

[Against the judgment and order of conviction and sentence dated 11.09.2020 (Sentence passed on 22.09.2020) passed by Sri Amit Shekhar, learned Additional Sessions Judge-VI, Hazaribag in S.T. No. 141 of 2016]

Criminal Appeal (DB) No. 597 of 2020

1. Vikas Tiwary, S/o Shambhu Nath Tiwary, R/o Patratu, Post Office and Police Station- Patratu, District- Ramgarh
2. Santosh Pandey, S/o Yogendra Pandey, R/o Steam Colony, Patratu, Post Office and Police Station- Patratu, District- Ramgarh

.... **Appellants**

Versus

The State of Jharkhand

.... **Respondent**

With

Criminal Appeal (DB) No. 579 of 2020

Vishal Singh @ Vishal Kumar Singh, S/o Late Niranjana Singh, R/o Daud Nagar, P.O.- Daud Nagar, P.S.- Daud Nagar, District- Aurangabad (Bihar), at present resident of Flat No. 303, 3rd Floor, Shrishti Enclave, Emli Kothi, P.O. & P.S.- Hazaribagh, District- Hazaribagh (Jharkhand)

.... **Appellant**

Versus

The State of Jharkhand

.... **Respondent**

With

Criminal Appeal (DB) No. 599 of 2020

1. Dilip Sao, S/o Jhari Sao, R/o Patratu Bazar, Post Office and Police Station- Patratu, District- Ramgarh
2. Rahul Deo Pandey @ Rahul Dev Pandey, S/o Shailendra Pandey, R/o Paraiya Khurd, Post Office and Police Station- Paraiya, District- Gaya, Bihar

.... **Appellants**

Versus

The State of Jharkhand

.... **Respondent**

P R E S E N T

**HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA**

For the Appellants : Mr. Surendra Singh, Sr. Advocate
Mr. Hemant Shikarwar, Advocate
Mr. Adarsh Kumar, Advocate
Mr. Dhurba Mukherjee, Advocate
(In Criminal Appeal (DB) No. 597 of 2020)
Mr. Anoop Prakash Awasthi, Advocate
Mr. Venkateshwar Gopal, Advocate
(In Criminal Appeal (DB) No. 579 of 2020)
Mr. A.K. Kashyap, Sr. Advocate
Mr. K.S. Nanda, Advocate
Criminal Appeal (DB) No. 599 of 2020

For the Resp.-State : Mrs. Vandana Bharti, A.P.P.
Mr. Shailendra Kumar Tiwari, Spl. P.P.
Mr. Satish Prasad, A.P.P.
For the Informant : Mr. B.M. Tripathi, Sr. Advocate
Mr. Kumar Harsh, Advocate
Mr. Nutan Sharma, Advocate
Mr. Naveen Jaiswal, Advocate
Mr. Tejaswa Mohanta, Advocate

C.A.V. on 17/09/2025
Per Rongon Mukhopadhyay, J.

Pronounced on 18/02/2026

Heard learned counsels for the parties.

2. Since all these appeals arise out of a common judgment they are being disposed of by this common order.
3. These appeals are directed against the judgment and order of conviction and sentence dated 11.09.2020 (Sentence passed on 22.09.2020) passed by Sri Amit Shekhar, learned Additional Sessions Judge-VI, Hazaribagh in S.T. No. 141 of 2016, whereby and whereunder, the appellants Vikash Tiwary and Santosh Kumar Pandey in Criminal Appeal (DB) No. 597 of 2020 have been convicted for the offences punishable u/s 120B, 302, 341, 353 read with Section 34 of the IPC, u/s 25(IA)/26/35 and 27 (2) of the Arms Act and Sections 3/4/5 of the Explosives Substances Act and have been sentenced to imprisonment for life along with a fine of Rs. 40,000/ each for the offence u/s 120B, 302 read with Section 34 of the IPC and in default in payment of fine they were to undergo S.I. for 03 years; R.I. for 02 years along with a fine of Rs. 6000/- for the offence u/s 353/34 of the IPC and in default in payment of fine to undergo S.I. for nine months; S.I. for one month along with a fine of Rs. 200/- for the offence u/s 341 of

the IPC and in default in payment of fine to undergo S.I. for three days; R.I. for eight years along with a fine of Rs. 20,000/- for the offence u/s 25(IA) of the Arms Act and in default in payment of fine to undergo S.I. for two years; R.I. for six years along with a fine of Rs. 15,000/- for the offence u/s 26/35 of the Arms Act and in default in payment of fine to undergo S.I. for 1½ years; R.I. for 10 years along with a fine of Rs. 25,000/- for the offence u/s 27(2) of the Arms Act and in default in payment of fine to undergo S.I. for 2½ years; R.I. for 10 years along with a fine of Rs. 20,000/- for the offence u/s 3 of the Explosives Substance Act and in default in payment of fine to undergo S.I. for two years; R.I. for six years along with a fine of Rs. 15,000/- each for the offences u/s 4 and 5 of the Explosives Substance Act and in default in payment of fine to undergo S.I. for 1½ years.

The appellant Vishal Singh in Criminal Appeal (DB) No. 579 of 2020 and the appellant no. 1 in Criminal Appeal (DB) No. 599 of 2020 have been convicted for the offences u/s 120B, 302 read with Section 34 of the IPC, 353/34, 354/34, 341/34 of the IPC and have been sentenced to undergo imprisonment for life along with a fine of Rs. 30,000/- for the offences u/s 120B, 302 read with Section 34 of the IPC and in default in payment of fine to undergo S.I. for 2½ years; R.I. for two years along with a fine of Rs. 6,000/- for the offence u/s 353/34 of the IPC and in default in payment of fine to undergo S.I. for 9 months; S.I. for one month

along with a fine of Rs. 200/- for the offence u/s 341 of the IPC and in default in payment of fine to undergo S.I. for three days.

The appellant no. 2 in Criminal Appeal (DB) No. 599 of 2020 has been convicted for the offence u/s 120B/302 of the IPC and has been sentenced to undergo imprisonment for life along with a fine of Rs. 30,000/- and in default in payment of fine to undergo S.I. for 2½ years.

All the sentences awarded to the respective appellants were directed to run concurrently.

4. The prosecution case arises out of the fardbeyan of Assistant Sub-Inspector of Police Birendra Prasad Singh recorded on 02.06.2015 at 11:00 A.M., in which, it has been stated that on the same day at 7:00 A.M. in four government vehicles, armed escorts and fifteen Policemen in plain dress had come to the Civil Court premises, Hazaribagh from Jai Prakash Narayan Central Jail for production of the accused. On that day dreaded criminal Sushil Srivastava who had several criminal cases against him in Bihar and Jharkhand was also brought for production. It has been stated that at 10:00 A.M. Sushil Srivastava was being taken to the Court of Additional District & Sessions Judge-II in S.T. Case No. 362/11 and S.T. Case No. 164/10 in handcuffs and after completing the necessary formalities when Sushil Srivastava reached the Gulmohar Tree situated near the G.R. Office, 10-15 persons known to Sushil Srivastava started touching his feet. At that point of time two persons came and after paying their reverence and shaking

hands with Sushil Srivastava started walking with him when all of a sudden, a person come down from a Bolero vehicle which was situated nearby bearing registration No. JH-12B-1694 and by taking cover behind the Bolero vehicle started making indiscriminate firing with an AK-47 rifle at Sushil Srivastava and his two companions. One of the persons accompanying the accused who was firing had thrown a hand grenade to create terror. Sushil Srivastava as well as his accomplices suffered gunshot injuries. The informant had directed the Police personnel present to take up their positions and start firing at the assailants and when firing started the assailants fled away by scaling over the boundary wall in course of which one AK-47 rifle fell down on the ground. All the miscreants managed to flee away on motorcycles. Sushil Srivastava and his two accomplices were taken to Sadar Hospital, Hazaribagh where Kamal and Gayas Khan died while Sushil Srivastava was referred to Ranchi for better treatment but he also died. In compliance to the orders of the superior authority the Bolero vehicle was searched and posters were found in which it was written that the murder of Kishore Pandey has been avenged and mention was made of the name of Vikas Tiwary with “to be continued....” written at the bottom. A live grenade was found from inside the Bolero and from the place of occurrence 29 empty cartridges, four pellets and a black purse were recovered in which the photo copy of driving license and voters’ card of Sahnawaz Alam were found. A pin and lever of a used grenade and an AK-47

rifle near the closed gate of the Court premises as well as two magazines were recovered. The articles were seized and the seizure lists were prepared.

Based on the aforesaid allegations Sadar P.S. Case No. 610/2015 was instituted u/s 341, 323, 326, 353, 307, 302, 120B/34 of the IPC and Sections 25(1-A), 25(1-AA), 26/27/35 of the Arms Act and Sections 3/4/5 of the Explosives Substance Act. On completion of investigation charge sheet was submitted and after cognizance was taken the case was committed to the Court of Sessions where it was registered as S.T. Case No. 141/2016. Charge was framed against the accused u/s 120B, 341/120B, 353/120B, 307/120B, 302/120B of the IPC, Section 25(1A)/35, 26/35, 27(3) of the Arms Act, Sections 3/4/5 of the Explosives Substance Act which were read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

5. The prosecution has examined as many as forty-two witnesses in support of its case.

6. P.W.1 (Sabbir Hussain) was posted as a Sub-Inspector of Police in Sadar P.S. Hazaribagh and on 02.06.2015 while he was on patrolling duty he had received an information from the Officer-in-Charge, Sadar P.S. to come to Civil Court, Hazaribagh. On reaching the Court premises he came to know that Sushil Srivastava and his two accomplices Gayas Khan and Kamal Khan have been shot at by the members of the Vikas Tiwary gang and that they have been sent for treatment to Sadar Hospital,

Hazaribagh. The arms, ammunitions and other articles were seized in his presence and he had signed upon the seizure list. Later on, he came to know that Gayas Khan and Kamal Khan has died at Sadar Hospital, Hazaribagh while Sushil Srivastava died on the way to RIMS, Ranchi. He has proved his signature on the seizure lists which have been marked as Exhibits-1 and 1/1. He has stated that he does not know the accused of the case.

In cross-examination, he has deposed that he had remained at the place of occurrence for about 1-1½ hours. None of the persons present was agreeable to sign on the seizure list. He had heard that the entire episode was orchestrated by the Vikas Tiwary gang.

7. P.W.2 (Rahul Kumar Singh) was posted on security duty in the Court premises at Hazaribagh on 02.06.2015 and the incident had occurred at 10:30 A.M. near the Hibiscus plant and the Indian Gooseberry tree situated in the front building. All the Police personnel after production of Sushil Srivastava in the Court of Additional Sessions Judge-II were coming down the stairs. A Bolero was parked near the Gooseberry tree bearing registration No. JH-12B-1694. He has stated that 2-3 persons came out of the Bolero vehicle and blasted a grenade in front of the stairs after which they started firing with AK-47 rifles. The bullet struck Sushil Srivastava and his two accomplices. He immediately rushed towards the motorcycle stand where he took shelter. All the three accused persons after firing started fleeing away. He had fired at

them with his Insas rifle. All the three assailants fled away after scaling the wall and by leaving an AK-47 rifle near the wall. He and the others had loaded Sushil Srivastava on a vehicle and had taken him to Sadar Hospital, Hazaribagh from where he was referred to Ranchi. He had later on come to know that the murders were committed at the behest of some Tiwary. He has failed to identify accused Vikas Tiwary, Santosh Pandey and Rahul Deo Pandey who were produced through video conferencing.

In cross-examination, he has deposed that Sushil Srivastava was an interstate criminal and 45 security personnel were deputed for his security out of whom 18 were armed with modern weapons like Insas rifles. Apart from him Dharmendra Kumar Singh and Rajmuni Ram had also fired. He cannot say as to whether any other Police personnel had fired or not. No seizure list was prepared in his presence. When Sushil Srivastava was getting down from the stairs there were 15 persons in front of him and 02 had come from behind and left after paying their reverence to Sushil Srivastava. He does not know as to whether Aman Srivastava and Avik Srivastava, the two sons of Sushil Srivastava were present or not. His statement was recorded by Birendra Prasad Singh. When the video conferencing for identification was held, he could not identify because the pictures were hazy. Subsequently, when the technical glitches were removed, he could identify the accused who was in a red shirt who had disclosed his name as Rahul Deo Pandey. He had disclosed to the S.P. and

Officer-in-Charge Birendra Prasad that the person who was fleeing away was tall and thinly built. He saw the person who was firing from an AK-47 rifle. He had identified the accused wearing red shirt as the person who was firing from the backside. There can be some confusion as the accused he has identified was seen by him from his back.

8. P.W.3 (Devendra Paswan) has stated that on 02.06.2015 at the time of the incident after production in the Court of Additional Sessions Judge-II he was going towards the hazat. Some persons known to Sushil Srivastava were paying their reverence to him. All of a sudden from the northern side firing started, at which, he and the rest of his colleagues took up position. He suffered a firearm injury on his right leg. He made counter firing and thereafter he became unconscious. He had later on come to know that Sushil Srivastava and his two accomplices, Kamal Khan and Gayas Khan had succumbed to the injuries suffered by them. Due to the presence of so many people he could not identify any of the accused and he had also become unconscious due to the firearm injury suffered by him.

In cross-examination, he has deposed that he does not have any knowledge about what occurred after he became unconscious.

9. P.W.4 (Dharmendra Kumar Singh) was posted at Police line, Hazaribagh. The incident is of 02.06.2015 at 10:30 A.M. in the Hazaribagh Court premises near a Gulmohar tree. He

has stated that Sushil Srivastava was returning after his production before the Additional Sessions Judge-II and when he came down stairs some persons had shaken hands with him and offered their greetings. The security personnel were making efforts to remove these persons when all of a sudden firing started from AK-47 rifles and bullets struck Sushil Srivastava and his two acquaintances Kamal Khan and Gayas Khan. A counter firing was resorted to by the Police after which the accused persons started fleeing away. The accused persons were tall and thinly built who were wearing black T-shirt and trousers with their faces covered with a black cloth. In course of fleeing away one AK-47 rifle fell down near the wall. The accused persons had managed to make good their escape. While Sushil Srivastava was referred to RIMS, Ranchi the other two injured persons were referred to Sadar Hospital, Hazaribagh. Later on, he came to know that all three have died. The Police authorities had thereafter scanned the place of occurrence and prepared a seizure list. He has identified Vikas Tiwary who was produced through video conferencing while he has failed to identify Santosh Pandey and Rahul Deo Pandey.

