son of Ghoghar Bhuiyan, (11) Bhaglu Bhuiyan son of Lootan Bhuiyan, (12) Chamaru Bhuiyan son of Bodh Bhuiyan belonging to adjacent Tola-Azadbigha, P.S. Karpi, (13) Dukhan Kahar, son of not known of village Kutubpur, (14) Dulli Yadav and (15) Vyas Yadav, both sons of Janardhan Yadav, of village Gokhulpur and (16) Ramesh yadav son of



Suryadeo Yadav, resident of Kurtha Police Station, District- Jehanabad present at my door in the lane. Among them, persons belonging to my village were dressed in lungi and ganji. Their lungi was half folded and Dukhan Kahar, Dulli Yadav, Vyas Yadav and Ramesh Yadav were in police uniform. Along with them, there were other persons also whom I could not recognize.

In the meantime, Murgi Bhuiyan caught hold of the hand of my son and was dragging him out. I implored before him, but he did not pay heed to my request and took him to Thakurbadi situated in the north-east direction. I started crying. In the meantime, I heard sound of 3-4 rounds of firing and the slogan- "MCC Zindabad". Then, I came to know that they were members of the MCC party. They took away my son to kill him. My husband had also gone out of the house after taking tea a little while ago. They took him away. I could not bear the shock of my husband and son being taken away by the extremists. I proceeded towards the Thakurbadi to set them free. I saw that hundreds of extremists had assembled there. Amongst them some were in police uniform and some were dressed in lungi and ganji and they were carrying pasuli and garasa (a sharp-edged weapon). They tied my husband and son by folding their hands. Genda Bhuiyan tied the legs of my son and Murgi Bhuiyan tied the legs of my husband and about 3-4 persons pushed them on



the ground and one person whom I did not recognize slit their throat with a pasuli. When I raised alarm, they pushed me abruptly as a result of which I fell on a heap of straw and continued watching them committing the crime. I saw that they were bringing many persons of the village forcibly and slitting their throats. Thereafter I saw that the killings by cutting throats were mainly being done by the accused Dukhan Ram Kahar and Ramesh Yadav. I could not control myself any more viewing the scene. I came back to my house crying and beating my chest. After 2-3 hours, I heard a sound of explosion and the extremists left the place and went towards south of the village shouting the slogan "MCC Zindabad". Many persons raised hue and cry. I too went to Thakurbari where many villagers were crying. I saw many dead bodies lying beside the dead body of my son and dead bodies in large number were also at the northern side of the village. I came to know from the villagers that hundreds of MCC extremists had arrived and surrounded the village and took the villagers forcibly to Thakurbari in the north. I also came to know that they had committed murder of 3-4 persons by slitting their throat with pasuli after dragging them in the southern side of the village. The villagers told me that besides my husband and son, MCC people killed number of persons near Thakurbari and also in the southern direction of the village. I also came to know that some persons



were injured. The extremists took away the DBBL licensee gun of Mukesh Kumar son of Pashupati Singh. They also demolished his house and door by causing explosion with dynamite.

I claim that hundreds of extremists had assembled in the vicinity of my village last night at about 7.30 PM. They attacked my village being armed with rifle, gun and pasuli and committed this massacre outside the village and took away the DBBL gun of my villager Pashupati Singh. They also demolished his house by dynamite and committed massacre for four hours and left the place shouting "MCC Zindabad".

7. Jamuna Singh, the Sub-Inspector of Police-cum-Officer-in-Charge of Karpi Police Station forwarded the recorded statement to the Karpi Police Station and took up investigation of the case himself.

8. Upon receipt of the duly recorded oral statement of the informant, a formal FIR, vide Karpi P.S. Case No. 22 of 1999, was instituted at 10.00 AM on 19th March, 1999 under Sections 147, 148, 149, 324, 307, 302, 452, 380, 120-B of the Indian Penal Code, 27 of the Arms Act, 17 of the Criminal Law Amendment Act and 3/4 of the Explosive Substances Act against the 15 named accused persons and others unknown by the Sub-Inspector of Police Arjun Minz.



9. During investigation, the police recovered 34 dead bodies and inquests were held at the spot between 06:00 AM and 09:50 AM on 19th March, 1999. Autopsy on the dead bodies was conducted at the place of occurrence itself on 19th March, 1999 between 04:00 PM and 07:15 PM by P.W.7 Dr. Srinath Prasad, P.W.21 Dr. Harish Chandra Hari, P.W.22 Dr. Mithilesh Kumar and Dr. Vinay Prakash Keshav (not examined). Dr. Abhay Kumar Jha Suman, Senior resident in the Department of Surgery, Magadh Medical College and Hospital had examined five victims, who had sustained injuries in the incident. The Investigating Officer seized certain incriminating articles like residues present around the blast side, blood stained earth, a blood stained *farsa* and a blood stained *pasuli* from the place of occurrence.

10. On perusal of the record, I find that the police submitted their 1st report under Section 173(2) of the Cr.P.C in the court of Chief Judicial Magistrate, Jehanabad on 16th June, 1999. They sent up 56 accused persons for trial and intended to examine 82 witnesses. Thereafter, a supplementary charge-sheet was submitted on 27th October, 1999 against one accused. The second supplementary charge-sheet was submitted by the police on 20th February, 2000 forwarding 19 additional accused



persons for trial. The third supplementary charge-sheet was submitted on 5th May, 2000 against another additional accused. Thus, in all, 77 accused persons were sent up for trial. On receipt of the police reports submitted under Section 173(2) of the Cr.P.C, the learned Chief Judicial Magistrate took cognizance of the offences and, after complying with the statutory requirements of Section 207 of the Cr.P.C, committed the case to the court of Sessions for trial. Though, charges were framed against 45 accused persons by the Trial Court, due to death and other reasons, only 38 of them faced trial.

11. It is to be noted that during trial the prosecution had produced 30 witnesses in order to prove the charges framed against the accused persons. They are Ram Ratan Sharma (P.W.1), Vishwa Vijay Sharma (P.W.2), Arjun Singh (P.W.3), Suresh Sharma (P.W.4), Sanjay Kumar (P.W.5), Shyam Nandan Singh (P.W.6), Bali Ram Sharma (P.W.6a), Rajeshwar Singh (P.W.7), Arvind Kumar (P.W.8), Girija Devi (P.W.9), Pankaj Kumar (P.W.10), Rakesh Kumar (P.W.11), Krtishna Bihari Sharma (P.W.12), Ravindra Sharma (P.W.13), Dinesh Sharma (P.W.14), Ran Vijay Sharma (P.W.15), Chinta Devi (P.W.16), Mithilesh Sharma (P.W.17), Manorma Kuwar (P.W.18), Janeshwar Sharma (P.W.19), Balkeshwari Devi (P.W.20), Sharda



Devi (P.W.21), Dr. Sri Nath Prasad (P.W.22), Madhulika Kumari (P.W.23), Mukesh Kumar (P.W.24), Ajay Kumar (P.W.25), Sri Niwas Sharma (P.W.26), Vishwambhar Singh (P.W.27), Dr. Harish Chandra Hari (P.W.28), Dr. Mithilesh Kumar (P.W.29) and Dr. Abhay Kumar Jha Suman (P.W.30).

12. The prosecution also proved the following documents during trial:-

1. Signature of witnesses on inquest report (Exhibit- 1 Series)
2. Seizure List (Exhibit- 2)
3. Inquest Report (Exhibit- 3 Series)
4. Fardbayan (Exhibit- 4)
5. Formal FIR (Exhibit- 5)
6. Charge Sheet (Exhibit- 6 Series)
7. Post Mortem Reports (Exhibit- 7 Series)
8. Injury Reports (Exhibit- 8 Series)
9. Sanction order of District Magistrate, Jehanabad (Exhibit- 9)
10. Report of Forensic Science Laboratory (Exhibit-10)

13. Apart from the oral and documentary evidences, the prosecution also produced one pamphlet, which was marked as Material Exhibit- 1.



14. **Ram Ratan Sharma** (P.W.1), while deposing before the Trial Court on 1st November, 2007 states that on 18th March, 1999, at about 7:00-7:30 PM, he was sitting at the door of Pashupati Sharma (not examined). At that time, about 12-14 persons being armed with rifle and gun came to Pashupati Sharma's house. They caught someone and took him towards the road. They were looking for members of Ranveer Sena. He also saw that out of the miscreants some were trying to break the door of the house. They took the person in their captivity to the door of Padma Narayan Singh (not examined). He claims to have seen five persons including the appellant Budhan Yadav. He further claims that the miscreants killed Amresh, Ramdayal Sharma and Tulsi Sharma. He states that the aggressors were carrying torch lights in which he recognized some of them. He further states that when he came back, he saw that the throat of his son was slit. The miscreants killed him near the Thakurbadi and killed three others on the southern road. He identified Budhan in the dock.

15. In cross-examination, he states that his house is at the southern end of the house of Pashupati Sharma and he was sitting at the door of Pashupati Sharma. His co-villagers Sanjay Sharma, Vijay Sharma and Ajay Sharma were also sitting there.



He also states that the son of Pashupati Sharma, namely, Mukesh was in the house. He states that he saw the accused persons from a distance of 100 yards. He did not flee away. The persons sitting with him fled away. He further states at para 9 that he had not taken Budhan Yadav's name before the police in his statement under Section 161 of the Cr.P.C. At para 11, he states that the miscreants were at Padam Narayan Singh's house for half an hour. He further states that from where he was seated facing the southern direction he could not see the Thakurbadi. He states that he came back to his house after half an hour and did not go to Thakurbadi.

16. **Vishwa Vijay Sharma (P.W.2)**, while deposing before the court on 21st January, 2008 states that on the date and time of occurrence he was at his home. He heard that MCC cadre had come. He hid himself on the roof of Kailash Babu (not examined). He states that he heard the sound of four firing and two blasts. Thereafter, he saw 25-30 persons. They were wearing lungi ganji and police uniform and were carrying *pasuli* and rifle. He states that the accused persons were carrying big torches and they were lighting them in which he identified the miscreants Yogendra, Ramesh, Butta Thakur, Doman Mistri, Shiv Lal, Budhan, Bhanu, Hari Bhushan, Gopal, Mohan,



Radhey Shyam, Ramashish, Parikha, Murgiya, Chamarua, Bifan, Prahlad, Sukhu, Bachesh, Dully and Vyas. He states that the accused persons caught his son Pintu Kumar. Radhey Shyam and Prahlad tied his hands and took him towards Thakurbadi. He states that when the accused went back, he went towards Thakurbadi where he saw the dead bodies of his son and others.

17. **Arjun Singh** (P.W.3) deposed before the court on 7th February, 2008. In his deposition, he states that the occurrence took place on 18th March, 1999 at 7:30 PM. At that time, he was at the door of his house along with his brothers Suresh Sharma, Sachidanand Sharma, Naresh Sharma, Sheo Kumar, Kavindra and others. The miscreants, who were in police uniform, arrived there and they caught hold of Kavindra and Vimlesh and took them towards Thakurbadi. They killed them by cutting their throats. In all, they killed 34 persons on that day. They also blew up his house by using dynamite. They snatched the ornaments of his daughter-in-law Rina Devi. He states that later on he came to know that the miscreants killed his nephew Ranjay Sharma. He states that on that day 34-35 persons were killed by the miscreants. He states that the police had enquired from him during investigation. He did not identify any of the miscreants in dock.



18. **Suresh Sharma** (P.W.4) deposed before the court on 7th February, 2008. In his deposition, he states in para 1 that at the time of occurrence he was with his brother Arjun Singh (P.W.3) and others (not examined) at his doorstep. In para 2, he states that party members came to his house carrying torch lights. They were looking for members of Ranveer Sena. He also states that Rajeshwar Sharma (P.W.7) got involved with the miscreants. He further states that the miscreants tied his hands and those of Sachidanand Sharma, Naresh, Kavindra (deceased). During this time, he managed to escape. In para 4, he claims to identify Uma Paswan as one of those aggressors, who had tied his hands. In the same para, he also claims that his son Ranjay Sharma was killed and Ajay Sharma (P.W. 25) was injured.

19. In his cross examination in para 12, he states that when he was caught by the miscreants, his brother Arjun Singh (P.W. 3) was present. In para 16 he states that he had hidden himself in Mahesh Sharma's house. In Para 17, he states that the night of occurrence was dark.

20. **Sanjay Kumar** (P.W.5) deposed before the court on 15th May, 2008. In his deposition, he states that on 18th March, 1999 at 7:30 PM he was at his door and was operating flour mill with his brother Om Prakash. At that time, Sadan



Badhai and Madan Badhai were also present. In the meantime, miscreants came there and caught him and his brother Om Prakash and brought them to Thakurbadi. The miscreants tied their hands and legs. They slit the throat of his brother Om Prakash with *pasuli*. In the meantime, he fell down and the miscreants threw the dead bodies over him due to which his life was saved. He states that he identified Bigan Kahar, Sukhu Yadav, Bichesh Yadav, Prahlad, Ramesh, Dukhan Manjhi and Dukhan Kahar in the light of torch. According to him, the occurrence continued for about 2-3 hours.

21. **Shyam Nandan Singh** (P.W.6) deposed before the court on 10th June, 2008. He supported the killing of several persons near Thakurbadi on the date of occurrence. He claims to identify Bachesh Yadav, Sukhu Yadav, Bifan Manjhi, Gond Manjhi and Ram Kewal Manjhi in the light of torch. However, he did not identify any accused in the dock.

22. **Bali Ram Sharma** (P.W.6-a) deposed before the court on 3rd September, 2008. In his deposition, he claims that about 20-25 miscreants entered his house, caught hold of his uncle's hand and took him away. He identified Bachesh Yadav, as one of the accused, who had come to his house. He states that the miscreants were carrying torches and that he climbed a tree.



23. In cross-examination, he admits that he had not claimed to identify any of the miscreants in his statement under Section 161 of the Cr.P.C. He further clarified that he had told the police that 20-30 persons had entered his house, but he could not say who had entered, as he did not know any one's name.

24. **Rajeshwar Singh** (P.W.7) deposed before the court on 20th September, 2008. In his deposition, he states that on 18th March, 1999, at the time of occurrence, he was at the verandah of Girijesh Singh along with Nageshwar Singh, Kamlesh and Balram Singh. He heard hulla about arrival of party members. He saw that they had tied the hands of Suresh Sharma. When he enquired, he was told that they were taking Suresh Sharma for identification of members of Ranveer Sena. He further states that he engaged himself with the miscreants and Suresh Sharma managed to escape. He states that the miscreants assaulted him with butt of gun. According to him, they were carrying torch, gun and country made pistol. He further states that the miscreants slaughtered several persons at Thakurbadi. He claims to identify Mishri Manjhi and Ganauri Ram. In cross-examination, he states that he went to Saharsa O.P. and remained there for the whole night.

25. **Arvind Kumar** (P.W.8) deposed before the court



on 16th June, 2009. He states in paras 1 and 2 that he was at Arjun Singh's doorstep at the time of occurrence. He saw about 30-35 miscreants, who were looking for Ranveer Sena members. At this time, Rajeshwar Singh got involved in a scuffle with the miscreants. In para 3 he claims to recognize Venkatesh Manjhi, Bhodu Manjhi, Budhan Yadav, Mishri Manjhi, Naresh Ram, Bigan Ram, Vikash Yadav, Kariman Paswan, Vyas Yadav, Karu Yadav, Mungeshwar Yadav and Ganauri Manjhi. He further states that he fled away and concealed himself. He also heard sound of firing and the slogan "MCC Zindabad". He states that after 11:00 PM he went to Thakurbadi where he saw several dead bodies. Throats of all bodies were cut and their abdomen torn. In para 11, he identified only Ganauri Manjhi and no other accused person.

