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**Cr. Appeal (DB) No. 1324 of 2005**

**Dhirendra Singh v. State of Jharkhand**

**2017 SCC OnLine Jhar 793**

**In the High Court of Jharkhand at Ranchi**

(BEFORE H.C. MISHRA AND S.N. PATHAK, JJ.)

Cr. Appeal (DB) No. 1324 of 2005

Dhirendra Singh @ Pappu ..... Appellant

v.

State of Jharkhand ..... Respondent

And

Cr. Appeal (DB) No. 1163 of 2005

Narendra Singh @ Pandit ..... Appellant

v.

State of Jharkhand ..... Respondent

Criminal Appeal (DB) No. 1324 of 2005

With

Criminal Appeal (DB) No. 1163 of 2005

Decided on February 28, 2017, [C.A.V. On: 19.01.2017]

For the Appellants: M/s. Munna Lal Yadav & Sanjay Kumar Tiwary, Advocates

For the Respondent-CBI: M/s. Kailash Prasad Deo & Gaurav, Advocates

The Judgment of the Court was delivered by

**H.C. MISHRA, J.:**— Both these criminal appeals arise out of the common Judgment and as such, they are taken up together and disposed of by this common Judgment.

**2.** Heard learned counsels for the appellants in both the appeals and learned counsel for the CBI.

**3.** The appellants are aggrieved by the Judgment of conviction dated 6.7.2005 and Order of sentence dated 14.7.2015 passed in Sessions Trial No. 122 of 2001/Sessions Trial No. 240 of 2003, by the learned Addl. Sessions Judge, Fast Track Court No. 8, Jamshedpur, whereby, the appellants have been found guilty and convicted for the offence under Section 302 r/w Section 34 of the Penal Code, 1860 and Section 27 of the Arms Act. Upon hearing on the point of sentence, the appellants have been sentenced to undergo imprisonment for life for the offence under Sections 302/34 IPC and rigorous imprisonment for three years for the offence under Section 27 of the Arms Act. Both the sentences were directed to run concurrently.

**4.** The prosecution case was instituted on the basis of fradbeyan of P.W. 27 Suraj Mandal, who was then a member of Legislative Assembly from Jharkhand Mukti Morcha party (hereinafter referred to as "J.M.M."), recorded at Tata Main Hospital, Jamshedpur, on 8.8.1987 at 12.15 hours, wherein, he has stated that the informant along with Nirmal Mahto (the deceased), Gyan Ranjan Jee, Ex-MLA, Babulal Soy and Shivaji Rai had reached Jamshedpur in the previous night at about 10.30 pm and had stayed at TISCO Guest House (which is also known as Chamariya Guest House). They had come for attending the last rites of mother of one Avtar Singh Tari. On 8.8.1987 at 11.45 am, they along with some other persons came out of the guest house for going to the house of Avtar Singh Tari. Some other persons also came there, who were also to go to the house of Avtar Singh Tari. In the meantime, one Car bearing No. DEA-2544 came

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there and five persons alighted from it. The informant asked Nirmal Mahto as to who they were, where upon Nirmal Mahto told that two of them were Pandit and Pappu (the appellants herein), who were brothers of Birendra Singh. Pandit went inside the guest house and came out along with his brother Birendra Singh and they started talking amongst themselves. In the meantime, Birendra Singh fired firearm upon Nirmal Mahto, which hit Nirmal Mahto and he fell down. Pandit also assaulted Nirmal Mahto by firearm from behind and he again fired firearm, injuring the informant also, whereupon, Sunil Singh opened fire and the accused persons fled away. The driver of the car also tried to flee away with the car, but he was stopped by Sunil Singh, but he also fled away, leaving behind the car. The informant was informed by Sunil Singh that he (the driver) was Akhileshwar Singh. Soon thereafter, Nirmal Mahto was brought to TMH, where he was declared dead. The informant claimed that the accused persons, namely, Birendra Singh and his brothers, Pandit and Pappu and other accused persons in furtherance of their common intention had committed murder of Nirmal Mahto and had also assaulted and injured the informant with intention to cause his death.

**5.** On the basis of the fardbeyan of the informant, Bistupur P.S. Case No. 169 dated 8.8.1987, corresponding to G.R. No. 1201 of 1987 was instituted under sections 302/307/34 of the Penal Code, 1860 and Section 27 of the Arms Act, and investigation was taken up. Subsequently the case was investigated by the CBI and upon investigation, the CBI submitted charge sheet against the apprehended accused Birendra Singh, showing these appellants to be absconders. It may be stated that said Birendra Singh faced trial in another sessions trial, in which, he was convicted and sentenced for the offence, who subsequently, died during the pendency of his appeal in the High Court. After apprehension of the appellants, supplementary charge sheets were submitted against the appellants.

**6.** It may also be stated at this place that initially appellant Dhirendra Singh @ Pappu was facing trial in Sessions Trial No. 122 of 2001 in the Trial Court at Jamshedpur, whereas, Narendra Singh @ Pandit was facing trial in the CBI Court at Ranchi. By the order of the High Court, both the trials were amalgamated and Narendra Singh @ Pandit was also tried in the Trial Court below at Jamshedpur in Session Trial No. 240 of 2003 after amalgamating both the cases and examining those witnesses afresh, who had earlier been examined.