In cross-examination, he has deposed that he had seen Vikas Tiwary when he was apprehended and he had also seen his photograph in the newspaper. He had seen the accused Vikas Tiwary after two years from the time he had seen the photograph of the accused in the newspaper. In course of investigation only the S.P. had put questions and none else. He had not disclosed to the

S.P. that the accused was tall, thinly built and having dark complexion. He knew the accused by name since last 4-5 years. He had not disclosed about the name of the accused to any other person other than the S.P. He had not disclosed the name of the accused to even Birendra Kumar Singh. When after production of Sushil Srivastava they had come down the stairs within 2-3 minutes there was darkness all around. The smoke which had engulfed the area cleared after thirty minutes. There was mayhem all around. The Police personnel who were present had taken up positions. All twenty Police personnel who had taken up position had fired. He does not remember as to who had followed the accused. He had seen only one person fleeing. He had seen from the back Vikas Tiwary fleeing away. He had identified the son of Sushil Srivastava who was having a water bottle in his hand. He does not know his name.

10. P.W.5 (Rajmuni Ram) was one of the members of the Special Force deputed for the security of the prison van. Sushil Srivastava was taken in a prison van to the Court and after his production all came down where a crowd had gathered to pay reverence to Sushil Srivastava. He and the other security personnel were trying to disperse the crowd when a blast occurred and the area was consumed with smoke. From the side of the Bolero vehicle firing was being made upon Sushil Srivastava and four persons got injured. When the accused was trying to flee away taking advantage of the commotion he had fired upon the accused.

Sushil Srivastava, Kamal Khan, Gayas Khan and Hawaldar Devendra Paswan become injured due to the firing and Sushil Srivastava, Kamal Khan and Gayas Khan died. The Police had fired thirteen rounds while the accused persons had fired 29-30 rounds. He has failed to identify Vikas Tiwary, Santosh Pandey and Rahul Deo Pandey when they were produced through video conferencing.

In cross-examination, he has deposed that he does not know as to whether the 20-25 persons who had come to meet Sushil Srivastava were his accomplices or not. He had recovered 6-7 empty cartridges of AK-47 rifle.

11. P.W.6 (Ashok Tiwari) was posted in Sadar P.S., Hazaribagh and on 02.06.2015 the Officer-in-Charge had called him on his mobile at 10:45 A.M. and asked him to come to the Court premises as firing was going on. When he reached the Court, he came to know that Sushil Srivastava and his two accomplices Kamal Khan and Gayas Khan have been murdered. The murders were committed by the Vikas Tiwary gang. He has proved his signature on the two-seizure lists prepared by Ajit Kumar which have been marked as Exhibits- 1/2 and 1/3.

In cross-examination, he has deposed that he had not made any station diary entry before leaving the Police Station. By the time he had reached the place of occurrence the incident had already taken place. He was present at the place of occurrence from 11:00 A.M. to 12:30 P.M. and during this period a staff

collected blood-stained earth and kept it in two polyethenes. He had also recovered 2-3 empty cartridges.

12. P.W.7 (Ajay Kumar Singh) was on duty in the Court on 02.06.2015. Birendra Prasad Singh was his villager. After the formality with respect to the production of Sushil Srivastava in Court was completed, he was taken near the Gulmohar tree where his well wishers had come to meet him. He and other security personnel were trying to disperse the crowd when from a Bolero vehicle 8-10 persons came out and started firing as a result of which Gayas Khan and Kamal Khan died while being taken to the Hospital and Sushil Srivastava died at Sadar Hospital. A person, who was tall, thinly built and having dark complexion was fleeing away and in course of the same a magazine and AK-47 rifle fell down. About 29-30 rounds of firing was made. Later on, he came to know that the murders were executed by the Vikas Tiwary gang. He has identified Vikas Tiwary who was produced through video conferencing.

In cross-examination, he has deposed that while reading the newspaper he came to know that Sushil Srivastava has been murdered by the members of the Vikas Tiwary gang. On 03.06.2015 the photo of Vikas Tiwary was published in the newspaper. He had come to know that Police has arrested Vikas Tiwary from Delhi. On 03.08.2015 the news of Vikas Tiwary being brought to Hazaribagh and his photographs were published in the newspaper Khabar Mantra. Vikas Tiwary was kept in the Police

Station and several persons including him had seen him. Sitaram Mishra, Mohit Prasad Singh, Vijay Kumar, Anuj Kumar, Uday Shankar Paswan, Rajeev Ranjan and Rajendra Prasad Mehta had seen Vikas Tiwary in the Police Station. After 02.06.2015, he never used to come regularly to the Court since he was suspended. His statement was never recorded by the Police. It is true that he had identified Vikas Tiwary only on the basis of having seen his photo in the newspaper.

13. P.W.8 (Sanoj Kumar) was posted as In-charge of Padma O.P. and on 02.06.2015 he had received an information that in the Court Hazat Sushil Srivastava, Gayas Khan and Ayub Khan were murdered by the rival Pandey gang members, Vikas Tiwary and others. He and the then Officer-in-Charge of Barhi P.S. Akil Ahmad were entrusted to arrest Santosh Pandey. He and his team had left for Paliganj and in village Jalpura he had arrested Santosh Pandey on 08.06.2015 from the house of his sister. In course of arrest a search was conducted and from the possession of Santosh Pandey three mobiles with SIMS were recovered. He has proved the seizure list which has been marked as Exhibit-2.

In cross-examination, he has deposed that he did not have any arrest warrant for Santosh Pandey. After arrest the statement of Santosh Pandey was neither recorded by him nor by the Officer-in-Charge, Barhi P.S.

14. P.W.9 (Dharmendra Kumar) was posted at Sadar P.S. and attached with Panther Mobile Unit. He had come to know

that Sushil Srivastava has been shot and he was taken to Sadar Hospital. On 05.06.2015 he was called to the State Bus Stand, Hazaribagh by the Officer-in-Charge, Sadar P.S., D.N. Azad. A search was made of accused Vishal Kumar and from his possession two white colour mobiles were recovered. A seizure list was prepared which has been proved and marked as Exhibit-3. A second seizure list was prepared on 05.07.2015 regarding seizure of a mobile and an Apache motorcycle bearing registration no. JH02Q-6868 and the copy of the same was given to accused Dilip Sao. He has proved the seizure list which has been marked as Exhibit-4.

In cross-examination, he has deposed that despite the presence of several persons it was the Police personnel who had signed as witnesses.

15. P.W.10 (Ramswarop Dangi) was posted at Sadar P.S. in the Panther Squad. He has proved his signature in the seizure list which has been marked as Exhibit-4/1. On 05.07.2015 in the night he was on duty when the Officer-in-Charge had called him to the old Bus stand. In his presence a search was conducted of accused Dilip Sao and a mobile as well as an Apache motorcycle were seized.

In cross-examination, he has deposed that when the phone call had come, he was on patrolling duty in the Matwari to Pagmal road. The accused was searched after he had reached the Bus stand.

16. P.W.11 (Sitaram Mishra) was deputed as a Security Guard for Sushil Srivastava on 02.06.2015. He has stated that after production he was returning with Sushil Srivastava and had reached near the Gulmohar tree. Near the Gulmohar tree a vehicle was standing. Some persons were paying reverence to Sushil Srivastava. He and the other security personnel were dispersing the crowd which had gathered to greet Sushil Srivastava when some persons taking shelter behind a Bolero car started firing at Sushil Srivastava. He and the others took up position and started firing at which the accused persons started fleeing away towards the northern side. There were about 8-10 persons who were involved. The accused who was firing with an AK-47 rifle was tall, thinly built and of dark complexion and though he managed to scale the wall but his AK-47 rifle fell off near the wall. From the place of occurrence 29-30 empty cartridges and 13 live cartridges of AK-47 and a grenade from the vehicle were recovered. He had fired 13 rounds. He had later on come to know that Sushil Srivastava and his two accomplices have died. He has identified Vikas Tiwary who was produced through video conferencing as well as three accused persons who were physically produced in Court.

In cross-examination, he has deposed that A.S.I. Birendra Kumar Singh was near Sushil Srivastava and he is the main witness in the case. When on 02.06.2015 a grenade had blasted there was utter chaos all around. He had thrown himself on the ground. He had remained at the place of occurrence for

thirty minutes. He had not fired but the other Police personnel did fire. During his stay at the place of occurrence, Rajmuni Ram, Rahul Kumar, Ravinandan Goshwami and Mohit Prasad were present with him. In the meantime, the S.P., Dy. S.P. and Inspector had arrived. During this half an hour period the rifles of the Jawans were not seized. On 03.06.2015, the name of Vikas Tiwary had come in the newspaper and his photograph was also published. On 03.08.2015, the photograph of Vikas Tiwary was published in Sanmarg. It was also mentioned in the newspaper that it was a shooter from U.P. named Raj who had fired upon Sushil Srivastava.

17. P.W.12 (Ajit Kumar) has stated that he was posted at Sadar P.S., Hazaribagh and on 02.06.2015 a telephone call came from the Officer-in-Charge, Dayanand Azad asking him to immediately come to the Court premises. He had come to know that Sushil Srivastava has been fired upon by Vikas Tiwary. He has stated that empty cartridges, improvised hand grenade, poster, lever and pin of hand-grenade, one AK-47 rifle, two magazines in which one of the magazines had thirteen live ammunitions, a silver colour Bolero etc. were seized. He had recorded the fardbeyan of Birendra Prasad Singh. He has proved the handwriting and signature of Dayanand Azad on the endorsement in the fardbeyan which has been marked as Exhibit-5.

In cross-examination, he has deposed that he had not made any station diary entry before leaving the Police Station.

He did not find any injured person when he had reached the place of occurrence as all by that time were taken to the Hospital.

18. P.W.13 (Virendra Prasad Mehta) was posted in Police Line, Hazaribagh and on 02.06.2015 he was deputed in the security of the Hazat. When after production Sushil Srivastava was being taken to the Hazat and as soon as they reached near the Gulmohar tree indiscriminate firing started from the Bolero vehicle. There was mayhem and chaos and he and some other Police personnel took up position and started firing. In course of treatment, Sushil Srivastava, Kamal Khan and Gayas Khan died. He claims to recognize the accused. He has identified Vikas Tiwary who was produced through video conferencing and had also identified three of the accused who were physically present.

In cross-examination, he has deposed that on the date of occurrence Sushil Srivastava was handcuffed by Gandhauri Prasad. Gandhauri Prasad at the time of the incident had left the rope and fled away. When the S.P. asked him as to how many rounds he had fired, he had replied that he had not fired due to the prevailing chaos. It is a fact that on 03.06.2015 he had read the newspaper Prabhat Khabar and had seen the photograph with name of Vikas Tiwary printed on it. On 04.06.2015 also the photograph of Vikas Tiwary was printed in Prabhat Khabar and on 02.08.1995 as well as on 03.08.1995 the photograph of Vikas Tiwary was published in Dainik Bhaskar and Khabar Mantra

respectively. He has identified Vikas Tiwary due to his photograph having been published in the newspaper.

19. P.W.14 (Uday Shankar Paswan) was posted on 02.06.2015 in the Civil Court, Hazaribagh for the purposes of security of the prisoners. On the said date, he had taken Sushil Srivastava for production before the Court of Additional Sessions Judge-II and thereafter to another Court. After production as soon as they reached near the Banyan tree several persons started meeting Sushil Srivastava and touching his feet. From behind the Bolero vehicle bearing registration no. JH12B-1694 firing started upon Sushil Srivastava. Apart from Sushil Srivastava one Gayas and another person also received bullet injuries. One person died at the spot while the rest two persons died on way to the Hospital. A grenade was thrown which created a pandemonium. He and the other Police personnel took up position and was prevented from resorting to firing on the fear that some innocent might get hurt. Vikas Tiwary was fleeing away with his arms and in course of which his AK-47 rifle fell down inside the boundary wall. Vikas Tiwary had scaled a wall and fled away on a motorcycle. Immediately the higher Police officials had assembled and seizure of various articles were made. He has identified Vikas Tiwary, Rahul Deo Pandey and Santosh Pandey through video conferencing.

In cross-examination, he has deposed that seventeen Jawans armed with Insas rifles were deputed for the

security of Sushil Srivastava. All the Jawans had formed a ring around Sushil Srivastava so that no one can come near him. In the meantime, 15-20 persons from the gang of Sushil Srivastava had started shaking his hand and touching his feet when a loud explosion occurred and the area was covered in darkness. This created a chaos and all the Jawans in order to save themselves ran helter-skelter. The handcuff with a rope on Sushil Srivastava was in the hands of Gandhauri Prasad who fled away and he does not know where Gandhauri Prasad went. The accused had fled away prior to the arrival of the top Police officials. It is a fact that on 02.06.2015 all the seventeen Jawans were called to the Police Station by the S.P. and all their arms were seized and all seventeen were suspended and their statements were also recorded. The evidence is being given on the basis of the said statement. On 03.06.2015 the incident of 02.06.2015 was published in Daily Newspaper Prabhat Khabar where the photograph of Vikas Tiwary was printed. The photographs of Vikas Tiwary were published on 04.06.2015, 02.08.2015 and 03.08.2015 as well. He has come to know about Vikas Tiwary from the photographs which were published. He does not know Vikas Tiwary by name but knows him by his face. He had disclosed to the S.P. that Vikas Tiwary was fleeing away while firing and this fact was not shared with anyone. It is a fact that he had not disclosed before the S.P. of recognizing Rahul Deo Pandey and Santosh Pandey.

