

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1108 of 2018**

Arising Out of PS. Case No.-442 Year-2014 Thana- SASARAM NAGAR District- Rohtas

Harendra Singh, S/o Shivmuni Singh, resident of village-Karawar, P.S.-
Kargahar, District-Rohtas.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1088 of 2018

Arising Out of PS. Case No.-442 Year-2014 Thana- SASARAM NAGAR District- Rohtas

Ramesh Singh, S/o Aditya Singh, Present Address Village-Badhaiya Bag
Bhawanipur, P.S. - Sasaram (Model), District Rohtas, permanent resident of
Village - Sahwalia, P.S. - Kochas, District - Rohtas.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 1108 of 2018)

For the Appellant/s : Mr. B.N. Mishra, Advocate
Mr. Manoj Kumar Singh, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 1088 of 2018)

For the Appellant/s : Mr. Krishna Prasad Singh, Senior Advocate
Mr. Bhaskar Shankar, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

and

HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)

Date :10-04-2026

Since both the aforesaid appeals arising out of same
P.S. case and common judgment, they are being disposed of
by this common judgment.



2. The present appeals have been filed by both aforesaid appellants-convict under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') challenging the impugned judgment of conviction dated 03.08.2018 and order of sentence dated 07.08.2018 respectively passed by learned Presiding Officer, Fast Track Court-II, Sasaram, Rohtas in S. Tr. No.88 of 2015 arising out of Sasaram (Town) P.S. Case No. 442 of 2014, whereby and whereunder the learned Trial Court has convicted both appellants for the offences punishable under Sections 302 read with 34 and 120-B of the Indian Penal Code (hereinafter referred to as 'I.P.C.'). They have been sentenced to undergo rigorous imprisonment for life under Section 302 read with 34 of the I.P.C. and further sentenced to undergo rigorous imprisonment for life under Section 120-B of the IPC. However, all the sentences have been ordered to run concurrently.

3. The brief case of prosecution as appears through "*fardebayan*" of the informant, namely, Chandrawati Devi (PW-3) that on 24.05.2014, while she was sleeping on



the roof of her house along with her husband Mundrika Singh (deceased) and daughters namely, Khusbu (PW-1) and Neha (PW-2), Divya (not examined) and Chhoti (not examined), woke up upon receiving the sound of screaming and saw that appellant/accused namely, Harendra Singh (Cr. Appeal (DB) No.1108 of 2018), appellant/accused Ramesh Singh (in Cr. Appeal (DB) No.1088 of 2018), Dhiraj Kumar @ Aman Kumar have caught her husband and upon order of Ramesh Singh, the appellant/accused Harendra Singh fired with *katta* (country-made pistol) on head of her husband. Thereafter, all three accused persons dragged informant's husband down to the ground through stairs. Till then, the deceased-husband was said alive. Whereafter, the co-accused Aditya Singh told that still informant's husband is alive, whereafter the appellant-accused Ramesh Singh took *katta* (country-made pistol) from the hand of appellant Harendra Singh and fired upon deceased leading his death on spot itself. After the occurrence, several villagers gathered over there. The informant's along with their daughters came down from the roof and found the door of



the house opened. The ornaments and two mobile phones, which were kept in box in the house found missing. The reason for the occurrence was stated land dispute.

4. On the basis of aforesaid '*fardbeyan*', Sasaram (T) P.S. Case No.442 of 2024 was lodged for the offences punishable under Sections 302, 379, 120-B of the I.P.C. and Section 27 of the Arms Act on 25.05.2014 at about 9.00 A.M.

5. After completion of investigation, the police submitted charge-sheet for the offences punishable under Sections 302, 379, 120-B of the I.P.C. and Section 27 of the Arms Act on 30.09.2014 against appellants/accused before the learned Jurisdictional Magistrate.

6. Upon perusal of materials available on record, the learned jurisdictional Magistrate took cognizance of the offences punishable under Sections 302, 379, 120-B of the I.P.C. and Section 27 of the Arms Act against both the appellants and after compliance of Section 207 of the Code, committed the case of both appellants in view of Section 309 of the Code to the Court of Sessions on 03.01.2015 for



its trial and disposal.