**7.** Upon commitment of the case to the Court of Session, charges were framed against the appellants for the offence under Sections 302/34 of the Penal Code, 1860 and Section 27 of the Arms Act and upon the appellants' pleading not guilty and claiming to be tried, the appellants were put to trial.

**8.** In course of trial, prosecution has examined 35 witnesses in this case and proved several documents. Out of these witnesses, only three witnesses are the eyewitnesses to the occurrence, who are, P.W.17 Md. Akhtar Hussain, P.W.8 Nirmal Bhattacharya and P.W. 27 Suraj Mandal, who is the informant of the case.

**9.** P.W. 27, the informant Suraj Mandal, has fully supported the prosecution case. He has stated that he was MLA in the year 1987 from J.M.M. Party and prior to that, he belonged to Congress Party, when Gyan Ranjan Jee was also in the Congress Party. This witness has stated that he knew Birendra Singh, who was an accused in this case and he was also a worker of Congress Party. This witness had come to Ranchi for taking part in a party meeting and from Ranchi, on 7.8.1987 he, along with Gyan Ranjan Jee, Nirmal Mahto, Sivaji Rai and Babulal Soy came to Jamshedpur for taking part in the last rites of mother of Avtar Singh Tari. They reached Jamshedpur in the night and stayed in TISCO Guest House (which is also known as Chamariya Guest House), where they reached at about 10.30 in the night. On 8.8.87, in the morning he went to the room of Nirmal Mahto, where other persons also came, including, Aseem

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Mahto, the brother of Nirmal Mahto, and one Kalicharan Mahto, who was a relative of Nirmal Mahto. He had brought a new 407 vehicle for showing it to Nirmal Mahto, which was parked outside the guest house. All of them took a ride in the said vehicle and thereafter they returned to their room. After taking their breakfast, they came out from the guest house for going to the house of Avtar Singh Tari. When this witness and Nirmal Mahto reached near reception, they saw Birendra Singh sitting there. Other persons had also assembled there for going to the house of Avtar Singh Tari. In the meantime, an Ambassador car came, from which, five persons alighted and this witness asked Nirmal Mahto as to who those two persons were, who were coming towards them, upon which Nirmal Mahto told that they were Pappu and Pandit (appellants), the brothers of Birendra Singh. Birendra Singh talked to his brothers near reception and when these persons were going towards the vehicle, Pappu and Pandit again came there and Birendra Singh gave order to his brothers to kill them (the informant and Nirmal Mahto), whereupon, they tried to flee away towards the guest house, but Pappu caught hold the collar of Nirmal Mahto and Birendra Singh assaulted him by firearm. One fire was also made from behind by Pandit, which also hit Nirmal Mahto. One more firing was made which injured the small finger of right hand of the informant and this firing was made by Pappu. In the meantime, Gyan Ranjan Jee raised alarms. This witness and Nirmal Mahto fell down. Pappu was again loading his gun, but in meantime, Sunil Singh opened fire from his revolver, whereupon the accused persons tried to flee away on the car on which they had come, but Sunil Singh stopped the car. The accused persons fled away on foot. In the meantime, police reached there and Nirmal Mahto and this witness were taken to TMH, where Nirmal Mahto was declared dead and this witness was treated. The statement of the witness was recorded by the police at TMH, upon which, he had also put his signature. He has identified his signature on the fardbeyan, which was earlier marked Exhibit-25/1. This witness has identified both the accused persons in the Court. This witness was subjected to extensive cross-examination, in which, he has stated that he had deposed in the case Birendra Singh also, in Sessions Trial No. 203 of 1995. It appears that some contradictions were tried to be taken from the evidence, which he had given in Sessions Trial No. 203 of 1995, but it is not of much relevance. He has stated that upon treatment of his injury, he was shifted to cabin of the hospital where his statement was recorded by the police and subsequently, his statement was also recorded by the CBI at Circuit House, Jamshedpur. He has denied the suggestion to have given false evidence.

**10.** The second eyewitness of the case is P.W. 7 Md. Akhtar Hussain. He was the driver of the Ambassador car No. DEA 2544, which belonged to Akhileshwar Singh. It appears that Akhileshwar Singh and this witness were made accused in the case, but in course of investigation, they have been made the witnesses in the case. No charge sheet was submitted against them. In his examination-in-chief, after amalgamation of both the cases, he has stated that he was the driver of the Ambassador car of Akhileshwar Singh. On 8.8.1987, one person came and informed Akhileshwar Singh that Gyan Ranjan Jee had come. Thereafter, this witness brought Akhileshwar Singh on the car to Chamariya Guest House. Akhileshwar Singh went inside the guest house. Accused Pappu came and demanded key of the car, which he denied, saying that he would give the key only with the permission of the owner of the car. Then Pappu went back and came with Akhileshwar Singh, on whose instructions, he give the key of the car to Pappu and Pappu took away the car. At about 11.40 am, Pappu again came back along with Pandit and both of them went inside the guest house. After some time, both of them came out and upon the order given by Birendra Singh, they started firing. Birendra Singh also opened fire and all of them were firing upon Nirmal Mahto, who was injured and he fell down. There was a connotation. He has identified both the accused persons in the Court. In his cross-examination, he has stated that he was

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knowing Birendra Singh from the date of occurrence itself and prior to that he had neither met him, nor had seen him. Prior to that, he was not knowing even Pappu and Pandit. He has stated that he could not see as to by whose firing, Nirmal Mahto was injured. He has stated that there were small firearms in the hands of both the accused. He has denied the suggestion of giving false evidence.

