

PETITIONER:
RAM SANJIWAN SINGH & ORS.

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 26/04/1996

BENCH:
MAJMUDAR S.B. (J)
BENCH:
MAJMUDAR S.B. (J)
ANAND, A.S. (J)

CITATION:
JT 1996 (4) 502 1996 SCALE (4)63

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.B. Majmudar. J.

Criminal Appeal No.387 of 1985 on special leave is taken out by accused no.10 Ram Sanjiwan Singh in Sessions Trial Case No.195 of 1974 in the Court of 2nd Additional Sessions Judge, Jamshedpur while the companion Criminal Appeal No.388 of 1985 also by special leave is taken out by accused no.1 Moti Lal Tiwari, accused no.4 Malkit Singh and accused no.6 Ganesh Gwala who were co-accused in the same Sessions Case. Earlier accused nos.2,3 and 5 respectively in the same case had also joined in Criminal Appeal No.388 of 1985 but as they have died pending this appeal now Criminal Appeal No.388 of 1985 survives only for accused nos.1, 4 and 6 respectively who are the remaining three appellants in this appeal. In these appeals a common judgment rendered by a Division Bench of the High Court of Judicature at Patna has been brought in challenge. The said common judgment was rendered in Criminal Appeal No.15 of 1976 filed by appellant Ram Sanjiwan Singh, original accused no.10 before the High Court against whom Criminal Revision Application NO.137 of 1976 was also filed by the first informant seeking conviction under Section 302 Indian Penal Code (in short 'IPC') and enhancement of his sentence as rendered by the Trial Court. The High Court also issued notice for enhancement of sentence in the appeal of accused no.10. By the same common judgment the High Court also disposed of companion criminal appeals by other accused as well as the appeal against acquittal of concerned accused as filed by the State. The Criminal Appeal of Ram Sanjiwan Singh, accused no.10 was dismissed by the High Court while the notice for enhancement was made absolute and the sentence of Ram Sanjiwan Singh under Section 304-A, IPC was enhanced upto life imprisonment. It is this order of the High Court which is challenged by accused no.10 Ram Sanjiwan Singh in his Criminal Appeal No.387 of 1985. So far as Criminal Appeal NO.388 of 1985 is concerned the surviving three

appellant-accused nos.1, 4 and 6 respectively who were convicted by the Trial Court under Section 302 read with Section 34 IPC and were sentenced to undergo life imprisonment, unsuccessfully challenged the said order of conviction and sentence before the High Court in their Criminal Appeal No.28 of 1976 which came to be dismissed by the High Court by the very same common judgment. It is this judgment of the High Court that is brought in challenge by these three appellant-accused nos.1, 4 and 6 respectively in their Criminal Appeal No.388 of 1985. In order to appreciate the grievance voiced on their behalf by the learned senior counsel Shri Rajender Singh it is necessary to glance through a few introductory facts leading to these appeals.

In Sessions Trial No.195 of 1974 in the Court of 2nd Additional Sessions Judge, Jamshedpur, 13 accused including the present four accused were tried under Section 302 IPC, Section 302 read with Section 149 IPC. Section 302 read with Section 109 IPC, Section 150 read with Section 302 IPC, Section 302 read with Section 120-B and Section 148 IPC and Sections 25(a) and 27 of the Arms Act. The prosecution case against these 13 accused including the present four accused ran as under :

"That between 14th August 1971 to the 24th May, 1972 at Mohalla Kasidih and Jail Compound, Jamshedpur they agreed to murder Ramchandra Singh in pursuance to which he was in fact murdered. Accused Pyara Singh, Siroman Singh and Dhurandhar Singh, have been further charged under Section 150/302 I.P.C. that on 24.5.72 at Sakchi Bazar they engaged the remaining accused persons to murder the said Ramchandra Singh which was committed in pursuance to that engagement. These three accused have also been charged under Section 302/109 I.P.C. for abetting the remaining accused persons for committing that murder. The remaining 10 accused persons have been charged under Section 148 I.P.C. for committing rioting armed with fire arms on 24.5.72 at Sakchi Bazar and also under Section 25(a) and 27 Arms Act. The accused persons named under serial nos.1 to 6 in the judgment have been further charged under Section 302 I.P.C. that on 24.5.72 they committed the murder of the said Ramchandra Singh and the remaining accused persons 7 to 10 under Section 302/149 I.P.C. for the same murder.