20. P.W.15 (Mohit Prasad Singh) has stated that on 02.06.2015 he was on duty in the Sessions Court, Hazrat. When he had come down from the stairs and had come near the Gulmohar tree 2-4 persons came to meet Sushil Srivastava and in the meantime a bomb was thrown and firing started. In course of indiscriminate firing Md. Kamal and Md. Gayas died at the place of occurrence itself and Sushil Srivastava died on the way to the Hospital at Ranchi. The accused persons were fleeing away while firing and in course of getting away they had left behind an AK-47 rifle. He has identified Vikas Tiwary, Rahul Deo Pandey and Santosh Pandey who were produced through video conferencing.

In cross-examination, he has deposed that due to the bomb blast there was total chaos and all the persons present fled helter-skelter. In the meantime, Gandhauri Prasad who had the handcuff and rope of Sushil Srivastava had also fled away. Birendra Prasad Singh who was close to Sushil Srivastava also hid himself somewhere. It is a fact that 1-2 accused persons had scaled the wall and fled away and nobody followed them. The S.P. had interrogated all the twenty-two Jawans who had seen the occurrence and had also given it in writing. On the next day of the occurrence all their weapons were seized and all the twenty-two Jawans were suspended. The report of the incident was published in Prabhat Khabar on 03.06.2015 and he had also seen the photograph of Vikas Tiwary printed on it. On 04.06.2015 and 02.08.2015 he had seen the photo of Vikas Tiwary which was

published in the newspaper. The photo of Vikas Tiwary which was seen by him in the newspaper was etched in his memory and that was the reason he had been able to identify Vikas Tiwary in the video conferencing.

21. P.W.16 (Rajeev Ranjan) was posted at Police Centre, Hazaribagh and on 02.06.2015 he was deputed for duty in the Court. After the formalities regarding production of Sushil Srivastava was complete, they had reached near the Gulmohar tree when some persons started shaking hands with Sushil Srivastava and also touched his feet and they were being persuaded not to do so. In the meantime, 08-10 accused armed with AK-47 rifle and pistols came out from the Bolero vehicle and started firing at Sushil Srivastava and Kamal Khan as well as Gayas Khan who were standing besides Sushil Srivastava. A bomb was also exploded by the accused persons. There was chaos all around. He had seen a thinly built dark complexioned man fleeing away while firing. In course of scaling the wall the AK-47 rifle of the accused fell down. Gayas Khan and Kamal Khan died at the spot while Sushil Srivastava died on the way to the Hospital. He had later on come to know that Vikas Tiwary and his gang were responsible for the firing. He has identified Vikas Tiwary, Rahul Deo Pandey and Santosh Pandey who were produced through video conferencing.

In cross-examination, he has deposed that Sushil Srivastava is a notorious criminal and for his safety seventeen Jawans were deputed. All the Jawans were armed with Insas rifles.

He cannot say as to on which part of the body of Sushil Srivastava bullets had struck. On 03.06.2015, the incident was reported in Prabhat Khabar and the photograph of Vikas Tiwary was published which he had seen. Subsequently the photographs of Vikas Tiwary were also published on various newspapers. It is not true that at the time of the incident Rahul Deo Pandey was in jail.

22. P.W.17 (Vijay Kumar) was posted in the Police Line and on 02.06.2015 he was on duty in the Prison Van. As soon as they reached near the Gulmohar tree after completing the formalities relating to production of Sushil Srivastava in the Court some known persons of Sushil Srivastava started shaking his hand and touching his feet. He dispersed these persons when all of a sudden 08-10 persons came out of a Bolero vehicle bearing registration no. JH12B-1694 and after blasting a bomb started firing at Sushil Srivastava. The bullet struck Sushil Srivastava and his two accomplices; one Gayas Khan and another. Since a chaos ensued firing could not be made upon the accused. One Police personal had suffered a firearm injury. He had chased an accused but he managed to flee away. Both the injured accomplices of Sushil Srivastava died at the spot while Sushil Srivastava died on way to the hospital. Later on, he came to know that Vikas Tiwary and his gang were involved in the shootout. He has identified Vikas Tiwary, Rahul Deo Pandey and Santosh Pandey who were produced through video conferencing.

In cross-examination, he has deposed that seventeen Police personnel including him were deputed for the security of notorious criminal Sushil Srivastava. The security personnel had made a ring around Sushil Srivastava to prevent anyone from meeting him. He and the other Police personnel deputed to provide security to Sushil Srivastava were called to the Police Station by the S.P. and all were suspended apart from seizing their arms. The incident was published in Prabhat Khabar on 03.06.2015 where the photo of Vikas Tiwary was also published. On 04.06.2015 and 02.08.2015 once again the photograph of Vikas Tiwary were published. He had thereafter come to know that Vikas Tiwary has been arrested and he has been kept in Sadar P.S., Hazaribagh.

23. P.W.18 (Anuj Kumar Sharma) was posted in the Police Line and on 02.06.2015 he was deputed in the escort party for the production of Sushil Srivastava. When after production of Sushil Srivastava they had reached near the Gulmohar tree 08-10 persons came out of a Bolero vehicle bearing registration no. JH12B-1694 and started making indiscriminate firing injuring Gayasuddin, Md. Kamal Khan and Sushil Srivastava. A hand grenade was also thrown which led to a pandemonium. All the three injured died near the Gulmohar tree. The accused thereafter taking advantage of the chaos fled away by scaling a wall and in course of escape an AK-47 rifle fell down. He had later on come to know that the firing was done by Vikas Tiwary, Santosh Pandey

and the other gang members. He has identified Vikas Tiwary, Santosh Pandey and Rahul Deo Pandey who were produced through video conferencing.

In cross-examination, he has deposed that the security personnel entrusted with the duty of protecting Sushil Srivastava had Insas rifles in their possession. The handcuff and the rope tied around the waist of Sushil Srivastava was in the hands of Gandhauri Prasad. His statement was recorded after one month of the occurrence. The incident of 02.06.2015 was published in Prabhat Khabar along with the photos of Vikas Tiwary which he had seen. Subsequently also on 04.06.2015 the photograph of Vikas Tiwary was published which he had seen as well.

24. P.W.19 (Dr. Gopal Das) was posted as a Medical Officer at Sadar Hospital, Hazaribagh and on 02.06.2015 post-mortem examination of Md. Kamal was conducted by a Medical Board comprising of himself, Dr. Vijay Shankar and Dr. S.R. Dangi. He has proved his signature in the postmortem report which has been marked as Exhibit-6.

On the same day autopsy was conducted on the dead body of Gayas Khan @ Md. Nasib by the same Medical Board. He has proved his signature on the postmortem report which has been marked as Exhibit-7.

In cross-examination, he has deposed that the postmortem report has been prepared by Dr. Vijay Shankar who was heading the Medical Board.

25. P.W.20 (Dr. Vijay Shankar) was posted at Sadar Hospital, Hazaribagh and on 02.06.2015 he and the other members of the Medical Board had conducted autopsy on the dead body of Kamal and had found the following:

- 1.** *Fire arm wound ¼” x ¼” oval in shape, margins inverted, radish black in color at right iliac fossa of abdomen, just above anterior superior iliac spine-entry wound.*
- 2.** *1-1/2” x 1”, Muscle mass protruding from the margins, edges evorted blackish in color. – Exit wound. On probing it communicated with the entry and exit wound.*

On exploration blood found in thoracic and abdominal cavity, heart was pale with chambers empty, lungs pale, intestine and osmium found ruptured at many places, liver pale, spleen mildly congested, kidney pale, stomach showing undigested rise dark and water.

The cause of death was opined to be due to shock and haemorrhage resulting from gunshot injury. The postmortem report has been proved and marked as Exhibit-6/1. The signature of Dr. Vijay Shankar and Dr. S.R. Dangi have been proved and marked as Exhibits -6/2 and 6/3 respectively.

On the same day the Medical Board had conducted autopsy on the dead body of Gayas Khan @ Md. Wasif and had found the following:

- 1.** *Lacerated wound 3” x 1” x muscle deep, red in colour on right thigh.*

- 2.** *Lacerated wound 1-1/2" x 1/2" x 1/2" deep reddish in colour on right thigh near knee joint.*
- 3.** *Fire arm wound-(a) 1" x 1/2" over the left iliac fossa closed to the junction of the abdomen and thigh blackish in colour-entry wound, (b) 2-1/2" x 1-1/2" muscle coming out of the wound, margins averted-Exit wound (c) 2" x 1" reddish in colour with margins inverted just below left axilla-entry wound (d) 4" x 2" muscle protruding from margins over the occipital area-Exit wound.*

On exploration of the abdomen intestine found ruptured in many places. In the thoracic cavity heart was found pale and punctured in region in left ventricle. Both chamber of the heart empty, liver found ruptured at lower part spleen ruptured, kidneys pale fracture of the tenth rib on left side. Lungs lacerated on the left side. Stomach contained undigested food on exploration of the scalp wound there was damage to the occipital wound and laceration of brain tissue, meninges.

The cause of death was opined to be due to haemorrhage and shock resulting from gunshot injury. The postmortem report has been proved and marked as Exhibit-7/1. His signature and the signature of Dr. S.R. Dangi on the postmortem report have been proved and marked as Exhibit-7/3 and 7/2 respectively.

26. P.W.21 (Dr. S.R. Dangi) was posted at Sadar Hospital, Hazaribagh and on 02.06.2015 a Medical Board comprising of him, Dr. Gopal Das and Dr. Vijay Shankar had conducted autopsy on the dead bodies of Md. Kamal and Gayas Khan and they had prepared the postmortem report in which all three have put their signature.

27. P.W.22 (Birendra Prasad Singh) is the informant who has stated that on 02.06.2015 at 10:45 A.M. he was on duty as the In-charge of Court Hazat and along with him were sixteen Jawans who were taking Sushil Srivastava to the Court of Additional Sessions Judge-II for production. As soon as they reached near the Gulmohar tree firing started on Sushil Srivastava. One or two persons from behind a Bolero vehicle started firing with an AK-47 rifles and in course of firing the bullets struck Sushil Srivastava, Kamal Khan and another person. On his orders Police made counter firing. A bomb was also exploded by the accused persons which led to a pandemonium. He immediately informed his higher authorities after which the S.P., Dy. S.P. and others arrived at the spot. The injured were rushed to Sadar Hospital in a government vehicle and Kamal Khan and Sabir Hussain died during treatment while Sushil Srivastava was referred to RIMS, Ranchi where he succumbed to his gunshot injuries. A seizure was made of the Bolero vehicle, a bag, thirteen live cartridges and an empty cartridge. His fardbeyan was recorded by Ajit Kumar. He has proved his signature on the fardbeyan which has been marked as Exhibit 5/1. The accused who had made the firing managed to escape by scaling a wall. On reading the newspaper they could come to know that the incident was executed by the gang of Vikas Tiwary.

In cross-examination, he has deposed that at the time of recording his fardbeyan the S.P. and the Dy. S.P. were also

present. The articles which were seized from the vehicle was done in his presence. He has stated that Gandhauri Prasad had fled away from the place of occurrence.

28. P.W.23 (Sanjay Kumar Rana) was posted at Jharkhand Police Academy as head of CLI and BDST. He has produced the bomb disposal report in Court pursuant to the direction of S.P. Hazaribagh and the Court. The live grenade was defused and the residue was sent to FSL for examination. He has proved the carbon copy of the report which has been marked as Exhibit-8.

In cross-examination, he has deposed that the grenade was an improvised device.

29. P.W.24 (Avik Kumar @ Avik Srivastava) has stated that the occurrence had taken place on 02.06.2015 at 10:30 A.M. in the Court premises. He along with his elder brother Aman Srivastava had come to meet their father, Sushil Srivastava. His father had said about meeting them in leisure after attending the Court. After some time, his father came out of the Court and as he came downstairs, he had seen some persons standing near a Bolero vehicle which was parked besides the tree. The persons who were standing were Vikas Tiwary, Santosh Pandey, Vikas Sao, Deepak Dhobi, Dilip Sao, Sunil Dhobi, Vishal Singh and a few others. As soon as his father came down Vikas Tiwary took out a firearm and started making indiscriminate firing. Vikas Tiwary had also exploded a bomb. There was smoke all around and by the time

the accused persons by throwing away the firearm were fleeing his father had already sustained gunshot injuries. He had brought his father to Sadar Hospital, Hazaribagh from where he was referred to RIMS, Ranchi and on the way he died. He has identified Santosh Pandey and Vikas Tiwary who were produced through video conferencing.

In cross-examination, he has deposed that it is true that his father was lodged in Central Jail, Hazaribagh for eighteen years. He used to meet his father in Court from his childhood. Several years back on 26.07.2008 an attack was made upon his mother and his father had disclosed that it was orchestrated by Bhola Pandey. He is aware of the fact that when his father was lodged in Birsa Munda Jail one Bhoma Singh was murdered for which his father was convicted. He had seen the photographs of the accused in the newspaper. He does not remember as to whether after the incident the photo of the accused was published in the newspaper or not. It is a fact that he had not seen Vikas Tiwary prior to the incident. His father had never disclosed to him about the age and physical features of Vikas Tiwary. He does not know the accomplices of his father. There were 15-18 Police personnel looking after the security of his father. He was standing at a distance of 20-30 feet from the place where the occurrence had taken place. When he had taken his father to the Hospital, he and his brother's cloths were smeared in blood. He had not given any oral or written information about the incident to the Police

personnel who had reached the place of occurrence. He does not know as to whether any case was lodged on 02.06.2015 or not. No case was lodged by him on 02.06.2015 or by the accomplices of his father. After 02.06.2015 he had come to Hazaribagh on 02.09.2015 and during this period he had not instituted a case either at Ranchi or at Hazaribagh. He has stated that on 03.09.2015 he had come to Hazaribagh with his brother and on that day, he had filed a case at Hazaribagh. He had filed a written report in the Police Station. He is giving evidence in the case which he had lodged on 03.09.2015. He does not remember whether he had filed a case at Ranchi or not. On 02.06.2015 his brother Aman Srivastava had given a written report in Sadar P.S., Ranchi. He does not remember whether his brother had lodged a case at Sadar P.S., Ranchi on 02.06.2015 against Vikas Tiwary, Kameshwar Pandey, Bablu Pandey and Sanjeev Neogi with respect to the incident which occurred at Hazaribagh. After a written report was given on 03.09.2015 the Police had enquired from him on 09.09.2015. He is not in touch with his brother for 2½ years. He does not know the place where his brother resides or the work he does. He does not know the source of income of his family. On the date of occurrence, he had not disclosed the incident to his family members. In the written report dated 03.09.2015 he had mentioned about the presence of Vikas Tiwary, Santosh Pandey, Vikas Sao, Deepak Dhobi, Dilip Sao, Sunil Dhobi and Vishal Singh near the vehicle. He had also mentioned that as soon as his father came down the

stairs on the signal of Vikas Tiwary the others had surrounded him. He had seen Vikas Tiwary firing with an AK-47 rifle and he had also exploded a bomb. Vikas Tiwary and the other members of his gang scaled the wall and fled away. He cannot describe the age and physical features of Deepak Dhobi and Sunil Dhobi and though both were standing but he is not sure as to whether they were involved in the firing or not. Out of Santosh Pandey, Vikas Sao, Dilip Sao and Vishal Singh, Santosh Pandey was firing. He has deposed that Vikas Tiwary was firing with a pistol from his right hand. He had not seen as to whether the 6-7 persons who were standing with Vikas Tiwary were having AK-47 rifles or not. His statement was recorded by the Police on 09.09.2013 and on 03.09.2013. It is true that there was enmity between his father and Vikas Tiwary.