**11.** P.W. 8, Nirmal Bhattacharya, is the third eyewitness in the case, who, in his examination-in-chief after amalgamation of both the trials, has stated that he was a contractor and he was also in politics. On 8.8.1987, he had gone to Chamariya Guest House to meet Nirmal Mahto, where Suraj Mandal, Gyan Ranjan Jee, Suresh Khetan, Durga Pado, Dhananjay Mahto were also there. At about 11.00-12.00 noon, all of them came out to Portico. A Jeep bearing No. BPX-281, belonging to Nirmal Mahto was in the parking. This witness was bringing the Jeep from parking, as all of them had to go to attend the last rites of mother of Avtar Singh Tari. In the meantime, Birendra Singh proceeded towards Nirmal Mahto, asking both the accused Narendra Singh @ Pandit and Dhirendra Singh @ Pappu to kill both of them (i.e., Nirmal Mahto and Suraj Mandal). Birendra Singh caught hold the collar of Nirmal Mahto, and fired on his chest. Pandit fired on the back of Nirmal Mahto and third firing was made by Dhirendra Singh @ Pappu on the face of Nirmal Mahto, which also hit fingers of Suraj Mandal, as he was helping Nirmal Mahto. They brought Nirmal Mahto to TMH on the same jeep where he was declared dead. He has also identified both the accused in the Court. In his cross-examination, this witness has stated that he had long acquaintance with Nirmal Mahto. At the time of occurrence, he had not started the jeep, rather, he had only sat on the jeep and in the meantime, the occurrence took place. This witness has stated that all the accused persons were armed with country-made pistols. He has denied the suggestion of giving false evidence.

**12.** P.W.12 is Dr. Sheo Shankar Prasad, who had conducted the postmortem examination on the dead body of the deceased. He has stated that on 8.8.87, he was posted in the Department of Pathology at M.G.M. Medical College, Jamshedpur. He received the dead body of Nirmal Mahto, identified by Constable No. 427 Rishimuni Singh and Constable No. 933 Jawahar Paswan at 3.30 pm. and conducted the autopsy at 3.35 pm, on the dead body. He had also received the inquest report and dead body challan, on which, he had put his signatures and he has proved his signatures on these documents, which were marked exhibits. He found the following ante-mortem injuries at the time of autopsy:—

- (I) Punctured injury caused by bullet measuring 3 cm on the left side of lower chest at mid auxiliary line 7" below the left axilla. The wound was irregular and oval in shape and margins were lacerated. An entrance wound of 1 cm diameter having blacking and tattooing of the skin around the wound. The bullet was lodged at the upper part of the esophagus rupturing the skin thoracic muscles ribs 6th and 7th upper lobe of left lung and heart. Chest cavity containing blood and blood clot approximately one litres.
- (II) Punctured injury caused by bullet measuring 3 cm on the back of waist over the Sacrum. The wound was irregular and oval in shape and margins were lacerated. An entrance wound of 1 cm diameter having blacking and tattooing of the skin around the wound. The bullet was lodged in the second sacral vertebra by rupturing the skin muscles and bone.
- (III) Multiple pellets injury on the face. All the pellets were subcutaneously lodged. Three of the pellets removed and preserved. Fracture of the four upper teeth, two incised and two canine. The wound No. (I) and (II) had been produced by graze of bullet and injury No. (III) were caused by firearm weapon. Age of injury:- Fresh. Time since death within six hours. Death was due to internal hemorrhage caused by firearm injury."

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**13.** This witness has stated that injury Nos. (I) and (II) were sufficient to cause the death. He has proved the post-mortem report to be in his pen and signature, which was marked Exhibit-5. He has also stated that the deceased was aged 36 years, middle aged semi dark complexion, good built beard present. This witness had handed over the bullets and pellets removed from the dead body of the deceased. He also handed over the cloth on the dead body to the police and receipt was obtained. The receipt was subsequently handed over to N.K. Sharma of CBI on 21.11.1987. He has also proved the receipt given by the Inspector of CBI, on which the signatures were marked exhibits. He has identified the underwear of the deceased, which was given to the police by him and the same was marked as material Exhibit-V. In his cross-examination, he has stated that in slip No. 359, the word 'Kachha' (underwear) was not mentioned, rather in the slip, only cloth was mentioned. He has also stated that he was not in a position to say that blacking and tattooing of the skin around the wound could be possible when the firing was made at the close distance because he is not an expert.

