

**HIGH COURT OF MADHYA PRADESH**  
**BENCH AT INDORE**

**(DIVISION BENCH: HON. MR. JUSTICE VIVEK RUSIA &  
HON. MR. JUSTICE SHAILENDRA SHUKLA)**

Case No.		<b>CRA No.849/2008 &amp; CRA No.962/2008</b>
Parties name	:	<b>CRA No.849/2008</b> Bhagwan Singh S/o Bherusingh and others  <b>Versus</b> State of Madhya Pradesh  <b>&amp;</b> <b>(CRA No.962/2008)</b> Sohan Singh S/o Ragunath Singh and Another  <b>Versus</b> State of Madhya Pradesh
Date of Judgement	:	<b>24.09.2021</b>
Bench constituted of	:	Hon'ble Shri Justice Vive Rusia Hon'ble Justice Shailendra Shukla
Judgement delivered by	:	Hon'ble Justice Shailendra Shukla
Whether approved for reporting	:	<b>Yes</b>
Name of counsels for the parties	:	Shri Virendra Sharma, learned counsel for the appellants. Ms. Mamta Shandilya, learned Govt. Advocate for the non-applicant – State.
Law laid down	:	<b>*Recording of Dying Declaration by Investigating Officers-</b> Held- Regulation No.742 of M.P. Police Regulation stipulating assessment of condition of injured by Medical Officer before recording such dying declaration needs to be adhered to. Further, it should also be explained as to why the service of Magistrate could not be requisitioned for recording of dying declaration <b>*Case involves allegations of committing triple murder-</b> Role of Investigating Officer found to be

		extremely unprofessional, with not only major lapses but also indications of actual concocted dying declaration – Initiation of proceedings under M.P. Civil Services (Pension) Rules 1976 recommended against Investigating Officer.
Significant paragraph numbers	:	15, 16, 17, 18, 19, 26

**(Vivek Rusia)**  
**Judge**

**(Shailendra Shukla)**  
**Judge**

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**(DIVISION BENCH: HON. MR. JUSTICE VIVEK RUSIA &  
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<b><u>Criminal Appeal No.849 of 2008</u></b>		
1.	Bhagwan Singh S/o Bherusingh, Age 55 years	<b>Appellants</b>
2.	Balu Singh S/o Bhagwansingh, Age 22 years	
3.	Darbar Singh S/o Bherusingh, Age 37 years	
4.	Roop Singh S/o Bherusingh, Age 36 years	
5.	Bharat Singh S/o Meharbansingh, Age 21 years	
6.	Dharmendra Singh S/o Bhagwansingh, Age 20 years	
7.	Meharban Singh S/o Bherusingh, Age 60 years All Occupation, Agriculture, All R/o. Village Brahmankheda, P.S. & Tehsil, Mahidpur, District Ujjain	
<b>Versus</b>		
1.	State of Madhya Pradesh through Police Station-HarijanThana, District Ujjain (M.P.)	<b>Respondent</b>

**&**

<b><u>Criminal Appeal No.962 of 2008</u></b>		
1.	Sohan Singh S/o Ragunath Singh, Age 22 years	<b>Appellants</b>
2.	Ragunath Singh S/o Bhagwansingh, Age 22 years All Occupation, Agriculture, Both R/o. Village Brahmankheda,	

	P.S & Tehsil, Mahidpur, District Ujjain	
<b>Versus</b>		
1.	State of Madhya Pradesh through Police Station-SDOP, Mahidpur, District Ujjain (M.P.)	<b>Respondent</b>
<b>Shri Virendra Sharma, learned counsel for the appellants. Ms. Mamta Shandilya, learned Govt. Advocate on behalf of respondent/State.</b>		

### J U D G M E N T

**( Delivered on 24<sup>th</sup> September, 2021 )**

**Per Shailendra Shukla, J.**

Regard being had to the similitude of the FIR and factual foundation, these appeals filed on behalf of the appellants were analogously heard and decided by this common order.