It was the prosecution case that between 14th August 1971 and 24th May 1972 at Mohalla Kasidih and Jail Compound, Jamshedpur in State of Bihar these accused had agreed to murder one Ramchandra Singh and in pursuance of that criminal conspiracy he was in fact murdered. Original accused nos.11, 12 and 13, namely, Pyara Singh, Siroman Singh and Dhurandhar Singh respectively had been further charged under Section 150 read with Section 302 IPC alleging that on 24th May 1972 at Sakchi Bazar they engaged the

remaining 10 accused to murder said Ramchandra Singh. The aforesaid three accused were also charged with Section 302 read with Section 109 IPC for abetting the remaining accused for committing the murder while the remaining 10 accused including the present four accused were charged under Section 148 IPC for committing rioting armed with firearms on 24th May 1972 at Sakchi Bazar. They were also charged under Sections 25(a) and 27 of the arms Act. Accused nos.1 to 6 were further charged under Section 302 IPC on the ground that on 24th May 1972 they committed the murder of said Ramchandra Singh and the remaining accused nos.7 to 10 were charged under Section 302 read with Section 149 IPC for committing the very same murder.

The prosecution case in its inception rested on the 'Fardbeyan', Exh.2 given by one Sunil Singh, P.W.5 and which was recorded on 24th May 1972 at 7.00 p.m. The prosecution case was that deceased Ramchandra Singh was the Supervisor in the co-operative store, Sakchi. On 24th May 1972 at 6.15 p.m. he was getting himself shaved by a barber in the western portion of the verandah of that co-operative store sitting on a tin chair facing towards the east. The informant Sunil Singh P.W.5, one Rameshwar Prasad P.W.1, Gazraj Singh P.W.3 and Shankar Singh P.W. 4 were standing in the same verandah in its eastern portion. The coolies and the salesman of the co-operative store were also there.

It is further the prosecution case that this co-operative store opened on the road running east to west. There were shops opposite to this store on the other side of the road which were also open at that time. It was Bazar area and at the time of the incident the shops in the bazar were open. It is alleged by the prosecution that at that time accused no. 1 Moti Lal Tiwary, accused no.2 Panchu Ram, accused no.4 Malkit Singh, accused no.3 Laxmi Sonal, accused no.10 Ram Sanjiwan Singh, accused no.5 Arurendra Bahadur Singh alias Lallu Singh, accused no.7 Dineshwar Singh alias Babua and accused no.9 Bansilal Tiwary along with 2-3 persons armed with revolvers came from the western side and took their position opposite the co-operative store. Seeing them the barber slipped away. Accused no. 1 Moti Lal Tiwary fired two gun shots on Ramchandra Singh who fell down from the chair. Accused no.5 Lallu Singh, accused no.4 Malkit Singh, accused no.2 Panchu Ram, accused no.3 Laxmi Sonal also are alleged to have fired on Ramchandra Singh while accused no.10 Ram Sanjiwan Singh fired in the air to scare away the public and for preventing anyone coming to rescue the victim. It is alleged that remaining accused were guarding the road. There was lot of commotion on account of this firing. Thereafter the accused slipped away. Victim Ramchandra Singh was carried in a bleeding state to Tata Memorial Hospital by a car but on arrival he was declared dead. The motive of this day light murder was said to be enmity between the deceased Ramchandra Singh and accused no.11 Pyara Singh. It is alleged that remaining accused belonged to the group of Pyara Singh.

Sub-Inspector P.N. Singh P.W.44 having received a telephonic message of firing in Sakchi Bazar made a station diary entry and went to the bazar at 6.30 p.m. along with Sub-Inspector L.P. Srivastava P.W.39, S.J. Ramjit Singh and others. He went to the TISCO Co-operative Store and found it open. A blood-stained chair and shaving brush and cup were also found there. The entire area looked deserted. Having kept Sub-Inspector Ranjit Singh there to guard the place of offence he went to Tata Memorial Hospital along with his companions and reached there at 6.55 p.m. In the hospital he met the informant Sunil Singh P.W.5 and recorded his