**14.** P.W.21 is Dr. Braj Kishore Prasad Singh, who had examined the injuries on Suraj Mandal and he found the following injuries on him: —

- (i) Abrasion in right knee.
- (ii) Multiple pillet injury on right hand.
- (iii) Contusion in right little finger.

**15.** Injuries Nos. (i) and (iii) were caused by hard and blunt substance and simple in nature and injury No. (ii) was caused by firearm. The patient was admitted in hospital and the expert opinion regarding injury No. (ii) was given by Dr. S.C. Sinha, Orthopedic Surgeon of TMH. According to him, that injury was also simple in nature. Two pellets were found in the wound in the X-ray. He has identified the injury report of Suraj Mandal to be in his pen and signature, and has also identified the opinion of Dr. S.C. Sinha, thereon, which were marked as Exts-18 and 18/1.

**16.** On the same day, he had examined Nirmal Mahto, who was brought by Nirmal Bhattacharya. On examination, he found no respiration, pulse not felt, blood pressure not recordable, heart sound absent, pupil dilated and fixed, cornea reflex absent. There were other injuries on him caused by firearms. Patient was brought dead. He handed over the dead body of Nirmal Mahto to ASI for postmortem examination. He has proved the injury report of Suraj Nirmal Mahto to be in his pen and signature, which was marked Exhibit-19. In his cross-examination, he has stated that since Nirmal Mahto was brought dead, he did not examine him thoroughly and he was not in a position to say how many injuries were there on his body.

**17.** P.W.1 Dhananjay Mahto, P.W.2 Suresh Khetan, P.W.3 Rajni Singh and P.W.4 Indra Kumar Choudhary, are the political workers, who were present at the place of occurrence. They have only stated that on 8.8.87, Nirmal Mahto was murdered at Chamariya Guest House, but these witnesses have not claimed to be the eyewitness to the occurrence and they have stated nothing against the accused persons. P.W.5 Vijay Kumar Srivastava and P.W.6 Surendra Singh were only tendered by the prosecution. P.W.9 Pankaj Thakur and P.W.10 Vinod Kumar Singh had only heard about the occurrence and they have also stated nothing against these accused. P.W.11 Mahesh Kumar was a Constable in CBI and he had only proved the service report of Summon. P.W.-34, Prem Prakash Dubey and P.W.-35 Radhakant Pathak, who are also constables, are formal witnesses only proving some documents.

**18.** P.W.13, M.V. Raman was, working as Receptionist at TISCO Guest House and he has proved the Visitors register from pages 72 to 89 of the guest house, containing the entries about the guests of the guest house, which was marked Exhibit-11. He has stated about the stay of Suraj Mandal, Nirmal Mahto, Gyan Ranjan Jee and others in the guest house and he had also seen them in the guest house. He has also proved

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the seizure list of the visitors register, upon which, he had also put his signature, which was marked as Exhibit-12 and he has proved his signatures on every page of the visitors register, which were marked as Exhibit-13 series. This witness has stated that he had heard the sound of firing and thereafter, Gyan Ranjan Jee came running and asked him to call the police and to inform the hospital and he was saying that Birendra Singh should not have done this. He had also stated that Nirmal Mahto was injured and thereafter he also saw Suraj Mandal going towards his room in injured condition. This witness informed the Superintendent of Police and TMH for ambulance and thereafter, he came to the verandah, where he saw some persons were trying to lift Nirmal Mahto. He again came and informed the higher officials. He has stated that his statement was also recorded by the CBI. Though this witness has also stated about the occurrence, but he stated nothing about the accused persons.

**19.** P.W.14 Deo Prasad Mahto and P.W.16 Sudhir Mahto are the witnesses to the inquest report of the dead body of the deceased and they have proved their signatures thereon. Witness Sudhir Mahto is also the brother of the deceased. He is not the eyewitness to the occurrence. Upon getting the information about the occurrence, he had come to the hospital, where he saw the dead body of his brother and he also put his signature on the inquest report, which upon his identification was marked as Exhibit-14/2. This witness has also stated about the enmity between Birendra Singh and Nirmal Mahto and had also stated that Birendra Singh had given threatening. At the hospital, he was informed by the persons present there that his brother was assaulted by Birendra Singh, Pappu and Pandit. He had also met Suraj Mandal, who was injured and admitted in the hospital, and he also informed him about the occurrence. In his cross-examination, he has stated that he is not the eyewitness to the occurrence.

**20.** P.W.15 is Akhileshwar Singh, whose car was used in the occurrence and he has admitted that on the date of occurrence, he had gone to guest house along with Birendra Singh and Pandit. Thereafter, this witness was declared hostile.