1. These appeals have been filed under Section 374 of Cr.P.C against the judgment dated 23.07.2008 passed by Special Judge, SC/ST (P.A.) Act, Ujjain in Special S.T. No.261/2005 whereby the appellants have been convicted under Section 148, 302/149 (three counts) of IPC and sentenced to two years of R.I. with Rs.1,000/- fine with default stipulation of six months of R.I. under Section 148 of IPC for each count and with life imprisonment and fine of Rs.1,000/- with default stipulations of six months of R.I. under Section 302/149 IPC for each count.

2. The prosecution story succinctly speaking is that prior to the incident dated 11.07.2005, there was a report filed by both the parties (the appellants and the deceased) against each other on 08.07.2005. The appellants had lodged the report against the deceased for committing theft of their buffaloes and the deceased had lodged the

report alleging assault upon them by the appellant for alleged stolen of their buffaloes. After lodging the FIR on 08.07.2005, the appellants had thrown stones at the house of complainant (deceased) in the mid-night between 10-11.07.2005. Due to this incident, deceased Ramchandra alongwith his mother Nanibai set out for the police station for lodging report in the morning of 11.07.2005 at about 7:30 to 8:00 AM. On the way, they were surrounded by the appellants who were wielding weapons such as *Dhariya*, swords and sticks and they started abusing the deceased threatening him and they started assaulting him with these weapons. The father of Ramchandra, Kachru, when came to intervene, he was also assaulted by the appellants. The appellants, thereafter, dragged Bhagirath (brother of the deceased Ramchandra) from his house and assaulted him, they brought him up to “*Bada*” of Jaswant Singh where, he died. Gattabai, wife of Ramchandra and other villagers arrived at the spot but the appellants threatened that anyone intervening would be killed as well. Kachru and Bhagirath succumbed to their injuries on the spot. Telephonic intimation was sent to the Police Station – Mahidpur Road. The SHO of Police Station Mahidpur Road, Prahalad Singh Tomar (PW.18) arrived on the spot and he found Ramchandra to be still alive. He recorded the Dehati Nalichi Ex.P/7 on the basis of statements made by Ramchandra and then recorded the dying declaration Ex.P/10 on the spot. Ramchandra was sent to PHC, Mahidpur Road, but succumbed on the way to hospital. Prahalad Singh Tomar (PW.18), drew Safeena form and Naksha Panchyatnama of the bodies of Kachru and Bhagirath and their bodies were sent to the Civil Hospital for conducting post-mortem. The Safina form of deceased Ramchandra was drawn in Mahidpur Civil Hospital, his post-mortem was also got conducted. On the basis of Dehati Nalichi, FIR

was lodged, investigation was initiated, spot map Ex.P/57 was drawn, the Patwari drew another map, blood stained soil and plain soil were seized, the shoes of Ramchandra and Bhagirath were seized from the spot, some stones were also seized near the spot, blood stained clothes of the deceased were seized and memo of appellants were recorded from Ex.P/32 to Ex.P/38, sword was seized from Sohan Singh, Dhariya (sharp edge weapon) was seized from appellant Roopsingh and from rest of the appellants, sticks were seized. These seizure memos are Ex.P/37 to Ex.P/38. The seized items were sent to FSL from where the report was obtained. After recording the statements of the witnesses and rest of the investigation, charge-sheet was filed before the JMFC who committed the matter to the Special Judge, SC/ST (P.A.) Act.

3. Learned Special Judge has framed charges under Section 148 and 302 of IPC and in alternate 302/149 and 506 of IPC and under Sections 3, 2 and 5 of SC/ST (P.A.) Act. The appellants abjured their guilt and claimed innocence submitting that they have been falsely implicated so as to illegally obtain compensation from the State Government. No defense evidence has been led. The learned trial Court examined 19 witnesses in all and by the impugned judgment, the trial Court has acquitted the appellants from Section 506(2) of IPC and Section 3, 2, 5 of SC/ST (P.A.) Act. The appellants have been sentenced in the manner as already described.

4. In separate appeals which have been preferred, the appellants have stated that the learned lower Court was wrong in drawing unwarranted inferences, the FIR is delayed and dying declaration is not reliable, the witnesses are not reliable as well and the ocular testimony does not correspond with the medical testimony, there are serious material omissions and contradictions in the statements of the

prosecution witnesses and on these grounds, they have sought to be acquitted.

5. The question for consideration is whether in view of the submissions made on behalf of the appellants, the appeals are liable to be allowed and the appellants are entitled for acquittal?