'fardbeyan' Exh.2. He then went to the morgue of the hospital and found the dead body of Ramchandra Singh covered with a cloth. He performed inquest Exh.4 over the body in presence of Bharat Singh P.W.9, Mohan Singh P.W.10 and Saatan Mukhi P.W.23. The body had several bleeding injuries. Its beard was partly shaved. Blood stained clothes of the deceased were seized. They also had holes in them. He deputed Constable Girja Singh P.W.29 and Chhedi Singh P.W.30 to guard it. He further examined the complainant. He also sent the 'fardbeyan' with L.P. Srivastava P.W.39 and directed for drawing the formal First Information Report (FIR) which was drawn at the Police Station (Exh.2 series). After visiting the scene of offence and noting the physical features of the scene of offence and after recording statements of various witnesses and after arresting the accused investigation was completed and all the accused were chargesheeted as aforesaid. After the usual committal proceedings before the Court of Sub-Divisional Magistrate, Jamshepur all the 13 accused were committed to the Court of Sessions to stand their trial for the various offences with which they were charged. After recording the prosecution evidence and after hearing the accused the learned Sessions Judge came to the conclusion that the prosecution had failed to establish its case of criminal conspiracy against the concerned accused. Consequently accused no.11 Pyara Singh, accused no.12 Siroman Singh and accused no.13 Dhurandhar Singh were acquitted of the offences with which they were charged. The learned Sessions Judge also found that the prosecution had failed to bring home the charge against accused no.7 Dineshwar Singh and accused no.9 Bansilal Tiwary, Thus these five accused were acquitted. So far as the remaining 8 accused were concerned the learned Sessions Judge held relying on the eye-witness account deposed to by the witnesses and other evidence on record that the prosecution had brought home charge under Section 302 read with Section 34 IPC against accused no.1 Moti Lal Tiwary, accused no.2 Panchu Ram, accused no.3 Laxmi Sonal, accused no.4 Malkit Singh, accused no.5 Arurendra Bahadur Singh and accused no.6 Ganesh Gwala. They were also convicted under Section 148 IPC. Accordingly for the offence under Section 302 read with Section 34 IPC the aforesaid six accused were sentenced to suffer rigorous imprisonment for life. For the offence under Section 148 IPC each of them was sentenced to undergo rigorous imprisonment for three years. They were also convicted under Sections 25(a) and 27 of the Arms Act and were sentenced to undergo rigorous imprisonment for three years each.

So far as accused no.10 Ram Sanjiwan Singh is concerned he along with accused no.8 Ganesh Choubey were found to have committed offences under Section 304 Part I read with Section 149 IPC and for that offence both of them were sentenced to undergo rigorous imprisonment for seven years. They were also found guilty of offence under Section 148 IPC and for that offence each of them was ordered to undergo rigorous imprisonment for three years. They were also convicted under Sections 25(a) and 27 of the Arms Act and were sentenced to undergo rigorous imprisonment for three years. All these sentences were ordered to run concurrently.

As stated above accused no.10 Ram Sanjiwan Singh filed Criminal Appeal No.15 of 1976 before the High Court of Judicature at Patna. Accused nos.1, 4 and 6 preferred Criminal Appeal No.28 of 1976. The State of Bihar preferred Government Appeal No.1 of 1976 seeking conviction under Section 302 so far as accused no.10 Ram Sanjiwan Singh was concerned and also for conviction of other six accused who

were acquitted by the Trial Court while informant Sunil Singh preferred Criminal Revision Application 137 of 1976 against six accused out of whom accused nos.1, 4 and 6 were three of them. As noted earlier the High Court also issued notice of enhancement of sentence in the Criminal Appeal No.15 of 1976 filed by accused no.10 Ram Sanjiwan Singh. All these appeals, revision and enhancement notice issued against accused Ram Sanjiwan Singh were heard together by the Division Bench of the High Court and were disposed of by a common judgment giving rise to the present proceedings.

Before we deal with the main contentions canvassed by the learned senior counsel Shri Rajender Singh for the appellants it will be necessary to keep in view the limited scope of the present proceedings which arise out of grant of special leave to appeal against orders of conviction and sentence as rendered by both the courts below against the present appellants. The concurrent findings reached by both the courts below on evidence cannot be lightly brushed aside and unless it is shown that the findings are against the weight of evidence or are vitiated by any legal error, this Court does not interfere with them as a matter of course, especially when they are based on appreciation of evidence of eyewitnesses found to be acceptable by both the courts below. It is in that light that we have to consider the main contentions canvassed by learned senior counsel Shri Rajender Singh in support of these appeals.