26. **Girija Devi** (P.W.9) deposed before the court on 6th November, 2009. She states in her deposition that ten years ago while she was sitting at the door of Chandra Bhushan Sharma, 10-15 persons being armed with gun in police uniform came there. They were enquiring about the members of Ranveer Sena. They caught hold of Chandra Bhushan Sharma and Arun Kumar and dragged them away. They killed Chandra Bhushan Sharma by cutting his throat. They also injured Arun Kumar, but he



survived. She states that she could identify only Dully Yadav amongst the miscreants.

27. **Pankaj Kumar** (P.W.10) identifies his signature on the inquest reports of Chandra Bhushan Sharma, Rohit Kumar, Satyendra Kumar, Tulsi Sharma and Awadh Kishore, which were marked as Exhibits- 1 to 1/4 respectively.

28. **Rakesh Kumar** (P.W.11) identifies his signature on the inquest reports of Lalan Sharma, Ram Pravesh, Ram Slok Singh, Jwala Sharma, Nand Lal Singh, Awadhesh Sharma, Sanjeev Kumar and Sachidanand Singh, which were marked as Exhibits- 2 to 2/7 respectively.

29. Similarly, **Krishna Bihari Sharma** (P.W.12) identifies his signature on the inquest reports of Lalan Sharma, Ram Pravesh, Ram Slok Singh, Jwala Sharma, Nand Lal Singh, Awadhesh Sharma, Sanjeev Kumar and Sachidanand Singh, which were already marked as Exhibits- 2 to 2/7.

30. Likewise, **Ravindra Sharma** (P.W.13) identifies his signature on the inquest reports of Awadh Kishore, Satyendra Sharma @ Gulatan Sharma, Rohit, Tulsi and Bhushan, which were marked as Exhibits- 3 to 3/4 respectively.

31. **Dinesh Sharma** (P.W.14) deposed before the court on 22nd February, 2010. In his deposition, he states that the



occurrence took place on 18th March, 1999 at 7:30 PM. He saw that one Chhotan Manjhi being armed with country made pistol was trying to locate the family members of his neighbor Madheshwar Sharma. When he could not locate them, he tried to break open his door. When he failed, he came on the terrace of Madheshwar Sharma. He states that he concealed himself under the sacks and his neighbor Pramila Devi covered the sacks with a thick blanket. In the meantime, 15-20 miscreants came on the roof of his house. He identified Dwarik Paswan, Gorai Paswan, Satyendra Das, Shambhu Das, Shambhu Dom, Ramesh Yadav, Bhikhan Manjhi and Sadhu Bhuiyan amongst them, who were armed with country made pistol and were flashing torch light. He states that he kept himself hiding in the same position till 3:00 AM. He came out of the hiding only after the police had arrived. He identified Gorai Paswan in the dock. In cross-examination, he admits that it was a dark night. He also admits that he came out of hiding three hours after the miscreants had left the village.

32. **Ran Vijay Sharma** (P.W.15) deposed before the court on 22nd February, 2010. He states that while he was going to attend call of nature, he saw near the verandah of Surendra Singh that armed persons in police uniform were coming. He



states that thereafter he fled away and hid himself. Then he states that Awadhesh Singh (deceased) was being brought down from the roof by Natu Yadav, Budhan Yadav, Chandar Yadav and Navrup Yadav. After the miscreants left the place, he saw that Awadhesh and Jitendra were killed. He states that of all the accused persons he had named before the police, none were present in the court. After clearly giving up that the persons whom he named before the police were not present, he identified the accused Budhan Yadav in dock.

33. In cross-examination, He states that the incident created quite a scene of tumult in the village. He states that everyone was desperate to seek a good hiding place. He claims that he concealed himself at a place where a house is located and where no one had access. He states that on the arrival of the Police he came out of his house. He further admits that Budhan Yadav was to him a known person.

34. **Chinta Devi** (P.W.16) deposed before the court on 8th March, 2010. She also supports the killing of several persons in the village on the date of occurrence. She claims to identify Radhey Shyam, Dully Yadav, Kariman Yadav and Ramesh Yadav. In cross-examination, she states that four days prior to the occurrence, four persons had visited the village with Radhey



Shyam, Dully Yadav, Ramesh Yadav, Kirani Yadav and Kariman Yadav.

35. **Mithilesh Sharma** (P.W.17) deposed before the court on 8th March, 2010. In his deposition, he states that the occurrence had taken place in the year 1999 at about 7:30 PM. At that time, he was at his house. He heard that miscreants had arrived. He states that the villagers started running helter-skelter. He concealed himself. The miscreants caught hold of the villagers and took them towards the Thakurbadi. Thereafter, the miscreants raised slogan and resorted to firing and left the place. He states that subsequently the police arrived. He further states that several persons were killed. However, he did not recognize any of the miscreants.

36. **Manorma Kuwar** (P.W.18) deposed before the court on 12th March, 2010. In her deposition, she states that on 18th March, in the evening at 7:00 PM, she was at her house. She heard hulla that miscreants had arrived. She came out of the house and saw that the miscreants had caught hold of her son Vimlesh. She tried to rescue him but they dragged him towards Thakurbadi. They slaughtered her son in her presence. She further states that in all 34 persons were killed and five others were injured. She further states that her younger son Kamlesh



was also killed. She claims to identify Bodha Bhuiyan, Kariman Paswan, Raj Nath Kahar @ Naresh, Radhey Shyam, Prahlad Goverdhan, Ramesh and Amrendra. In cross-examination, she admits that the persons whose name she has taken are not present in court.

37. **Janeshwar Sharma** (P.W.19) deposed before the court on 12th March, 2010. He has supported the prosecution case to the extent that on the date and time of occurrence 34 persons were killed and five others were injured by the MCC cadre, but he did not name any accused. In cross-examination, he admits that the miscreants were about 200-400 in number.

38. **Balkeshwari Devi** (P.W.20) has also supported the prosecution case to the extent that on the date and time of occurrence 34 persons were killed and five others were injured by the MCC cadre. Her husband Ram Pravesh Sharma was killed in the occurrence. She states the name of accused Gerwa Bhuiyan only. She did not identify any accused in court.

39. **Sharda Devi** (P.W.21) also supported the prosecution case that on the date and time of occurrence 34 persons were killed and five others were injured by the MCC cadre. She claims to identify Vishu Ram, Butta Thakur, Genda Bhuiyan, Modi Bhuiyan and Hare Kishore amongst the



miscreants. However, she states that the accused persons whom she named were not present in the court.

40. **Madhulika Kumari** (P.W.23) also supported the prosecution case that on the date and time of occurrence 34 persons were killed and five others were injured by the MCC cadre. She states that her father Awadh Kishore Sharma and her brother Madhukar Kumar were killed in the occurrence. She has not stated name of any of the accused.

41. **Mukesh Kumar** (P.W.24) deposed before the court on 29th September, 2010. In his deposition, he states that on 18th March, 1999, at about 7:30 PM, he was at his house. He heard hulla that MCC cadre had arrived. He states that he went on his terrace. He states that some unknown persons entered into his courtyard. When he enquired from them, they asked him to come down. While he was descending of his stairs, one of the miscreants stated that if he would not come down he will be shot dead. On this, he went back to his terrace. He states that he took his gun and wanted to go out of his house but his mother stopped him. He states that thereafter he concealed himself. He saw that the miscreants had caught hold of his nephew Tunnu and asked for the gun. He states that his mother gave them the gun. Thereafter, they started searching for him and when they



could not locate him, they locked his room and went away. He states that his verandah was blown by explosion. He further states that when he came out and went to Thakurbadi, he found that 34 persons were killed. He also saw dead bodies of his brother Neeraj Kumar and uncle Birendra Kumar. He states that 4-5 persons had sustained injuries also. They were taken to hospital. He further states that because of dark night, he could not identify any of the miscreants.

42. **Ajay Kumar** (P.W.25) deposed before the court on 30th October, 2015. He states that on 18th March, 1999, at about 7:30 PM, he was at his house with his family members. In the meantime, 15-20 outsiders came and took him and others to Thakurbadi. At Thakurbadi, he and others were tied and surrounded by 30-35 persons. He was assaulted by the miscreants. He recognized Lalan Pasi. In cross-examination, he states that he was examined by police 5-6 months after the occurrence. He further states that at Thakurbadi he pretended to become unconscious and kept his eyes closed as long as the miscreants were there.

43. **Sri Niwas Sharma** (P.W.26) deposed before the court on 2nd November, 2015. He states in his deposition that on 18th March, 1999 he was at his house. Around 7:00 PM he heard



an announcement being made that members of Ranveer Sena were being sought. He states that he took refuge in the field near his house, amidst the chaff. He further claims that he identified Bachesh Yadav and Radhey Shyam when they were taking one Sanjeev Kumar (deceased) towards Thakurbadi through the field in which he was hiding, at around 10:00 PM. He also states that he had signed over the inquest report of Vimlesh and Kamlesh. In his cross examination, he states that he concealed himself so completely that he could not be seen by anyone and remained so hidden for 3 hours. He states that when all the miscreants left, he came out of hiding. He admits that accused Bachesh was known to him from before the occurrence.

44. **Vishambar Singh** (P.W.27) deposed before the court on 1st December, 2015. He states that he had taken over the investigation of the case from the then investigating officer Jamuna Singh on 18th June, 1999. He states that in course of investigation he had sent spear, *pasuli*, *farsa* and residues of explosive to the Forensic Science Laboratory. He further states that he had received the injury reports of the injured Mohan and Munna Kumar from Magadh Medical College, Gaya. He states that during investigation he had recorded the statements of Rakesh Kumar, Mohan Sharma, Arun Kumar @ Munna and



Bibha Kumari. He further states that he had handed over the charge of investigation to the police Inspector Alok Kumar on 14th October, 1999. He proved carbon copies of the seizure lists in the writing of his predecessor Jamuna Singh, which were marked as Exhibits-2 and 2/1. He proved the fardbeyan of the informant Chintamani Devi reduced in writing by the aforesaid Jamuna Singh, which was marked as Exhibit-4. He also proved the formal FIR of Karpi P.S. Case No. 22 of 1999 drawn in the writing and signature of Arjun Minz, which was marked as Exhibit-5. He proved the charge-sheet nos. 41 of 1999, 54 of 2000, 8 of 2000 and 105 of 1999 submitted by the police in connection with Karpi P.S. Case No. 22 of 1999, which were marked as Exhibits – 6 to 6/3. He states that the first charge-sheet is in the writing of Jamuna Singh and all the supplementary charge-sheets were submitted by his successor Alok Kumar. He also proved the Pamphlet, which was seized from the place of occurrence, which was marked as Material Exhibit -1. He states that the then officer-in-charge of Karpi Police Station Jamuna Singh and police officer Alok Kumar had passed away. In cross-examination, he admits that no TIP was undertaken in the case. He also admits that he did not arrest any accused in connection with the present case.



45. **Dr. Srinath Prasad (P.W.22)**, who was posted at Sadar Hospital, Jehanabad had conducted autopsy on the dead bodies of (1) Babu Lal Singh @ Shyam Narayan Singh, (2) Awadh Kishor Sharma, (3) Sanjeev Kumar, (4) Chandra Bhushan Sharma, (5) Parikshit Sharma, (6) Ramnath Sharma and (7) Jitendra Sharma on 19th March, 1999 between 4:00 PM and 7:15 PM under the orders of the District Magistrate at Senari village. He proved the respective post-mortem reports of the seven deceased persons, which were marked as Exhibits- 7 to 7/6. The respective post-mortem reports would reflect the following ante-mortem injuries on the bodies of the deceased persons: -

Babu Lal Singh @ Shyam Narayan Singh

Mouth and eyes partially opened.

Both upper arms tied on the back.

Incised wound at the level of C-3, from front of neck 8” x 1½” x bone deep from left side by sharp cutting weapon including neck muscles, carotid sheath, neck vessels & nerves & trachea.

Viscera pale, heart empty both sides, stomach contains partially digested food present.

Time elapsed after death- Eighteen to Twenty-four hrs. (18-24 hrs.) Mode of weapon- Sharp cutting weapon may be sickle.

Cause of death- Shock and haemorrhage leading to C/R failure due to above injuries.



Awadh Kishor Sharma

Both arms (upper) tied on the back.

Incised wound at the level of C-4, from front of the neck 8" x 1" x bone deep by sharp cutting weapon including neck muscles, carotid sheath, neck vessels & nerves & trachea.

Viscera pale, heart empty both sides, stomach contains partially digested food present.

Time elapsed after death- Eighteen to Twenty-four hrs. (18-24 hrs.) Mode of weapon- Sharp cutting weapon may be sickle.

Cause of death- Shock and haemorrhage leading to C/R failure due to above injuries.

Sanjeev Kumar

Mouth and eyes partially opened.

Both upper arms tied on the back.

Incised wound at the level of C-4, from front of neck from left side 5½" x 1" x bone deep by sharp cutting weapon including neck muscles, carotid sheath, neck vessels & nerves & trachea.

Viscera pale, heart empty both sides, stomach partially digested food present.

Time elapsed after death- Eighteen to Twenty-four hrs. (18-24 hrs.) Mode of weapon- Sharp cutting weapon may be sickle.

Cause of death- Shock and haemorrhage leading to C/R failure due to above injuries.

Chandra Bhushan Sharma

Both upper arms tied on the back.

Incised wound at the level of C-4, from front of



neck 8" x 1½" x bone deep by sharp cutting weapon including neck muscles, carotid sheath, neck vessels & nerves & trachea.

Viscera pale, heart empty both sides, stomach partially digested food present.

Time elapsed after death- Eighteen to Twenty-four hrs. (18-24 hrs.) Mode of weapon- Sharp cutting weapon may be sickle.

Cause of death- Shock and haemorrhage leading to C/R failure due to above injuries.

Parikshit Sharma

Hands tied on the back.

Both legs tied.

Sharp cut wound at the level of C-4, from front of neck 6½" x 1" x bone deep by sharp cutting weapon including neck muscles, carotid sheath, neck vessels & nerves and trachea.

Viscera pale, stomach partially digested food present.

Time elapsed after death- Eighteen to Twenty-four hrs. (18-24 hrs.) Mode of weapon-Sharp cutting weapon may be sickle.

Cause of death- Severe Shock & haemorrhage leading to C/R failure due to above injuries.

Ramnath Sharma

Both hands tied on the back.

Incised wound at the level of C-5, from front of neck 6" x 1" x bone deep by sharp cutting weapon including neck muscles, carotid sheath, neck



vessels & nerves and trachea.

Viscera pale, heart empty both sides, stomach partially digested food present.

Time elapsed after death- Eighteen to Twenty-four hrs. (18-24 hrs.) Mode of weapon- Sharp cutting weapon may be sickle.

Cause of death- Shock & haemorrhage leading to C/R failure due to above injuries.

Jitendra Sharma

Hands tied on the back.

Legs tied.

Incised wound from the front of neck including neck muscles, carotid sheath, neck vessels & nerves 6" x 1" x bone deep at the level of C3 by sharp cutting weapon.

Trachea at the lower level sharply cut.

Viscera pale, stomach partially digested food present.

Time elapsed after death- Eighteen to Twenty-four hrs. (18-24 hrs.) Mode of weapon- Sharp cutting weapon may be sickle.

Cause of death- Severe Shock & haemorrhage leading to C/R failure due to above injuries.