6. Nanibai (PW.3) is the eye-witness who has stated that she is mother of Ramchandra and Bhagirath and that Kachru was her husband. She has stated that the appellant Bhagwan Singh had thrown stones in the previous night under the influence of liquor. The witness states that the appellants were nursing doubt against Ramchandra for having released (stolen) their buffaloes and this was the reason that the appellants had thrown stones. The witnesses states that she suffered injuries on her head due to stone pelting. She further states that, she alongwith Ramchandra set out towards Mahidpur Road Police Station for lodging the report. Accused Sohan Singh caught hold of Ramchandra and all other accused persons started assaulting him. The witness states that Roop Singh, Meharban and Bhagwan Singh were wielding sharp edge Dhariya, Bharat Singh, Balu were wielding swords whereas Darbar Singh and Rugnath Singh were wielding sticks. Due to such assault, Ramchandra suffered injuries on his head, at that time, the husband of the witness (Kachru), who had gone to attend the call of nature, arrived and pleaded with folded hands, but the appellants broke his hands in pieces with swords. The witness thereafter states that the appellants did not injure anyone else but then immediately states that Bhagirath had climbed on the terrace of his house, but the appellants went after him and assaulted him and killed him. The witness also states that the accused persons had severed the hands and legs of Kachru and also his head was cut off. She also stated that the

neck of her son Bhagirath was also cut off. The witness states that after the incident, she went to make telephone call to the Police Station Petlawad and when police came, Ramchandra was still alive who recorded his dying declaration whereas Kachru and Bhagirath were already dead.

7. This witness thus states that five accused persons were wielding sharp edge weapons and two others were wielding swords and rest were assaulting with sticks. However, Investigating Officer, R.S. Prajapati (PW.15) has stated that only sword has been sized from the appellants Sohan Singh and one Dhariya has been seized from the appellant Roopsingh as per their memos whereas sticks were seized from the other appellants.

8. Further, contrary to the evidence of Nanibai (PW.3) that the hands of Ramchandra were cut off in pieces with swords by the appellants and the hands, legs and head of Kachru were also cut off by the appellants. Dr. Dinesh Chandra Saxena (PW.4), who had conducted the post-mortem of the deceased has not found any incised wound on the person of any of the deceased. All the injuries on the person of the deceased have been found to be lacerated wounds, contusions and abrasions and has stated that all the injuries were caused by hard and blunt objects. The Presiding Officers has although stated that some of the injuries were so serious in nature that bones had come out which may not occur due to merely lathi blows meaning thereby that such injuries could have only been caused by more dangerous weapons such as Dhariya and swords, however, this opinion of Presiding Officer is not based on any admission on the part of doctor who conducted the post-mortem examination. The doctor has in fact, not been asked any such question and therefore, serious discrepancies in the statements of



Nanibai and the prosecution story regarding wielding of swords and dhariya by numbers of accused persons and assaulting the deceased with such danger weapons, is not found to be substantiated.

9. The evidence of Nanibai (PW.3) is also not found to be reliable as in para no.12 of her cross-examination she admits the suggestions that she was moving much behind Ramchandra and on hearing the noise from the spot of incident, which was at a slope, she had gone to call the Sarpanch and when she came back alongwith Sarpanch, she had found her husband and son lying there. Due to this discrepancy, she has again been re-examined and then she again states that the incident had occurred in her presence only. The Presiding Officer in para no.26 of the judgment has despite noticing the aforesaid contradiction, considered the evidence to be reliable stating that the contradiction in the evidence of witness giving rise to doubt on the witness is only because of clever cross-examination. One fails to understand as to what difference would it make whether contradiction in statement is brought about by clever or otherwise manner of cross-examination. The contradiction would be the contradiction in any case. Thus, the evidence of Nanibai (PW.3) is not found to be reliable. Her statements needs to be corroborated by other piece of evidence.