While referring to the main features of the prosecution case in earlier part of this judgment we have indicated how the assault on deceased Ramchandra Singh is said to have been mounted by the accused and how the said incident was allegedly witnessed by the eye-witnesses. To recapitulate, the prosecution case hinges on the eye-witness account of P.W.1 Rameshwar Prasad, P.W.3 Gazraj Singh, P.W.4 Shankar Singh and P.W.5 Sunil Singh. P.Ws.1 and 3 were the body guards of the deceased while P.W.4 was his nephew and P.W.5, the first informant, was his grandson. We have been taken through the evidence of these witnesses. We may state that evidence of these eye-witnesses has been relied upon by the Trial Court as well as by the High Court by giving cogent reasons. Having given our anxious consideration to the said evidence once again we find that their evidence has well stood the test of cross examination and was rightly accepted by both the aforesaid courts. These witnesses have supported the prosecution case in all material particulars. The picture which has been projected from this eye-witness account is to the effect that on 24th May 1972 at about 6.15 p.m. in front of the co-operative store in Sakchi Bazar, Jamshedpur while the deceased who was looking after that store was sitting on the western side of the verandah and was having a shave from a barber, he became the target of pistol shots and number of bullets were pumped in his body and in this assault all the present appellants are clearly indicted by the eye-witness account. It is also shown that the eye-witnesses who were standing on the eastern side of the verandah rushed on spot on witnessing this assault the accused who had come in company with other accused who were ultimately acquitted and for whose involvement we may not say anything further. Then the deceased in a profusely bleeding condition was taken to the Tata Memorial Hospital by P.W.4 Shankar Singh and informant Sunil Singh P.W.5. The Police Sub-Inspector incharge of Sakchi Police Station who had already received information regarding the firing in Sakchi Bazar had in the meantime rushed to the hospital where the deceased was removed and in the hospital at the earliest opportunity by about 7.00 p.m. he recorded the FIR

given by the informant P.W.5 Sunil Singh. It has to be kept in view that the incident had taken place by about 6.15 in the evening and thereafter the deceased profusely bleeding had to be taken in a taxi after getting a taxi from the taxi stand and on reaching the hospital the deceased was examined by Dr. Saroj Kumar Das P.W.33 at 6.42 p.m. and he was declared 'Brought dead'. The doctor had found nine bullet injuries on the person of the deceased. Under these circumstances the evidence of P.W.44 Prayag Narain who was Office-In-charge of Sakchi Police Station has to be appreciated. He had broadly supported the prosecution version in connection with the prompt recording of FIR at the hospital. His evidence fully supports the version of complainant P.W.5 Sunil Singh. Prayag Narain P.W.44 stated that from April 1971 to June 1973 he was Officer In-charge, Sakchi Police Station and on 24th May 1972 at about 6.20 p.m. at the Police Station he got a telephonic message that there had been firing in the Sakchi Bazar which had led to chaos. He made a station diary about it and then left the police station at about 6.30 p.m. and reached near the TISCO Co-operative Store which he found deserted although the store was open. He found lot of blood on the verandah and an upturned chair besmeared with blood. He also found a small 'katori' meant for shaving and a brush there. He left Ranjit Singh, Sub-Inspector of Police to guard that place and himself proceeded at 6.55 p.m. to the Tata Memorial Hospital where he met Sunil Singh and got recorded the 'fardbeyan' of Sunil Singh by Lala Prasad Srivastava. It has to be appreciated that when Dr. Das P.W.33 declared that the deceased was brought dead in the hospital it was quite natural on the part of the police witness P.W.44 to enquire from the complainant Sunil Singh P.W.5 as to how the incident had happened and as Sunil Singh had by that time come to know that his grandfather was already dead he would naturally give his version about how the incident occurred without being required to further attend upon the deceased. Under these circumstances recording of the 'fardbeyan' at 7.00 p.m. is rightly held by both the courts below a prompt recording of the First Information Report regarding the incident. In this connection we may also note one strong exception taken by learned senior counsel Shri Rajender Singh about the recording of FIR. He submitted that in fact FIR was recorded two days' late, that is, on 26th May 1972 because by that time a copy of the said FIR is said to have reached the Court of Judicial Magistrate, 1st Class and, therefore, the alleged recording of the FIR at 7.00 p.m. in the hospital is a concocted version and an attempt is made by the prosecution to ante-time and ante-date the FIR. It is not possible to agree with this contention for the simple reason that nothing substantial could be brought out in the cross examination either of Sunil Singh P.W.5 or the witness Prayag Narain P.W.44 to support such a contention. That apart, there are available on record positive checks by way of contemporaneous record indicating that the FIR must have been recorded by 7.00 p.m. in the hospital. It is the evidence of Prayag Narain P.W.44 that after the 'fardbeyan' was taken down at the hospital at 7.00 p.m. a formal FIR was registered immediately thereafter in the Police station and it is in evidence that the said case was registered as Crime Case No.15/72. The evidence of witness Prayag Narain P.W.44 further shows that after he reached the hospital and after he recorded the 'fardbeyan' he went to the morgue and he got performed the inquest Exh.4 over the dead body in presence of P.W.9 Bharat Singh Mohan Singh P.W.10 and Saatan Mukhi P.W.23. He found that the