7. Upon perusal of materials available on record, the learned Sessions Court framed charges against appellants-accused on 12.08.2015 for the offences punishable under Sections 302, 379, 120-B of the I.P.C. and Section 27 of the Arms Act, which were duly explained to them in their vernacular language, which was denied by the accused-appellants and they claimed to face trial.

8. To substantiate its case before learned trial court, the prosecution has, in total, examined six witnesses, which are:- **PW-1 Khusboo Kumari**, **PW-2 Neha Kumari** (both married daughters of the deceased), **PW-3 Chandrawati Kumari** (wife of deceased/informant), **PW-4 Rajendra Singh** (Neighbour and independent witness), **PW-5 Md. Jubair Alam** (Investigating Officer of the case) and **PW-6 Dr. Bhagwan Singh** (Civil Assistant Surgeon of Sadar Hospital, Sasaram), who conducted autopsy upon the deceased.

9. The prosecution has also relied upon the following documents as to substantiate its case, which are as



under:-

Sl. No.	Exhibit Nos.	List of the documents
1.	Exhibit-1	Signature of Chandravati Kunwar on <i>Fardbeyan</i> .
2.	Exhibit-1/1	Signature of informant Chandravati Kunwar on complaint petition dated 09.06.2014.
3.	Exhibit-1/2	<i>Fardbeyan</i> .
4.	Exhibit-1/3	Forwarding on <i>Fardbeyan</i> .
5.	Exhibit-2	Postmortem report of the deceased.

10. After the completion of prosecution evidences, the accused-appellants were examined under Section 313 of the Code by putting all incriminating evidences surfaced during the trial, to which, they denied and shown their complete innocence.

11. In defence, the accused-appellants have examined altogether three witnesses. They are:-**DW-1**, Binod Kumar, **DW-2**, Prem Chandra Sharma and **DW-3**, Santosh Pandey.

**Argument on behalf of accused-appellant
Harendra Singh (in Criminal Appeal
No.1108 of 2018)**

12. Mr. B.N. Mishra, learned counsel appearing for appellant-accused Harendra Singh submitted that the



learned trial court while recording the judgment of conviction *qua* appellant failed to appreciate the evidence in its true spirit of law. In support of his submission, it is pointed out that the doctor (PW-6) conducted autopsy upon deceased categorically stated during trial that only one gunshot injury was found upon person of the deceased, which negates the version of prosecution witness including the informant that two gun-shot injuries were caused to the deceased. It is submitted that the second injury of right occipital region is the exit wound of first entry wound caused by firearms on left temporal region. It is submitted that false implication in the background of admitted land dispute between the parties were totally ignored by the learned trial court. It is further submitted that the version of dragging of deceased from roof to the ground, crossing stairs also appears not convincing in terms of the deposition of PW-6, the doctor, as no abrasion or fracture, etc. found upon the body of the deceased.

13. Learned counsel further submitted that the aforesaid medical evidence creates a serious doubt to the



fact as to whether informant is the eye-witness of the occurrence. It is submitted that PW-1 and PW-2 are the married daughters of the deceased and PW-3 is the wife, who are the interested witnesses and, therefore, their testimonies were required to be scrutinized with great care, which was not done by the learned trial court.

14. It is further submitted by learned counsel that the appellant-accused is not the resident of same village and has no concern with land dispute. The learned trial court has completely ignored the version of defence witnesses, who categorically deposed during trial that at the time of occurrence, the appellant-accused was in a marriage ceremony and, therefore, the plea of "*alibi*" was also not believed by the learned trial court, without supplying any reason, making the judgment of conviction not sustainable under the eyes of law.

15. Travelling over the argument, it is further submitted by learned counsel that I.O. (PW-5) upon inspection of place of occurrence, found only one bed on roof, which further creates a doubt that the deceased with



his wife and four daughters were sleeping on same single bed. It is further submitted that neither any blood-stained bed/clothes was seized by I.O. nor any blood-stains were found on spot. It is submitted that admittedly PW-4 is not the eye-witness of the occurrence and moreover PW-1 and PW-2 deposed during the trial that they woke up after hearing the sound of firing also creates a doubt that they are the eye-witness of the actual occurrence of firing as alleged to be made by appellant/accused.