10. The other corroborative piece of evidence in this matter is dying declaration of Ramchandra. The witness Pralad Singh Tomar (PW.18) has stated that on 11.07.2005, while he was posted as SHO at Police Station Mahidpur Road, he received an intimation on telephone about the incident and he went to the spot. He found Ramchandra in injured condition and on the basis of his statements, Dehati Nalishi Ex.P/60 was recorded. Ramchandra has appended his thumb impression on Ex.P/60. Thereafter, his dying declaration was recorded

in the presence of witnesses. As per the witnesses, Ramchandra told him names of the appellants who had injured him and he also told him about the weapons with which he had been assaulted and narrated the reason for which he has been assaulted. As per Ramchandra, the accused had thrown stones in the night before and had been also making allegations of committing theft of their buffaloes regarding which, Ramchandra was going to lodge the report. As per the witness, his dying declaration is recorded in question answer format and dying declaration is Ex.P/10 on which the witness appended his signatures from "A" to "A" part and Ramchandra has appended his thumb impression.

11. In cross-examination, the witness states that he had gone to the spot equipped with material for carrying out investigation. He has been asked as to whether he had taken seal of SHO to the spot or not. He has been asked which thumb impression of Ramchandra was used for appending the impression. The witness does not remember this. The witness in para no.17 of his cross-examination has been asked question that in Dehati Nalishi, the thumb impression is made with blue ink, but in dying declaration, the color of ink is different and has been asked reason for the difference. The witness has stated that due to different carbon papers, there is a difference in the color of the ink. This would only mean that the source of ink on the thumb of Ramchandra was not of Ink pad but of carbon papers. However, in Safina Form and Naksha Panchnama drawn at the spot, thumb impressions of the witness have been taken which depicts clearly that ink pad has been used meaning thereby, that the ink pad was available at the spot and hence, what was the need to use the carbon papers in respect of Ramchandra and why two different carbon papers were used, is not explained by the witness.

The witness has stated that the ink pad was left behind at the police station. However, that is also not reliable in view of the thumb impression from ink pad found to be appended on Safina form and other documents which were drawn at the spot only. Further, although the time of dying declaration has been shown as at 11:15 AM but it has not been shown that till what time, the dying declaration was recorded. Whether Ramchandra was in fit condition to make statements has also not been stated by way of making such a remark on Ex.P/10. When such an information had been received in the police station, no effort was made to contact any doctor or Magistrate requesting him to accompany the spot. Ex.P/10 (dying declaration) does not bear the presence of any such doctor or Magistrate. The witness Ishwar Singh (PW.5) whose signatures are taken on the dying declaration has been declared hostile and he denies that the dying declaration was recorded in his presence. Another witness Swaroop (PW.6), who has also a witness of dying declaration, has also turned hostile. He states that on the spot, he had seen two persons lying dead and what was done by T.I., was not known to him. He claims ignorance as to whether T.I. had taken any statements and also states that the aforesaid statements were not read over to him.

**12.** Learned counsel for the State has drawn court's attention to the last statement in cross-examination made by the witness (PW.6) who has stated that two persons had been lying dead and the third person whether was dead or alive, the witness does not know. Learned counsel for the State submits that the witness straightway denies that Ramchandra was dead and therefore, the prosecution story that Ramchandra was alive stands substantiated.

**13.** The aforesaid submissions of learned counsel for the State

regarding reliability of evidence of Swaroop (PW.10) does not hold water as can be seen. Swaroop has denied the recording of any statement of the deceased in his presence and the statements which he makes at the end of his deposition, only shows his ignorance as to whether Ramchandra was alive or not.

14. Thus, the evidence of (PW.18) regarding dying declaration of Ramchandra is not supported by independent witnesses, there is already discrepancies found in his statements regarding use of carbon papers and it has also not been found that there is no remark either of doctor or any Magistrate on Ex.P/10 that deceased was in a fit condition to state or to record dying declaration.

15. Following excerpt from Regulation No.742 of M.P. Police Regulations, is relevant:

“a.....  
b.....  
c.....

If the attendance of a magistrate cannot be secured, without the risk of such person's death before his statement can be recorded, the investigating officer will record the dying declaration in accordance with the following instructions:-

(1) If possible, such person shall be examined by a medical officer with a view to ascertaining that he is sufficiently in possession of his reason to make a credible statement.”

The Investigating Officer has not followed the procedural norms as stipulated in the aforesaid regulation.