30. P.W.25 (Deepak Kumar Rao) has stated that on 02.08.2015 at 10:30 A.M. he was standing near the Gulmohar tree in the Court premises along with his acquaintances Sahadat Ansari and Ajay Prakash Singh. At the said place Vikas Tiwary along with his accomplices Santosh Pandey, Dilip Sao, Vikas Sao, Vishal Singh, Deepak Dhobi and Sunil Dhobi were present. After sometime they had heard the sound of firing and explosion of a bomb. He had seen Vikas Tiwary along with his accomplices firing with an AK-47 rifle on 3-4 persons. When the Police took action Vikas Tiwary, Vishal Singh, Dilip Sao, Santosh Pandey, Deepak Dhobi, Sunil Dhobi, Sonu Tiwary, Basant Karmali and Bablu

Thakur fled away after throwing the AK-47 rifle. He had later on seen Kamal Khan and Gayas Khan lying dead and Sushil Srivastava was taken on an ambulance to the hospital. He had seen Vishal Singh, Dilip Sao, Santosh Pandey, Deepak Dhobi, Sunil Dhobi, Bablu Thakur, Ashish Mehra @ Nepali, Basant Karmali, Sonu Tiwary and Vikas Sao roaming around with Vikas Tiwary on several occasions at Patratu. He has identified Santosh Pandey as one of the persons involved in the shoot out who was produced through video conferencing but he had not identified Rahul Deo Pandey. He has also identified Vikas Tiwary who was present through video conferencing.

In cross-examination, he has deposed that in one case he had gone to Jail along with his sister named Juli and her mother-in-law Amberi Begum. When he had reached the place of occurrence the incident had already occurred by then. On 02.06.2015 out of 50-100 persons from Patratu in the Court he had identified 5-7 persons and amongst them were Vikas Tiwary, Santosh Pandey, Dilip Sao, Vishal Singh, Deepak Dhobi, Sunil Dhobi, Bablu Thakur and Vikas Sao. He does not have any closeness with these persons nor does he have any enmity with them. He had seen these persons from a distance of 25-30 feet. When the firing started, he fled towards the GR Office and in course of which he had seen Vikas Tiwary along with his 3-4 accomplices firing. The Police had reached the place of occurrence before him. When he had reached two persons were already lying

dead. He does not remember as to whether in his statement before the Police he had stated about Santosh Pandey and Vikas Sao loitering with Vikas Tiwary on the date of occurrence. After perusing the diary, he says that the two names are not mentioned. He does not remember as to whether he had stated before the Police that Vikas Tiwary with his accomplices were firing upon 3-4 persons indiscriminately from an AK-47 rifles. On perusing para 18 of the case diary, he has deposed that the same has not been mentioned. He had not stated before the Police that when Police took action Vikas Tiwary, Vishal Singh, Dilip Sao, Santosh Pandey, Deepak Dhobi, Sunil Dhobi, Sonu Tiwary, Basant Karmali and Bablu Thakur fled away from a gate by leaving an AK-47 rifle. He was not taken to the Test Identification Parade to identify Vikas Tiwary. He has stated that due to the chaotic situation he could not give attendance in the Court.

31. P.W.26 (Satyendra Singh) was posted at FSL, Ranchi as a Ballistic Expert. The Investigating Officer had sent a sealed packet through Memo No. 325 dated 13.06.2016 and it contained the following:

- (i) *The parcels consisted of one cardboard box within a cloth cover, which was duly sealed with impressions of seal corresponding with impression forwarded. It contained one AK-47 rifle marked-A, 13 live rounds AK-47 rifle cartridges marked-B and 02 AK-47 rifles magazines marked-C, along with other Ext. marked-D.*
- (ii) *Description-*

1. One sealed cloth bound packet bearing P.S. Sadar Case No. 610/2015 dated 02.06.15 etc contained one 7.62 calibre AK-47 regular rifle bearing no. M20019 with foldable iron but and without magazine and sling. A paper slip bearing P.S. Sadar Case No. 610/2015 dated 02.06.15 signature of CJM dated 03.06.15 and witnesses etc was pasted on it. It was marked as A by the I.O. and was also marked as A in the laboratory.

2. One sealed cloth bound packet bearing P.S. Sadar Case No. 610/2015 dated 02.06.15 etc. marked B by the I.O. contained one plastic dubba having a paper slip bearing P.S. Case No. 610/2015 dated 02.06.15 signature of CJM dated 24.05.16 etc. contained 13 live round of 7.62 calibre AK-47 rifle cartridges, these were marked as B1 to B13 in the laboratory.

3. One sealed cloth bound packet bearing P.S. Sadar Case No. 610/2015 dated 02.06.15 etc. marked C by the I.O. contained two empty iron magazines of AK-47 rifles, these were marked as C1 and C2 in the laboratory.

Test Cartridge fired

4. Two live rounds of 7.62 MM calibre cartridges marked B1 and B2 noted in item 2 fired from AK-47 rifle bearing no. M20019 noted in item 1 as test cartridges and test firing shells were marked as TCS1(A) and TCS2 (A) and test fired bullets were marked as TC and TCB2(A) in the laboratory.

The result of the analysis and its conclusion are depicted as follows:

- (i) The Ext. marked C1 and C2 are two iron magazines of 7.62 mm calibre AK-47 rifle. These can be used to accommodate 7.62 mm calibre cartridges to fire 7.62 mm calibre AK-47 rifle.

He has proved the report which has been marked as Exhibit-9.

In cross-examination, he has deposed that the firearm was sent for examination after one year of the incident. As per his report one bullet out of four pellets were not fired from the seized AK-47 rifle. It was fired from another AK-47 rifle.

32. P.W.27 (Sumanta) had joined as a Scientific Assistant in SFSL, Ranchi and had assisted Dr. H.K. Sinha, the then Assistant Director, SFSL in the working of Biology and Serology examination of the exhibits produced. He has proved both the reports prepared in his laboratory at SFSL, Ranchi which have been marked as Exhibit-10 and 10/1. The result of the biological examination was that blood was detected all over in the Exhibits marked 1, 2 and 3. Blood could not be detected in the Exhibit marked-4.

33. P.W.28 (Sayed Bashir Ahmad) is an Assistant Director in SFSL, Ranchi and he is an expert in explosives and Physics. He has proved the report regarding examination of the lever and pin which has been marked as Exhibit-11. He has also proved the report with respect to the testing of aluminium coloured powder and which has been marked as Exhibit-11/1.

34. P.W.29 (Dr. Sanjay Kumar) was posted as Assistant Professor, Department of Forensic Medicine, RIMS, Ranchi and on 03.06.2015 he along with the other members of the Medical Board namely, Dr. Sourav Banarjee, Tutor, Department of Pathology, Dr.

Rishi Tuhin Guria, Assistant Professor, Department of Medicine and Dr. Sanatan Bhagat, Professor, Department of Surgery had conducted autopsy on the dead body of Sushil Srivastava and had found the following:

(A) *On external Examination: All cloths were grossly blood stained. Body was of average built with rigor mortis developed on eye lid, jaw, elbows, knees, all fingers and all toes. Pupils were bilaterally dilated and fixed. Abdomen was slightly distended.*

(B) *Fire arm injuries:*

- I. *Wound of entrance of .5 cm x .5 cm was situated on right upper part of chest, 4 cm right lateral from midline and situated at the edge of right clavicle.*
- II. *Wound of entrance of .5 cm x .5 cm was situated on right lower chest at the level of .5 cm right lateral to midline and 8 cm below right nipple. Abrasion of 3 x 1 cm was associated on medial side of main wound of entrance. Projectile passed through chest wall, pleura and right lower lobe of lung and passed out of body by making an exit wound of 1 cm x 1 cm situated on right lower back 5 cm right lateral in at T10 (10th Thoracic vertebrae) level.*
- III. *Wound of entrance of 1 cm x 5 cm, oval in shape was situated on lateral part of abdomen at 22 cm below left axilla and 5 cm medial to mid axillary line. The projectile passed through abdominal wall, abdominal cavity tearing spleen and left kidney and passed out of body by making an exit wound of .5 x .5 cm on middle of left lateral of lower back.*
- IV. *Wound of entrance of 3 cm x 1 cm, oval in shape was situated on right lateral part of abdomen at umbilical level and 18 cm right lateral to umbilicus. The projectile passed through soft tissue, abdominal cavity, ascending colon, and passed out of body*

by making an exit wound of .5 cm x .5 cm on right lower back at the level of iliac crest.

- V. Wound of entrance of .5 cm x .5 cm was situated on left forearm at antero-medial part 6 cm below left elbow joint. The projectile passed through soft tissue and broke the ulna bone and passed out by making an exit wound of 3 cm x 2 cm on dorso-lateral part of left forearm.*
- VI. Wound of entrance of .5 cm x .5 cm was situated on lateral part of right upper thigh. The projectile passed through soft tissue, pelvic bone and passed out by making an exit wound of 2 cm x 1 cm on upper and lateral part of left thigh.*
- VII. Wound of entrance of .5 cm x .5 cm was situated on lateral part of right knee. The projectile passed through soft tissue and bone passed out of body by making an exit wound of 5 cm x 3 cm on antero-medial part of right knee.*
- VIII. Wound of entrance of .5 cm x .5 cm was situated on back of right leg. The projectile after passing only through subcutaneous tissue passed out by making an exit wound of 1 cm x .5 cm on right leg at middle part.*

(C) In the head and cranial cavity brain was found pale otherwise normal.

(D) In the chest cavity, injuries were as mentioned before. Additionally, there was significant blood and blood clot in the chest cavity otherwise normal. No abnormality was detected in heart and blood vessels.

(E) In the abdominal cavity, injuries as mentioned before. Additionally, there was significant blood and blood clot in abdominal cavity. Stomach contained pasty food matter about 100 grams. Both small and large intestine contained digested food matter and gas. Liver was normal. Injuries in the other organs were as mentioned before.

All the injuries mentioned in number I to VIII were ante mortem in nature caused by firearm. Death was due to firearm injuries and its complications. He has proved the postmortem report which has been marked as Exhibit-12. He has proved the signature and seal of Dr. Sourav Banerjee, Dr. Rishi Tuhin Guria and Dr. Sanatan Bhagat upon the postmortem report which have been marked as Exhibits- 12/1, 12/2 and 12/3 respectively.

In cross-examination, he has deposed that no bullet/pellet/wad was found/recovered from the dead body. He cannot say as to what weapon was used but the injuries are suggestive of usages of rifle of high velocity.

35. P.W.30 (Dr Saurabh Banerjee) was posted as a Tutor in the Pathology Department, RIMS, Ranchi and on 03.06.2015 he had participated along with other Board Members in conducting autopsy on the dead body of Sushil Srivastava.

36. P.W.31 (Dr. Rishi Tuhin Guria) was posted as an Assistant Professor, Department of Medicine, RIMS, Ranchi and on 03.06.2015 he also had participated along with the other Board Members in conducting autopsy on the dead body of Sushil Srivastava.

37. P.W.32 (Virendra Thakur) on the order of the Court has produced the seized articles in connection with Sadar P.S. Case No. 610/15. He has proved the letters of the Officer-in-Charge, Sadar P.S. which has been marked as Exhibit-13. He has

proved the letter showing receipt of the sealed box sent by the Forensic Science Laboratory which has been marked as Exhibit-13/1. The sealed boxes were opened and from the first box an AK-47 rifle sealed in a cloth was found which was marked as Exhibit-A. The second was a plastic jar in which two magazines and thirteen rounds of AK-47 cartridges were found. The third was a sealed plastic box which was marked SFSL No. 687/17 and Exhibit Nos. B/32 and B/13. The fourth sealed plastic box marked "D" bears the name of two witnesses. Four sealed packets contained earth marked 1 to 4 and 4 plastic *dubbas* marked 5 to 8 and it was noted that exhibit marked-8 was consumed during explosive examination. The small sealed box was opened from which four white colour sealed envelope bearing SFSL No. 797/15, Exhibit Nos. 1, 2, 3 and 4 have been mentioned. In the other plastic boxes 27 fired shells of 7.62 mm (AK-47) have been mentioned. All the said exhibit materials were mentioned at Serial Nos. XIV, XV and XVI of the malkhana register which were marked as Exhibits- XIV, XIV/1 and XIV/2. The seal of AK-47 rifle was opened and marked as material Exhibit-I. Two magazines were marked as material Exhibits-II and II/1. The test fired shells were marked as material Exhibits- III, III/1, III/2 and III/3. Similarly, five cartridges have been marked as material Exhibits-IV to IV/10. A piece of iron "L" shape and a long rope and a clip have been marked as material Exhibits- V and V/1. The soil and darkened sand particles have been marked as material Exhibits- VI to VI/3. Three missing fire

cartridges and one empty shell have been marked as Exhibits- VII to VII/2. The two empty shells have been marked as material Exhibits- VIII to VIII/1. The 27 empty shells of AK-47 rifle at the bottom of which 7.62 was mentioned have been marked as material Exhibits- IX to IX/26. The piece of the paper on which SFSL No. 797/15 has been mentioned has been marked as Exhibit-II.