16. Beside aforesaid, it is submitted that statement of appellant-accused under Section 313 of the Code was recorded in a very cryptic and mechanical manner without putting all incriminating evidences to him, as surfaced during the trial and, therefore, on this score alone, the judgment of conviction as recorded by the learned trial court is liable to be set aside/quashed.

17. In support of his submission, arguing for defence of *alibi*, learned counsel has relied upon the legal report of Hon'ble Supreme Court as available through **Ashok Verma vs. State of Chattisgarh [2024 SCC**



Online SC 3804] and lastly in support of contradiction in testimonies, which were not taken into consideration by the learned trial court as surfaced during trial, learned counsel for the appellant relied upon legal report of Hon'ble Supreme Court as available through **Kanhaiya vs. State of Madhya Pradesh [2025 INSC 1246]**.

**Argument on behalf of accused-appellant
Ramesh Singh (in Criminal Appeal No.1088
of 2018)**

18. Besides aforesaid grounds as taken for accused-appellant Harendra Singh (in Cr.Appel (DB) No.1108 of 2018) in addition, it is urged by Mr. Krishna Prasad Singh, learned senior counsel appearing for appellant-accused Ramesh Singh that the occurrence took place during theft or dacoity, as it may gather safely from face of *fardebayan* but, as an afterthought, the informant being the wife of deceased implicated this appellant, who is the step brother of the deceased. It is submitted that allegation of subsequent and second firing is available against this appellant, which was alleged to be caused at ground floor. It is submitted that the prosecution witnesses, who claimed to be the eye-witnesses of the occurrence



specifically stated against this appellant to cause firearm injury on the neck of deceased but, upon postmortem report and as per testimony of PW-6, who conducted the autopsy, no such injury was noticed upon, making the allegation falsified on its face.

19. It is submitted that only one empty cartridge was found on the roof and no such empty cartridge was found on the ground, which further negates the version of second firing as alleged and testified against the appellant-accused Ramesh Singh during the trial.

Argument on behalf of the prosecution/State:-

20. Mr. Sujit Kumar Singh, learned APP appearing for the State while opposing the memo of appeal collectively submitted for both appellants-accused that this is a case of direct evidence and, therefore, the disputed motive is not a relevant factor as to whether the occurrence took place due to land dispute or in course of dacoity. It is pointed out that PW-3 categorically deposed against appellant Harendra Singh (Cr. Appeal (DB) No.1108 of 2018) that he fired upon her husband from very close



range by country-made pistol, which appears in full corroboration with postmortem report. Therefore, the ocular evidence is in corroboration with medical evidence and, as such, there is no room for doubt that the first firing as alleged on the roof was made by the appellant Harendra Singh. It is submitted that the bullet was also found from the brain of the deceased. It is pointed out by learned APP that the plea of *alibi* was not duly proved as no member of "*barati*" and family members in which the marriage was solemnized was examined. Neither video nor any photograph in support of presence of appellant in *barati* was exhibited during the trial, as such, it was rightly discarded by the learned trial court. It is also submitted that PW-4, who is the independent witness found appellants running away in street along with other co-accused persons immediately after the occurrence is also a relevant fact. However, it is fairly conceded by learned APP that upon autopsy, no gun-shot injury was found upon the neck of the deceased as ascertained to be caused by appellant-accused Ramesh Singh (in Cr. Appeal (DB) No. 1088 of 2018).



21. Mr. Singh further submitted that the presence of appellant Ramesh Singh with appellant Harendra Singh at the place of occurrence is not a disputed fact, as same was witnessed by three prosecution witnesses, who are the eye-witnesses of the occurrence and, therefore, the conviction of appellant Ramesh Singh with aid of Section 120-B of the IPC as recorded by learned trial court is not questionable. It is also submitted by learned APP that the minor contradictions are bound to be surface viz. dragging of deceased from roof to the ground via stairs by holding leg or hand and merely for that reason, the conviction as recorded by learned trial court cannot be viewed with doubt. It is also submitted that the occurrence took place in the house in mid-night and, therefore, the presence of witnesses, who are wife and daughters are very natural and, as such, their testimonies cannot be viewed with doubt being interested witnesses.

22. I have perused the lower court records carefully and gone through the evidences available on record, as also considered the rival submissions canvassed



by learned counsel appearing on behalf of the parties.