16. The Apex Court in the case of Munna Raja & Anr. vs. State of M.P. AIR 1976 S.C. 2190 has held that where the Investigating Officer himself recorded the statement of the victim who was in a precarious condition if services of the Magistrate or doctor were not sought, such a practice of recording by the Investigating Officer was improper and should

not be encouraged. Para 11 of aforesaid judgment is relevant which reads as under :-

*“11. ....But, if the investigating officer thought that Bahadur Singh was in a precarious condition, he ought to have requisitioned the services of a Magistrate for recording the dying declaration. Investigating officers are naturally interested in the success of the investigation and the practice of the investigating officer himself recording a dying declaration during the course of investigation ought not to be encouraged. We have therefore excluded from our consideration the dying declaration, Ex. P-2, recorded in the hospital.”*

17. In ***Meera vs. State of Rajasthan***, AIR 2004 S.C. 1879 it was laid down that where the Investigating Officer had plenty of time and facility to procure the services of the Magistrate for recording of a dying declaration, the dying declaration recorded by the Magistrate should be excluded from consideration. The relevant para reads as under:

*“19. ....There is another aspect of the matter for which there is no explanation. This is not a case where, according to the prosecution, the poison was administered to the deceased without her knowledge or suspicious. If one is to believe the dying declaration one fails to understand why the deceased would have swollen the poison given by her mother-in-law when she had seen, as claimed by her, that what was being given to her was poison meant for killing rats. All these facts create a serious doubt in our mind as to whether the dying declaration was really recorded in the manner alleged and also as to the veracity and truthfulness of the said dying declaration. As we have noticed earlier there is no evidence on record to show that the relationship between the appellant and the deceased were strained and not cordial. There is also evidence on record to show that the deceased had been keeping unwell after child birth and she was being treated for her ailments. The High Court has observed that there was no reason for the deceased to commit suicide. Apart from the fact that a person committing suicide behaves with abnormality, equally there is no reason for the appellant to commit the murder of the deceased. That apart, the conduct of the appellant is also not consistent with the hypothesis of her guilt. If she had really administered poison to the deceased she would not have accompanied the deceased to her parents' house at Purada and thereafter taken her to the hospital at Sumerpur. Admittedly, she was present all the time and all this only indicate her innocence in the matter. Looking to the circumstances in which the dying declaration was recorded by the police officer and not by the Magistrate, and having regard to the other facts and circumstances of the case, we are of the view that the prosecution has not proved its case beyond reasonable doubt, and in any event the appellant is entitled to the*

benefit of doubt.”

(emphasis supplied)

18. In the case of *Lallubhai Devchand Shah & Ors. vs. The State of Gujarat*, AIR 1972 SC 1776, the Apex Court has laid down in para as under :-

9. .... A dying declaration must be closely scrutinised as to its truthfulness like any other important piece of evidence in the light of the surrounding facts and circumstances of the case, bearing in mind, on the one hand, that the statement is by a person who has not been examined in court on oath and, on the other hand, that the dying man is normally not likely to implicate innocent persons falsely. See *Khushal Rao vs The State of Bombay* 1958 SCR p. 552. If the court is satisfied on a close Scrutiny of the dying declaration that it is truthful, it is open to the court to convict the accused on its basis without and independent corroboration. In the present case, we find that on a close scrutiny of the dying declaration both the courts, after a detailed consideration of the evidence, have come to the conclusion that the dying declaration is true. The normal rule so far as this Court is concerned is that when the High Court accepts a piece of evidence as true, this Court does not examine the evidence afresh for itself unless there is substantial error of law or procedure or there is a failure of justice by reason of misapprehension or mistake in reading the evidence or the case involves a question of principle of general importance. See *Brahmin Ishwarlal Manilal v. The State of Gujarat* Crl. Appeal No. 120 of 1963 decided on 10-8-1965, and *Tapinder Singh v. State of Punjab and Anr.* 1970 (2) SCC p. 133.

19. It is being seen that investigating officers are not adhering to the precautions contained in Regulation No.742 of M.P. Police Regulations (supra) and other directions contained in the apex Court judgements before recording the dying declaration. A copy of this judgment needs to be sent to DGP, Madhya Pradesh for the purpose of circulating the same to Superintendent of Police throughout the State, who in turn shall issue suitable directions to SHOs of Police Stations within their jurisdiction.