beard of the dead body was partly shaved. So far as the inquest report is concerned it is at Page 518 of the Paper Book. It is in form No.38 and in the reference column Sakchi Police Station Case No.15 of 24.5.72 under Sections 148, 149 and 302 IPC and Sections 25(a) and 27 of the Arms Act is clearly mentioned. This shows that by the time the inquest report was prepared in the morgue of the hospital itself Criminal Case No.15 was already got registered in the police station on the basis of 'fardbeyan' of P.W.5 Sunil Singh. This is one positive check of contemporaneous nature which shows that 'fardbeyan' had seen the light of the day prior to the preparation of the inquest report itself in the morgue of the hospital on that night.

The second positive check for lending credence to the 'fardbeyan' recorded at the hospital is supplied by another evidence of contemporaneous nature being seizure memo which is found at page 538 Of the Paper book. Evidence of witness prayag Narain P.W.44 shows that from the hospital he had gone to the site and had got the articles lying on the scene of offence seized. That seizure list Exh.3 also clearly refers to Sakchi Police Station Case No.15 dated 24.5.72 on the same lines on which the inquest report refers to the police case and the nature of the offences for which the case was registered. The time and date of seizure is shown to be 24th May 1972 at 12.30 o'clock at night. Nothing could be alleged against the preparation of the seizure list at that time. This also indicates that investigation which was triggered off pursuant to the recording of the FIR had resulted in all these subsequent steps during the course of investigation on the night of 24th May itself and were taken out pursuant to the recording of the FIR, first 'fardbeyan' at the hospital and then the formal FIR at Sakchi Police Station. Consequently it could not be said that the FIR was ante-timed or that it was not recorded as it was tried to be suggested by the prosecution. If it was registered only on 26th May, 1972 as suggested by the learned senior counsel for the appellants all the steps taken by the police pursuant to the recording of the FIR in the evening and night of 24th May, 1972 and which have clearly referred to the recording of the FIR and registering of the Criminal Case No.15 of 24.5.72 at the police station on the evening of that day itself would not have transpired at all. It was then submitted that this FIR had reached the Magistrate's Court only on 26th May 1972. It is easy to visualize that after all necessary immediate steps were taken after the recording of the FIR on the evening of 24th May 1972 if the FIR was sent on the next day to the Magistrate's Court it could not be said that it was in any way delayed. The fact that it was placed before the Magistrate on 26th May would only indicate that the clerk concerned must have brought it to the notice of the Magistrate on 26th May 1972 but that would not necessarily mean that copy of the FIR had not reached the Magistrate's office on the next day. Consequently it must be held that the First Information Report was promptly registered at the Police station hot on the heels of the happening of the incident on the evening of 24th May at Sakchi Bazar and that FIR reflected almost a contemporaneous account of what had taken place on spot. That recitals in this FIR clearly indicate that an assault was mounted on deceased Ramchandra Singh by accused including the present appellants nos.2 and 5 in Criminal Appeal No.348 of 1985. It had also indicate the involvement of appellants in Criminal Appeal No.387 of 1985 original accused no.10 Ram Sanjiwan Singh who is said to have fired pistol shot in air to scare

away the public. It is true that FIR did not mention presence of accused no.6 Ganesh Gwala. But this circumstance which was heavily relied upon by the learned senior counsel for the appellants cannot advance the case of the accused any further for the simple reason that the FIR itself mentioned that there were two other persons whose names the first informant Sunil Singh did not know. This version of his in the 'fardbeyan' was fully supported by him at the stage of trial and nothing substantial could be brought out in his cross examination to shake this version. Consequently it must be held that the FIR fully corroborated the eye-witness account deposed to by first informant Sunil Singh P.W.5 and other eye-witnesses.