23. **PW-1** is **Khusboo Kumari**, who is the daughter of deceased Mundrika Singh. In examination-in-chief, she has supported the occurrence and deposed that same took place about 1.30 A.M. on 25.05.2014 when she along with family members woke up upon receiving thumping sound on the roof and found there both appellants-accused Ramesh Singh and Harendra Singh along with one Aman. They all found to hold her father Mundrika Singh and upon receiving order of appellant-accused Ramesh Singh, the appellant-accused Harendra Singh fired on temple of her father. She also deposed in her examination-in-chief that the appellant-accused along with other co-accused persons dragged her father to the ground, where appellant-accused Ramesh Singh also fired upon her father leading to his death on spot. It was deposed that after committing murder of her father, the appellants-accused Harendra, Ramesh, co-accused Aman and Aditya Singh, who were involved in the occurrence fled away. At first instance, they brought her father to police station from where, he was sent



to hospital. She identified both appellants-accused in dock during the trial.

23.1. Upon cross-examination, it was stated by her that the accused persons were dragging her father by holding his hand. She stated that on fateful night, she was sleeping in the room and her father was also sleeping there. She deposed that at the place of firing, blood was found at the ground. The blood-stains were also on stairs. After dragging to the ground, another bullet was fired upon him. She has not accompanied her father to police station. It was stated that Aditya Singh (her grandfather) has solemnized two marriage and her father was the son from first marriage, whereas the accused-appellant Ramesh born from the second marriage. It was stated that before this occurrence, the partition had already taken place between her grandfather, appellant-accused Ramesh and her father. She also stated that she gave her statement before police. It was stated that her mother (PW-3) became senseless after death of her father. She stated that she gave statement before police that the firing by appellant-accused Ramesh Singh was



made on the neck of her deceased father.

24. **PW-2** is **Neha Kumari**, who is also the daughter of the deceased Mundrika Singh. She was also sleeping with her father, mother and sisters on the date and time of occurrence and deposed that the accused-appellant Harendra Singh and Ramesh Singh along with Aman Singh hold her father whereafter, appellant Harendra Singh fired on temple of her father whereafter he was dragged to the ground floor of the house. It was deposed that upon saying of Aditya Singh that still her father is alive, the accused-appellant Ramesh Singh after snatching *kutta* (country-made pistol) from the hand of accused-appellant Harendra Singh fired on the neck of her father, resultantly, he died on the spot. The accused-appellants along with other co-accused persons fled away after the occurrence. It was deposed that her father was searched initially at ground floor and when he was not found there, the accused persons looted the ornaments and jewellery from the house.

24.1. Upon cross-examination, it was stated that her father was dragged to the ground by holding his leg



contrary to the statement of PW-1. It was stated that at the time of occurrence, the moon-light was available. It was also stated that after the occurrence, several nearby people gathered there. She categorically stated that her mother was in sense and she did not lose her sense. It was also stated that the blood-stains were available on cloth of her father. The occurrence was reported to the police but, by that time, accused-appellants and other co-accused persons were fled away.

25. **PW-3** is **Chandrawati Kunwar**, who is the wife of the deceased and informant of the case. She is also the eye-witness of the occurrence and deposed in her examination-in-chief that she was sleeping on the roof of her house along with husband and daughters and woke up after hearing the voice of her husband and found that both accused-appellants, Aman @ Dheeraj were holding her husband and upon order of appellant-accused Ramesh, Harendra fired upon temple of her husband. All three accused persons including appellants dragged her husband to the ground floor via stairs, where Aditya Singh said that still



he is alive, upon so, the appellant-accused Ramesh Singh after snatching *kutta* (country-made pistol) from Harendra Singh fired on her husband, which hit near to his neck. It was deposed that her husband died on the spot. It was deposed that accused persons looted mobile and jewellery from her house. It was deposed that the occurrence was reported to police on phone whereafter, police arrived at place of occurrence about 3.00 A.M., whereafter, her statement was recorded. She identified all accused persons standing in the dock during the trial. She also identified her signature over *fardebayan*, which upon her identification exhibited as **Exhibit No.-1**. She also identified her signature on protest petition, which was filed on 09.06.2014 which upon her identification was exhibited as **Exhibit No.-1/1**.