In cross-examination, he has deposed that no malkhana number was mentioned on Exhibit-13. In the sealed cloth of AK-47 rifle there is no signature of any Officer or witness nor it bears any malkhana number.

38. P.W.33 (Nathuni Prasad Yadav) was posted at Sadar P.S., Hazaribagh and he had made part investigation of Sadar P.S. Case No. 610/15. Pursuant to the direction of his superiors he had submitted charge-sheet against Vikas Tiwary. The investigation is pending against Vikas Sao, Bablu Thakur, Raj Singh, Pradeep Paswan and the accomplices of Raj Singh. He had prepared the inquest report of Md. Kamal and Gayas Khan. He has proved both the inquest reports which have been marked as Exhibits- 16 and 16/1.

In cross-examination, he has deposed that he had taken over the investigation on 15.09.2015 and during the investigation for 3½ months he had not arrested any accused nor had he recorded the statements of any witnesses. It is true that he

had seen the photo of Vikas Tiwary in the newspaper after the incident.

39. P.W.34 (Kanhu Tudu) was on Hazat duty on 02.06.2015 and on that day he had taken Sushil Srivastava to the Court of Additional Sessions Judge-II for production and as soon as he came down from the stairs 8-10 persons came out from a Bolero vehicle and started shaking hands with Sushil Srivastava. At that point of time indiscriminate firing started from behind the Bolero vehicle. Due to the firing Sushil Srivastava and his two accomplices become injured and they were taken to Sadar Hospital where they died. The accused persons had exploded a bomb and had fled away. His statement was recorded by the Police. He had identified Vikas Tiwary in the Test Identification Parade. He has identified Vikas Tiwary who was produced through video conferencing. He has identified an accused in the dock who was firing on the date of occurrence but he does not know his name.

40. In cross-examination, he has deposed that the white T-shirt clad accused whom he had identified in the dock was firing at Sushil Srivastava. Due to the explosion of the bomb several Police personnel and members of the public suffered injuries. The rifles of all the Jawans were seized by the S.P. and all the Jawans had given their written report of the incident. All the Jawans were suspended by the S.P. It is true that the S.P. had put pressure that only on giving evidence in Court and identifying the accused their suspension will be revoked.

41. P.W.35 (Sanjay Sao) did not support the case of the prosecution and was declared hostile by the prosecution.

42. P.W.36 (Vijay Sao) has also not supported the case of the prosecution and has been declared hostile by the prosecution.

43. P.W.37 (Gopi Sao) has also been declared hostile by the prosecution.

44. P.W.38 (Sushma Baraik) was posted as an Executive Magistrate, Ranchi and on 02.06.2015 she was directed to report to Medica Hospital for preparation of an inquest report. She had thereafter prepared the inquest report of Sushil Srivastava. She has proved the inquest report which has been marked as Exhibit-17.

In cross-examination, she has deposed that the dead body of Sushil Srivastava was identified by his two sons.

45. P.W.39 (Dinesh Kumar) was posted as Judicial Magistrate 1st Class in Civil Court, Hazaribagh and he has stated that on 09.09.2015 on the orders of the Chief Judicial Magistrate, Hazaribagh he had conducted the Test Identification Parade of Vikas Tiwary and he was identified by Ajay Kumar Singh, Sitaram Mishra, Moti Prasad Singh, Kanhu Tudu, Rajeev Ranjan, Dablu Sharma, Avik Kumar, Birendra Prasad Mehta, Uday Shankar Paswan, Anuj Kumar Sharma and Vijay Kumar while he was not identified by Birendra Prasad Singh. He has proved the Test

Identification Charts which have been marked as Exhibit- 18 to 18/11.

In cross-examination, he has deposed that he does not remember as to whether on 02.06.2015 the photo of Vikas Tiwary was published in the newspaper or not. He had seen the suspect immediately before the TIP was conducted.

46. P.W.40 (Dayanand Azad) was posted as Officer-in-Charge of Sadar P.S. and on 02.06.2015 at 10:30 A.M. he had received an information that the prisoners who have been produced from jail are being shot at. He immediately rushed to the Court along with superior officers and on reaching the place of occurrence he had sent the injured Sushil Srivastava, Gayas Khan and Kamal to Sadar Hospital, Hazaribagh by means of government and private vehicles. He had thereafter gone towards the place from where the miscreants had escaped. When he returned back to the Court premises the fardbeyan of Birendra Prasad Singh was produced before him after which he took over the investigation of the case. The Sub-Inspector of Police, Ajit Kumar had produced two seizure lists before him of the seized materials including an AK-47 rifle, empty cartridges, Bolero vehicle etc. He had thereafter inspected the place of occurrence which is on the western side of the Hazaribagh Court campus in front of the District Mediation Centre near an unmetalled road. Besides this road on the southern side a Gulmohar tree is situated. About 20 meters from the place of occurrence there are two trees of *Awla* and *Karunj* and between

these trees the Bolero vehicle was parked from where the firing was made and a grenade was also exploded. In the wall of the Mediation Centre 4-5 marks of firing made by the accused persons were found. About 50 feet from the Court complex there is a boundary wall with an iron gate and this was the wall which was scaled by the accused persons while fleeing away. The AK-47 rifle was recovered from this place. He had prepared a sketch map of the place of occurrence and on returning to the Police Station had instituted a formal FIR. He had thereafter recorded the statements of Devendra Paswan, Dharmendra Kumar Singh, Rahul Kumar Singh, Rajmuni Ram, Ajay Prakash Singh, Deepak Kumar Rao, Sahadat Ansari, Sabir Hussain, Ashok Tiwary, Sallaudin Ansari, Mansur Ansari, Munna Singh, Bittu Singh and Ashok Tiwary. For defusing the seized improvised hand grenade an application was sent to In-charge, B.D.D.S, Police Training Centre, Hazaribagh. In order to obtain the C.D.R and C.A.F. of mobile numbers 9525543291, 9431549877, 7352888295, 8873699883 and 9006533226 he had sent an application to the Technical Cell of S.P. He had thereafter recorded the fardbeyan of Aman Srivastava given to Sriram Sharma on 02.06.2015 at Sadar P.S., Ranchi. He had arrested Vishal Kumar Singh and Shambhu Nath Tiwary and from the possession of Vishal Kumar Singh two mobiles were recovered which were seized and a seizure list was prepared. He has proved the seizure list which has been marked as Exhibit-3/1. On 08.06.2015 on the orders of S.P. Hazaribagh he had gone to

Patna and arrested Santosh Pandey and from his possession three mobiles were recovered and a seizure list was prepared which has already been marked as Exhibit-2. He had recorded the confessional statement of Santosh Pandey in which he had accepted his involvement in the incident. The confessional statement of Santosh Pandey has also been proved and marked as Exhibit-19. He has stated that a spy had disclosed that Rahul Deo Pandey is also involved as he has close acquaintance with Vikas Tiwary as when Sushil Srivastava was being taken for production Rahul Deo Pandey had informed Vikas Tiwary and after the murder was committed Vikash Tiwary had informed Rahul Deo Pandey about the same. On perusal of the call details of the mobile of Vikas Tiwary bearing no. 7085127548 it is established that after the incident Vikas Tiwary had first and foremost called Rahul Deo Pandey in the mobile no. 7352960781 at 10:53 A.M. and the call duration was of 39 seconds. After the order of Police remand Rahul Deo Pandey was brought to the Police Station from the Jail where his confessional statement was recorded and he had admitted his role as a conspirator. He had arrested Dilip Sao and had recorded his confessional statement. The said confessional statement has been proved and marked as Exhibit-2. He had sent blood-stained earth, blood, pellet, empty cartridges and the explosive powder from inside the bombs samples to the FSL, Ranchi. On receiving an information that the main accused Vikas Tiwary is staying in Delhi he had gone to Delhi along with Sub-Inspector, Akil Ahmed. On

reaching Delhi, he came to know that Vikas Tiwary has been arrested by the Special Cell of Delhi Police and that he has been taken to Patiala House Court. He had submitted an application to the Court and after getting the permission of the Court Vikas Tiwary was interrogated for twenty minutes and he had accepted his involvement in the conduct of murders. He had arrested Vikas Tiwary and the Court had granted transit remand for two days. He has stated that Vikas Tiwary was brought to Hazaribagh and he was given on Police remand after which in course of inquiry he had recorded the confessional statement of Vikas Tiwary. He has proved the confessional statement of Vikas Tiwary which has been marked as Exhibit-21. The forwarding report of Vikas Tiwary has been proved and marked as Exhibit-22. He had thereafter submitted charge-sheet against Vishal Kumar Singh, Santosh Pandey, Rahul Deo Pandey, Dilip Sao and Shambhu Nath Tiwary u/s 341, 326, 323, 307, 302, 120B/34 IPC, Sections 25(1-A)/25(1-AA)/26/27/35 of the Arms Act and Section 3/4/5 of the Explosives Substance Act. He had immediately started a supplementary investigation and in course of the same he had recorded the statements of Avik Kumar, Aman Srivastava, Upendra Kumar Singh, Sabana Khatoon, Sahin Pravin, Sanjay Sao, Gopi Sao, Vijay Sao, Dablu Sharma, Rajesh Kumar Singh, Sitaram Mishra, Mohi Prasad Singh, Ajay Kumar Singh, Vijay Kumar, Anuj Kumar Sharma, Kanhu Tudu, Uday Shankar Paswan, Rajeev Ranjan and Birendra Prasad Mehta. He had submitted an

application to the Court for analysis of the seized AK-47 rifle by the Sergeant Major and also submitted an application to the Chief Judicial Magistrate, Hazaribagh for holding a Test Identification Parade of Vikas Tiwary and Dilip Sao. A Test Identification Parade was held and 11 persons had identified Vikas Tiwary. Thereafter he had obtained the postmortem report of Gayasuddin Khan and Md. Kamal. On account of his transfer to Barkata Thana he had handed over the charge of investigation to the Officer-in-Charge, Jitendra Singh who in turn had given the charge of the investigation to Sub-Inspector, Nathuni Prasad Yadav. He has proved the application given to the CJM, Hazaribagh for holding the Test Identification Parade of Vikas Tiwary and Dilip Sao which has been marked as Exhibit-3.

In cross-examination, he has deposed that it is true that he reached the Civil Court Hazaribagh after the incident had occurred. When he had reached the place of occurrence at that point of time the Dy. S.P., Inspector and other Police Personnel and staffs of the Civil Court, Lawyers and several independent witnesses were present. It is a fact that after he had reached the place of occurrence none of the persons present had disclosed the name of the assailants who had fled away. A rumour was floating around that the murders were executed by the gang members of Vikas Tiwary. He had received the fardbeyan on 12:15 P.M. along with the seizure list. It is a fact that from the Bolero vehicle some posters were recovered in which it was written that the murder of

Kishore Pandey has been avenged with the name of Vikas Tiwary in the poster with a further sentence “to be continued...”. This was the basis for making Vikas Tiwary an accused. He had not made any investigation with respect to the recovery of posters nor he had done the photography of the Bolero vehicle. He had not taken the finger print of the AK-47 rifle nor had he taken the finger print of Vikas Tiwary. During investigation he had not recorded the statement of Gandhauri Prasad. It is true that in the FIR it has been mentioned that two persons had participated in the incident “one was firing with an AK-47 rifle while the other had thrown a grenade”. It is also true that after the incident the photograph of Vikas Tiwary was frequently published in the newspapers. He had personally arrested Vikas Tiwary from Delhi and he had identified him. Vikas Tiwary is not very tall and has a healthy figure and was not thinly built. In the fardbeyan there is no name of any independent witness but the same contains the name of only Police personnel. From 02.06.2015 to 02.09.2015 he had not received any written report from the family members of Sushil Srivastava. The son of Sushil Srivastava namely, Aman Srivastava upon the death of Sushil Srivastava had recorded a fardbeyan at Medica Hospital, Ranchi which has been mentioned in the case diary. On a perusal of the fardbeyan it appears that Aman Srivastava had gone to meet his father at Hazaribagh Civil Court but no information in that regard was given to him till 02.09.2015. The fardbeyan of Aman Srivastava does not mention Vikas Tiwary as the person who

was shooting with an AK-47 rifle and he had merely stated about the firing which had taken place. The fardbeyn of Aman Srivastava does not also name Shambhu Nath Tiwary, Santosh Pandey, Rahul Deo Pandey, Dilip Sao and Vishal Singh. It also does not mention that the brother of Aman Srivastava namely, Avik Srivastava was also with him on the date of occurrence. During investigation he had taken into consideration the fardbeyan of Aman Srivastava. He had not been able to find out the registered owner and the driver of the Bolero vehicle. In course of investigation, he had come to know that a shooter by the name of Raj Singh was also involved in the shoot out along with the other accused persons. The two mobiles mentioned at para 83 of the case diary were not seized by him.