**21.** P.W.17 is Avtar Singh @ Tari, who has stated that his mother had died on 26.7.1987 and his last rites was to be performed on 8.8.1987, in which, he had invited Nirmal Mahto, who was the leader of J.M.M. Party. Gyan Ranjan Jee, Suraj Mandal, Shankar Singh, Suresh Kheran and others, were also invited. Gyan Ranjan Jee, Suraj Mandal and Nirmal Mahto had come to Jamshedpur on 7.8.87 and they had stayed in Chamariya Guest House. He was informed that there was firing in the guest house, in which, Nirmal Mahto was killed and Suraj Mandal was injured. Thereafter, he went the hospital and he met Suraj Mandal, who was admitted there in injured condition, who informed that Birendra Singh and his brothers Pappu and Pandit had assaulted them by firearm, in which, Nirmal Mahto was murdered and he was injured. In his cross-examination, he has stated that he is only the hearsay witness on the point of occurrence.

**22.** P.W.18 Jawahar Paswan is a Constable in police and he has stated that he had brought the dead body of the deceased for postmortem along with Constable Rishimuni Singh. He has proved his signature and the signature of Rishimuni Singh on the dead body challan. He has stated that after the postmortem, he handed over the dead body to the brother of the deceased.

**23.** P.W.19 Husai Kachhap was working as Sub-Inspector in Bistupur Police Station. He has stated that on 8.8.1987 upon getting information of the occurrence, he along with Inspector S.K. Rai, S.I. Bhagwan Prasad, S.I.H.R. Dubey and others, had gone to the place of occurrence where he saw Nirmal Mahto was in injured condition. Suraj Mandal was also present there. Nirmal Mahto was sent on a Jeep to TMH. He was informed that Nirmal Mahto was assaulted by Birendra Singh and his brother Narendra Singh. He went out in search of Birendra Singh, but he could not find him. Thereafter

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he went to TMH, by that time, Nirmal Mahto had died. He had prepared the inquest report of the dead body, which he has proved to be in his pen and signature, which was earlier marked Ext-14. He has also stated that he prepared the dead body challan for sending the dead body for post-mortem examination, which also he has proved to be in his pen and signature, which was earlier marked Ext-16. He has stated that at the place of occurrence he was informed that the offence was committed by Birendra Singh and his brother Dhirendra Singh, At this point this witness was declared hostile, and in his cross-examination by the prosecution he has admitted that before the CBI, he had disclosed the names of Birendra Singh, Pappu and Pandit, which he was informed at the place of occurrence. He has stated in his cross-examination by the defence about the car on which the accused persons had come and stated that it was a Maruti car of white colour bearing No. BRV 2522. On this point also, this witness has been declared to be hostile, and in his cross-examination by the prosecution he has stated that he has no knowledge that he had stated before the CBI that it was an Ambassador car of dark green colour bearing No. TEA 2544.

**24.** P.W.20 Krishna Kant Singh, is a retired police officer, who has stated that he had taken over the charge of investigation of Bistupur P.S. Case No. 169/1987 on 10.8.1987 from the earlier I.O., and he had recorded the statements of Suraj Mandal and other witnesses, including Akhileshwar Singh, who was arrested in connection with this case. He had also arrested Md. Akhtar Hussain, driver of Akhileshwar Singh. He had got the revolver of Sunil Singh and the fired cartridges examined by Sargent Major and he had also received report from him. He has stated that upon the orders of his senior officers, he handed over the charge of investigation to the CBI. There is nothing of much importance in the cross-examination of this witness.

**25.** P.W. 22 Shobraj Thakur, is the CBI Inspector, who had taken over the charge of investigation on 8.8.2000 from the earlier I.O., and by that time, charge sheet had already been submitted by the earlier I.O. against Birendra Singh showing the present accused persons absconders. On 8.8.2000, he was informed that Dhirendra Singh @ Pappu had surrendered in the Court on 1.8.2000. Thereafter, on 21.8.2000, he took Dhirendra Singh @ Pappu on police remand for three days and interrogated him. He submitted charge-sheet against Dhirendra Singh @ Pappu on 28.09.2000. He has proved the supplementary charge-sheet submitted against Dhirendra Singh @ Pappu and the signatures thereon, which were marked Exhibit-20 series. He has also proved the summon of a witness.

**26.** P.W.- 23 is Surendra Kumar Roy, who was Deputy Superintendent of Police, CID, Ranchi. He has stated that in 1986-87, he was posted at Bistupur Police Station and on 6.1.1987, accused, Birendra Singh had lodged a complaint against Nirmal Mahto, which he entered in the station diary and had sent to Golmuri Police Station. On the same date he had also received a complaint by Nirmal Mahto against Birendra Singh, which also he had sent to Golmuri Police Station. He has proved the forwarding reports on both the complaints to be in his pen and signature, which were marked Exts-22 & 23. He has stated that on 8.8.1987, he was informed that there was firing in Chamariya Guest House and he made necessary station diary entry, bearing No. 246 dated 8.8.1987, which also, he identified and proved, which was marked Ext-24. He has stated that he had gone to Chamariya Guest House along with other police officers and he saw Nirmal Mahto injured by firearm and bleeding, who was being lifted in a Jeep. He also saw Suraj Mandal in injured condition, who was also sitting in the Jeep and they were being taken to TMH. This witness also went to TMH, where the doctor declared Nirmal Mahto to be brought dead. In the hospital, the statement of Suraj Mandal was recorded on the basis of which, Bistupur P.S. Case No. 169 dated 8.8.1987 was instituted against Birendra Singh, Pandit, Pappu and Akhileshwar Singh, and he himself took over the charge of investigation. He has identified the fardbeyan of Suraj Mandal and the endorsement on the fardbeyan to be in his pen and signature, which