25.1. Upon cross-examination, it was stated by her that she passed her matriculation examination. She stated that her father-in-law solemnized two marriage nad her husband was born from his first marriage. It was stated that the family partition already taken place between her husband and father-in-law along with step brother, prior to



the present occurrence. It was stated that on roof, the firing was made from point blank range upon her husband, which hit to his left temple. It was stated that her house is situated beside the house of Ramesh and height of roof is also almost equal. She further stated that her husband was dragged upto 10 feet on the roof. She tried her best to save her husband but, he was beaten badly by accused persons. She deposed that bamboo stair was in the eastern side of the exit of the house. She deposed that the husband was brought down upto two stairs whereafter he was thrown to the ground and he fell to the ground by his head end, where the second bullet was fired upon him.

26. **PW-4** is **Rajendra Singh**, who deposed in his examination-in-chief that the incident took place at 1.30 am on 25.05.2014. It was deposed that Mundrika was sleeping on his terrace. He was sleeping on the terrace of the second floor. It was deposed by him that he got up on hearing the first shot of firing. He further deposed in chief that after hearing the second shot of firing, he stood up and saw that four men Harendra Singh, Aman, Aditya and Ramesh all



were coming after shooting. He further deposed that he went to the scene of the incident after twenty minutes. He saw that Mundrika Singh was shot on the temple and chest. It was stated that police arrived at spot after half an hour. He had given his statement to the police. He further stated that his house is at a distance of fifty yards. He identified the appellants-accused Harendra and Ramesh in the dock.

26.1. Upon cross-examination, it was stated that he went to the place of occurrence after half an hour of the incident. He did not remember whether the night on which incident took place was dark or moonlight. He further stated that his statement was recorded by the police after one hour reaching to the place of occurrence. The Sub Inspector of Police had written it and he put his signature on it. He further stated that the statement written by police was not read over to him. It was stated that he told the police that he heard that someone had shot Mundrika. He stated that he did not disclosed to the police that he saw three people running. He stated that he has no knowledge that Harendra Singh had gone to another village on the night of 24/25 to



attend an invitation. He denied to have given statement to the police that the accused were running away with any weapon. He has denied to give false testimony.

27. **PW-5** is **Zubair Alam**, who is the Investigating officer of the case and was posted as Incharge of Model Police Station, Sasaram. According to his examination-in-chief, on 25.05.2015, he took over the investigation of this case. At 2 o'clock in the night, he received information that a person was shot dead in Badhiyabag Bhawanipur of Takia. He further deposed that on receiving the aforesaid information, he left the police station with A.S.I. Kasi Prasad Srivastava and reached at the scene of incident. He also deposed that the place of occurrence is a single-storey east facing house of deceased Mundrika Singh situated in Badhiyabagh Bhawanipur, P.S.- Model Sasaram. He further deposed that the deceased was said to sleep on the roof of the said house. He deposed that he found blood splatters on the mattress and blood drops had also fallen all over the roof. He further stated that it is being said that criminals shot him on this roof. After being shot, he was



dragged down through wooden stairs. He further deposed that another bullet is said to have been fired after coming down to the ground floor. He further deposed that a 0.315 bore cartridge was found on the roof of the house of the deceased. He prepared a formal seizure list, which was kept in the *Malkhana*. An order was issued to conduct the postmortem. He further deposed that he registered a formal FIR at Town Police Station. The formal FIR was in the handwriting and signature of P.S.I. Kashi Prasad Srivastava, which upon identification was exhibited as **Exhibit No.-1/2** and forwarding endorsement, which was in his handwriting has been identified as **Exhibit No.1/3**.

27.1. Upon cross-examination, it was stated that the statement of informant was again recorded on 26th. He also recorded the statement of PW-1 Khushboo Kumari and PW-2 Neha Kumari, wherein both the witnesses have said that their statements were recorded on 25.05.2014. He received the postmortem report on 19.06.2014. He also deposed that on 30.09.2014, he submitted charge-sheet against Harendra Singh and Ramesh Singh. He has received