46. **Dr. Harish Chandra Hari** (P.W. 28), who was also posted as Medical Officer at Sadar Hospital, Jehanabad had conducted autopsy on the dead bodies of (1) Awadhes Sharma, (2) Kundan Sharma, (3) Rajesh Kumar, (4) Sanjeev Kumar, (5)



Ram Pravesh Singh, (6) Pintu Sharma, (7) Jwala Sharma, (8) Ramslok Sharma and (9) Nand Lal Sharma on 19.03.1999 between 4:00 PM and 7:15 PM at village Senari under the orders of the District Magistrate. He proved the post-mortem reports of the aforesaid nine deceased persons, which were marked as Exhibits 7/7 to 7/15. The respective post mortem reports would reflect the following ante-mortem injuries on the bodies of the deceased persons:-

Awadhes Sharma

Mouth and eyes partially opened.

Both hands tied on back.

Sharp cut injuries were present on front of neck, extending from right to left of both lateral side of neck (Size-6" x 1½" x bone deep at level of C-4. All muscles sheath, nerve and vessels of front of neck & trachea & esophagus were cutting. All viscera pale, Heart empty, urinary bladder and stomach partial undigested food material present (empty)

Mode of death- Shock and haemorrhage caused by sharp cutting weapon.

Time elapsed since death-18-24 hours.

Death due to shock and haemorrhage caused by sharp cutting weapon.

Kundan Sharma

Mouth and eyes partially opened. Both hands tied on back.



(i) Sharp cut injuries on the front of neck, extending from right to left lateral side of neck. Size-6½” x 1½” x bone deep. Muscles sheath and nerve of front of neck and trachea and esophagus were cutting.

(ii) Sharp cutting injuries at middle of abdomen, size- 5” x 1” x peritoneal deep.

All visceras pale, Heart empty, urinary bladder empty, stomach partial foods material (undigested) present.

Mode of death- Shock and haemorrhage due to sharp cutting weapon.

Time elapsed since death-18-24 hours.

Death due to shock and haemorrhage due to sharp cutting weapon.

Rajesh Kumar

Mouth and eyes partially opened.

Sharp cutting injuries on front of neck, extending from left lateral side to right lateral side. Size-6” x 1” x bone deep (level C-3). All muscles vessels, nerve front of neck and trachea esophagus cut.

Viscera were pale, Heart empty, stomach empty, urinary bladder empty.

Mode of death- Shock and haemorrhage caused by sharp cutting weapon.

Time since death-18-24 hours.

Death due to C.R. fracture, shock and haemorrhage caused by sharp cutting weapon.

Sanjeev Kumar

Eye & Mouth were partially opened. Both the



hands tied on back.

(i) Sharp cutting injuries on the front of neck at the level of C-4 of size-6" x 1½" x bone deep. All the muscles vessels & nerve of front of neck and trachea and esophagus were cutting upto lower bone.

(ii) Sharp cutting injuries on middle of abdomen of size- 5" x 1" x peritoneal deep. All visceras were pale, Heart were empty, urinary bladder and stomach were empty.

Mode of death- Shock and haemorrhage caused by sharp cutting weapon.

Time elapsed since death-18-24 hours.

Death due to shock and haemorrhage caused by sharp cutting weapon.

Ram Pravesh Singh

Mouth and eye partially opened. Both hands tied on the back.

Sharp cutting injuries over the front neck size-6" x 1½" x bone deep (C-4) with cutting injuries of neck muscle, vessels, nerve & trachea esophagus extending left lateral to right lateral side of neck.

Sharp cutting injuries on the middle of abdomen with injuries to abdominal muscle and upto peritoneal size 6½" x 1" x peritoneal deep. All visceras pale, stomach empty, heart empty, urinary bladder empty.

Mode of death- Shock and haemorrhage caused by sharp cutting weapon.

Time since death-18-24 hours.



Death due to C.R. fracture caused by shock and haemorrhage leading by sharp cutting injuries.

Pintu Sharma

Eye and mouth partially opened. Both hand tied back.

(i) Sharp cutting injuries on the front of neck with injuries on the neck muscle, vessels, nerve and trachea and esophagus upto cervical bone, Size-5" x 1½" x bone deep (C-4).

(ii) Sharp cutting on the front of chest, size- 4" x 1" x 1".

(iii) Sharp cutting injuries at lower abdomen, size- 6" x 1" x peritoneal deep. Abdominal viscera were protruded out. Intestine were intact. Heart-empty, viscera-pale, Stomach empty, urinary bladder empty.

Mode of death- Haemorrhage and Shock caused by sharp cutting weapon.

Time since death-18-24 hours.

Death due to shock and haemorrhage due to sharp cutting weapon.

Jwala Sharma

Mouth and eye partially closed.

Sharp cutting injuries on the front of neck extending from both lateral side of neck, size-6" x 1½" x bone deep upto cervical bone at the level of C-3 with neck muscles, neck vessels, trachea, esophagus and both shoulder. Visceras were pale. Heart empty, stomach empty, urinary bladder empty.



Time elapsed since death-18-24 hours.

Mode of death- Shock and haemorrhage caused by sharp cutting weapon.

Death occurred due to C.R. failure and by shock and haemorrhage due to sharp cutting weapon.

Ramslok Sharma

Mouth and eyes closed.

Sharp cutting injuries on the front of neck at the level of C-4 extending from both lateral side of neck. Size-7" x 1½" x bone deep upto cervical bone. All the muscles & sheath, vascular nerve, trachea and esophagus of front of neck were cut. Heart empty, Viscera Pale, stomach empty, urinary bladder empty.

Mode of death- Shock and haemorrhage caused by sharp cutting weapon.

Time elapse since death- within 18-24 hours.

Death due to C.R. failure caused by shock and haemorrhage due to sharp cutting weapon.

Nand Lal Sharma

Mouth and eye partially opened. Both upper arms tied on back.

Incised wound at the level of cervical 4 from front of neck 7" x 1¼" x bone deep from left side by sharp cutting weapon including neck muscle, neck vessel and nerve and trachea and esophagus. All viscera pale, Heart empty, urinary bladder empty, stomach empty.

Time elapsed since death – 18-24 hrs.

Mode of death – by shock and haemorrhage caused



by sharp cutting weapon.

Death due to shock and haemorrhage caused by sharp cutting weapon.

47. **Dr. Vinay Prakash Keshav** (not examined) conducted post-mortem examination on the bodies of (1) Vimlesh Sharma, son of Kapildeo Sharma, (2) Upendra Kumar, son of Vyas Sharma, (3) Satyendra Kumar, son of Raghuraj Sharma, (4) Ram Dayal Sharma, son of Anirudh Sharma, (5) Kamlesh Kumar, (6) Tulsi Sharma and (7) Kavindra Sharma.

48. **Dr. Harish Chandra Hari** (P.W. 28) has proved the seven post-mortem reports prepared by Dr. Vinay Prakash Kesav (not examined), which were marked as Exhibits- 7/16 to 7/22. He also proved 11 post-mortem reports prepared by Dr.Mithilesh Kumar(P.W.30), which were marked as Exhibits 7/23 to 7/33.

49. **Dr. Mithilesh Kumar** (P.W. 30), who was also posted as Medical Officer at Sadar Hospital, Jehanabad had conducted autopsy on the bodies of (1) Sukhalu Sharma, (2) Lalan Sharma, (3) Sukhan Sharma, (4) Sachidanand Sharma, (5) Jitendra Sharma, (6) Raju Sharma, (7) Om Prakash, (8) Jhabbal Kumar, (9) Pintu Sharma, (10) Birendra Sharma and (11) Rohit Sharma on 19.03.1999 under the orders of District Magistrate on the site of occurrence at village-Senari. He explained the



injuries, the time elapsed since death and the cause of death of the 11 persons whose autopsy had been conducted by him in the following manner: -

Sukhalu Sharma

Incised wound over front of neck at level of Hyoid bone, 6" x 1" x 4" with cutting of wind pipe and carotid sheath with its content and related muscles.

Internal examination: - Both chambers of heart- Empty. Liver, Lung, Spleen, Kidney- Pale, Bladder-Empty. Stomach contains 3 oz. partially digested food.

Cause of death- Haemorrhage and shock due to sharp cut injuries over neck by sharp weapon.

Time since death-12-24 hours.

Lalan Sharma

Bruise- both wrists circumferentially about 1" wide.

Incised wound over front of neck at level of Hyoid bone by cutting of both carotid sheath with its content. Cutting of wind pipe with related muscles- 8" x 1/2" x 4".

Internal Examination: - Both chamber of Heart Empty, Liver, Lung, Spleen, Kidney- Pale. Bladder- Empty. Stomach contains about 3 oz partially digested food.

Cause of death- Haemorrhage and shock due to sharp cut injury of neck by sharp weapon.

Time elapsed since death-12-24 hours.

Sukhan Sharma



Incised wound over neck at level of thyroid cartilage, 8" x 2" x 4".

Cutting of both sides of carotid sheath with its content and wind pipe and related muscle.

Internal Examination: - Both Chamber of Heart Empty, Liver, Lungs, Spleen, Kidney-Pale. Bladder- Empty. Stomach contains semi digested food about 3 oz.

Cause of death- Haemorrhage and shock due to sharp cutting over neck by sharp weapon.

Time since death- 12-24 hours.

Sachidanand Sharma

Incised wound just below the right side of ear over face, 6" x ¼" x 2" and incised wound at level of thyroid cartilage over neck behind one side of the Sternomastoid to other side. Cutting of both side of carotid sheath with its content including muscle and cartilage.

Internal Examination: - Both Chamber of Heart – Empty, Liver, Lung, Spleen, Kidney- Pale. Stomach contains digested food. Bladder- Empty

Cause of death- Haemorrhage and shock due to sharp cut injury by sharp weapon.

Time elapsed since death- 12-24 hours.

Jitendra Sharma

Bruise both wrist circumferentially. Incised wound over front of neck at level of Hyoid bone, 10" x ½" x 4". Cutting of both sides of carotid sheath with its content and related structure muscle and wind pipe.

Internal Examination: - Both Chamber of Heart



Empty. Liver, Lung, Spleen, Kidney- Pale.
Bladder- Empty. Stomach contains partially
digested food about 2 oz.

Cause of death- Haemorrhage and shock due to
sharp cut injury over neck.

Time elapsed since death-12-24 hours.

Raju Sharma

Incised wound over neck at level of thyroid
cartilage, 8" x ½" x 5". Cutting of both side of
carotid sheath and its content and related muscle
and cartilages of wind pipe.

Internal Examination: - Both chamber of Heart –
Empty. Liver, Lung, Spleen, Kidney-Pale. Bladder-
Empty

Cause of death- Haemorrhage and shock due to
incised wound over neck by sharp weapon.

Time elapse since death-12-24 hours.

Om Prakash

Incised wound over neck thyroid cartilage 8" x 1" x
4".

Cutting of both side of carotid sheath with its
content. Cutting of wind pipe and muscle onward.

Internal Examination:- Both chamber of Heart –
Empty. Liver, Lung, Spleen, Kidney Pale. Bladder-
Empty. Stomach contains about 2 oz partially
digested food.

Cause of death- Haemorrhage and shock due to
sharp cut over neck by sharp weapon.

Time since death-12-24 hours.

Jhabbal Kumar



Incised wound over front of neck at level of Hyoid bone, 8" x 2" x 6". Cutting of both sides of carotid sheath with its content and wind pipe, structure and muscle cut in way.

Internal Examination: - Heart both chamber – Empty. Liver, Lung, Spleen, Kidney-Pale. Bladder-Empty. Stomach contains about 3 oz semi digested food.

Time elapse since death-12-24 hours.

Cause of death- Haemorrhage and shock due to sharp cut over neck by sharp weapon.

Pintu Sharma

Incised wound over the front of neck at level of thyroid cartilage at right side 8" x 1" 6". Incised cutting of Rt carotid sheath with its content and cutting of wind pipe and related muscle.

Internal Examination: - Both chamber of Heart – Empty, Liver, Lung, Spleen, Kidney-Pale. Bladder-Empty. Stomach contain about 3 oz semi digested food.

Cause of death- Haemorrhage and shock due to sharp cut injury over neck by sharp weapon.

Time elapse since death-12-24 hours.

Birendra Sharma

Bruise both wrists circumferential.

Incised wound front of neck to right side of back over neck about 8" x 1" x 4" with incised wound of thyroid, carotid sheath with its content and related muscle.

Internal Examination: - Both chamber of Heart



Empty. Liver, Lung, Spleen, Kidney-Pale. Bladder-Empty. Semi digested food about 2 oz in stomach. Cause of death- Haemorrhage and shock due to sharp cut injury over neck.

Time elapse since death- 12-24 hours.

Rohit Sharma

Incised wound over front of abdomen at level of Xiphisternum to umbilicus 6” x 1” x 6” with protrusion of jaw.

Incised wound over front of neck 6” x 2” x 4’ with incised wind pipe, Carotid sheath with its content of both side.

Internal Examination: - Both chamber of Heart Empty, Liver, Lungs, Spleen, Kidney-Pale. Bladder-Empty. Stomach contains 3 oz semi digested food.

Cause of death- Haemorrhage and shock due to sharp cutting injury over neck and abdomen by sharp weapon.

Time since death-12-24 hours.

50. P.W.29 has proved his writings and signature over the aforesaid 11 post-mortem reports, which were already marked as Exhibits-7/23 to 7/33.

51. **Dr. Abhay Kumar Jha Suman** (P.W.30) had examined five injured persons, namely, (1) Rakesh Kumar, (2) Ajay Kumar, (3) Mathura Sharma, (4) Anil Sharma and (5) Bibha Kumari at Magadh Medical College Hospital, Gaya on



19th March, 1999. At that time, he was posted as Senior Resident in the Department of Surgery. He proved the injury reports of the aforesaid five injured persons, which were marked as Exhibits-8 to 8/4. The injury reports reflect the following injuries on their person :-

(1) Rakesh Kumar

- i) One incised wound over right iliac fossa 2.5" x 1.5" x communicating to peritoneal cavity through which part of small intestine protruding. At laparotomy peritoneal cavity was full of blood and fecal matter, perforation was found in ilium 2" x 1". The lower two ribs in right side were incised in the upper part of wound.
- ii) One incised wound over neck extending from right side to left side, 6" x 1/2" x muscle deep and on the cleft of wound in mid line thyroid cartilage was cut.
- iii) One incised wound over right Tina almost dissecting it.
- iv) One incised wound over right elbow 2" x 1" x 1/2".
- v) One incised wound over chin 1" x 1/2" x 1/4".
- vi) One incised wound over neck in left lower part 2" x 1/2" x 1/2".
- vii) Multiple shallow incised wound over lower part of neck over upper part of chest.
- viii) One incised wound over right side of chest 1/2" x 1/4" x 1/4".
- ix) Multiple incised wound over left upper part of neck.
- x) One incised wound over left upper part of chest 1.5" x



½” x ½”.

- xi) One incised wound over left upper part of middle of neck, ½” x ¼” x ¼”.

All above injuries were caused by sharp cutting weapon and injuries no. (i) and (ii) were grievous in nature, age of the injuries within 12 hours.

2. Ajay Kumar Sharma

- i) One incised wound over lower part on the right side of neck 2.5” x 1” x ½” muscle deep.
- ii) One incised wound over right iliac fosa, 2” x 1” x communicating to peritoneal cavity through which part of small intestine protruding. At laparotomy peritoneal cavity was full of blood and fecal matter, perforation was found in ilium.

Both the above injuries were caused by sharp cutting weapon and injuries were grievous in nature, age of the injuries within 12 hours.