47. P.W. 41 (Jitendra Singh) has stated that the incident is of 02.06.2015 when Sushil Srivastava and two other persons were murdered at Civil Court premises, Hazaribagh. The first Investigating Officer had submitted charge-sheet against Vishal Kumar Singh, Santosh Pandey, Rahul Deo Pandey, Dilip Sao and Shambhu Nath Tiwary while the second Investigating Officer had submitted charge-sheet against Vikas Tiwary. He had taken over the investigation from Nathuni Prasad Yadav. On 08.03.2016 he had received an information that Vishal Sao was in prison at Tenughat Jail and such information was found to be true. He has stated that on 10.03.2016 he had received a secret information that shooter Raj Singh who was involved in the episode was in Sultanpur (U.P.) Jail and when he reached Sultanpur the

Jail Superintendent had disclosed that for administrative reasons Raj Singh has been shifted to Bareilly Jail. He had submitted an application before the CJM, Hazaribagh for remand of the accused Raj Singh. He had obtained the test report of the seized AK-47 rifle, magazine, 13 live cartridges, pin, lever of the grenade which have already been marked as exhibits. He had obtained the sanction for prosecution from the District Magistrate-cum-Deputy Commissioner, Hazaribagh which has been proved and marked as Exhibit-25. He had recorded the statement of Vikas Sao in Hazaribagh Jail in which he had disclosed about his friendship with Vikas Tiwary. He had submitted charge-sheet against Vikas Sao.

In cross-examination, he has deposed that in course of investigation he had recorded the statement of Vikas Sao.

48. P.W.42 (Daud Herenj) has appeared before the Court to state about the Bolero vehicle which was seized by the Police. The Bolero vehicle has been kept in the Police Station premises and its condition has become awful. He has produced the report of the Officer-in-Charge regarding the condition of the Bolero vehicle which has been marked as Exhibit-26 and two photographs of the vehicle marked as X and X/1 for identification.

49. The statements of the accused were recorded u/s 313 Cr.P.C., in which, they have denied their complicity in the commission of the murders.

50. The defence has examined eight witnesses in support of its case.

51. D.W.1 (Sushila Devi) has stated that on 02.06.2015 at 6:00 A.M. she had come to Civil Court, Hazaribagh to meet her husband Swatantra Raj Gupta who was in jail. She was sitting on a platform near the Gulmohar tree waiting for her husband when at 10:00 A.M. she heard the sound of firing. The firing was going on at a distance of 5-10 meters from where she was sitting. The person who was firing was tall and thinly built whom she could recognize. The three accused persons who were produced through video conferencing were not the persons who were firing. A bomb was also exploded after which there was a pandemonium. Everyone including the Police personnel had fled away.

In cross-examination, she has deposed that she does not know in which case her husband was in custody. On the date of occurrence, she had come in a train from Haliapur, Uttar Pradesh.

52. D.W.2 (Santosh Pandey) has stated that he stays at Patratu with his family and he runs a grocery shop. His father is a Railway employee. He has no connection with Bhola Pandey, Kishore Pandey and Vikas Tiwary. He does not know Vikas Sao, Bablu Thakur, Suman Singh, Dilip Sao, Vishal Singh, Deepak Dhobi, Pradeep Paswan, Sunil Dhobi and Shambhu Tiwary. It is a fact that on 02.06.2015 he was not present in Civil Court, Hazaribagh. On 24.05.2015 he was in his village at Pandey Rati in

Patna District along with his family on account of the marriage of his niece. The marriage was solemnized on 02.06.2015 and he and his family members were present at Pandey Rati. After the *bedai* had taken place at 8:00 A.M. on 02.06.2015 he and his family members had gone to his cousin sister's place at Jalpura and he had stayed for 5-6 days when Police had arrested him and he was brought to Hazaribagh. He has stated that he does not know either Sushil Srivastava or Deepak Kumar Rao.

In cross-examination, he has deposed that he does not have any documentary evidence to prove that on 02.06.2015 he was at Pandey Rati.

53. D.W.3 (Yogendra Pd. Pandey) is the father of Santosh Pandey who has stated that on 24.05.2015 he and his family members had gone to Pandey Rati to attend the marriage ceremony of his granddaughter Rupa Kumari which was solemnized on 01.06.2015. During marriage on 01.06.2015 his son Santosh Pandey was with him. After the *bedai* ceremony of his granddaughter she was taken to village Jalpura where they stayed for five days. On 07.06.2015 while they were sleeping Police had come and had taken away his son Santosh Pandey. His son Santosh Pandey runs a General Store at Patratu.

In cross-examination, he has deposed that he cannot produce any documentary evidence to prove that on 02.06.2015 his son Santosh Pandey was at Pandey Rati.

54. D.W.4 (Om Prakash Rana) has stated that he works as an Advocate Clerk (Munshi) in Civil Court, Hazaribagh. It was morning Court on 02.06.2015 and he had come to Civil Court, Hazaribagh along with his father. On that day an incident of firing had taken place which he had witnessed. The person who was firing was tall and thinly built. Due to the firing, there was a chaos and everyone fled away. He has stated that Rahul Deo Pandey and Santosh Pandey who were produced through video conferencing were not the persons who were either firing or were fleeing away. He has failed to identify Vikas Tiwary who was produced through video conferencing. He has also not identified Vishal Singh in the dock.

In cross-examination, he has deposed that he does not have an Advocate Clerk license.

55. D.W.5 (Sujit Kumar Singh) has stated that he works in Haryana Transport Company of India as a Manager and the business is owned by Vishal Singh. On 02.06.2015 at 9:30 A.M. Vishal Singh had come to the office as usual and stayed till 4:00 P.M. He had shown the accounts for the period 01.05.2015 to 31.05.2015 to Vishal Singh who had signed on them. He has produced the bills which have been marked as Exhibit- C to C/16 with objection. He has produced the second set of bills from 01.03.2015 to 31.03.2015 bearing the signature of Vishal Singh which have been marked as Exhibits- D to D/15 with objection.

In cross-examination, he has deposed that he is working with Vishal Singh for the last ten years. There is no attendance register in the firm in which he works.

56. D.W.6 (Vishal Singh) has stated that he stays at Ratan Heights, Morabadi along with his family. In Ranchi he has a business of transport as well as a Motorcycle Showroom. On 02.06.2015 he was in his office at Haryana Transport Company of India from 9:00-9:30 A.M. to 5:00 P.M. On the same day he had signed on 33 bills furnished by his employee Sujit Kumar Singh. He has proved the bills which have been marked as Exhibits- E to E/32. He has also proved four pages of the ledger which has been marked as Exhibits- F to F/3. He does not know Bhola Pandey, Kishore Pandey and Vikas Tiwary of Patratu. He does not know Sushil Srivastava.

In cross-examination, he has deposed that in his transport company office there is no attendance register.

57. D.W.7 (Dilip Sao) has stated that on 02.06.2015 he was at Patratu along with his family. He does not know Bhola Pandey, Kishore Pandey, Vikas Tiwary, Santosh Pandey and Vishal Singh. He also does not know Sushil Srivastava.

In cross-examination, he has deposed that he had not disclosed before the Police that he is involved in the business of vegetables.

58. D.W.8 (Pradip Kumar Das) has stated that on the strength of a letter issued by the Superintendent, Jayaprakash

Narayan Central Jail, Hazaribagh he has produced the register in connection with S.T. No. 141/2016. He has proved the letters which have been marked as Exhibits- G, H and I. The register indicates that Rahul Deo Pandey was remanded to the Jail on 01.05.2015 in connection with Chauparan P.S. Case No. 68/2005 and on 02.06.2015 he was in jail. The gate register shows that on 02.06.2015 Rahul Deo Pandey had not gone outside the Jail. The relevant page of the gate register has been proved and marked as Exhibit- J.

59. It has been submitted by Mr. Surendra Singh, learned Senior Counsel for the appellants Vikas Tiwary and Santosh Pandey in Criminal Appeal (DB) No. 597 of 2020 and the appellant no. 2 Rahul Deo Pandey in Criminal Appeal (DB) No. 599 of 2020 that the evidence of the prosecution witnesses are vague, inconsistent, incoherent and is primarily based on assumption regarding the participation of the appellants in the ghastly murders which had taken place inside the campus of a revered institution. The discrepancy and contradictions in the evidence of the witnesses can be fathomed from the fact that some say that the assailants were 2-3 in numbers while the others speak of 8-10 assailants but the manner of occurrence suggests that a grenade was hurled and firing was made from AK-47 rifle which would conclusively prove that the increase in the number of assailants as stated by some of the witnesses are an exaggerated version. The prosecution has tried to build its edifice on a conspiracy theory

hatched by the accused persons and the appellant Rahul Deo Pandey has also been brought within the purview of conspiracy though admittedly he was lodged in Jayaprakash Narayan Central Jail in connection with a case. The conspiracy theory so far as the appellant Rahul Deo Pandey is concerned, stems from a purported call details of mobiles owned by Vikas Tiwary and Rahul Deo Pandey and a conversation between them which lasted for 39 seconds and which took place immediately after the mayhem was caused in the Civil Court premises, Hazaribagh. It has been submitted that there is no legal evidence on record to suggest that Vikas Tiwary and Rahul Deo Pandey ever owned mobile phones or that they spoken to each other over the said mobile phone. There is no witness who has stated about these appellants having mobile phones in their possession and the most astonishing thing is that no mobiles were seized from their possession. Even the CDR has not been proved by the prosecution. This would lead to an adverse inference being drawn against the prosecution. Reference in such context has been made to the case of "*Tomaso Bruno & Another Versus State of Uttar Pradesh*", reported in (2015) 7 SCC 178. Mr. Singh, learned Senior Counsel has while referring to the evidence of P.W.40, the first Investigating Officer has submitted that it was P.W.40 who was informed by a spy regarding the alleged conspiracy between Vikas Tiwary and Rahul Deo Pandey but absence of the spy as a witness in the trial would submerge the evidence of P.W.40 and would bring it within the realm of hearsay

evidence. Moreover, since it is a statement made during the course of investigation it will be hit by Section 162 Cr.P.C. None of the evidence produced by the prosecution establishes meeting of minds of these two appellants and, therefore, the charge of conspiracy becomes unsustainable.

Some of the witnesses have mentioned about the involvement of 8-10 assailants in the occurrence which is falsified by the prompt lodging of the fardbeyan wherein the informant who has been examined as P.W.22 has described the assailant as tall and thinly built and the second miscreant had exploded a bomb after which both made good their escape by scaling the wall. The evidence of P.W.22 is also supported by P.W.2 who has stated that only 2-3 assailants were involved in the occurrence. The promptness in lodging an FIR being the first version of an incident is construed to be the truthful version obliterating a well thought out version. Reference has been made to the case of "*Jai Prakash Singh versus State of Bihar and Another*", reported in (2012) 4 SCC 379. The evidence of P.W.2 and P.W.22 who have given a contradictory version to the other witnesses regarding the number of assailants' presents has not been challenged by the prosecution and their evidence is binding on the prosecution. According to the learned Senior Counsel the judgment in "*Virendra versus State of Madhya Pradesh*" reported in AIR 2022 SC 3373 is a pointer to the said fact. He has further submitted that the evidence of the ballistic expert who has been examined as P.W.26 validates the

evidence of P.W.2 and P.W.22 that not more than two rifles have been used in perpetrating the assault. When the direct evidence is not supported by expert evidence it is difficult to convict the accused based on such evidence and reliance has been placed in the case of "*Ram Narain versus The State of Punjab*" reported in AIR 1975 SC 1727. Mr. Surendra Singh, learned Senior Counsel has submitted that the evidence of P.W.7, P.W.11, P.W.13, P.W.14, P.W.15, P.W.16, P.W.17, P.W.18 and P.W.34 are liable to be discarded on account of the fact that though they were available for questioning on 02.06.2015 their statements were not recorded by the Investigating Officer and ultimately their statements were recorded on 05.09.2015 and 06.09.2015 which has a time gap of more than three months from the date of occurrence and no plausible explanation has been furnished by the prosecution with respect to such inordinate delay. All these witnesses were suspended, their arms were seized and their written statements were taken but all those statements have been suppressed by the prosecution for reasons best known to them. The delay in recording of statement of material witnesses will be fatal to the prosecution case and reliance has been placed in the case of "*Ramesh and Another versus State of Karnataka*" reported in (2024) 9 SCC 169.

With respect to the identification of the appellant Vikas Tiwary by the Police witnesses are concerned, there has been consistent evidence that the photograph of Vikas Tiwary was

published in the newspaper a day after the incident and on subsequent dates as well and viewed in such backdrop the identification in the Test Identification Parade as well as in the dock becomes a farcical exercise. Reference has been made to the case of "*Seeni Nainar Mohammed and Others versus State, Rep. by Deputy Superintendent of Police*" reported in AIR 2017 SC 3035 and "*Ravi @ Ravichandran versus State Rep. by Inspector of Police*" reported in AIR 2007 SC 1729.

P.W.34 who was a constable has revealed that the suspended Police personnel were pressurized to identify the accused otherwise their suspension would not be revoked. The witnesses have also admitted to have seen the appellant Vikas Tiwary in the Police Station while he was on Police remand. Therefore, the identification of Vikas Tiwary becomes a tainted piece of evidence.

Mr. Singh, learned Senior Counsel has extensively referred to the evidence of P.W.24 Avik Srivastava who is the son of the deceased Sushil Srivastava and who has claimed to be present with his father when such outrageous incident had taken place. This witness has stated about the presence of 8-10 assailants which however as stated above has been contradicted by some of the witnesses. A new scenario has emerged in the evidence of P.W.24 to the effect that Vikas Tiwary had hurled a bomb and had also resorted to firing which has not been stated by any of the other prosecution witnesses. Even after an incident of such a

magnitude P.W.24 did not inform his relatives and such conduct makes his claim to be an eye-witness suspicious. Despite having seen his father gunned down in front of his own eyes and despite claiming that Vikas Tiwary was the main assailant he had not lodged any case immediately after 02.06.2015 but had lodged a written report on 03.09.2015 which report has been suppressed by the prosecution. The statement of P.W.24 was recorded by the Investigating Officer for the first time on 09.09.2015 which again is a dent in the prosecution case. The evidence of P.W.25 has been banked upon much by the learned trial court but the presence of P.W.25 in Court and consequently having seen the incident is itself in grave doubt on account of the fact that P.W.25 had a Court appearance on 02.08.2015 but his counsel had moved an application for exemption from personal appearance on the ground that he was sick. Moreover, P.W.25 in his cross-examination has deposed that he had arrived at the place of occurrence after the incident had already taken place. This witness was a close associate of Sushil Srivastava and the motive to implicate the appellant becomes apparent. He has developed his story during his evidence of the appellants being armed with AK-47 rifles and firing at the deceased but in course of his statement recorded during investigation no such assertion had been made by him. Improvements made for the first time in Court falsifies such testimony and this view is well settled in the case of "*Darshan Singh versus State of Punjab*" reported in (2024) 3 SCC 164.