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was marked Exhibit-25. He has also proved the signature of Suraj Mandal on fardbeyan, which was marked Exhibit-25/1. This witness has also proved the formal FIR to be in his pen and signature, which was marked Exhibit-26. He has stated that the inquest report and dead body challan were prepared under his instructions. One Ambassador car No. DEA 2544, two pairs of slippers and blood from the portico of the guest house were seized and seizure list was prepared in presence of two witnesses. He has proved seizure list, which was marked Exhibit-27 and he has also proved the signatures on the seizure list, which were marked Exhibit-27 series. This witness has stated that Dr. S.S. Prasad had conducted the post-mortem examination of the deceased and he received pellets extracted from the dead body in a sealed small bottle. He also received the post-mortem report. He has identified the small bottle, in which, pellets were received in sealed condition, which was marked material Exhibit-I. He has also identified the bullets and pellets, which were marked as material Exhibits-II and III. The plastic glass, in which the blood was seized, was marked as material Exhibit-IV on his identification. The underwear of the deceased was marked material Exhibit-V, on his identification. He also identified two pairs of slippers seized from the place of occurrence, which were marked as material Exhibit-VII and VII/1. He has stated that he had arrested Akhileshwar Singh.

**27.** P.W.-26 is Jagjit Singh, who is a C.B.I. Officer. He has stated that in this case, charge-sheet was earlier submitted against Birendra Singh, showing Dhirendra Singh @ Pappu and Narendra Singh @ Pandit as absconders. On 25.9.2002, CBI was informed that Narendra Singh @ Pandit had surrendered before the Judicial Magistrate, Jamshedpur, in another case. This witness was asked to investigate the matter and he took Narendra Singh @ Pandit on police remand and interrogated him. He has identified Narendra Singh @ Pandit in the Court. He has stated that after investigation, he submitted supplementary charge-sheet against this accused, which he proved and was marked Exhibit-33.

**28.** P.W. 28 Rajkishore Singh is another CBI Officer, who has stated about the statements made before him by Akhileshwar Singh. P.W.-29 is Navin Chandra Jha, another CBI Officer, who was also made some investigation in the case and got the statements of two witnesses, namely, Md. Akhtar Hussain and Gyan Ranjan Jee, recorded under Section 164 of the Cr.P.C. After investigation, he had submitted charge-sheet against Birendra Singh, showing Pappu and Pandit as absconders. He has identified the charge-sheet, which was marked Exhibit-34.

**29.** P.W.-31 is T.N. Kapoor, who is a retired CBI officer and he had also made some investigation in the case. He has proved the FIR drawn by CBI. He had also recorded the statements of Suraj Mandal, Gyan Ranjan Jee, Indra Kumar Choudhary, Dhananjay Mahto, H. Kachchhap, Inspector S.K. Roy, Inspector K.K. Singh and Inspector Ghose. He has stated that Husai Kachchhap in his evidence had given the number of car as DEA-2544. He has also stated that he had sent the material exhibits for examination to CFSL, New Delhi and he has proved the letters, through which, the material exhibits were sent. He had also proved the fact that he had seized the visitors register from Chamariya Guest House from M.V. Raman and had prepared the seizure list, upon which, he had taken the signature of M.V. Raman also, which he proved and the same was marked as Exhibit-52. He has also stated that during investigation, he has seized revolver, DBBL gun and pant from some other persons also, along with bullet and fired cartridges extracted from the dead body of the deceased, which he sent for examination before the CFSL, New Delhi. He has proved the letter, through which, the material exhibits were sent. He has stated that he had taken Birendra Singh on remand during investigation and he had also interrogated him, but by that time, Pappu and Pandit were not apprehended. Thereafter he handed over the charge of investigation upon his transfer.

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**30.** P.W.-32 Yogendra Singh, is another CBI officer, who also made some investigations and recorded the statements of some witnesses. He had taken one pant and shirt from Nirmal Bhattacharya on 14.12.1987, which were blood stained and he seized them and prepared seizure list, which was marked Exhibit-54 upon his identification. He had also identified those shirt and pant, which were marked material Exhibits-IX and X.

**31.** P.W. 33 is Naresh Kumar Sharma, who was also a CBI officer. This witness had also stated about some investigations made by him and had made some seizures. He had also received the cloth of the deceased from Dr. S.S. Prasad under receipt No. 359, which was marked exhibit earlier. This witness has also seized some firearms and ammunitions and other materials.