20. It can also be seen that Ramchandra whose dying declaration was claimed to have been recorded had received as many as 24 injuries. Dr. Dineshchandra Saxena (PW/4) who had conducted the postmortem of Ramchandra had found the following injuries on his person :-

- “(i) Lacerated wound 7 x 2 cm x bone deep on the left side of the skull.
- (ii) Lacerated wound 4 x ½ x 1cm between medial line left side of the skull.
- (iii) Lacerated wound 5 x 2 x bone deep on right side of the skull.

- (iv) Lacerated wound extending from right ear to right side of the face 5 x ½ x 3 ¼ cm.
- (v) Contusion with swelling on right side lower lip 3 x 2 cm.
- (vi) Contusion 3 x 2 cm over right upper arm.
- (vii) Big contusion 15 x 2 cm extending from right upper arm to forearm with fracture of humerus and radius ulna bone with haematoma on the joint of the elbow.
- (viii) Lacerated wound 5 x 1 cm x bone deep on the right elbow joint from where fracture could be seen and felt.
- (ix) Lacerated wound 4 x 1 cm x bone deep on right forearm from which pieces of bone were coming out.
- (x) Contusion 5 x 4 cm on right palm.
- (xi) Contusion on the left deltoid region 5 x 2 cm with rail pattern.
- (xii) Contusion 5 x 2 cm on the left upper arm on the anterior aspect.
- (xiii) Contusion 8 x 2 cm on the left upper arm on the anterior aspect.
- (xiv) Contusion 6 x 4 cm on the left forearm with swelling. The bones of left forearm were found to be fractured with presence of haematoma.
- (xv) 3 abrasions with contusion size 8 x 1 cm x 5 x 1 cm and 3 x 1 cm on left forearm.
- (xvi) Swelling with contusion on left palm 5 x 4 cm.
- (xvii) Contusion below right chest size 8 x 4 cm.
- (xviii) Contusion resembling rail pattern size 5 x 4 cm on right side of the back and 28 x 20 cms on left side of the back.
- (xix) Abrasion all over the back 26 x 28 cm on the right side and 28 x 20 cm on the left side of the back.
- (xx) Lacerated wound 8 x 3 cm on the left leg resulting in both tibia and fibula bones coming out of the wound. On opening the wound it was found that the lower side of the femur bone was also fractured.
- (xxi) Lacerated wound 3 x 1 cm bone deep below knee with both bones broken along with haematoma.
- (xxii) Lacerated wound on the lower side of the left leg 5 in number sizes 2 x ½ x 1 cm, 1 ½ x ½ x 1 cm, 1 x ½ x 1 cm, 2 x ½ x ½, 1 x ½ x 1 cm.
- (xxiii) Lacerated wound on the joint of the knee 7 x 2 cm right leg fibula and deep bones were seen coming out of. The joint near knee was dislocated.
- (xxiv) Lacerated wound on right leg size 1 ½ x 1 x 1 cm.
- (xxv) Abrasion 5 x 1 cm on right leg.

**21.** As per Dr. Dineshchandra Saxena (PW.4) injury Nos.7, 8, 9, 13, 16, 17, 19, 20 and 22 had fractures. Thus, there were as many as nine fractures. On internal examination of the skull haematoma was found in injury

Nos.1, 2 and 3. On internal examination of the chest the sternum bone was found to contain haematoma and the bones below right chest were found to be broken and the right lung was found to be lacerated and torn. There was blood present in the right pleural cavity. The chambers of heart were empty and water was found in abdomen. The death has occurred as a result of haemorrhage resulting from the injuries and it was culpable homicide in nature. As per the witness the report is Ex.P/4. All injuries were antemortem in nature. With such multiple fractures, collapsed lung, serious injuries on skull, it cannot be expected that Ramchandra was still in a position to not only record the statements in Dehatinalishi, but also record his dying declaration thereafter. The incident had occurred at about 7.30 Am to 8.00 AM and the dying declaration was recorded 4 hours later. Such a seriously injured person is most likely to lapse into unconsciousness if not already dead in four hours duration. Hence, the dying declaration is unreliable.