3. Mathura Sharma

- i) Incised wound over neck in middle on upper part with skin flap hanging, 2” x ½” x ½”.
- ii) Incised wound over lower part of neck 1.5” x ¼” x ¼”.
- iii) Incised wound over right chick 1” x ½” x 1”.
- iv) Incised wound over right upper part of neck 3” x 1.5” x 1”.

All the injuries were simple in nature caused by sharp cutting weapon, age within 12 hours.

4. Anil Sharma

One incised wound over upper part of left thigh 3” x 1.5” x 1”.

Injury was simple in nature caused by sharp cutting



weapon, age within 12 hours.

5. Bibha Kumari

No evidence of external injury on her body was found.

52. After closure of the prosecution case, in order to enable the appellants to explain the circumstances appearing against them, the Trial Court recorded their statements under Section 313 of the Cr.P.C in which they denied the charges and pleaded their innocence. The questions put to all the 38 accused persons facing trial by the Trial Court were uniform. They are as under: -

“Q1. Have you heard the evidence of the witnesses?

Q2. There is evidence against you that on 18.03.99 in the night at village Senari, P.S.-Karpi, District-Jehanabad, Present District-Arwal, you in association with other accused persons having common intention and being armed with deadly weapons committed murder of 34 persons of Senari and caused injury to other persons with intention to commit their murder.

Q3. There is also evidence against you that you caught all the deceased and injured persons in their house and took them to Senari Thakurbadi from their house to commit their murder and murdered them by slitting their neck and cutting their abdomen?

Q4. There is evidence against you that you used illegal firearm to commit the said occurrence?



Q5. There is evidence against you that with intention to commit occurrence and terrorize persons you exploded bomb with other accused persons?

Q6. There is also evidence against you that you are a member of a banned extremist organization M.C.C. and while committing occurrence you raised slogan-MCC Zindabad with other persons?

Q7. What have you got to say in your defence?"

53. The defence did not lead any oral or documentary evidence during trial.

54. After analyzing the evidence on record and, after hearing the arguments on behalf of the parties, the Trial Court found the prosecution case proved beyond reasonable doubt against the 13 appellants in these appeals and two others namely, Vyas Yadav @ Naresh and Ganauri Manjhi and acquitted 23 accused persons for lack of evidence, vide impugned judgment dated 27th October, 2016.

55. Assailing the impugned judgment of conviction and order of sentence, Mr. Surendra Prasad Singh, learned senior advocate appearing for the appellants in Cr.Appeal (DB) Nos. 1271 of 2016, 32 of 2017 and 96 of 2017 being assisted by Mr. Krishna Prasad Singh, learned senior advocate and Mr. Bhashkar Shankar, learned advocate submitted that the incident



occurred on 18th March, 1999 between 7:30 PM and 11:00 PM at village Senari. It was a dark night as stated by Suresh Sharma (P.W.4) in para 17 and Dinesh Sharma (P.W.6) in para 8. Moreover, Bali Ram Sharma (P.W.6-a) also stated in para 8 that as it was a dark night, it was not possible to identify any body in the absence of artificial illumination. He submitted that there was no electricity in the village and it would not have been possible to identify the miscreants involved in the offence. He submitted that according to some of the witnesses they identified some of the miscreants as the miscreants were carrying torches and were flashing them in order to identify the victim. He submitted that under similar circumstance the Supreme Court has doubted the identification of the miscreants in *Ashoksinh Jayendrasinh vs The State of Gujarat*, since reported in (2019) 6 SCC 535 and *Tamilselvan Vs. State*, since reported in (2008) 7 SCC 755.

56. Mr. Singh, learned senior advocate further submitted that there was no Test Identification Parade (for short 'TIP') to pinpoint the assailants during investigation. The conviction of the appellants is based on dock identification, which took place about 7 years after the incident and extended to about 16 years. Relying on the judgments of the Supreme



Court in *Dana Yadav @ Dahu & Ors. vs State of Bihar*, since reported in (2002) 7 SCC 295; *Krishna & Anr vs State Of U.P.*, since reported in AIR 2007 SC 2452 and *Mulla v. State of U.P.*, since reported in AIR 2010 SC 942, he submitted that such dock identification could not be made basis of a conviction.

57. Mr. Singh, learned senior advocate next submitted that according to the prosecution case about 500 miscreants participated in the incident in which 34 persons were murdered. In such a situation, in view of the judgments of the Supreme Court in *Masalti v. State of Uttar Pradesh*, since reported in AIR 1965 SC 202; *Binay Kumar Singh v. State of Bihar*, since reported in AIR 1997 SC 322; *Chandra Shekhar Bind and Ors. v. State of Bihar*, since reported in (2001) 8 SCC 690; and *Ranjit Singh & Ors vs State of M.P.*, since reported in AIR 2011 SC 255, at least two witnesses, who deposed in a consistent manner regarding the participation of the accused would be necessary to hold the accused guilty.

58. Mr. Singh, learned senior advocate further submitted that six of the appellants, namely, Mungeshwar Yadav, Butai Yadav, Dwarik Paswan, Gorai Paswan, Vinay Paswan and Arvind Paswan have been identified by a single witness. He submitted that as there were many miscreants and



there was darkness, the evidence in relation to their identification and their participation in the commission of the offence is wholly insufficient to warrant conviction.

59. Referring to the deposition of the witnesses examined during trial, Mr. Singh, learned senior advocate contended that the appellants Satendra Das, Lalan Pasi, Gopal Sao and Uma Paswan were identified by two witnesses. He contended that the witnesses, who identified them have not given any consistent account of the incident nor have they stated about their overt acts. He argued that the Trial Court has failed to appreciate the evidence in correct perspective and has come to an erroneous conclusion.

60. He submitted that the appellant Bachesh Kumar Singh has been identified by four witnesses, namely, Vishwa Vijay Sharma (P.W.2), Suresh Sharma (P.W.4), Bali Ram Sharma (P.W.6-a) and Sri Niwas Sharma (P.W.26). However, on a close scrutiny of the deposition made before the court, it would be manifest that they are not reliable witnesses. He argued that no overt act has been attributed against the appellant Bachesh Kumar Singh. His presence in the unlawful assembly is also not established.

61. Lastly, he submitted that the prosecution has not



led any evidence whatsoever to prove that there is no chance of rehabilitation of the appellants. He submitted that the question of imposition of death penalty has been dealt with in detail by the Supreme Court in *Chhannu Lal Verma v. State of Chhattisgarh*, since reported in *AIR 2019 SC 243* wherein it has been held that death sentence should not be imposed unless there is not a single mitigating factor and that evidence has been led by the prosecution to prove that there is no chance of rehabilitation. He further contended that there is no evidence to suggest that during the period of trial or after conviction the behavior of the appellants in jail is such as to indicate that there is no chance of rehabilitation. Moreover, there is no evidence that the appellants have any criminal antecedent. He contended that the appellants belong to a depressed class and in view of the surrounding circumstances, it is not a fit case for imposition of death sentence.

62. Mr. Ansul, learned advocate appearing for the appellants in Cr.Appeal (DB) No. 184 of 2017 while adopting the submissions made by Mr. Surendra Singh, learned senior advocate, submitted that the appellants herein are not challenging the homicidal death of 34 persons and injuries sustained by five persons. They are challenging the allegation



that they are perpetrators of a serious offence.

63. He submitted that from the evidence adduced during trial it would be evident that the witnesses were not in a position due to dark night, commotion and absence of proper source of identification to actually see the perpetrators or to witness the killings taking place. He contended that the normal human behavior in a case like the present one would impel a person to run away and place himself in a position of safety and not to place himself in a position from where he could witness the occurrence.

64. He further contended that from a perusal of the FIR it would appear that the informant first went to Thakurbadi following her husband and son and saw the killings and thereafter she returned. She again went to Thakurbadi where she met large number of villagers, who told her about the occurrence in detail. The FIR has been lodged after that. The same means that the FIR not only contains the version of the informant but also the persons, who reached the Thakurbadi in the immediate aftermath of the occurrence. He contended that the FIR contains the names of 16 persons, but the appellants are not amongst them. Thus, the names of these appellants were not known either to the informant or to other villagers, who



gathered at the Thakurbadi in the immediate aftermath of the occurrence. He contended that two of the appellants, namely, Budhan Yadav and Gopal Sao are the residents of village Senari. They must have been known to the informant and other witnesses whose version went to lodging of the FIR till these two co-villagers apart from others have not been named in the FIR. The omission of their names in the FIR raises serious doubt about their involvement in the case.

65. He contended that the appellants were not caught on the spot and no recoveries were made from them to connect them in the instant case. Apart from identification in court, there is absolutely no material against them to hold them guilty. He contended that the material relied upon by the trial court for convicting the appellant is nothing but the identification of the appellants in dock by particular witnesses. He urged that no evidence brought on record between the charge and conviction has been put to any of the appellants while examining them under Section 313 of the Cr.P.C. Hence, in view of the settled law, the material not put to the accused cannot be taken into consideration for convicting the accused. He submitted that the trial court while convicting the appellants has erred both on law as well as on facts.



66. Mr. Sunil Srivastava, learned advocate appearing for the appellants in Cr.Appeal (DB) Nos. 30 of 2017 and 62 of 2017 has adopted the submissions made by Mr. Surendra Prasad Singh, learned senior advocate and Mr. Ansul, learned advocate. He contended that the arguments advanced by them completely cover the case of the appellants whom he represents.

67. Ms. Surya Nilambari, learned advocate appointed as amicus curiae in Death Reference No. 2 of 2017 submitted that six of the convicts, namely, Mungeshwar Yadav, Butai Yadav, Dwarik Paswan, Gorai Paswan, Vinay Paswan and Arvind Paswan have been identified by only one witness. She submitted that in their case the conviction should be reconsidered within the parameters laid down by the Supreme Court in *Masalti v. State of Uttar Pradesh* (Supra), which has been followed by the Supreme Court in several subsequent judgments. She also contended that from the evidence adduced by the prosecution witnesses in court, there remains no doubt that at the time of occurrence it was dark and the villagers were making desperate attempts to seek refuge in a place and position in which they would remain unseen by the miscreants. In such a state of complete chaos, the claim of identification made by some of the witnesses seems to be highly improbable. She



further contended that the miscreants have been identified in the dock for the first time after a gap of 7 to 16 years of the occurrence. The circumstances in which the identification was made make such identification rather weak without any corroboration. She contended that the identification must fulfill the mandatory requirements of being without reasonable doubt. She also reiterated the point argued by Mr. Ansul, learned advocate regarding the questions asked from the accused persons under Section 313 of the Cr.P.C. She contended that the accused persons were subjected to a series of identical questions even though the evidence against them is disparate. She contended that no questions were put to the accused persons regarding their identification by different persons and the places in the village in which they were claimed to be identified. According to her, this sort of examination goes against essence of Section 313 of the Cr.P.C.

68. On the point of sentencing, Ms. Surya Nilambari, learned *amicus curiae* has drawn the attention of the Court towards age of the appellants Bachesh Singh, Budhan Yadav, Satendra Das, Lalan Pasi, Gopal Saw, Dwarik Paswan, Kariman Paswan, Gorai Paswan and Uma Paswan, as recorded by the Trial Court and submitted that they all are now in their old age.



She submitted that some of them are approaching 70 years. Furthermore, the appellants Arvind Paswan, Mungeshwar Paswan and Vinay Paswan were in their 30's at the time of conviction. They have been identified by one witness each. According to her, such feeble identification is a strong mitigating factor against the death sentence.

69. On the other hand, Mr. Yogendra Prasad Sinha, learned Additional Advocate General No.7 being assisted by Dr. Mayanand Jha, Mr. Dilip Kumar Sinha, Mr. Abhimanyu Sharma and Ms. Shashi Bala Verma, learned Additional Public Prosecutors submitted that at 07:30 PM on 18th March, 1999 hundreds of men in police uniform carrying *pasuli*, *garasi*, *hasiya*, *khanti*, rifle and gun surrounded Senari village. The 34 victims were forced out of their houses and most of them were lined up near the Thakurbadi on the outskirts of the village where their throats were slit like cattle by the cadre of the MCC.

70. He submitted that the Trial Court discernibly and objectively considered the evidence in proper perspective. He contended that in the case at hand, it is clear that a premeditated killing of 34 persons of a particular community was carried out in the most barbaric manner. According to him, the witnesses examined during trial are consistent on sequence of events. He



further contended that the Supreme Court has sustained conviction even where the source of light was not disclosed in catena of cases.

71. He submitted that in the case of *Nathuni Yadav And Ors. vs State of Bihar and Anr.*, since reported in *AIR 1997 SC 1808*, the Supreme Court sustained the conviction even when there was absence of artificial light. He further submitted that in the case of *S. Sudershan Reddy & Ors. vs The State of Andhra Pradesh*, since reported in *AIR 2006 SC 2716*, it has been held that as the accused were known to the witnesses, identification was possible.

72. He has also relied upon the judgments of the Supreme Court in the case of *State of U.P. Vs. Babu & Ors.*, since reported in *(2003) 11 SCC 280* and *Kedar Singh & Ors. Vs. State of Bihar*, since reported in *1999 Cr.L.J. 601 (SC)* to submit that identification of known persons is possible from the manner of speech, walking and gesticulating.

73. Mr. Yogendra Prasad Sinha, learned Additional Advocate General No.7 further contended that the conviction can be sustained even where the witnesses identified the accused for the first time in court.

74. He contended that the identification of the



appellants in court is an admissible evidence. According to him, the accused persons and the victims were known to each other living in the same village or in the adjoining villages. They entered into the house of the victims, flashed their torches for identifying them and under such circumstance recognition was fully possible by the eye-witnesses, who saw the members of their family being dragged by the accused persons. He contended that P.W.25, an injured witness, identified the appellants as the miscreants, who had participated in the commission of the offence. He argued that it is well settled by now that the identification even in darkness is possible if the accused were known to the witnesses. He submitted that there was sufficient time to notice the facial features of the accused persons and, thus, non-holding of TIP in the instant case would be of no import. He submitted that in *Sheo Shankar Singh vs State of Jharkhand & Anr.*, since reported in (2011) 3 SCC 654 and *Dana Yadav @ Dahu & Ors. vs State of Bihar*, since reported in (2002) 7 SCC 295, it has been held by the Supreme Court that the identification of the accused in the court by the witnesses constitutes substantive evidence. He submitted that it has been further held by the Supreme Court in the above noted cases that Cr.P.C does not oblige the investigating agency to



necessarily hold TIP nor is there any provision under which the accused may claim a right to hold TIP.

75. He argued next that Section 134 of the Indian Evidence Act provides that no particular number of witnesses shall be required for the proof of any fact. He urged that the requirement of law is the quality and not the quantity of the evidence necessary for proving or disproving a fact. In the present case, since the witnesses examined on behalf of the prosecution were wholly reliable, the court has rightly come to its conclusion in convicting the appellants even in case of single identification.

76. Mr. Yogendra Prasad Sinha, learned Additional Advocate General No.7 further contended that the appellants were fully aware of the charges framed against them. Hence, any omission on the part of the court in bringing to the appellant's notice, the circumstances, which came against them would be of no consequence. According to him, non-examination of the first Investigating Officer, who had recorded the oral statement of the informant and the statements of the witnesses, was neither deliberate nor willful. As a matter of fact, PW 27, who had taken over the charge of investigation has categorically stated in his deposition that Jamuna Singh (the



first Investigating Officer) and Alok Kumar (another Investigation Officer) had passed away. He contended that non-examination of the deceased Investigating Officers has in no way prejudiced the case of the defence.