“Ankush Maruti Shinde and Others versus State of Maharashtra” reported in *AIR 2019 SC 1457* and *“Ajmer Singh and Others versus State of Punjab”* reported in *AIR 1977 SC 1078*.

It has been submitted that none of the pamphlets supposedly seized from inside the Bolero vehicle were exhibited and no reliance can be placed on the same. So far as the confessional statements are concerned, they are inadmissible in evidence and are hit by Section 25 of the Evidence Act and such assertion is cemented by the judgment rendered in the case of *“Rahul versus State (NCT of Delhi)”* reported in *(2023) 1 SCC 83*. The case of the prosecution being unconvincing in absence of any clinching material in its support all these appellants according to Mr. Singh, learned Senior Counsel deserves to be acquitted from the charges levelled against them.

60. Mr. Anoop Prakash Awasthi, learned counsel representing the appellant Vishal Singh @ Vishal Kumar Singh has adopted the lead argument advanced by Mr. Surendra Singh, learned Senior Counsel and has supplemented it by submitting that the appellant is not named in the First Information Report and rightly so as the appellant on the date of occurrence was in his office at Ranchi which is borne out from the various bills which have been exhibited by the defence. The plea of alibi has not at all been appreciated by the learned trial court. It has been submitted that no Test Identification Parade was never conducted with respect to Vishal Kumar Singh and the prosecution has instead

relied upon the dock identification after an inordinate delay of more than three years. Such identification cannot form the basis for conviction. Reliance has been placed in the case of "*Kanan and Others versus State of Kerala*" reported in *AIR 1979 SC 1127*. Mr. Awasthi has also referred to the case of "*Jaspal Singh alias Pali versus State of Punjab*" reported in *AIR 1997 SC 332*.

It has been submitted that the charge of conspiracy is wholly unfounded and not supported by any credible evidence. The confessional statement of Vikas Tiwary, Santosh Pandey and Dilip Sao have been relied upon by the prosecution to bring home the charge u/s 120B of the IPC and absence of any discovery makes such confession inadmissible in evidence. None of the three Investigating Officers being P.W.33, P.W.40 and P.W.41 have deposed of having collected any material which would point to the deliberation, planning or agreement on the part of the appellant to commit such offence. Some of the witnesses though have stated about the alleged presence of the appellant at the place of occurrence but mere presence ipso facto does not establish participation in a conspiracy. Mere suspicion however grave cannot take the place of proof. Mr. Awasthi has submitted that admittedly no witness has attributed any overt act against the appellants of either taking part in firing or in exploding a bomb. As held in "*R. Venkatkrishnan versus Central Bureau of Investigation*" reported in *(2009) 11 SCC 737*, the prosecution must demonstrate not only

existence of unlawful agreement but also the active participation of the accused therein.

The prosecution according to Mr. Awasthi has heavily relied upon the testimonies of the Police personnel and the solitary injured witness P.W.3 but P.W.3 has stated that on account of suffering a firearm injury he had become unconscious and could not identify the assailants. The evidences of the Police witnesses are not credible in view of their apparent contradictions and do not speak of the appellant Vishal Kumar Singh as a participant in the shootout. The involvement of Vishal Kumar Singh in the offence alleged is further eroded by the fact that the learned trial court had not found him guilty either under the Arms Act or under the Explosive Substance Act. This would further suggest that purely on the basis of suspicion not backed up by any cogent material the appellant has been convicted. Mr. Awasthi has submitted that in absence of any conclusive circumstances' as demonstrated by him the appellant Vishal Singh @ Vishal Kumar Singh deserves to be acquitted from the charges levelled against him.

61. Mr. A.K. Kashyap, learned Senior Counsel representing the appellant no. 1 Dilip Sao in Criminal Appeal (DB) No. 599 of 2020 has also adopted the submissions of Mr. Surendra Singh, learned Senior Counsel but has put forward some additional grounds particularly with reference to the appellant Dilip Sao.

It has been submitted that the appellant Dilip Sao has not been named in the First Information Report and was also not put on Test Identification Parade to ascertain as to whether he was seen at the place of occurrence or not. No recovery has been effected consequent to the confessional statement of Dilip Sao and, therefore, such confessional statement has no evidentiary value as per Section 25 of the Evidence Act. The alleged recovery of a bike and mobile were neither produced nor proved as material exhibits. P.W.2, P.W.3, P.W.4, P.W.7, P.W.22 and P.W.34 have not claimed to identify any accused who were on representation. P.W.25 as per his evidence does not appear to be an eyewitness. So far as P.W.11, P.W.13, P.W.14, P.W.15, P.W.16, P.W.17 and P.W.18 are concerned, they have claimed to have identified the accused persons in the dock for the first time after more than 2½ years from the date of the occurrence and such identification in absence of any corroboration becomes fallible. It has been submitted that Aman Srivastava the son of the deceased Sushil Srivastava had given his fardbeyan on 02.06.2025 at Sadar P.S., Ranchi but the prosecution has suppressed the said fardbeyan though as per the evidence of P.W.40 it would be apparent that the said fardbeyan does not contain the name of any person involved in the incident. It also does not mention that Avik Srivastava was present at the place of occurrence. The appellant in his evidence as D.W.7 has categorically denied his presence at the place of occurrence. Mr. Kashyap, learned Senior Counsel has stressed much upon the fact

that the appellant Dilip Sao has been convicted u/s 302 of the IPC with the aid of Section 120B of the IPC but there is no evidence on record to prove the conspiracy supposedly hatched by the appellant in concert with the other co-accused persons. In support of his various contentions, learned Senior Counsel has referred to the cases of "*Harbeer Singh versus Sheeshpal and Ors.*" reported in AIR 2016 SC 4958, "*Ganesh Bhavan Patel and Another versus State of Maharashtra*" reported in (1978) 4 SCC 371, "*Maruti Rama Naik versus State of Maharashtra*" reported in (2003) 10 SCC 670. "*Jagjit Singh Alias Jagga versus State of Punjab*" reported in (2005) 3 SCC 689, "*Mohanlal Gangaram Gehani versus State of Maharashtra*" reported in (1982) 1 SCC 700, "*Thimareddy and Others versus State of Karnataka*" reported in (2014) 13 SCC 408 and "*Hari Nath and Another versus State of U.P.*" reported in (1988) 1 SCC 14.

62. Mr. B.M. Tripathi, learned Senior Counsel appearing on behalf of the victim Avik Srivastava has submitted that the Court premises was made the battle ground for settling personal scores. The incident which had taken place in broad daylight in the citadel of justice by using sophisticated and advanced weapons like AK-47 rifle and hand grenade was an attempt to debilitate the institution itself and such brazen act has to be dealt with strongly. Such act has had a cascading effect on the litigants and witnesses intending to depose freely and without fear. The evidence of the witnesses in the backdrop of such a

horrible crime should be viewed with a ring of faith and trustworthiness.

It has been submitted that since indiscriminate firing took place from sophisticated firearms it would be but natural that the persons present took shelter in order to avoid being hit by any rogue bullets and in such circumstances, there is bound to be some variance in the ocular evidence. P.W.2 has given the minutes details of the incident and he has identified only Rahul Deo Pandey whom he had seen from before and if the Police witnesses were influenced the name of all the accused persons P.W.2 would have stated of identifying all. The evidence is natural and without any concoction. P.W.4 has identified only Vikas Tiwary whom he had seen running from behind. P.W.11, P.W.13, P.W.14, P.W.16, P.W.17 and P.W.18 have identified four accused persons while P.W.24 has identified Vikas Tiwary and Santosh Pandey. P.W.7 on the other hand has identified Vikas Tiwary only. Mr. Tripathi, learned Senior Counsel has submitted that the defence cannot gain any advantage by putting stress on the photograph of Vikas Tiwary being published in the newspaper as neither any newspaper was produced in Court nor its contents exhibited. An incident of such magnitude was bound to have prominently featured in the newspapers and that by itself would not degenerate the case of the prosecution into oblivion by discarding the evidence of such eye-witnesses. So far as Santosh Pandey and Rahul Deo Pandey are concerned, they have been identified by several Police

personnel and their photographs were also not published in the newspaper. An alien procedure not akin to criminal jurisprudence was adopted deliberately in order to create a doubt. Moreover, when the things which are not before the Court it is well settled that the Court should not take cognizance of the same. Mr. Tripathi, learned Senior Counsel for the victim has copiously referred to the evidence of P.W.24 the son of Sushil Srivastava who according to him has given a vivid description of the incident and has identified Vikas Tiwary, Santosh Pandey, Vikas Sao, Deepak Dhobi, Dilip Sao, Sunil Dhobi, Vishal Singh and others who had orchestrated the murderous attempt upon his father. He has also stated about the usages of bombs and AK-47 rifle as well as pistols by the accused persons. The evidence of P.W.24 in consonance with the evidence of the prosecution witnesses regarding the manner of occurrence and such evidence does inspire confidence and is wholly reliable and trustworthy. Countering the submissions advanced by the learned counsels for the appellants that P.W.24 is related to the deceased hence interested witness submission has been advanced that merely being related to the deceased would not make such evidence doubtful, more so when he was present at the place of occurrence and nothing has been unearthed from his evidence which would show his evidence as vindictive or exaggerated and designed to frame the appellants. Reference has been made to the case of "*Shio Shankar Dubey and Others versus State of Bihar*" reported in (2019) 6 SCC 501. In reply

to the submissions advanced by the learned counsels for the appellants that the fardbeyan of Aman Srivastava does not disclose the name of Avik Srivastava as being present and also does not name Vikas Tiwary as the assailant Mr. Tripathi, learned Senior Counsel has submitted that the presence of P.W.24 has been corroborated by P.W.4, P.W.29 and P.W.38. A First Information Report is not an encyclopaedia having the minutes of details and absence of the name of P.W.24 cannot be perceived to be the gospel truth particularly in view of the presence of P.W.24 having been noted by the witnesses who were present at the place of occurrence. Mr. Tripathi has also copiously referred to the evidence of P.W.25 whose evidence is of a sterling character and which the defence has failed to contradict or demolish. The application u/s 317 Cr.P.C. itself proves the presence of P.W.25 in the Court premises. The fact that Rahul Deo Pandey was not identified by P.W.25 puts his evidence on a higher pedestal regarding its truthfulness and credibility. In support of his various contentions Mr. Tripathi has relied upon the case of "*Mukesh and Another versus State (NCT of Delhi) and Others*" reported in (2017) 6 SCC 1, "*Sidhartha Vashisht alias Manu Sharma versus State (NCT of Delhi)*" reported in (2010) 6 SCC 1, "*Pal Singh and Another versus State of Punjab*" in SLP (Crl.) No. 191 of 2014, "*Dalbir Singh versus State of Haryana*" reported in (2008) 11 SCC 425, "*Girja Prasad (Dead) By L.R.S versus State of M.P.*" reported in (2007) 7 SCC 625, "*State of Rajasthan versus Arjun Singh and Others*" reported in (2011) 9 SCC

115, "*Raja versus State by the Inspector of Police*" reported in (2020) 15 SCC 562 and "*Yogesh Singh versus Mahabeer Singh and Others*" reported in (2017) 11 SCC 195.

63. Learned Spl. P.P. / A.P.P in the respective cases have adopted the arguments advanced by Mr. B.M. Tripathi, learned Senior Counsel for the informant.

64. We have heard the learned counsels for the respective sides and have also perused the Trial Court Records.

65. Sushil Srivastava, an interstate criminal was lodged in Lok Nayak Jayaprakash Narayan Central Jail, Hazaribagh serving out his sentence in a case of murder and he was a man of antecedents. On the fateful day of 02.06.2015 he was to be produced before two Courts in Hazaribagh and after the formalities of production was completed he came downstairs, guarded by several Police personnel specially deputed for his security and in course of exchanging greetings with his followers and accomplices an indiscriminate firing started specially targeting Sushil Srivastava and an improvised grenade was also exploded causing confusion and chaos and taking advantage of such pandemonium the accused persons made good their escape by scaling a wall in course of which an AK-47 rifle fell down which was subsequently seized. The scenario which emerged thereafter revealed that two of the accomplices of Sushil Srivastava namely, Gayas Khan and Kamal Khan died and while Sushil Srivastava was referred to RIMS, Ranchi from Sadar Hospital, Hazaribagh he also

succumbed to his injuries subsequently. The body of Sushil Srivastava was found riddled with bullets which itself suggests that he was the main target of the assailants and the death of his accomplices appear to be collateral damages. The narration of events by the eyewitnesses speak of a meticulous planning to eliminate Sushil Srivastava and the Civil Court premises of Hazaribagh was chosen as a soft spot for executing such devious intention. The act of the assailants to execute their plan in the citadel of justice is outrageous and insane and speaks of a demonic mindset as if the judicial institution is their fiefdom meant for settling personal scores.

Admittedly, though the incident had occurred leading to the death of three persons but it is to be discerned by dissecting the evidence on record as to whether the appellants were the assailants and/or the conspirators to the murders so committed.

66. The witnesses of the prosecution can be divided into Police witnesses and non-police witnesses. We have deliberately referred to P.W.24 and P.W.25 as non-police witnesses and not independent witnesses since the defense has tried to create a doubt over their status of being independent witnesses since P.W.24 is the son of the deceased while P.W.25 was an associate of the deceased.