objection letter from informant of the case in which it was stated that the Investigating Officer was recording false and fabricated statements under the pressure of the accused in order to weaken the case of the informant. The signature of informant on objection letter was exhibited as **Exhibit No.1/1**. It was deposed that he received information about the incident on mobile phone but, he did not enter the number of the informant in the station diary and even did not written his name and address. He reached at the spot within fifteen minutes after receiving the information. He prepared the inquest report but, it has not been marked as exhibit in this case. He further deposed that on reaching the police station, he made an entry in the station diary. He stated that the distance of Sasaram Town Police Station from Model police station is about one and a half kilometer. He has returned from crime scene to the police station at 6.30 in the morning. After returning, the *fardebayan* was sent to the police station for registration of the case. He found only one bed on the roof and blood splatters was found on the bed towards pillow. He further deposed that the clothes



or the bed of the deceased were not seized. He further deposed that he did not find any mark of dragging of deceased towards the stairs. It was stated further that after sending the dead body for postmortem at 6.05 A.M., he left for the police station. Before leaving the place of occurrence, he recorded the statement of PW-4, Rajendra Singh. Rajendra Singh has said in his statement that when he woke up after hearing the noise, he went to the roof, where he saw three people running away. He further stated that PW-1 Khusboo had stated that she woke up on hearing the sound of bullet. She did not give statement that Ramesh has shot her father. He further stated that PW-1 did not give the statement that Aman and Harendra had threatened her. He recorded the second statement at home. He also stated that he had recorded the statement of PW-1, PW-2 and PW-3 in Arodhi. He further stated that on 26.05.2014, PW-2 Neha Kumari had stated that she woke up after hearing the bullet sound. She had given statement that accused were unknown to her, who had shot her father. Ramesh had snatched the country-made firearm and shot him downstairs. He prepared



inquest report first. He denied that he registered FIR after receiving the postmortem report and in collusion with the prosecution prepared a wrong charge-sheet.

28. **PW-6** is **Dr. Shri Bhagwan Singh**, who conducted postmortem on the person of the deceased. According to him, on 25.05.2014, he was deputed as C.A.S. in Sadar Hospital, Sasaram. On the same day at 7:20 A.M., he conducted the postmortem on person of the deceased Mundrika Singh and found the following *antemortem* injuries:-

External Injury:

- (i) Penetrating lacerated wound with inverted blackened margin 4" x 1.5" x skull cavity deep over left temporal region of skull. Upper part of Pinna of left ear lacerated out with blackened margin (wound of entry).
- (ii) A lacerated wound 3" x 1" x skull cavity deep with everted margin over right side of occipital region of scalp (wound of exit). Both wounds bleeding.

On dissection:

Scalp- Left temporal and right occipital bone of scalp fractured.



Showing holes and radial fractures are occipital bone extending to left occipital parietal region. Menings lacerated underneath. The fracture part of wound and brain substance lacerated.

Chest- Bony cage of chest are intact. Larynx and Trachea intact.

Both lungs intact and pale. Heart intact and both chest empty.

Abdomen- Stomach containing digested parts like material small intestine role contained fluid and gas. Large intestine contained faecal matter and gas. Liver, spleen and both kidney intact and pale. Urinary bladder empty.

He opined that the cause of death as hemorrhage and shock due to above-mentioned injuries caused by firearm. He further deposed that the time elapsed since death is 12-24 hours. He ascertained that he found a bullet from skull cavity preserve in glass file sealed properly and handed over the same to the police for sending to the Office of Superintendent, Sadar Hospital, Sasaram. He prepared the postmortem report in his pen and signature, to which he identified. He also identified the postmortem register and signature over it, which upon its identification was exhibited



as **Exhibit No.-2.**

28.1. Upon cross-examination, it was stated that it takes 6 hours after death for *rigor mortis* to start. He further stated that if the deceased was dragged to the ground then abrasion will occur on the body. He found no abrasion on the body of the deceased. He stated that if a person thrown from a height of 10 feet to ground then he must receive some injuries like, rigidity, abrasion, swelling, fracture of bone, etc. He stated that he found only one wound from firearm on the body of the deceased but a bullet was found in the head due to which, the second one can also be fired. He stated that there is a difference between a blackening wound or a charring wound. He stated that if the wound is fired from close range, it will be a charring wound and the hair around the wound got burnt. He further stated that apart from one, he did not see any other fire injury on the body of the deceased. He did not get the body of the deceased x-rayed.