77. I have given my anxious consideration to the rival submissions and have carefully perused the evidence on record.

78. The undisputed facts of the case are as follows: -

- (a) On 18th March, 1999 at 7:30 PM hundreds of armed miscreants entered the village Senari. They searched out persons allegedly belonging to Ranveer Sena, took them to Thakurbadi at the outskirts of the village and murdered 34 of them. The incident occurred between 7:30 PM and 11:30 PM.
- (b) There was no electricity in the village. Moreover, it was a dark night as stated by Suresh Sharma (P.W.4) in para 17 and Dinesh Sharma (P.W.6) in para 8.
- (c) Some of the miscreants were carrying big torches. According to some of the prosecution witnesses, they identified the miscreants in the flash of torch light.



- (d) No TIP was conducted during investigation.
- (e) The conviction of the appellants is based on dock identification made more than 7 years and extended to about 16 hours after the incident.

79. The purpose of TIP is to test the veracity and trustworthiness of the evidence of the witnesses. The idea behind the TIP is to test whether or not the witness, who claims to have seen the culprits at the time of commission of the offence is reliable and can identify the culprits amidst other individuals.

80. True it is that identification of an accused in the court of law is substantive evidence whereas the evidence of identification in TIP though a primary evidence, it is not substantive one and, it can be used only to corroborate the identification of the accused in the court of law. Further, if the TIP is not conducted and the witness identifies the accused for the first time in court then evidence regarding identification in the court of law does not become inadmissible. Such evidence cannot be discarded on the ground that it was not preceded by TIP However, court identification of an accused without TIP is admissible, if the court finds it trustworthy.

81. In *Kanta Prashad Vs. Delhi Administration*, since



reported in *AIR 1958 SC 350*, the Supreme Court observed that the purpose of TIP is to test the statement of a witness made in the court when conducted during the time of investigation, it assures the investigating agency that the investigation is proceeding in the right direction.

82. In *Sheikh Hasib Alias Tabarak vs The State of Bihar*, since reported in *(1972) 4 SCC 773*, the Supreme Court observed that TIP during investigation is held to minimize the chances of the memory of the identifying witnesses fading away by reason of long lapse of time.

83. In *Dana Yadav @ Dahu* (Supra) relied upon by the State, the Supreme Court carved out certain exceptions to the ordinary rule that identification of an accused for the first time in court is a weak type of evidence. Relying on *State of Maharashtra Vs. Sukhdeo Singh* (Supra) and *Ronny alias Ronald James Alwaris and Ors. v. State of Maharashtra*, since reported in *(1998) 3 SCC 625*, the Supreme Court noticed that where the witness had a chance to interact with the accused or that in a case where the witness had an opportunity to notice the distinctive features of the accused which lends assurance to his testimony in court, the evidence of identification in court for the first time by such a witness cannot be thrown away merely



because any TIP was not held. In this regard, the Supreme Court held in paras 6 to 8 as under:-

“6. It is also well settled that failure to hold test identification parade, which should be held with reasonable despatch, does not make the evidence of identification in court inadmissible rather the same is very much admissible in law. Question is what is its probative value? Ordinarily identification of an accused for the first time in court by a witness should not be relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous Identification in the test identification parade or any other evidence. The purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen earlier, strength or trustworthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. If a witness identifies the accused in court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence. We are fortified in our view by catena of decisions of this Court in the cases of Kanta Prashad v. Delhi Administration, AIR (1958) SC 350, Vaikuntam



Chandrappa (supra), Budhsen (supra), Kanan and Ors. v. State of Kerala, [1979] 3 SCC 319, Mohanlal Gangaram Gehani v. State of Maharashtra, [1982] 1 SCC 700, Bollavaram Pedda Narsi Reddy (supra), State of Maharashtra v. Sukhdev Singh and Anr., [1992] 3 SCC 700, Jaspal Singh alias Pali v. State of Punjab, [1997] 1 SCC 510, Raju alias Rajendra v. State of Maharashtra, [1998] 1 SCC 169, Ronny alias Ronald James Alwaris, (supra), George and Ors. v. State of Kerala and Anr., [1998] 4 SCC 605, Rajesh Govind Jagesha, (supra), State of H.P. v. Lekh Raj and Anr., [2000] 1 SCC 247 and Ramanbhai Naranbhai Patel and Ors. v. State of Gujarat, [2000] 1 SCC 358.

7. Apart from the ordinary rule laid down in the aforesaid decisions, certain exceptions to the same have been carved out where identification of an accused for the first time in court without there being any corroboration whatsoever can form the sole basis for his conviction. In the case of *Budhsen (supra)* it was observed: -

"There may, however, be exceptions to this general rule, when for example, the court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration."

8. In the case of *State of Maharashtra (supra)*, it was laid down that if a witness had any particular reason to remember about the identity of an



accused, in that event, the case can be brought under the exception and upon solitary evidence of identification of an accused in court for the first time, conviction can be based. In the case of Ronny alias Ronald James Alwaris and Ors. (supra), it has been laid down that where the witness had a chance to interact with the accused or that in a case where the witness had an opportunity to notice the distinctive features of the accused which lends assurance to his testimony in court, the evidence of identification in court for the first time by such a witness cannot be thrown away merely because no test Identification parade was held. In that case, the concerned accused had a talk with the identifying witnesses for about 7/8 minutes. In these circumstances, the conviction of the accused, on the basis of sworn testimony of witnesses identifying for the first time in court without the same being corroborated either by previous identification in the test identification parade or any other evidence, was upheld by this Court. In the case of Rajesh Govind Jagesha (supra), it was laid down that the absence of test identification parade may not be fatal if the accused is sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement or is arrested on the spot immediately after the occurrence and in either eventuality, the evidence of witnesses identifying the accused for the first time in court can form the basis for



conviction without the same being corroborated by any other evidence and, accordingly, conviction of the accused was upheld by this Court. In the case of State of H.P. (supra), it was observed that "...test identification is considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them. There may, however, be exceptions to this general rule, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely without such or other corroboration." In that case, laying down the aforesaid law, acquittal of one of the accused by High Court was converted into conviction by this Court on the basis of identification by a witness for the first time in court without the same being corroborated by any other evidence. In the case of Ramanbhai Naranbhai Patel and Ors. (supra), it was observed "It, therefore, cannot be held, as tried to be submitted by learned counsel for the appellants, that in the absence of a test identification parade, the evidence of an eyewitness identifying the accused would become inadmissible or totally useless; whether the evidence deserves any credence or not would always depend on the facts and circumstances of each case." The Court further observed "the fact remains that these eyewitnesses were seriously injured and they could have easily seen the faces of the persons assaulting them and



their appearance and identity would well remain imprinted in their minds especially when they were assaulted in broad day light." In these circumstances, conviction of the accused was upheld on the basis of solitary evidence of identification by a witness for the first time in court." (emphasis mine)

84. In ***Sheo Shankar Singh vs State of Jharkhand*** (Supra) relied upon by the State, the Supreme Court observed that the Cr.P.C does not oblige the investigating agency to necessarily hold a TIP. The failure of the investigating agency to hold a test TIP does not, in that view, have the effect of weakening the evidence of identification in the court. It further held that in appropriate cases the court may accept the evidence of identification in the court even without insisting on corroboration. In paras 46 to 48 the Supreme Court held as under:-

“46. It is fairly well settled that identification of the accused in the court by the witness constitutes the substantive evidence in a case although any such identification for the first time at the trial may more often than not appear to be evidence of a weak character. That being so a test identification parade is conducted with a view to strengthening the trustworthiness of the evidence. Such a TIP then provides corroboration to the



witness in the court who claims to identify the accused persons otherwise unknown to him. Test identification parades, therefore, remain in the realm of investigation.

47. The Code of Criminal Procedure does not oblige the investigating agency to necessarily hold a test identification parade nor is there any provision under which the accused may claim a right to the holding of a test identification parade. The failure of the investigating agency to hold a test identification parade does not, in that view, have the effect of weakening the evidence of identification in the court. As to what should be the weight attached to such an identification is a matter which the court will determine in the peculiar facts and circumstances of each case. In appropriate cases the court may accept the evidence of identification in the court even without insisting on corroboration.

48. The decisions of this Court on the subject are legion. It is, therefore, unnecessary to refer to all such decisions. We remain content with a reference to the following observations made by this Court in Malkhansingh v. State of M.P. [(2003) 5 SCC 746: 2003 SCC (Cri) 1247] : (SCC pp. 751-52, para 7)

“7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in



law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are



essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See Kanta Prashad v. Delhi Admn. [AIR 1958 SC 350 : 1958 Cri LJ 698] , Vaikuntam Chandrappa v. State of A.P. [AIR 1960 SC 1340 : 1960 Cri LJ 1681] , Budhsen v. State of U.P. [(1970) 2 SCC 128 : 1970 SCC (Cri) 343] and Rameshwar Singh v. State of J&K [(1971) 2 SCC 715 : 1971 SCC (Cri) 638] .)”

85. In ***Mulla & Another vs State Of U.P*** (Supra) on which reliance has been placed by the learned *amicus curiae*, the Supreme Court observed that failure to hold TIP does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. However, where identification of an accused by a witness is made for the first time in Court, it should not form the basis of conviction. The relevant para 21 of the said judgment reads as under:-

“21. Failure to hold test identification parade does



not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Where identification of an accused by a witness is made for the first time in Court, it should not form the basis of conviction. As was observed by this Court in Matru v. State of U.P., (1971) 2 SCC 75 : (AIR 1971 SC 1050), identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in Court. (Vide Santokh Singh v. Izhar Hussain, (1973) 2 SCC 406 : (AIR 1973 SC 2190).” (emphasis mine)

86. In *Sukhbir Singh v. State of Punjab* (Supra) on which also reliance has been placed by the learned *amicus curiae*, the Supreme Court observed that there is no inflexible rule that an identification made for the first time in court has to be always ruled out of consideration, but the broad principle is that if there is no other evidence against an accused, an identification in court made long after the event is not acceptable. Paras 13 and 14 of the said judgment read as under:-

“13. We have considered the arguments advanced by the learned counsel for the parties. It will be



seen that the incident happened at about 9 p.m. on 26-12-1991. In the FIR recorded about 8 hours later, the appellants had been described as two Sikh youths 25/30 years of age wearing kurta-pajamas. The appellants were arrested on 21-5-1992 by Sub-Inspector Pyara Singh (who was not examined as a witness) and they were identified for the first time in court by Naranjan Singh on 21-9-1993. We are of the opinion that the physical description of the appellants given in the FIR would fit millions of youth in Punjab, and could not by itself pin the murder on them. The prosecution has also not come out with the steps in the investigation which had led to their identification as the primary assailants. It was, in this background, obligatory on the part of the prosecution to have produced Sub-Inspector Pyara Singh who could have testified to the steps in the investigation made by him which had enabled him to identify the appellants as the killers. This was not done. In this view of the matter, the judgments cited by Mr Patwalia fully apply to the facts of the case.

14. *There is absolutely no evidence other than the identification in court made by Naranjan Singh long after the incident. It is true that there is no inflexible rule that an identification made for the first time in court has to be always ruled out of consideration; but the broad principle is that (sic if) in the background there is no other evidence*



against an accused, an identification in court made long after the event is clearly not acceptable. The judgment cited by Mr Kuldip Singh of Malkhansingh case [(2003) 5 SCC 746: 2003 SCC (Cri) 1247] is on the facts of that particular case, as a prosecutrix, who was the victim of a gang rape, had identified some of the accused for the first time in court on which this Court opined that the identification was acceptable as a good piece of evidence.” (emphasis mine)

87. In ***State of Maharashtra Vs. Sukhdeo Singh*** (Supra), at para 25, it has been held by the Supreme Court that the “(i) *identification for the first time after a lapse of considerable time in Court or (ii) identification at a test identification parade in the case of total strangers, it is not safe to place implicit reliance on the evidence of witnesses who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in Court.*”

88. In ***Vaikuntam Chandrappa and Ors. Vs State of Andhra Pradesh***, (Supra), the Supreme Court inter alia observed as follows:-

“It is true that when he came to give evidence in court, the witness did point out to the same three accused as having been seen by him at:



the time of the murder. It is also true that the substantive evidence is the statement in court; but the purpose of test identification is to test that evidence and the safe rule is that the sworn testimony of witnesses in court as to the identity of the accused who are strangers to the witnesses, generally speaking, requires corroboration which should be in the form of an earlier identification proceeding.”

89. In ***George & Ors vs State of Kerala & Anr.***, since reported in ***AIR 1979 SC 1127***, the Supreme Court held that “... *though not fatal, absence of the corroborative evidence of prior identification in a T.I. parade makes the substantive evidence of identification in Court after a long lapse of time a weak piece of evidence and no reliance can be placed upon it unless sufficiently and satisfactorily corroborated by other evidence.”*

90. In ***Rabindra Kr. Pal @ Dara Singh vs Republic of India***, since reported in ***(2011) 2 SCC 490***, the Supreme Court held that “*it is clear that identification of accused persons by witness in dock for the first time though permissible but cannot be given credence without further corroborative evidence. Though some of the witnesses identified some of the accused in the dock as mentioned above without corroborative evidence the dock identification alone cannot be treated as substantial evidence, though it is permissible.”*



91. On a perusal of the ratio laid down by the Supreme Court in the above noted cases, it would be evident that ordinarily an accused should not be convicted on the testimony of witnesses identifying for the first time in court without any corroboration either by previous identification in the TIP or any other evidence. If there is no other evidence against the accused identification in court made long after the incident should not form the basis of conviction as it is regarded as evidence of weak character. However, in appropriate cases, in exception to the general rule, if a witness has any particular reason to remember about the identity of an accused or the accused is known to a witness from before, the court may rely on such identification without other corroboration.

92. So far as conviction of an accused on the testimony of a single witness is concerned, the issue had come up for consideration before the Supreme Court in *Vadivelu Thevar vs The State of Madras*, since reported in *AIR 1957 SC 614*. In that case conviction of the appellant rested on the testimony of the sole witness. The Supreme Court found that if the evidence, read as a whole, rings quite true, there should be no hesitation in acting upon it. Having considered the relevant authority and the



provisions of the Evidence Act, the Supreme Court outlined the following propositions:-

“(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.”

93. In view of Section 134 of the Indian Evidence Act, it has rightly been urged on behalf of the state that no particular number of witnesses shall be required for the proof of any fact in a case. The general principle of law is that generally conviction may be based on the testimony of single witness without any corroboration, if the evidence of the solitary witness



is fully reliable, trustworthy and inspires confidence.

94. However, with reference to carnage cases, in view of the peculiarity of the circumstances, as they generally involve large number of victims, witnesses and the accused persons, in *Masalti Vs. State of U.P.* (Supra), a four judge Bench of the Supreme Court held that “*where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable. Therefore, we do not think any grievance can be made by the appellants against the adoption of this test. If at all the prosecution may be entitled to say that the seven accused persons were acquitted because their cases did not satisfy the mechanical test of four witnesses, and if the said test had not been applied, they might as well have been convicted. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. But sometimes it is useful to adopt a test like the one which the High Court has*



adopted in dealing with the present case.” (emphasis mine)

95. The proposition of law laid down in *Masalti v State of U.P.* (supra) was followed in the case of *Binay Kumar Singh v. State of Bihar*, since reported in *AIR 1997 SC 322*, wherein the Supreme Court held as follows: -

“There is no rule of evidence that no conviction can be based unless a certain minimum number of witnesses have identified a particular accused as a member of the unlawful assembly. It is axiomatic that evidence is not to be counted but only weighed and it is not the quantity of evidence but the quality that matters. Even the testimony of one single witness, if wholly reliable, is sufficient to establish the identification of an accused as a member of an unlawful assembly. All the same, when the size of the unlawful assembly is quite large (as in this case) and many persons would have witnessed the incident, it would be a prudent exercise to insist on at least two reliable witnesses to vouchsafe the identification of an accused as a participant in the rioting.”