In this connection it was submitted by learned senior counsel Shri Rajender Singh that the evidence showed there were other independent witnesses available in the surrounding area where the incident as alleged to have taken place in broad day light in the evening in a thickly populated bazar. That still prosecution had not thought it fit to examine any outside witness though the evidence of P.W.44 shows that he had recorded statements of nearby shopkeepers. It may be so, However that by itself would not detract from the veracity of the eye-witness account. It has to be kept in view that P.W.1 Rameshwar Prasad and P.W.3 Gazraj Singh were the body guards of the deceased. Their presence on the spot was, therefore, quite natural and probable. It is unfortunate that though being body guards they could not save the deceased. In this connection learned senior counsel Shri Rajender Singh submitted that the conduct of these body guards is very unnatural as much as they did not rush to save their master. It is difficult to appreciate this contention, It has to be kept in view that the eye-witness account shows that the assault was mounted all of a sudden by a group of persons including the present appellants who came suddenly on spot and shot the deceased simultaneously and pumped bullets in him and immediately thereafter ran away. Because of this sudden attack by pistol shots the witnesses which were standing on the eastern side of the verandah would remain helpless spectators and moment they rushed on the spot they found their master heavily wounded and bleeding, It is not the case of the defence or even the prosecution that these body guards were armed with any firearms so that they could retaliate on the contrary, as the evidence shows there was hardly any time to retaliate. It was a sudden attack mounted on the deceased who was sitting in the chair and had undergone half shave of his beard. Under these circumstances it cannot be said that P.W.1 Rameshwar Prasad and P.W.3 Gazraj Singh being the body guards of the deceased had exhibited any unnatural conduct in not trying to save the deceased from the onslaught of bullet shots mounted on him by the accused and their companions on spot.

It was next contended that witness Shankar Singh P.W.4 was the nephew and witness Sunil Singh P.W.5 was the grandson of the deceased and, therefore, they were interested in the deceased and that there was deepseated enmity between accused Pyara Singh who was a rival contractor with the deceased and who is alleged to have entered into a criminal conspiracy with the accused who were allegedly hired assassins to liquidate the deceased. Now it is true that both the courts below have not accepted the case of criminal conspiracy but still the fact remains that a group of assassins mounted a well determined and pre-planned attack on the deceased when he was getting himself shaved by sitting in the verandah near Shop No.4 in Sakchi

Bazar. Presence of P.W.5 Sunil Singh and P.W.4 Shankar Singh was also quite natural as the evidence shows that they were helping the deceased in looking after the shop. In fact nothing was alleged in the cross examination of these two witnesses to indicate that their presence on spot was unexpected or could not have been there. The evidence of P.W.4 Shankar Singh and P.W.5 Sunil Singh has also fully corroborated the eye-witness account of P.W.1 Rameshwar Prasad and P.W.3 Gazraj Singh and their evidence in turn has stood corroborated by the recitals in the FIR which has been found to reflect 3 prompt and almost contemporaneous recording of what had happened on spot on that faithful evening. We, therefore, find that on the aforesaid evidence of eye-witnesses the prosecution had proved to the hilt its case against the appellant no.2 Moti Lal Tiwary accused no.1, appellant no.5 Malkit Singh accused no.4 and appellant no.7 Ganesh Gwala accused no.6. So far as appellant no.1 accused no.10 Ram Sanjiwan Singh is concerned on the eye-witness account which is found acceptable and reliable the prosecution had also established its case that the said accused had shared the common intention to do away with the deceased as he had shot in the air so that the people in the vicinity would be scared and may not come to the rescue of the deceased and he also could have been legitimately convicted under Section 302 read Section 34 along with his companions. However the learned Trial Judge thought it fit to convict him under Section 304 Part I, IPC and the State appeal against acquittal of appellant no.1 accused no.10 Ram Sanjiwan Singh came to be dismissed by the High Court and against that part of the decision of the High Court there is no appeal before this Court by special leave. Therefore accused Ram Sanjiwan Singh's acquittal under Section 302 read with Section 34 IPC has come to stay and cannot be interfered with. We shall deal with the nature of the sentence imposed on him by the High Court by way of enhancement from seven years to life imprisonment a little later. We may, however, deal with the main contention canvassed by learned senior counsel Shri Rajender Singh for submitting that the prosecution had not established its case beyond reasonable doubt so far as conviction under Section 302 read with Section 34 IPC is concerned. He firstly contended that it was most unnatural that the accused who were not shown to have been known to anyone could have been implicated in the incident by the eye-witnesses in the way they have done. It is not possible to agree with this contention. It is the case of the prosecution witnesses that these accused belonged to the group of Pyara Singh and even though the case of criminal conspiracy is not established it could not be said that they were totally unknown to the prosecution witnesses.