**32.** P.W. 24 is Roop Singh, who was working as Scientific Officer and head of the Ballistic Division CFSL, New Delhi. This witness has been examined in detail, in which, he has proved certain letters and queries received by the investigating agency, which were marked Exhibits. He has stated that four parcels marked Exhibit A/1, A/13, A/14 and A/16 were examined in Biological department in CFSL, New Delhi and a separate report was submitted by them. Two bullets and three small lead pellets were received by this witness in a small glass bottles, which were sealed and intact, when the same were received. Those were also sent to Biological Department for biological test. After opening the seal, they were examined and after examination, they were received in sealed condition. He has stated that the laboratory examination, including test firing and microscopic examinations were made, and he has proved his report about the test firing and comparison of fired ammunitions under microscope, which was dated 13.4.1988, which upon his identification was marked Exhibit-30. He has stated that bullets were fired from some country-made firearm and not from regular revolver. About the lead pellets, he has stated that they were standard suferical short gun pellets and not splinter of bullets. No definite opinion could be given whether they were fired from DBBL gun. He has also stated that the materials, which were received by him were returned back to the S.P., C.B.I. New Delhi after examination. In his cross-examination, this witness has stated that bullets were fired from close range, less than two feet, and this view was based on the examination of the bullets having been fired from some small country-made firearm, and the post-mortem report, which indicated the presence of blackening and tattooing around the wounds. These two bullets were of two different bores and calibers and are generally used in rifles. Absence of standard land/groove marks on both the bullets, indicated that these were not fired from standard rifles, but from the country-made pistol.

**33.** P.W.-25, Chiman Bhai Moti Bhai Patel, is the Assistant Director of Forensic Science Laboratory. He stated that from 1982 to 1991, he was working as Senior Scientific Officer, Gr-II in CFSL, New Delhi. He had also proved some letters sent to him. This witness has stated that he received small clipping/portion of the exhibits that were clipping of underwear, a portion of blood stained paper, plastic glass, stain prepared threats of two bullets and three pellets. These materials were sent to him for blood origin and grouping and after examination, he prepared his report in three sheets. He had proved the same which were marked Exhibit-32 series. He found human blood of AB group on underwear, plastic glass and two bullets and three pellets. He could not find blood group on bloodstained paper, but he found human blood on the paper also. There is nothing in his cross-examination to discredit his evidence.

**34.** P.W.-30 is Dr. V.K. Goyal, who was also posted as Deputy Director- -cum-Director-Incharge, CFSL, New Delhi, who has also proved some letters received from the Superintendent of Police, C.B.I. At the relevant time he was working as Sr. Scientific Officer. This witness had carried out the blood examination, in which, he found human blood in the underwear and the plastic glass. He has also proved the

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reports of the CFSL, which were marked exhibits.

**35.** All the aforesaid official witnesses were also cross-examined by the defence, but nothing important was pointed out by the learned defence counsels from their testimony.

**36.** From the statements of the appellants recorded under Section 313 Cr.P.C., it appears that all the circumstances appearing against them have been put meticulously by the Trial Court below. No defence witness was examined by the appellants in the Trial Court.

**37.** Learned counsel for the appellants submitted that these appellants have been falsely implicated in this case and the prosecution has not been able to prove the charge against them. Learned counsel pointed out that the prosecution case depends mainly upon three eyewitness only, who have named these appellants, but their evidences are full of contradictions. It is submitted that in the FIR, there is no allegation of assault against appellant Dharendra Singh @ Pappu and as such, his presence at the place of occurrence is absolutely doubtful. It is only, during investigation, the prosecution case has been developed and the allegation of assault has been leveled against this appellant. Learned counsel has further submitted that from the evidence of P.W.7, Md. Akhtar Hussain, it would appear that the identification of Dharendra Singh @ Pappu is absolutely doubtful. Learned counsel submitted that P.W.7 is highly interested witness, as he was earlier made accused in this case, but subsequently, he was made the witness in the case and as such, his evidence cannot be relied upon. Similar is the evidence of P.W. 15 Akhileshwar Singh, but the fact remains that this witness has not stated anything against these appellants. It is further submitted that there is no seizure of any firearm from these appellants. Learned counsel further submitted that though P.W. 7 Md. Akhtar Hussain has named both these appellants, but he has clearly stated that he could not say as to by whose assault Nirmal Mahto was injured. It is further submitted that P.W. 8 Nirmal Bhattacharya has stated that Nirmal Mahto was assaulted from behind by Pandit, and Pappu had assaulted him by firearms on his face, whereas, P.W. 27 Suraj Mandal has stated that Pappu had caught the collar of the deceased, and Pandit had assaulted the deceased from behind. Learned counsel accordingly, submitted that the evidence of the eyewitnesses against these appellants are full of contradictions and in view of the fact that there were admitted enmity between the deceased and brothers of these appellants, namely, Birendra Singh, as stated by P.W. 16 Sudhir Mahto, the brother of the deceased, false implication of the appellants cannot be ruled out. It is submitted that in view of the vital contradictions in the evidence of the eyewitnesses, these appellants are entitled at least to the benefit of doubt.