**22.** Other eyewitness of the incident is Gatta Bai (PW.16). She is the wife of deceased Ramchandra. This witness states that at the time of incident she was standing at her house and she had witnessed the murder. She states that all accused had assaulted her husband. She states that the accused also assaulted her father-in-law (Kachru). She also states that her brother-in-law Bhagirath had climbed on the terrace of the house, but the appellants also climbed up and cut him down. Her daughter was also injured with the sword. She denies in her cross examination that all the three of her family members had died while committing dacoity in a train as a result of train accident and she also denies that a false case has been foisted against the appellants in order to claim money. She has been given suggestion that due to misbehaviour with her she used to stay at her parental house. She denies this suggestion but then states that earlier she used to stay with her husband only. This could mean that she in fact used to stay away from her husband. The witness admits that her mother-in-law had told her to give statement as they would fetch money if they give statements. She then immediately states that



her mother-in-law did not told her so. She states that she has received Rs.1,40,000/- so far which has already been deposited. In para 12 of the cross examination she states that the spot of the incident is barely 5 steps away from her house. Then in para 15, she admits that the slope where the incident took place is 50 feets away from her house. Thus, there are major inconsistencies in her statements. Thus witness does not appear to be reliable. While the prosecution story is that her father-in-law Kachru was coming after answering the call of the nature, but this witness denies so. In para 16 she states that when incident occurred she was standing out side her house, but immediately thereafter states that when her husband was assaulted, she came out of the house.

**23.** As already seen, the aforesaid witness does not inspire confidence. Another eyewitness namely Nanibai (PW.3) has also been not found to be reliable. Nanibai (PW.3) has admitted that she was told by the officers that if they give proper statements then her son would be employed in Government service, that Collector and S.P. had given her Rs.2.80 lacs in F.D. and Rs.20,000/- as well. She has been asked regarding the incident of the previous night when stones were hurled allegedly by the appellant at her house. In para 10 she states that she told nobody in the village about the stones. She has stated that she had suffered injury due to stones hurled by the appellants, but there is no MLC of the witness conducted by the police. She admits that there is a motorcycle and tractor in her house. It is not understandable as to why she and Ramchandra were going on foot to police station Mahidpur Road, which is 18 Kms from her village. It is also not understandable as to why Nanibai an old woman would be accompanying her son on foot for lodging the report. Nanibai (PW.3) herself states that it takes about half an hour to reach the police station on motorcycle. One can very well imagine that no person would go on foot to lodge the report to such far off distance. Why Ramchandra could not have been accompanied by other male members of the family, has not been shown. While Gattabai (PW.16) has stated that the place of the incident was a slope about 50 feets away from her house, Nanibai

(PW.3) states that the aforesaid slope was 2 to 3 Kms away. Thus, it is certain that there was no possibility for Gattabai to see the incident from her house. One also fails to understand as to how Kachru, father of Ramchandra would go to that far for answering the call of nature as the slope where the incident took place was 2 to 3 Kms away from his house. Further, if Ramchandra was intercepted so far from his house, then what was the need for appellants to rush to his house and assault Bhagirath who was present in his house only. Further, if 3 persons had been murdered in broad day light then how is it possible no villagers came to the spot as the incident could not have been committed without any shouts and yelling etc. The weapons which have been seized from the appellants have not been sent to the FSL. The I.O. Prahlad Singh Tomar (PW.18) has not given any explanation as to why the weapons were not sent to the FSL. The two other deceased were Bhagirath and Kachru. Bhagirath had suffered 17 injuries and Kachru 14 injuries and number of fractures were found on various bones of Bhagirath as well as Kachru and important commonality in the injuries of Bhagirath and Kachru are that injury No.13 of Bhagirath was in the form of railway track pattern on the left thigh size 8 x 2 cm and the 11<sup>th</sup> injury on Kachru was also in the form of rail track pattern 10 x 2 cm on the left thigh. It has already been seen that 11<sup>th</sup> injury and 18<sup>th</sup> injury of Ramchandra were also of rail pattern. The 11<sup>th</sup> injury was a contusion on left deltoid region 5 x 2 cm. The 18<sup>th</sup> injury was a contusion 5 x 4 cm rail track pattern on his back.