It was next contended that it would be quite unnatural for these accused to mount an attack in broad day light in a thickly populated bazar area when the deceased was having his shave. We fail to appreciate how this circumstance by itself would make an assault by the accused unnatural. Once an attack was decided upon and pre-planned the victim was traced out and identified, if the accused in the company of their other companions came armed with pistols and suddenly mounted an attack on helpless victim who was sitting on the chair and was getting himself shaved it could not be said that it was an attack which could not have taken place, especially when the eye-witness account is that it had taken place and the fact remains that the deceased on account of this attack died on spot. It has also to be kept in view that the original accused no.5 Arurendra Bahadur Singh @

Lallu Singh and accused no.8 Ganesh Choubey were also being prosecuted and were convicted by the Trial Court on the very same eye-witness account. That appeals of both these injured accused have abated because they are dead. It could not, therefore, be said that this entire story of the attack was a fabric of imagination as tried to be suggested by learned senior counsel Shri Rajender Singh.

It was next contended that the injuries found on the dead body did not corroborate the version of inflicting bullet injuries as deposed to by the eye-witnesses. This contention is to be stated only to be rejected. Dr. Bhola Ram Mahto, Civil Assistant Surgeon at the Government Hospital, Jamshedpur who conducted the post mortem examination on the dead body found eight penetrating wounds on it and according to the doctor all injuries were ante mortem and were caused by high velocity missile like bullet. When multiple bullet injuries were found on the dead body it is easy to visualize that it would not have been the handiwork of only one person armed with one pistol. That clearly indicated plurality of persons who had assaulted the deceased with firearms. Consequently it could not be said that the injuries found on the dead body did not support the prosecution version deposed to by the eyewitnesses.

It was next contended that P.W.4 Shankar Singh had stated that he had taken the deceased to the hospital and he had not mentioned the name of Sunil. We fail to appreciate how this would make any difference as Sunil Singh P.W.5 who was present on the spot and who deposed that he had accompanied the deceased to the hospital had stood the test of cross examination. His version is also fully corroborated by the evidence of P.W.44 Prayag Narain who met Sunil Singh in the hospital and who recorded his 'fardbeyan'.

It was next contended by learned senior counsel for the appellants that the barber who shaved the deceased was not examined. Even this contention cannot advance the case of the appellants for the simple reason that P.W.5 Sunil Singh stated in his evidence as elicited in cross examination that he was trying to trace the barber. The evidence also showed that because of the firing the barber had run away. It was tried to be suggested that this very barber used to shave the deceased twice a week. That may be so. But it was not clear as to who was the barber who shaved the deceased on that fateful evening nor was anything pointed out in the cross examination of Sunil Singh P.W.5 that he knew the name of the barber. But even otherwise non-examination of the barber did not affect the core of the prosecution case against the accused which has stood well established on record by the eye-witness account of aforesaid eye-witnesses P.Ws.1, 3, 4 and 5.

It was next contended that the case diary was tempered with. Even this submission cannot be accepted for the simple reason that the evidence of Prayag Narain P.W.44 and other police witnesses clearly showed that four copies were taken out in connection with the entries in the police diary. The evidence of P.W.44 Prayag Narain had shown that the case diary was written in the prescribed form. There was a connective number of the case diary. In that case the serial number of the case diary was not connective because that had been written in four copies instead of three. This part of the evidence has stood well established on record and consequently even this contention cannot be of any use to the appellants to show that the recording of the FIR was in any way ante-timed.