96. In *Kamaksha Rai v. State of U.P.*, since reported in *(1999) 8 SCC 701*, which was related to an incident where large number of people exceeding 500 in number are said to have taken part, the Supreme Court held that *“Taking into consideration the nature of attack and the possibility or*



otherwise of the identification of these accused persons by the prosecution witnesses and bearing in mind the principles laid down by this Court in the above-cited judgments, we are of the opinion that it is not safe to rely on the evidence of witnesses who speak generally and in an omnibus way without specific reference to the identity of the individuals and their specific overt acts in regard to the incident...” (emphasis mine)

97. In ***Kamaksha Rai*** (Supra), the Supreme Court further observed that “*as a rule of prudence it is necessary to fix a minimum number of witnesses needed to accept the prosecution case to base a conviction....*”

98. The aforesaid proposition laid down in ***Masalti*** case (Supra) has consistently been followed in a number of cases of similar nature such as ***State of A.P. v. Thakkidiram Reddy***, since reported in (1998) 6 SCC 554 and ***Hukam Singh v. State of Rajasthan***, since reported in (2000) 7 SCC 490.

99. In ***Chandra Shekhar Bind Vs. State of Bihar***, since reported in AIR 2001 SC 4024, the Supreme Court observed that “*The Constitution Bench of this Court has, in the case of Masalti v. State of U.P. [AIR 1965 SC 202 : (1965) 1 Cri LJ 226] held that under the Evidence Act, trustworthy evidence given by a single witness would be enough to convict the*



accused persons, whereas evidence given by half-a-dozen witnesses which is not trustworthy would not be enough to sustain the conviction. It was held that where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident.”

100. In ***Chandra Shekhar Bind*** (Supra) relying upon ***Masalti*** case (Supra), the Supreme Court acquitted three of the appellants observing as under :-

“On the basis of this two-witness theory, benefit of doubt would have to be and is given to Accused 9, 10 and 12 inasmuch as more than one witness has not identified them.”

101. In ***Duleshwar v. State of M.P. (now Chhattisgarh)***, since reported in ***(2020) 11 SCC 440***, the Supreme Court observed : *“Thus, it is the quality of evidence that matters and not the quantity; and even the testimony of a single witness may be sufficient to establish the identity of an accused as member of an unlawful assembly but, when the size of assembly is quite large and many persons have witnessed the incident; and*



when a witness deposes in general terms, it would be useful to adopt the test of consistency of more than one witness so as to remove any doubt about identity of an accused as a member of the assembly in question. However, even if adopting such a test of consistency, what is to be looked for is the “consistent account of the incident” and the requirement of consistency cannot be overstretched as if to search for repetition of each and every name of the accused in each and every testimony. In other words, the comprehension of overall evidence on record is requisite; and mere counting of heads or mere recitation of names or omission of any name in the testimony of any particular witness cannot be decisive of the matter. In such facts and circumstances, even the relevance of the corroborating facts and factors like that of recovery of weapons or any other article co-related with the crime in question cannot be ignored altogether.” (emphasis mine)

102. *In Krishna Mochi Vs. State of Bihar*, since reported in **(2002) 6 SCC 81**, relied upon by Mr. Yogendra Prasad Sinha, learned Additional Advocate General No.7 appearing for the State, the Supreme Court observed that “*This Court has observed such a rule of caution ordinarily, which would obviously mean that there is no blanket ban or rule of*



universal application that if the number of eyewitnesses is less than two, in no case conviction can be upheld... .. no rule of universal application was intended to be laid down or has been laid down.”

103. The Supreme Court further observed in **Krishna Mochi** (Supra) that “*even if the complicity of the accused is proved by credible evidence of one or two witnesses, it would not be unsafe to convict an accused, rather a duty is enjoined upon the court not to acquit an accused on this ground alone unless the prosecution case is otherwise found to be untrustworthy. It is well settled that in a criminal trial credible evidence of even a solitary witness can form the basis of conviction and that of even half a dozen witnesses may not form such a basis unless their evidence is found to be trustworthy inasmuch as what matters in the matter of appreciation of evidence of witnesses is not the number of witnesses, but the quality of their evidence.*”

104. In **Ranjit Singh v. State of M.P.**, since reported in **(2011) 4 SCC 336**, the Supreme Court held as under:-

“Thus, from the above, the law on the issue remains that in a case involving an unlawful assembly with a very large number of persons, there is no rule of law that states that there cannot



be any conviction on the testimony of a sole eyewitness, unless that the court is of the view that the testimony of such sole eyewitness is not reliable. Though generally it is a rule of prudence followed by the courts that a conviction may not be sustained if it is not supported by two or more witnesses who give a consistent account of the incident, in a fit case the court may believe a reliable sole eyewitness if in his testimony he makes specific reference to the identity of the individual and his specific overt acts in the incident. The rule of requirement of more than one witness applies only in a case where a witness deposes in a general and vague manner, or in the case of a riot.” (emphasis mine)

105. From reading of the abovementioned judgments of the Supreme Court, it can safely be said that the court may rely upon the testimony of the single witness, if it is wholly reliable, trustworthy and inspires confidence, as there is no rule of law for universal application that conviction cannot be sustained on the evidence of solitary witness. However, even though the quality of evidence is paramount, when the size of the assembly is quite large and many persons have witnessed the incident, it would be useful to adopt the test of consistency of more than one witness so as to remove any doubt about the identity of the accused persons as a member of the assembly in question.



106. Further, from the ratio laid down by the Supreme Court in the aforementioned cases, it would also be evident that the corroboration, unless required by the statute, is a rule of prudence and not rule of law.

107. Keeping the aforesaid legal principles in mind, when we look to the facts of the present case, we find that in the case at hand several hundred miscreants had participated and 34 persons were killed. A large number of accused persons were charge-sheeted and out of them 38 persons faced the present trial.

108. In a criminal trial, there are two fundamental issues. The first is whether the alleged offence was committed and, if it is established that the offence was committed, the second question would arise as to who committed the offence?

The appellants herein have not challenged the homicidal death of 34 persons and injuries sustained by five persons. They have challenged the allegation that they are perpetrators of this heinous offence. They have stated that the witnesses were not in a position, due to dark night, commotion and absence of proper source of identification to actually see the perpetrators or to witness the killings taking place.

109. It would appear from the evidence on record that



the informant Chintamani Devi passed away during the trial. She could not be examined as a prosecution witness. It would also be evident from the perusal of the FIR that the alleged occurrence concluded at 11:00 PM on 18th March, 1999 and the FIR was lodged at 2:30 AM on 19th March, 1999. As per the informant, she first went to Thakurbadi following her husband and son and saw the killing and thereafter she returned. She again went to the Thakurbadi after the miscreants had left the place, where she met large number of villagers, who told her about the occurrence in detail. Her fardbeyan was recorded after she had met a number of villagers. It has rightly been submitted on behalf of the appellants that the FIR not only contains version of the informant but also the persons, who reached the Thakurbadi, in the immediate aftermath of the occurrence. It contains name of 16 persons. The appellants are not amongst them. Presumably, the appellants were not known either to the informant or to the other villagers, who had gathered at the Thakurbadi in the immediate aftermath of the occurrence.

110. At this stage, it would be pertinent to note that two of the appellants, namely, Budhan Yadav and Gopal Sao are the residents of the village Senari. They must have been known to the informant and other witnesses whose version went to



lodging of the FIR, still, these two co-villagers apart from others have not been named in the FIR.

111. Having said so, now I would like to deal with the individual case of each of the convicts (appellants).

Budhan Yadav (Cr.Appeal (DB) No. 30 of 2017)

112. So far as appellant Budhan Yadav is concerned, he has been identified by four witnesses. They are Ram Ratan Sharma (P.W.1), Vishwa Vijay Sharma (P.W.2), Arvind Kumar (P.W.8) and Ran Vijay Sharma (P.W.15).

113. Ram Ratan Sharma (P.W.1) has stated in his deposition that at the time of occurrence he was sitting at the door of Pashupati Sharma. He saw 12-14 miscreants being armed with rifle and gun. He claims to have seen five persons including the appellant Budhan Yadav and claimed that they killed Amresh, Ramdayal Sharma and Tulsi Sharma. He further states that when he came back, he saw the throat of his son Srimohan was slit. He states in his deposition that he saw the accused persons from a distance of 100 yards. He did not run away. He also states that the miscreants were having big torches and he identified them in the light. However, the most significant weakness in his evidence is his own admission made before the court that he had not taken Budhan Yadav's name as



an aggressor in his statement before police. When he admits this material omission, no reliance can be placed on his evidence against Budhan Yadav whom he identified in the dock after eight years of the occurrence. Further, in para 11, he states that Naxals kept him at the door of Judge sahib for half an hour. He states that Thakurbadi was not visible from the place he was sitting. He further states that he came back to his house after half an hour and he did not go to the Thakurbadi. He states that he was sitting at the door of Pashupati Sharma, who has not been examined. As per his deposition, Pashupati Sharma's son Mukesh was also there. It is of salience to note that this Mukesh has been referred to in the FIR as the person who was mourning the death of his brother and uncle and who also told the informant that his double barrel gun was taken away by the Naxals. It is trite law that the FIR can be used only to contradict or corroborate the maker of it. However, if the version of a particular person has gone into the making of the FIR then the omissions of such facts, affecting the probabilities of the case, are relevant on which the veracity of the prosecution case can be tested. In the instant case, the version of Mukesh son of Pashupati Sharma has gone into making of the FIR. He apparently did not supply the name of the appellant to the



informant. This omission is noteworthy as the appellant belongs to village Senari and there cannot be any question mark of his identification. The fardbeyan has been exhibited as Exhibit-4. The defence has rightly relied upon it to say that had the appellant Budhan been present at the house of Pashupati Sharma, the knowledge must have travelled from Mukesh to the informant. This fact coupled with the omission by P.W.1 to state the name of the appellant Budhan Yadav before the police in his statement made under Section 161 of the Cr.P.C would clearly go to show that the appellant was nowhere in the scheme of allegations made initially, but later on he has been transposed as an accused.

114. Another important aspect to be kept in mind in the deposition of P.W.1 is that the appellant Budhan along with four others slit the throat of Amresh, Ramdayal Sharma and Tulsi Sharma. He states that he was at the door of Pashupati Sharma and returned to his house after half an hour. He also clearly states that he did not go to Thakurbadi. A look on the inquest report of Amresh (Exhibit-7/29) and Ram Dayal Sharma (Exhibit- 7/30) would show that their dead bodies were found on the north of village Senari near temple, but the inquest report of Tulsi Sharma (Exhibit-7/28) would show that his dead body



was found south of village Senari on road. Thus, these three persons were surely not killed at one place, but at least at two different places. They were also not killed at the door of Pashupati Sharma whose son Srimohan as per the statement of P.W.1 was killed at Thakurbadi where he admittedly did not go. Thus, the place of occurrence as evidenced by inquest reports and statement of P.W.1 are at three different places and P.W.1 could not have been omnipresent at all these three places to have witnessed the occurrence. Hence, the version of P.W.1 regarding witnessing the killing of four persons and that too by Budhan Yadav whom he had not named before the police is highly doubtful and cannot be relied upon.

115. The next witness, who has taken the name of the appellant Budhan Yadav is Vishwa Vijay Sharma (P.W.2). He claims to identify him and some other convicts. He states in his deposition that at the time of occurrence he was at his house. When he heard the alarm that MCC members had arrived, he escaped to one Kailash Babu's terrace. He saw 25-30 persons from the terrace, who were clad in local outfits and police uniform armed with weapons. He states that the miscreants were carrying huge lights. In those lights, he claims to identify the appellant Budhan Yadav and some other convicts. He further



claims that his son Pintu was caught by the miscreants. When he went to Thakurbadi after departure of miscreants, he saw dead bodies and recognized only Bachesh Yadav amongst the seven accused persons present in the court. However, from the records of the Trial Court, it is not clear which of the accused persons were in attendance on the day his evidence was taken. He states in his cross-examination that when the accused persons came to the village, in the ensuing commotion, everyone made a frantic effort to hide. He went to Kailash Babu's terrace. From the terrace, which had no boundary, he claims to have seen the miscreants whilst seated two feet away from the edge. He also states that there was a distance of about 80-85 feet between him and the aggressors. He states that he remained at the terrace for 3 ½ hours.

116. As already stated, P.W.2 had not pointed out the source of identification in his statement made under Section 161 of the Cr.P.C and had mentioned it in the court for the first time. What becomes important in view of the fact that Budhan Yadav, being a co-villager, his presence at Senari was not unusual. However, P.W.2 does not explain how Budhan shared the common object of the unlawful assembly of which he was alleged to be a part. It is well settled that an essential



requirement of Section 149 of the Indian Penal Code is sharing of the common object of the unlawful assembly. The presence of Budhan Yadav in his own village is perfectly normal, so his identification at the place of occurrence alone would not be sufficient without establishing a nexus between his presence and the common object of the unlawful assembly. The prosecution ought to have been more meticulous in demonstrating how Budhan Yadav had participated in sharing the common object of the unlawful assembly. P.W.2 generally states that the accused persons caught hold of Pintu Kumar and slaughtered, but no specific testimony has been rendered to show that Budhan Yadav shared the common object of the unlawful assembly. It must be borne in mind that Budhan Yadav and others have been convicted under Section 302/149 IPC. So the prosecution, at least in his case, cannot merely rely on vague and general identification without establishing his clear membership of the unlawful assembly along with his participation in the carrying out of common object of the unlawful assembly through cogent and credible evidence. Furthermore, from the evidence of P.W.2, it seems that he was not in a position to see the occurrence or the accused persons. He states that there was distance of 80-85 ft. between him and the accused persons. He disowns his own



statement in para 21 that he stated before the police that he heard four fires and two blasts and the accused persons were carrying big torches. Under the circumstance, in absence of the source of identification, the claim of his identification of Budhan Yadav from a distance of 80-85 ft. seems to be highly improbable.

117. The next witness, who identified the appellant Budhan Yadav is Arvind Kumar (P.W.8). He was examined in the court on 16th June, 2009. He has stated in his deposition that he was at Arjun Singh's doorstep at the time of occurrence. About 30-35 extremists came looking for Ranveer Sena members. At this time one Rajeshwar Singh (not examined) got involved in a scuffle with extremists. He claimed to recognize Budhan Yadav and other convicts. However, he identified only Ganauri Manjhi and no other accused person. What is noteworthy in his deposition is that from the order sheet dated 16th June, 2009 it would appear that the appellant Budhan Yadav was in attendance in court in person. Despite his presence in court, P.W.8 did not identify him. Dock identification, which is generally regarded as substantive evidence, is conspicuous by its absence. This fact alone vitiates the testimony of P.W. 8.