**24.** Thus all the 3 deceased had injuries resembling rail track pattern impressions. This probabilizes the suggestion given to Gattabai (PW.16) that the death was on account of train accident. The suggestion is that the aforesaid accident occurred when the deceased were trying to commit dacoity in a train. It can also be seen that the Investigating Officer Prahlad Singh Tomar (PW.18) when received the information on telephone regarding the incident, did not care to record the information on any Roznamchasana. There is no Rawangi Roznamchasana drawn. Hate Singh (PW.1) who has lodged

FIR on the basis of Dehatinalishi admits in para 5 that there is no mention of Roznamcha number in the FIR. The witness states in para 5 that there is no mention as to how the information was received in the police station. He then states that in Roznamcha the aforesaid information is mentioned but then no Roznamcha has been exhibited nor placed on record. He denies that Ex.P/1 does not contain the Roznamcha number because no Roznamcha was in fact written. Despite denying the suggestion the fact remains that no Roznamcha has been exhibited or placed on record. This lapse raises finger of suspicious on the Investigating Officer. This Court expresses its displeasure on the manner of investigation by the Investigating Officer who has left gapping holes in his investigation. DSP R.S. Prajapati (PW.15) in para 15 of his cross examination has stated that he has received wireless information regarding the murder of Dalits and he had been informed that SHO was already present at the spot. This shows that I.O. Prahlad Singh Tomar (PW.18) is not stating the truth when he states that he had informed the DSP while proceeding towards the spot.

**25.** It has already been seen that Gattabai (PW.16) has been given suggestion that the deceased were attempting train robbery and were cut down and died in the train accident. Investigating Officer Prahlad Singh Tomar (PW.18) has admitted in para 18 that number of criminal offences have been registered against Ramchandra, Kachru and Bhagirath in police station. The deceased were thus having criminal antecedents and the police was aware about their criminal history. It cannot be denied that when they were found to have died, a false case was foisted upon the appellants against whom the deceased had lodged police complaint barely the 3 days ago. The role of the Investigating Officer appears to be highly suspicious. He states in para 20 that he did not inform the Police Control Room. He states in para 6 and 7 that he had informed DSP while proceeding towards the spot but does not remember as to whether such information was given on mobile or from landline. As already seen, no Roznamchasana was drawn regarding receipt of such

information in police station. Nanibai (PW.3) states that on seeing the incident she had gone to call the Sarpanch and police was informed on telephone. However, Sarpanch has not been examined and Nanibai (PW.3) was not expected to herself inform the police station. After due consideration of evidence available on record, we find that neither the eye-witnesses have been found to be reliable nor the various links in circumstantial evidence have been found proved in a manner so that a complete chain of circumstantial evidence pointing out guilt of appellants may be established. Consequently, the appellants stand acquitted from all the charges i.e. from Section 148 of IPC and Sections 302/149 (three counts) of IPC. Any fine amount deposited by the appellants be restored to them. If not required in any other case, they shall be released from the jail forthwith. Three of the appellants namely Balu Singh, Roop Singh and Meharban Singh are on bail. Their bail bonds stand discharged.

**26.** We have found role of Prahlad Singh Tomar (PW.18) who was investigation officer to be extremely un-professional. The investigation carried out not only is replete with major lapses, there are indications of actually concocted dying declaration. Hence, we recommend initiation of proceedings against the investigating officer Shri Prahlad Singh Tomar regarding withholding/reducing his pension under M.P. Civil Services (Pension) Rules, 1976. A copy be sent to the senior police officer (DGP/IG) for the purpose.

**27.** We also express our displeasure over the investigation carried out by SDOP, Mahidpur R.S. Prajapati (PW.15), who being a senior police officer, did not get to the root of the matter. Extra caution ought to have been taken in a case involving three deaths.

**28.** We further express our regret on inappropriate appreciation of the evidence by the trial Court, which although noticed serious discrepancies in the evidence, has however tried to reason out in favour of the prosecution which has resulted in failure of justice ultimately. As many as 6 out of 9

appellants have had to remain in jail since 2005 (16 years) so far.

**29.** The property seized in the matter would be stand disposed of as per para 37 of the impugned judgment.

**30.** A copy of this judgment be sent to the trial Court alongwith original record for compliance.

**(Vivek Rusia)**  
**Judge**

**(Shailendra Shukla)**  
**Judge**

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