It was next contended that these alleged eye-witnesses had bad antecedents. That might be so, however if their

presence on the spot was natural and they could witness what happened on spot it could not be said that they were necessarily deposing falsely about what they saw on spot. A faint attempt was tried to be made that if the assault was mounted from a distance of one foot, as one of the witnesses stated, the injuries found on the dead body would have been more pronounced. This submission loses its importance for the simple reason that witness Gazraj Singh P.W.3 had deposed that accused Moti Lal Tiwary had fired from a distance of 1 or 1/2 or 2 metres and Malkit had fired from 1 metre and other people were firing from a distance of 2 or 3 metres. This part of the evidence has well stood the test of cross examination and could clearly support the prosecution version regarding the finding of the firearm injuries on the deceased. In this connection it has also to be kept in view that P.W.5 Sunil Singh had stated that even earlier an attempt was made to murder the deceased. Under these circumstances if the deceased had kept himself in company of his body guards as well as his near relatives like Sunil Singh P.W.5, his grandson and Shankar Singh P.W.4, his nephew it could not be said that this was an unnatural conduct.

It was then submitted that in the inquest report the names of the assailants were not shown. It is obvious that there was no column in inquest report about the names of the assailants and there was no occasion for anyone to mention the names of the assailants in the inquest report. It was then submitted that Dr. Saroj Kumar Das P.W.33 had stated that witness Shankar Singh had brought the dead body and he had not stated the name of Sunil. This appeared to be an omission as Sunil's presence was clearly deposed to by P.W.44 who got recorded his 'fardbeyan' and once Sunil's evidence that he accompanied the deceased to the hospital is found believable and has well stood the test of cross examination the non-mentioning of the name of Sunil by Dr. S.K. Das would not make any difference and would pale into insignificance. For all these reasons, therefore, these appeals are liable to be dismissed. These were the only contentions and as there is no substance in them, this result is inevitable. Consequently so far as the appellant no.1 accused no.10 Moti Lal Tiwary, appellant no.5 accused no.4 Malkit Singh and appellant no.7 accused no.6 Ganesh Gwala are concerned, their Criminal Appeal NO.388 of 1985 is liable to be dismissed.

However, so far as Criminal Appeal No.387 of 1985 by accused Ram Sanjiwan Singh is concerned as we have noted earlier his acquittal under Section 302 IPC read Section 34 IPC has stood confirmed. The learned Sessions Judge has imposed on him for that offence sentence to suffer rigorous imprisonment for seven years. In his appeal, however, pursuant to the notice of enhancement, the High Court thought it fit to enhance his sentence to life imprisonment. To that extent the decision of the High Court seems to be inconsistent. When the High Court held that accused Ram Sanjiwan Singh had not committed offence of murder and, therefore, as a logical corollary he was not liable to be sentenced to life imprisonment, it is difficult to appreciate how the same sentence of life imprisonment could be imposed on him by enhancing his sentence under Section 304 Part I. It is now well settled that imposing of sentence is in the realm of discretion of the court and unless this sentence is found to be grossly inadequate the appellate court would not be justified in interfering with the discretionary order of sentence. On the facts of the present case, it may not be said that the sentence of seven years

rigorous imprisonment as imposed by the Trial Court was grossly inadequate. Consequently the Criminal appeal No.387 of 1985 filed by Ram Sanjiwan Singh will have to be partly allowed. While maintaining his conviction for an offence under Section 304 Part I, his sentence of life imprisonment as enhanced by the High Court will stand set aside and instead the sentence of seven years rigorous imprisonment as imposed by the learned Trial Judge will stand restored.

In the result Criminal Appeal No.387 of 1985 filed by accused Ram Sanjiwan Singh is partly allowed as aforesaid while the Criminal Appeal No.388 of 1985 filed by accused Moti Lal Tiwary original accused no.1 appellant no.2, accused Malkit Singh original accused no.4 appellant no.5 and accused Ganesh Gwala original accused no.6 appellant no.7 will stand dismissed. As all the accused are on bail pending these appeals, their bail bonds are ordered to be cancelled and they are ordered to be taken into custody for serving out remaining part of their sentence as imposed by the order of the courts below and as confirmed by this Court, subject to the modification of the sentence in favour of accused no.10 Ram Sanjiwan Singh appellant no.1 in his criminal appeal.