**38.** Learned counsel for the CBI, on the hand, has opposed the prayer and has submitted that there is no illegality in the Judgment of conviction and Order of sentence passed by the Trial Court below. It is submitted that P.W. 27 Suraj Mandal is the most important witness in the case, who has fully supported the prosecution case stating that these appellants along with their brother, Birendra Singh, had assaulted the deceased by firearms, causing his death. It is submitted that all these three accused persons have been consistently named by all the eyewitness, namely, P.W. 7 Md. Akhtar Hussain and P.W. 8 Nirmal Bhattacharya and P.W. 27 Suraj Mandal. There may be small contradictions in their ocular evidence, which is only natural due to passage of time, and it is not fatal the prosecution case. It is submitted that in furtherance of their common intention, all the three accused persons had assaulted the deceased by firearms, causing his death. Indeed, Birendra Singh, who was apprehended and tried separately, was also found guilty and convicted and sentenced for the offence, but he died during the pendency of his appeal. It is submitted that the ocular evidence of the witnesses have been fully corroborated by the evidence of

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P.W.12 Dr. S.S. Prasad, who had found three ante-mortem firearms injuries on the deceased including the pellet injuries on his face and he has specifically stated that death was caused due to firearm injuries and he has also proved the post-mortem report, which is Exhibit-5. P.W. 21 Dr. Braj Kishore Prasad Singh had also proved the injury reports of the informant Suraj Mandal and he had also proved the report prepared by him with respect to the deceased Nirmal Mahto while declaring him dead. It is submitted that the forensic expert witnesses, namely, P.W. 24, Roop Singh, P.W. 25, Chinmay Bhai Moti Bhai Patel and P.W. 30, Dr. V.K. Goyal have fully supported the fact that the human blood was found on the material exhibits, i.e., the underwear of the deceased and bullets and pellets extracted from the body of the deceased and accordingly, the prosecution has been able to prove the case against the appellants beyond all reasonable doubts. Learned counsel for the CBI accordingly, submitted that these appellants have rightly been convicted and sentenced for the offences under Section 302 read with Section 34 of the Penal Code, 1860 and Section 27 of the Arms Act.

**39.** Having heard learned counsels for both the sides and upon going through the record, we find that though there may be slight contractions in the evidence of three eyewitness about the manner of assault, but the fact remains that all the three eyewitnesses, namely, P.W. 7 Md. Akhtar Hussain, P.W.8 Nirmal Bhattacharya and P.W. 27 Suraj Mandal have named both these appellants to have assaulted the deceased along with their brother Birendra Singh. Both these appellants are also named in the FIR and it cannot be said that the presence of Dhirendra Singh @ Pappu is doubted from the FIR. The ocular evidence of three eyewitnesses, as stated above, and the FIR clearly prove the fact that all the three accused persons, including these two appellants, were present at the place of occurrence and they had assaulted the deceased by firearms in furtherance of their common intention and in the occurrence, the informant Suraj Mandal was also injured. P.W. 27 Suraj Mandal is the natural eyewitness of the occurrence, being the injured, and he has fully proved the prosecution case. Nothing could be taken in the cross-examination of these three eyewitnesses to discredit their testimonies. Indeed, even P.W. 16, Sudhir Mahto, who is brother of the deceased, who had reached the hospital upon getting information about the occurrence, has stated that injured Suraj Mandal and other persons present at the hospital, informed him about the occurrence, stating that three accused persons, including these appellants, opened fired upon the deceased, causing his death. The forensic experts have fully proved the fact that stains of human blood were present on the underwear of the deceased, as well as bullets and pellets extracted from the dead body of the deceased. The blood was collected by the investigating officer from the place of occurrence, and the same was also found to be the human blood. The ocular evidence of eyewitnesses is fully corroborated by the medical evidence of P.W. 12 Dr. S.S. Prasad and P.W. 17 Dr. Braj Kishore Prasad Singh, as well as the FSL witnesses, viz., P.W. 24, Roop Singh, P.W. 25, Chinmay Bhai Moti Bhai Patel and P.W. 30, Dr. V.K. Goyal. It is well settled principle of law that if the ocular evidence is supported by the evidence of medical experts, the minor discrepancy and deviation in the evidence of the witnesses, here and there, are immaterial.

**40.** In view of the aforesaid discussions, we find that the prosecution has been able to prove the charge against the appellants beyond all reasonable doubts. We find no infirmity in the Judgment of conviction dated 6.7..2005 finding the appellants guilty for the offences under Sections 302/34 of the Penal Code, 1860 and Section 27 of the Arms Act, and the Order of sentence dated 14.7.2005, sentencing them to undergo rigorous imprisonment for life for the offence under Sections 302/34 of the Penal Code, 1860 and rigorous imprisonment for three years for the offence under Section 27 of the Arms Act, as passed by learned Addl. Sessions Judge, Fast Track Court-VIII, Jamshedpur, in S.T. No. 122 of 2001/S.T. No. 240 of 2003, which are hereby,

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confirmed. Both the appellants are already in jail, serving out the sentence.

**41.** We find no merit in both these appeals and the same, are accordingly, dismissed. Let the Lower Court Records be sent back to the Court concerned forthwith along with a copy this Judgment.

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