118. The next witness, who has stated the name of the



appellant Budhan Yadav is Ran Vijay Sharma (P.W.15). At the outset, it is to be noted that P.W. 15 in his examination-in-chief admits that of all the persons, whose names he had revealed to the police under Section 161 of the Cr.P.C, none was present in the court. In court, he recognized Budhan Yadav, but it is obvious from his statement made in examination-in-chief that Budhan Yadav was not one of those whose names he had taken before the Police during investigation. This omission to take Budhan Yadav's name under section 161 of the Cr.P.C becomes even more fatal to the testimony of P.W. 15 as Budhan Yadav was a co-villager and he knew him well enough to identify him before the Police. Apart from the omission noted above, another important aspect in his evidence is his position at the time of occurrence. He does not claim to identify anyone from the verandah of Surendra Singh where he saw the miscreants arriving in uniform, rather he fled from the verandah on seeing the miscreants coming and thereafter claimed to identify the aggressors from the house in which he had hidden. He claimed that he concealed himself at a place where the house is located and where no one had access. Admittedly, from hiding he witnessed the occurrence whereas he stated that nobody could reach where he had hidden himself and nobody could have gone



there. On arrival of the police, he came out of the house. He admittedly was hidden in a very difficult position and without source of identification. Under such circumstance, his claim of identification seems to be highly improbable.

Bachesh Kumar Singh (Cr.Appeal (DB) No. 32 of 2017)

119. Appellant Bachesh Kumar Singh has been identified by Vishwa Vijay Sharma (P.W.2), Sanjay Kumar (P.W.5), Bali Ram Sharma (P.W.6-a) and Sri Niwas Sharma (P.W.26).

120. So far as the evidence of P.W.2 is concerned, he has identified the appellant on 21st January, 2008 about 8 years after the incident. I have already discussed the evidence adduced by him hereinabove while dealing with the case of the appellant Budhan Yadav. He has identified Bachesh Kumar Singh amongst seven persons present in the court. As per his own admission, as soon as the accused persons entered the village, without witnessing anything, he went to his room and hid himself at the terrace of Kailash Babu. He claims to have seen the miscreants from a distance of 80-85 ft. between him and the aggressors whilst seated two feet away from the edge. He denies stating before the police that the aggressors were carrying torch light. From the sequence of events narrated by him, it would be



evident that he was in a difficult situation and his pre-dominant motive at the relevant time was to conceal himself so that nobody could view him. Under such circumstance, when the appellant Bachesh Kumar Singh was a totally stranger to the P.W.2, it would not be safe to place implicit reliance on the identification made by him for the first time in court after 8 years.

121. Bali Ram Sharma (P.W.6-a) has identified the appellant in dock on 3rd September, 2008, i.e., after almost nine years. He claims in para 2 of his examination-in-chief that about 20-25 miscreants entered his house, caught hold of his uncle's son and took him away. He identified Bachesh Kumar Singh as one of the miscreants, who had come to his house. In Para 4, he states that the miscreants were carrying torches and that he climbed a tree in order to save himself. In cross-examination, he admits at Paras 5 and 7 that he had not claimed to have identified any of the miscreants in his statement made under Section 161 of the Cr.P.C. He further clarified that he had told the Police that 20-30 persons had entered his house, but he could not say who had entered as he did not know any one's name.

122. Bali Ram Sharma's identification of Bachesh



Kumar Singh becomes unreliable in view of the blatant contradiction between his statements in court and before the Police. He has accepted in his cross examination that in his statement under Section 161 Cr.P.C, he had not claimed to identify any of the miscreants. This discrepancy in his statement under section 161 Cr.P.C and before the court makes his testimony doubtful.

123. Sri Niwas Sharma (P.W.26) claimed to identify the appellant Bachesh Kumar Singh. He states in his examination-in-chief in Paras 1 and 3 that he was at his house when around 7:30 P.M. he heard an announcement being made that members of Ranveer Sena were being sought. In Para 4, he states that he took refuge in the field near his house amidst the chaff. He further claims in para 4 that he identified Bachesh and others when they were taking one Sanjeev towards Thakurbadi through the field in which he was hiding at around 10:00 P.M. In his cross-examination, he admits in para 16 that he had concealed himself so completely that he could not be seen by anyone and remained so hidden for 3 hours. In para 18, he states that when all the miscreants left, he came out of hiding. In para 24, he admits that the accused Bachesh was known to him from before. No overt act has been attributed by him to the appellant.



124. It is surprising that if the appellant Bachesh Kumar Singh was known to P.W.26 from before, as to why his name was not disclosed to the informant or the police officer at the time of recording of fardbeyan as the incident occurred between 7:30 P.M. to 11:30 P.M. and the police recorded the fardbeyan at 2:30 A.M. Hence, there was sufficient time to divulge his name to the informant. Further, even if it is believed that the appellant Bachesh Kumar Singh was familiar to P.W.26, it is not his case that he identified him through his voice or gait or clothes etc. Any source of identification is also missing from his testimony, which could have added weight to his identification at 10 P.M. when the night was pitch dark. It is further compounded by the position through which he testified at the time of identification i.e. amidst loads of chaff, well hidden from public view. Both the absence of source of identification at a time of darkness coupled with his position in the hay and chaff, make his claim of identification doubtful.

125. It is pertinent to note here that in para 10 at page 14 and in para 37 at page 48 of the impugned judgment, the Trial Court has recorded that Sanjay Kumar (P.W.5) stated that he identified the appellant Bachesh Kumar Singh in the light of torch along with others amongst the miscreants. On a careful



perusal of the evidence of P.W.5, I find that he claimed to identify Bigan Kahar, Sukhu Yadav, Bichesh Yadav, Prahlad, Ramesh, Dukhan Manjhi and Dukhan Kahar amongst the miscreants at the time of occurrence. He did not name the appellant amongst the miscreants he claimed to identify. Inclusion of his name amongst the miscreants in the aforesaid paragraphs by the Trial Court is contrary to the evidence on record.

Kariman Paswan (Cr.Appeal (DB) No. 1271 of 2016

126. So far as the appellant Kariman Paswan is concerned, he has been identified by Ran Vijay Sharma (P.W.15), Chinta Devi (P.W.16), Manorma Kuwar (P.W.18) and Arvind Kumar (P.W.8).

127. I have already discussed the testimony of P.W.15 hereinabove while dealing with the case of Budhan Yadav. P.W.15 has identified Kariman Paswan in the court. He stated in para 1 that on noticing the arrival of miscreants from the verandah of Surendra Singh, he fled and hid himself. It is from his hiding place that he claimed to see Kariman and others taking Awadhesh (deceased). In his cross examination, he clarified the place where he had concealed himself i.e. in a house where no one else could come. He came out of this house



after the arrival of the Police. No details have been given by the prosecution as to where the house was located, its distance from Awadhes's house and whether the house could be seen from where he was hiding. It is reiterated that P.W.15 has clearly stated in his deposition that the persons whom he named before the police were not present and after so saying he identified Uma Paswan, Budhan Yadav and Kariman Paswan in court. Thus, apparently, in his substantive evidence before the court, he has clearly stated that Kariman Paswan was not amongst the persons whom he had named before the police. It is also relevant to note here that the appellant Kariman Paswan is not the resident of village Senari. The sequence of events narrated by P.W.15 has been discussed in detail while dealing with the case of the appellant Budhan Yadav. He was admittedly hidden in a very difficult position and that too without source of identification. Under such circumstance, no implicit reliance can be placed on the identification made by him for the first time in court after 11 years of the occurrence.

128. Chinta Devi (P.W.16) identified Kariman Paswan in court. She states in her deposition that she had seen Kariman in village Senari with one Radhey Shyam before the incident. She does not identify Kariman Paswan as being part of the



occurrence. She does not specify the time elapsed between his presence in the village and the incident. She does not whisper a word in her evidence against Kariman relating to any sort of overt act. There is nothing on record to suggest that visit of Kariman had any nexus with the actual carnage. Thus, the evidence of P.W.16 is of no help to the prosecution.

129. So far as Manorma Kuwar (P.W.18) is concerned, she states that she was at her house at the time of occurrence. Her son was caught and taken to Thakurbadi. She identified Bodha Bhuiyan, Kariman Paswan, Raj Nath Kahar @ Naresh, Radhey Shyam, Prahlad Goverdhan, Ramesh and Amrendra on seeing them in court. In her cross-examination, she states that the police had arrived at 11:00 P.M. in the night and enquired about the incident. She further states that she did not name of the persons whom she identified in the court before the police. She also states that those whose name she had mentioned before the police are not present in court. Thus, from the evidence of P.W.18 it transpires that she had not named Kariman before the police. She identified him along with others on seeing him in the court. However, she has not uttered anything specific against him. She has also not mentioned any source of identification in her deposition. Such identification made by P.W.18 in the court



after 11 years of the occurrence cannot be relied upon for upholding the conviction.

130. The next witness, who identified Kariman Paswan, is Arvind Kumar (P.W.8). In his deposition, he claimed that he recognized Kariman and others in the group of miscreants. However, he was unable to identify Kariman in the dock despite the fact that he was in attendance and present in court on 16th June, 2009, the date on which P.W.8 testified, as would be evident from the order sheet dated 16th June, 2009. Hence, no reliance can be placed on the evidence of P.W.8.

Gopal Sao (Cr.Appeal (DB) No. 30 of 2017)

131. The appellant Goal Sao has been identified by Ram Ratan Sharma (P.W.1), Vishwa Vijay Sharma (P.W.2) and Ran Vijay Sharma (P.W.15).

132. So far as Ram Ratan Sharma (P.W.1) is concerned, while dealing with the case of the appellant Budhan Yadav, I have already discussed his testimony in detail and have found the version of P.W.1 regarding witnessing the killing of four persons and that too by the persons whom he had not named before the police highly doubtful. However, it would be apposite to analyze his testimony with regard to its reliability against the appellant Gopal Sao and others killing Amresh, Ramdayal and



Tulsi. It is the prosecution case that all the killings took place at Thakurbadi. In para 11 of his testimony, he accepted that Thakurbadi was not visible from the place where he was seated and further in para 13, he states that he did not go to Thakurbadi. It is his specific case that while he was at Padam Narayan Singh's house he saw Gopal Sao and some others killing the persons named above. The killings he accepts took place near Thakurbadi. Thus, his basis of identification of the Gopal Sao collapses when admittedly he was not so placed that Thakurbadi could be visually accessible to him. Moreover, inquest report of Tulsi Sharma would show that his body was found at south of village Senari on road and inquest reports of Amresh Kumar and Ramdayal Sharma would show that their bodies were found at north of village Senari near temple. Thus, these three persons were surely not killed at one place, but at least at two different places. They were also not killed at the door of Pashupati Sharma. His son Srimohan was killed at Thakurbadi where admittedly he did not go. Thus, the place of occurrence as would appear from the inquest reports are at three different places and P.W.1 would not have been omnipresent at all these three places. The aforesaid facts make it clear that P.W.1 was not in a position to identify the miscreants whom he



claims to recognize in the act of killing.

133. So far as Vishwa Vijay Sharma (P.W.2) is concerned, he identified the appellant Gopal Sao along with Budhan Yadav in court almost nine years after the occurrence. The appellant Gopal Sao is his co-villager. I have already discussed the reliability and credibility of his evidence while dealing with the case of the appellant Budhan Yadav. While dealing with the sequence of events, I have already held that P.W.2 was not in a position to witness the occurrence and, thus, no reliance can be placed on the identification made by him so far as Gopal Sao is concerned, who is also a resident of Senari village. He could have been easily identified, but initially he has not been named. Moreover, his presence outside his house in the village at the time of occurrence cannot be treated as doubtful and the same may not make him a member of unlawful assembly sharing common object.

134. So far as Ran Vijay Sharma (P.W.15) is concerned, he has stated the name of Gopal Sao as one of the miscreants who took Awadhesh. However, he recognized only Uma Paswan, Budhan Yadav and Kariman Paswan and no other accused person in dock. So, there was no dock identification of Gopal Sao by P.W.15. Apart from the above, while dealing with the



case of appellant Budhan Yadav, I have already discussed the testimony of P.W.15 and held that his claim of identification seems to be highly improbable. Considering his failure to identify Gopal Sao in court as also other attending circumstances discussed hereinabove, I am constrained not to place implicit reliance on his testimony.

Uma Paswan (Cr.Appeal (DB) No. 1271 of 2016)

135. So far as the appellant Uma Paswan is concerned, he has been named by Suresh Sharma (P.W.4) in his deposition and identified by Bali Ram Sharma (P.W.6-a) and Ran Vijay Sharma (P.W.15).

136. The testimony of Suresh Sharma (P.W.4) needs to be analyzed with that of Arjun Singh (P.W.3) as P.W.4 has referred his presence at the time his hands were tied by the miscreants. As per P.W.4, he identified Uma Paswan when he and others tied his hands. Thereafter, he managed to escape and did not claim to identify anyone. Thus, the only time when he was in a position to identify the accused persons, P.W.3 was also with him. P.W.4 states in his testimony that at the time of occurrence he was with his brother Arjun Singh (P.W.3) and others (not examined) at his door step. At that time party members came to his house carrying torch light. They were



looking for the members of Ranveer Sena. He further states that the miscreants tied his hands and those of Sachidanand Sharma, Naresh and Kavindra (deceased). He also states that Rajeshwar Sharma (P.W 7) got involved in a scuffle with the miscreants and during this time he managed to escape to Mahesh Sharma's house (not examined). In para 4, he claims to identify Lalan Pasi as one of those aggressors, who had tied his hands. He claims that his son Ranjay Sharma was killed and Ajay Sharma (P.W. 25) was injured. In his cross examination, he states that when he was caught by the miscreants, his brother Arjun Singh (P.W. 3) was present. He also states that the night of occurrence was dark. However, P.W 3 does not corroborate that P.W. 4 was caught by the aggressors or that his hands were tied by them although P.W. 3 does make a mention of what happened to Kavindra (deceased) and Vimlesh. P.W. 25 also does not refer to the presence of P.W. 4 at his house. Further, no source of identification has been disclosed on a dark night. Furthermore, P.W.4 has not identified Uma Paswan in court despite the fact that he was in attendance on the date of his deposition. Hence, the uncorroborated testimony of P.W.4 can not be made basis for arriving at a conclusion of guilt.

137. Bali Ram Sharma (P.W.6-a) has identified Uma



Paswan after nine years in dock. In his cross-examination, he admits at paras 5 and 7 that he had not claimed to identify any of the miscreants in his statement under Section 161 Cr.P.C. He further clarified that he told the Police that 20-30 persons had entered his house, but he could not say who had entered. Under such circumstance, identification of Uma Paswan after nine years of the occurrence becomes unreliable in view of blatant contradiction between his statement in court and before the Police. This discrepancy in his statement under Section 161 Cr.P.C and before the court makes his testimony doubtful.

138. So far as Ran Vijay Sharma (P.W.15) is concerned, his testimony has been discussed above. He does not say that there was any light to facilitate identification. The identification of Uma Paswan made by him in court after almost 11 years of the occurrence in absence of any light to facilitate identification gives rise to chance of wrong identification. Moreover, I have already discussed that his evidence is highly discrepant and does not inspire confidence. In any case, even if the testimony of P.W.15 is believed to be true, it will remain uncorroborated testimony of a single witness, as the evidence given by P.W.4 and P.W. 6-a, in view of the reasons pointed out above, is not reliable and fulfilling of the criterion of beyond reasonable



doubt.

Satyendra Das (Cr.Appeal (DB) No. 1271 of 2016)

139. The appellant Satyendra Das was identified by Bali Ram Sharma (P.W.6-a) and Dinesh Sharma (P.W.14).

140. So far as Dinesh Sharma (P.W.14) is concerned, he has stated that he had hidden himself under the sack which was covered on top with a thick blanket by his neighbour. In the meanwhile, 15-20 miscreants came, amongst whom he identified appellant Satendra Das and others, who were carrying torch lights. In court, he identified only Gorai Paswan. In his cross examination, he stated the night was dark and he further repeated that at the time the aggressors came to his house, he was hidden under the cover of blanket. With regard to the veracity of his testimony, it can only be said that given his position under layers of thick sack on top of which a thick blanket was also placed, any chance of identification ranged from minimal to non-existent.