OUR FINDING:

29. Upon perusal of record, it transpires to us that



PW-3 being eye-witness of the occurrence stated that her husband (deceased) was dragged on the roof, whereas PW-1 and PW-2 being eye-witness of the occurrence stated that their father was dragged down through stairs. PW-6, who is I.O. of this case found blood stains on stairs during the visit. It also appears that PW-1 said that the deceased was dragged by leg and PW-2 deposed that the deceased was dragged by hand.

30. In our view, these contradictions are minor contradictions on the basis of which the crime in issue cannot be viewed with doubt. In such criminal trials, the minor contradictions as aforesaid are bound to be surfaced.

31. It would be apposite to reproduce para-8 of the legal report of Hon'ble Supreme Court as available through **State of Himachal Pradesh Vs. Hukum Chand @ Monu (supra)**, which is as under:-

"8. When it comes to inconsistencies and omissions in testimonies, which is one of the primary grounds on which the reasoning of the High Court rests, it is well recognised that human perception, memory and narration are imperfect. As such, the Court has consistently



held that minor inconsistencies or trivial discrepancies in the testimony of witnesses do not by themselves make the evidence unreliable. In *State of U.P. v. M.K. Anthony*, this Court explained that while appreciating evidence, courts must not attach undue importance to minor discrepancies. Variations in trivial matters that do not affect the core of the case should not lead to rejection of credible testimony in its entirety. The evidence must be assessed as a whole to determine whether it carries the ring of truth. Similarly, in *Appabhai v. State of Gujarat*, the Court cautioned against placing undue weight on minor contradictions or omissions. Truthful witnesses may differ in detail due to normal lapses of memory or differences in perception. The essential question is whether the inconsistencies materially compromise the backbone of the prosecution narrative. In *State of Rajasthan v. Kalki*, the Court distinguished between normal discrepancies arising from errors of observation or memory and material discrepancies that go to the core of the case. Only the latter undermine the prosecution in a substantial manner”.

32. Main argument in defence taken by appellant-accused Harendra Singh that at the time of occurrence he



was not in village rather he was attending marriage ceremony in nearby village and to prove his plea of ***alibi***, three defence witnesses were examined as DW-1, DW-2 and DW-3. DW-1 said that the appellant-accused Harendra Singh was with him in said party. This fact was also supported by DW-2 and DW-3.

33. It is worth to mention that the plea of ***alibi*** is a strict proof of evidence. It cannot be dealt with in such a casual manner. Neither photographs, videograph nor the parents of the bridegrooms or bride, who solemnized the marriage function were examined during the period of trial in support of ***alibi***. Moreover, the marriage function was not at a place from where it was extremely impossible for appellant Harendra Singh to come at place of occurrence at about 1 A.M.

34. Therefore, we are of the view that the plea of ***alibi*** is just an afterthought and is not sustainable and can not be said proved during the trial.

35. It would be apposite to reproduce para-10 of the legal report of Hon'ble Supreme Court as available



through **Ashok Verma case (supra)**, which is as under:-

“10. We will now consider the question whether the contention of the appellant that the plea of alibi was considered perversely, especially without properly appreciating the evidence of DW-1. In the decision in *Binay Kumar Singh v. State of Bihar*, this Court took note of the meaning of the Latin word ‘*alibi*’ as ‘elsewhere’ and observed and held that the said plea would be available only if that ‘elsewhere’ is a place which is that much far off making it extremely impossible or improbable for the person concerned to reach the place of occurrence and participate in the offence concerned on the relevant date and time. Paragraph 22 and 23 of the said decision which is relevant for the purpose reads thus:—

“22. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Penal Code, 1860 or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (a) given under the provision is worth reproducing in this context:

“The question is whether A committed a crime at Calcutta on a certain date; the fact that on that date, A was at Lahore is relevant.”

23. The Latin word alibi means



“elsewhere” and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding



his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions.”

36. It further transpires to us that the three prosecution witnesses claimed themselves to be eye-witness of the actual occurrence, who are PW-1, PW-2 and PW-3. PW-3 is the wife and PW-1 and PW-2 are daughters of the deceased, who were sleeping on the roof of their house along with deceased, on the night, the occurrence took place. Their presence at place of occurrence, being family members are very normal. They are appearing very natural witness of the occurrence. It transpires from the testimony of PWs-1, 2 and 3 that they are consistent to the fact that the appellant-accused Harendra Singh fired upon deceased from very close range just above the left pinna. Thereafter, he was dragged down and thrown to the ground, where realizing that still the husband of PW-3 was alive, another



firing was made on his neck.