141. The evidence of Bali Ram Sharma (P.W.6-a) has been discussed above. He has identified the appellant on 3rd September, 2009 after nine years of the occurrence. He stated that in order to save himself, he climbed a tree. He identified appellant Satyendra Das, as one of 20-25 persons, who had



come to his house. However, no reliability upon his identification can be placed as in his cross examination he admitted that he had not claimed to identify any of the miscreants in his statement under Section 161 Cr.P.C. Further, he clearly states that he could not identify any of the miscreants, who had entered his house.

Lalan Pasi (Cr.Appeal (DB) No. 1271 of 2016)

142. The convict Lalan Pasi was identified by Suresh Sharma (P.W.4) and Ajay Kumar (P.W.25).

143. So far as Suresh Sharma (P.W.4) is concerned, I have already discussed his evidence while dealing with the case of the appellant Uma Paswan and held that the evidence given by P.W.4 remains uncorroborated by other witnesses mentioned in his testimony. He identified Lalan Pasi almost 9 years after the occurrence. He claims that it was a dark night. However, he did not mention any source of identification in his deposition. His deposition has not been corroborated either by P.W.3 or by P.W.25. The evidence given by him has also not been corroborated by P.W.7 even though he has referred to the presence of P.W.7 at the time he claims to identify Lalan Pasi.

144. So far as Ajay Kumar (P.W.25) is concerned, he has identified Lalan Pasi after 16 years of the occurrence. He has



not stated that there was any illumination. The dock identification after so many years cannot be placed reliance for arriving at the conclusion of guilt. True it is that P.W.25 is an injured witness, but he has admitted in cross-examination at para 27 that he was examined by the police 5-6 months after the occurrence. He also admitted that at Thakurbadi he pretended to be unconscious and kept his eyes shut as long as the miscreants were there. He identified the appellant but did not specifically state, who had taken him from his house and assaulted. Since he has stated that at Thakurbadi he claimed to become unconscious and kept his eyes closed as long as the miscreants were present to convince them that he was not conscious and thereby to escape a fatal assault, any identification at Thakurbadi by P.W.25 becomes difficult. Despite being victim of occurrence, he has given a general statement without attributing any action to the accused persons identified by him. While his testimony does corroborate the basic prosecution story, which in any case was not doubtful, the evidence with regard to identification becomes doubtful.

145. The remaining six convicts, namely, Mungeshwar Yadav, Butai Yadav, Dwarik Paswan, Gorai Paswan, Vinay Paswan and Arvind Paswan have been identified by only one



witness.

Vinay Paswan and Arvind Paswan
(Cr.Appeal (DB) No. 184 of 2017)

146. The next set of convicts are Vinay Paswan and Arvind Paswan. As seen above, the convicts Arvind Paswan and Vinay Paswan have been named by Ajay Kumar (P.W.25) only, who is an injured witness, in dock on 30th October, 2015, i.e., after sixteen years of the incident. He suffered injury on his leg, which is simple, and in his stomach, which is grievous. He has not stated that the miscreants were carrying torches. As noticed above, the sequence of events as detailed by him is not supported by P.Ws. 3, 4 and 7. He has baldly taken the names of the accused persons without clarifying whether they were involved in taking him to Thakurbadi or assaulting him. He admitted in his deposition that his statement was recorded by the police after 5-6 months. Such delay in examination by the Police may not cast doubts about the basic prosecution story of the massacre, which in any case is admitted, but surely it makes the point of his identification vulnerable to doubts regarding its credibility. Furthermore, the appellants Vinay Paswan and Arvind Paswan belong to a different village and P.W.25 has nowhere stated as to how he came to know them.



Dwarik Paswan and Gorai Paswan
(Cr.Appeal (DB) No. 1271 of 2016)

147. These two convicts have been identified by Dinesh Sharma (P.W.14). I have discussed the testimony of P.W.14 hereinabove. As noticed, before the miscreants came to the terrace where he was hiding, he covered himself with sacks. Moreover, a neighbor had placed covering over the sack. His assertion that he identified the accused persons in such a position cannot be believed, especially as he had admitted that he had hidden himself to save his life. The story of identification narrated by him is unconvincing.

Butai Yadav (Cr.Appeal (DB) No.62 of 2017)

148. So far as the convict Butai Yadav is concerned, he has been identified by Suresh Sharma (P.W.4). The credibility of his testimony has already been discussed hereinabove. He claimed that his hands were tied by Butai Yadav and others, but his testimony has not been corroborated by P.W.3 or P.W.7, who were said to have been present with him at the time he was caught by the miscreants. He admits that he ran away from the place. Therefore, he also had no opportunity to identify Butai Yadav.

Mungeshwar Yadav

149. So far as the convict Mungeshwar Yadav is



concerned, Arvind Kumar (PW-8) has named him in his deposition. However, he did not identify him in court despite his physical presence as is evident from the order sheet dated 16th June,2009. He does not say that there was any illumination at the time of the incident. Moreover, he says that he ran away within two minutes of the miscreants coming. As there were many miscreants and there was darkness, it would be unsafe to rely upon such identification, especially when he failed to recognize the convict in court.

150. The convict Mungeshwar Yadav has been identified by Arvind Kumar (P.W.8), Butai Yadav has been identified by Suresh Sharma (P.W.4), Dwarik Paswan and Gorai Paswan have been identified by Dinesh Sharma (P.W.14) and Vinay Paswan and Arvind Paswan have been identified by Ajay Kumar (P.W.25). Their case has to be considered within the parameters laid down by the Constitution Bench of the Supreme Court in *Masalti Vs. State of U.P.* (Supra), which has consistently been followed by the Supreme Court in *Binay Kumar Singh Vs. State of Bihar* (Supra), *Chandra Shekhar Bind Vs. State of Bihar* (Supra) and more recently in *Duleshwar Vs. State of M.P.* (Supra). As noticed, the Supreme Court has consistently taken the view that even though the quality of evidence is



paramount, when the size of the assembly is quite large and many persons have witnessed the incident, it would be useful to adopt the test of consistency of more than one witness so as to remove any doubt about the identity of the accused persons as a member of the assembly. The Supreme Court also emphasized the utility of this test when the deposition of the witnesses is general rather than more precise or detailed. I find that in case of each of the convicts identified by a single witness, the deposition of the witnesses identifying them is in general terms. Even P.W. 25, an injured witness, has baldly taken the names of the accused persons without clarifying whether they were involved in taking him to Thakurbadi or assaulting him. An important fact with regard to P.W. 25 is his delayed examination by the Police. Such delay in examination by the police may not cast doubts about the basic prosecution story of the massacre, which in any case is admitted, but surely makes the point of his identification vulnerable.

151. Thus, the deposition with regard to these appellants, who have been identified by a single witness after more than nine years, apart from being isolated, lacks consistency and precision laid down by the Supreme Court in *Krishna Mochi* (Supra) and other decisions, which could make



the testimony of a single witness sufficient for convicting the accused persons in a case where size of assembly was quite large and many persons had witnessed the incident.

152. Having analyzed the testimony of the witnesses examined before the court in respect of each of the convicts, there remains no doubt that the time of occurrence was dark, the site of unfortunate massacre was beset with mayhem with villagers making desperate attempts to seek refuge in a place and position in which they would remain unseen by the miscreants lest they fell prey to their barbarism. In such a state of complete chaos, witnesses hiding in different corners of the village have claimed to identify one or more accused persons without any indication as to the source of light save the torches being carried by the miscreants. Moreover, the witnesses have claimed that the miscreants were more or less identically clad, some in police uniforms, some others in the local outfits. Also, almost all the P.Ws, who claimed identification, had done so at the time of occurrence from a distance i.e., they claimed to identify the miscreants from their respective hiding places. Only Suresh Sharma (P.W.4) claimed to identify when his hands were tied but on other counts his evidence does not inspire confidence, Ajay Kumar (P.W.25), an injured witness identified



them without specifying where and how and Manorama Kuwar (P.W.8) claimed to identify when her son was taken. Their evidence on other counts have been found doubtful. Even if the miscreants were known to some of the witnesses, they have been identified by witnesses, who did not claim to be in proximity with the miscreants as they were more concerned about concealing themselves in safe places. It is nobody's case that the miscreants were identified through voice or clothes or any other mark of familiarity. In such a situation, characterized by darkness and physical distance, the question naturally arises as to how could any kind of identification of faces of the miscreants be made. The seizure lists do not indicate the seizure of any artificial sources of light which could have aided the identification on a dark night.

153. Furthermore, the miscreants have been identified in the dock for the first time more than seven years and extended up to about 16 years after the occurrence. The circumstances in which the identifications were made, as discussed above, make such identification rather weak without any corroboration. The dock identification was based on recollection of the events, which took place long back.

154. Admittedly, there was no TIP. The Supreme Court



has consistently held in *Dana Yadav@ Dahu* (Supra); *Sheo Shankar Singh vs State of Jharkhand* (Supra); *Mulla & Another vs State of U.P.*(Supra); *Sukhbir Singh vs State of Punjab* (Supra); *State of Maharastra vs Sukhdeo Singh* (Supra); *Vaikuntam Chandrappa and Ors. vs State of Andhra Pradesh* (Supra) and *George & Ors. vs State of Kerala* (Supra) that the evidence of identification of the accused persons at the trial for the first time is from its very nature, inherently of a weak character. It has considered a safe rule of prudence to generally look for corroboration of the testimony of witnesses in court as to the identity of the accused who are strangers to them in the form of earlier TIP. It has further held that generally identification for the first time in dock is insufficient to warrant a conviction.

155. Another important feature of this case is the manner in which the appellants were deprived of their statutory right to be heard, as provided under Section 313 of the Cr.P.C., which reads as under:-

“313. Power to examine the accused.

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;



(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons- case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub- section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The court may take help of Prosecutor and defence Counsel in preparing relevant questions which are to be put to the accused and the court may permit filing of written statement by the accused as sufficient compliance of this section.”

156. A plain reading of Section 313 of the Cr.P.C would demonstrate that the question under Clause (1) (a) is discretionary. It empowers the court to put such question to the accused as the court considers necessary for the purpose of enabling him personally to explain any circumstance appearing in evidence against him at any stage without previously warranting. However, Clause (1)(b) empowers the court to question the accused on the case after the witnesses or the prosecution has been examined and before is called upon for his defence. It casts a duty on the court to give an opportunity to the accused to explain the incriminating material against him.



157. In *State of U.P. Vs. Md. Iqram & Anr.* Since reported in *AIR 2011 SC 2296*, the Supreme Court held:

“...The attention of the accused must specifically be brought to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so.

Therefore, the court is under a legal obligation to put the incriminating circumstances before the accused and solicit his response. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused to have an opportunity to offer an explanation for such incriminatory material appearing against him. Circumstances which were not put to the accused in his examination under Section 313 Cr.P.C. cannot be used against him and have to be excluded from consideration.”

158. In *Nawal Kishore Vs. State of Bihar*, since reported in *(2004) 7 SCC 502*, the Supreme Court observed:

“Under Section 313 Cr.P.C. the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of question and he should have been given opportunity to give his explanation. No such opportunity was given to the



accused in the instant case. We deprecate the practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation. The trial judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in slipshod manner, it may result in imperfect appreciation of evidence.”

159. In ***Dara Singh And Anr. vs The State of Punjab*** since reported in ***AIR 1952 P H 214***, the Supreme Court held “... *it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear*



against him. The questioning must, therefore, be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is, therefore, in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.”

160. In ***Reena Hazarika Vs. State of Assam***, since reported in ***AIR 2018 SC 5361***, the Supreme Court held:

“Section 313, Cr.P.C. cannot be seen simply as a part of audi alteram partem. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2), Cr.P.C. The importance of this right has been considered time and again by this court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow. If the accused takes a defence after the prosecution evidence is closed,



under Section 313(1)(b) Cr.P.C. the Court is duty bound under Section 313(4) Cr.P.C. to consider the same. The mere use of the word 'may' cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available is an entirely different matter. If there has been no consideration at all of the defence taken under Section 313 Cr.P.C. in the given facts of a case, the conviction may well stand vitiated."

161. The membership of an unlawful assembly, allegation under the Arms Act, Explosive Substances Act and killing of 34 persons by the unlawful assembly were the charges on which the appellants were tried. The evidence against the appellants is the material on which the Trial Court has relied upon to convict them.

162. The examination of the accused persons under Section 313 of the Cr.P.C when compared with the charges framed will illustrate the utility of the examination in this case. The accused persons have been subjected to seven standard and identical questions even though the witnesses against them are



disparate. While some of the accused persons have been identified by some witnesses, the others have been identified by a single witness. No question has been put to them regarding identification by different persons and the places in the village in which they were claimed to be identified. For instance, the evidence against Butai Yadav, Uma Paswan and Lalan Pasi is that they tied the hands of Suresh Sharma. However, they have not been confronted with these evidences. Instead of seeking their explanation with regard to the incriminating material, the accused persons have been asked to explain the charges for which they were being tried. This sort of examination goes against the essence of Section 313 of the Cr.P.C. Thus, in view of the ratio laid down by the Supreme Court in *State of U.P. Vs. Md. Iqram & Anr* (Supra), *Nawal Kishore Vs. State of Bihar* (Supra), *Dara Singh And Anr. vs The State of Punjab* (Supra) and *Reena Hazarika Vs. State of Assam* (Supra), the material not put to the accused cannot be taken into consideration for convicting them.

163. Thus, the identification of the accused persons by the witnesses in the court cannot be relied upon to convict them.

164. Moreover, the conviction in a criminal trial is required to be certain and not doubtful. The burden of proof of



guilt of an accused is upon the prosecution. It must stand by itself. In the present case, on appreciation of evidence adduced during trial, I find that there is a real and reasonable doubt as to the guilt of the appellants.

165. Accordingly, the impugned judgment dated 15th November, 2016 and order of sentence dated 27th October, 2016 passed in Sessions Trial No.93/2013/281/2015, arising out of Karpi P.S.Case No.22/1999, so far as the appellants in these appeals are concerned are, hereby, set aside. The appellants Bachesh Kumar Singh (Cr.Appeal (DB) No. 32 of 2017), Budhan Yadav and Gopal Sao (Cr. Appeal (DB) No. 30 of 2017), Butai Yadav (Cr.Appeal (DB) No. 62 of 2017), Satendra Das, Lalan Pasi, Dwarik Paswan, Kariman Paswan, Gorai Paswan and Uma Paswan (Cr.Appeal (DB) No. 1271 of 2016), Mungeshwar Yadav (Cr.Appeal (DB) No. 96 of 2017), Vinay Paswan and Arvind Paswan (Cr.Appeal (DB) No. 184 of 2017) are directed to be released forthwith, if they are not required in any other case.

166. These appeals stand allowed.

167. The reference made by the trial court under Section 366 of the Cr.P.C is rejected.

168. The Patna High Court, Legal Services Committee



is, hereby, directed to pay Rs. 10,000/- to Ms. Surya Nilambari,
learned *amicus curiae* in Death Reference Case No. 2 of 2017 as
a consolidated fee for the services rendered by her.

(Ashwani Kumar Singh,J.)

Arvind Srivastava,J: I agree.

(Arvind Srivastava, J)

Pradeep/-

AFR/NAFR	AFR
CAV DATE	15.04.2021
Uploading Date	21.05.2021
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