37. PW-1, who is the daughter of the deceased, who through her examination-in-chief testified that the second firing was made by appellant Ramesh Singh. She could not disclose that on which body part it was caused, whereas PW2 who is also the daughter and PW-3, who is the wife of the deceased being eye-witness to the occurrence specifically ascertained that the appellant-accused Ramesh Singh made gun shot injury on the neck of her father and husband respectively. The appellant Ramesh Singh is the step brother of the husband of PW-3 and they are said to be in inimical terms out of ancestral land dispute, in terms of the testimony of PW-3. After causing first gun shot injury, as per these three witnesses, the injured/deceased was dragged to the ground through stairs and when he came to the ground floor, seeing him alive, the appellant-accused Ramesh Singh fired on him resulting his death. It transpires from the testimony of these three witnesses that while the second firing was made, they were on the roof of the house.

38. In the backdrop of these testimonies, now it



would be relevant to discuss the testimony of PW-6, who is the doctor and conducted autopsy upon the deceased. As per autopsy report, he found only one penetrating lacerated wound with inverted blacken margin over left temporal region of scalp. Upper part of pinna of left ear found also lacerated, whereas injury No.2 was said to be exit wound of injury No.1, which was a lacerated wound 3" x 1" everted margin over right side of occipital region of scalp.

39. The testimony of PW-6 suggests that there was only one gun shot injury, which was on temporal region, which was caused by appellant-accused Harendra Singh as per testimony of PW-1, PW-2 and PW-3. We have no reason to disbelieve it.

40. From testimony of PW-3, it can be also gathered that her husband after receiving first gun shot injury was thrown to the ground through stairs and she heard the firing of the ground floor. It also transpires that her house and roof was almost closed to the house and roof of the appellant Ramesh Singh. In view of same, the presence of appellant -accused Ramesh Singh in street as



testified by PW-4, who claimed to be an independent eye-witness of the occurrence, does not assist us as to arrive on the conclusion *qua* involvement of Ramesh Singh with crime in question beyond reasonable doubt. PW-4 further ascertained that he saw gun shot injury on chest also.

41. Non-finding of any second gun shot injury upon deceased as ascertained to be caused by appellant Ramesh Singh is a major contradiction in view of autopsy report, which cannot be overlooked particularly, in the background of previous enmity.

42. Therefore, in our considered view, the prosecution has failed to answer certain important questions during trial *qua* involvement of appellant-accused Ramesh Singh, the benefit of which must be extended to him. Resultantly, the impugned judgment of conviction dated 03.08.2018 and order of sentence dated 07.08.2018 respectively passed by learned Presiding Officer, Fast Track Court-II, Sasaram, Rohtas in S. Tr. No.88 of 2015 arising out of Sasaram (Town) P.S. Case No. 442 of 2014, is hereby set-aside *qua* conviction of appellant/accused



Ramesh Singh.

43. Accordingly, Criminal Appeal (DB) No.1088 of 2018, as preferred by appellant namely, Ramesh Singh is allowed.

44. The appellant, namely, Ramesh Singh is acquitted of the charges levelled against him by the learned trial court. Since the appellant is already on bail, he is discharged from liabilities of bail bonds and sureties.

45. Fine, if any paid, be returned to the appellant immediately.

46. So far as conviction against appellant-accused Harendra Singh [in Criminal Appeal (DB) No.1108 of 2018] is concerned, we did not find any reason to disbelieve the testimony of PWs-1, 2, 3 and PW-6 and, therefore, we could not find any occasion to interfere with impugned judgment of conviction as recorded by learned trial court *qua* appellant Harendra Singh.

47. Hence, Criminal Appeal (DB) No.1108 of 2018, as preferred by appellant namely, Harendra Singh is dismissed.



48. Let a copy of this judgment along with the Trial Court Records be sent to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

Bibek Chaudhuri, J:- I agree.

(Bibek Chaudhuri, J.)

Sanjeet/-

AFR/NAFR	AFR
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