67. The Police witnesses who claimed themselves to be the eyewitnesses have given different versions with respect to the

number of assailants who took part in the incident in various capacities. P.W.1 had arrived at the place of occurrence on account of an information received from the Officer-in-Charge, Sadar P.S. but by that time the incident had already taken place. P.W.1 is, therefore, a hearsay witness. P.W.2 was posted on security duty within the Civil Court premises and he has stated about seeing 2-3 persons coming out from a Bolero vehicle and spraying Sushil Srivastava and his two associates with bullets from AK-47 rifles. P.W.3 in course of firing had sustained a bullet injury and he had become unconscious. P.W.3 has been candid enough to admit that he had not identified the assailants and he is unaware about what happened after he became unconscious. The tenor of evidence of P.W.4 speaks of a few assailants may be 2 or 3 who had covered their faces with black cloths and he in his cross-examination has deposed that he had seen only one person fleeing away. P.W.5 was one of the members of the Special Force deputed for security of the prison van. He was present at the place when the incident had taken place but he has failed to identify any of the accused persons. P.W.6 had reached the place of occurrence after the incident had already taken place. P.W.7, P.W.11, P.W.16, P.W.17, P.W.18 and P.W.34 have stated about the presence of 8-10 persons who had made a concerted assault with firearms upon Sushil Srivastava and had also exploded a bomb. The informant who was examined as P.W.22 and who is also an eyewitness has stated about 1-2 persons taking part in the firing. The version of the

above noted witnesses can be summarized to mean that P.W.2 and P.W.22 have stated about the presence of 2-3 persons and the evidence of P.W.4 can be construed to mean a limited number of assailants while P.W.7, P.W.11, P.W.16, P.W.17, P.W.18 and P.W.34 have stated about the presence of 8-10 assailants. The presence of 8-10 assailants taking part in the mayhem seems to be, in the surrounding circumstances of the case, a highly exaggerated version. We say this because none of the aforesaid witnesses have stated about all the 8-10 persons scaling the wall and making good their escape. It has been consistently stated that an assailant with an AK-47 rifle fled away by jumping the wall and in course of such act his AK-47 rifle fell down which was later on seized. It is not the case of the prosecution that these witnesses immediately on commencement of the incident had fled away from the place of occurrence; rather all had taken shelter and / or position to counter the offensive and it is indeed surprising that none had stated about how the rest of the participants in the firing barring the assailants who scaled the wall managed to flee away. The other aspect of the matter is that when a conspiracy has been hatched as would appear from the evidence of the witnesses to eliminate Sushil Srivastava and even if we accept that 8-10 persons were involved and were present at the place of occurrence it was but natural that they would have been around in order to execute their devious plan. This scenario was never depicted by the circumstances and when we have a glance to the ballistic report

(Exhibit-9) prepared by P.W.26 it is evident that two AK-47 rifles were used apart from a hand grenade being thrown. These facts cement the assertion of P.W.2 that 2-3 persons were involved in the firing. P.W.22 who is the informant in his evidence has mentioned about the presence of 1-2 persons. In the fardbeyan of P.W.22 he has mentioned about one assailant being armed with an AK-47 rifle while another had thrown a hand grenade. The promptness of lodging an FIR reflects the true version of the events which had unfolded and the fardbeyan of P.W.22 making accusations against two assailants only leads credence to such assertion. In such context, we may refer to the case of “*Jai Prakash Singh versus State of Bihar and Another*”, reported in (2012) 4 SCC 379, wherein it has been held as follows:

“12. *The FIR in a criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations / deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question. (Vide Thulia Kali v. State of T.N. [(1972) 3 SCC 393 : 1972 SCC (Cri) 543 : AIR 1973 SC 501] , State of*

Punjab v. Surja Ram [1995 Supp (3) SCC 419 : 1995 SCC (Cri) 937 : AIR 1995 SC 2413] , Girish Yadav v. State of M.P. [(1996) 8 SCC 186 : 1996 SCC (Cri) 552] and Takdir Samsuddin Sheikh v. State of Gujarat [(2011) 10 SCC 158 : (2012) 1 SCC (Cri) 218 : AIR 2012 SC 37] .)”

68. Mr. Surendra Singh, learned Senior Counsel for the appellants has submitted that the non-consideration of the evidence of P.W.2 and P.W.22 by the learned trial court and since these witnesses favored the accused with respect to the number of assailants present at the place of occurrence such evidence should have acted in favour of the appellants. This view has been rendered in the case of “*Virendra versus State of Madhya Pradesh*” reported in *AIR 2022 SC 3373*, wherein it has been held as follows:

*“7. Both the courts shifted the burden on the defence. The evidence rendered by the prosecution witnesses was rejected, either as that of indifferent witnesses or as irrelevant evidence. We may note that these are all prosecution witnesses who were not treated as hostile. No attempt whatsoever was made either to treat them as hostile or to re-examine them except that of PW10. Not even a suggestion was put to them on the presence of PW15. In such a scenario, the statement made by the prosecution witnesses in favour of the accused would certainly inure to his benefit. Our view is fortified by the decision of this Court in *Raja Ram v. State of Rajasthan*, (2005) 5 SCC 272 : (AIR Online 2000 SC 474):*

"9. But the testimony of PW8 Dr. Sukhdev Singh, who is another neighbour, cannot easily be surmounted by the prosecution. He has testified in very clear terms that he saw PW 5 making the deceased believe that unless she puts the blame on the appellant and his parents she would have to face the consequences like prosecution proceedings. It did not occur to the Public

Prosecutor in the trial court to seek permission of the court to heard (sic declare) PW8 as a hostile witness for reasons only known to him. Now, as it is, the evidence of PW 8 is binding on the prosecution. Absolutely no reason, much less any good reason, has been stated by the Division Bench of the High Court as to how PW8's testimony can be sidelined."

It is reiterated in Javed Masood v. State of Rajasthan, (2010) 3 SCC 538 : (AIR 2010 SC 979):

"20. In the present case the prosecution never declared PWs 6, 18, 29 and 30 "hostile". Their evidence did not support the prosecution. Instead, it supported the defence. There is nothing in law that precludes the defence to rely on their evidence."

Reliance was made on the recovery from the appellant. The fact remains that there was sufficient evidence to conclude that only one shot was fired which could be seen even from the evidence of PW15. While assessing the evidence produced by the defence, courts discarded them without appreciating the fact that it has to be seen only on the degree of probability."

69. In the backdrop of the aforesaid reasonings we come to a conclusion that only 2-3 persons were involved in the murderous assault on Sushil Srivastava as deposed by P.W.2 and P.W.22 and P.W.7, P.W.11, P.W.16, P.W.17, P.W.18 and P.W.34 seems to have developed their version in that respect in order to bring all the accused persons within the precincts of suspicion.

70. The evidence of the Police witnesses notably P.W.7, P.W.11, P.W.13, P.W.14, P.W.15, P.W.16, P.W.17, P.W.18 and P.W.34 and the sloppy manner in which the investigation has been carried out is an enigma in itself. The incident had taken place on

02.06.2015 and the promptness in lodging the First Information Report on the same day itself dissipated with the passage of time and the subsequent lackadaisical conduct of the Police raises more questions than answers. These witnesses were available for recording their statements but despite the same their statements were recorded on 05.09.2015 and 06.09.2015 for an incident which had occurred on 02.06.2015. These witnesses were on duty to provide security of Sushil Srivastava. All these witnesses have claimed to have identified Vikas Tiwary but the manner of identification has completely exposed the languid and insouciant investigation of the Police totally oblivious to the sobriety of the offence. On a dissection of the evidence of P.W.11, P.W.13, P.W.14, P.W.15, P.W.16, P.W.17, P.W.18 and P.W.34 the common thread which runs through is of their awareness about the involvement of the appellant Vikas Tiwary as the principal offender and the main adversary of Sushil Srivastava from the newspaper reports which were published on the next day of the mayhem along with photographs of Vikas Tiwary which was followed up on subsequent dates also. These witnesses have been candid enough to state so and some of them have unflinchingly stated about the pressure created upon them by the Superintendent of Police, Hazaribagh by suspending them, seizing their arms and issuing threat of not revoking the suspension till the accused persons are identified. In the backdrop of such manner of identification, we may emphasis

on a few judgments which would give muscle to such finding of ours.

71. In the case of “*Seeni Nainar Mohammed v. State Represented by Deputy Superintendent of police*” reported in (2017) 13 SCC 685, it has been held as follows:

“25. We accept the contention of the learned Senior Counsel for the appellants that the test identification parade was a farce as after the pictures of the accused had been published in the newspaper, the identification parade which is a very weak piece of evidence should not have been conducted.”

72. In the case of “*Ravi Alias Ravichandran v. State State Represented by Inspector of police*” reported in (2007) 15 SCC 372, it has been held as under:

“16. Mr R. Sundaravaradan, learned Senior Counsel appearing on behalf of the State, however, would submit that identification of the prisoners in court only is the substantive evidence and the High Court was correct in its approach in rendering its opinion on the said basis. It was furthermore submitted that DW 1 was merely a hearsay witness.

17. Certain facts are not in dispute. The test identification parade was held after ten days. It is also not in dispute that the photographs of the accused were taken at the police station. The investigation officer allowed them to be published. Photographs of the appellant and the said Udayakumar were not only published, according to the prosecution witnesses, they were shown to be the accused in the aforementioned crime. Some of them admittedly were aware of the said publication. The purported test identification parade which was held ten days thereafter, in our opinion, loses all significance, in the aforementioned fact situation.

18. It is no doubt true that the substantive evidence of identification of an accused is the one made in the court. A judgment of conviction can be arrived at even if no test identification parade has been held. But when a first information report has been lodged against unknown persons, a test identification parade in terms of Section 9 of the Evidence Act, is held for

the purpose of testing the veracity of the witness in regard to his capability of identifying persons who were unknown to him. The witnesses were not very sure as to whether they had seen the appellant before. Had the accused been known, their identity would have been disclosed in the first information report. PW 1 for the first time before the court stated that he had known the accused from long before, but did not know their names earlier, although he came to know of their names at a later point of time.

19. *In a case of this nature, it was incumbent upon the prosecution to arrange a test identification parade. Such test identification parade was required to be held as early as possible so as to exclude the possibility of the accused being identified either at the police station or at some other place by the witnesses concerned or with reference to the photographs published in the newspaper. A conviction should not be based on a vague identification.”*

73. Though it is true that no newspaper containing such article of the incident or the photographs of Vikas Tiwary published in the same have been exhibited but that by itself would not diminish or evanesce the evidence of the witnesses referred to above viewed in the consistent and corroborative nature of such evidence with respect to the identification of the appellant through the photographs which were published in the newspapers. The circumstances narrated above would, therefore, invalidate the identification of the appellant Vikas Tiwary so far as P.W.7, P.W.11, P.W.13, P.W.14, P.W.15, P.W.16, P.W.17, P.W.18 and P.W.34 are concerned.

74. P.W.24 and P.W.25 have been projected by the prosecution as witnesses of sterling quality. P.W.24 Avik Srivastava is the son of the deceased Sushil Srivastava who has stated that on the fateful day he had come to meet his father along with his

brother Aman Srivastava. He has stated about the presence of all the appellants and a few others standing near a Bolero vehicle. The presence of the appellants neither created any suspicion in the mind of P.W.24 nor did P.W.24 took evasive action to shield his father which seems to be an unnatural conduct on the part of P.W.24 considering his cross-examination in which he has admitted about the existence of an enmity between his father and the appellant Vikas Tiwary. The evidence of P.W.24 is perforated with contradictions and incongruities as though in his examination-in-chief he has claimed to have identified Vikas Tiwary standing besides a Bolero vehicle with the other appellants but in his cross-examination, he has accepted the fact that he had not seen Vikas Tiwary prior to the incident and his father had also not disclosed to him about the age and physical features of Vikas Tiwary. The unnatural conduct of P.W.24 which we have dealt with earlier is further fortified by the fact that despite the incident having taken place on 02.06.2015 no case was lodged by him immediately or by any of the accomplices of his father. He had instituted a case on 03.09.2015 at Hazaribagh and during the intervening period no case was instituted either at Hazaribagh or at Ranchi. The written report submitted by P.W.24 on 02.09.2015 also appears to have been suppressed by the prosecution. His statement was recorded by the Police on 03.09.2015. The institution of the case by P.W.24 after such an inordinate and unexplainable delay and giving a detailed description of the events

is clearly an afterthought and gravitates the evidence of P.W.24 towards the domain of exaggeration and falsity. The evidence of P.W.24 has also been sought to be challenged on the ground that P.W.24 is the son of the deceased and an interested witness. Countering such submission Mr. B.M. Tripathi, learned Senior Counsel for the informant has relied upon the case of “*Shio Shankar Dubey and Ors. v. State of Bihar*” reported in (2019) 6 SCC 501, in which, it has been held as follows:

“10. *PW 11, who is a brother of the deceased, has fully corroborated the prosecution case in his evidence. In spite of thorough cross-examination, the witnesses could not be shaken. The submission of the appellant that witnesses PW 11 and PW 13 being related to the deceased are interested witnesses and should not be relied upon does not commend us. The mere fact that the deceased was brother of the informant and PW 13 is the husband of the niece of the deceased does not impeach their evidence in any manner. The mere fact that witness is related does not lead to inference that such witness is an interested witness. This Court has occasion to consider such submission in a number of cases. In *Kartik Malhar v. State of Bihar* [*Kartik Malhar v. State of Bihar*, (1996) 1 SCC 614 : 1996 SCC (Cri) 188] , this Court held that a close relative who is a very natural witness cannot be regarded as an interested witness. In paras 15 and 16, the following was laid down: (SCC pp. 621-22)*

*“15. As to the contention raised on behalf of the appellant that the witness was the widow of the deceased and was, therefore, highly interested and her statement be discarded, we may observe that a close relative who is a natural witness cannot be regarded as an interested witness. The term “interested” postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason. In *Dalbir Kaur v. State of Punjab* [*Dalbir Kaur v. State of Punjab*, (1976) 4 SCC 158 : 1976 SCC (Cri) 527] , it has been observed as under: (SCC pp. 167-68, para 11)*

'11. ... Moreover, a close relative who is a very natural witness cannot be regarded as an interested witness. The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason. Such is not the case here.'

16. In Dalip Singh v. State of Punjab [Dalip Singh v. State of Punjab, (1953) 2 SCC 36 : AIR 1953 SC 364 : 1953 Cri LJ 1465] it has been laid down as under: (AIR p. 366, para 26)

'26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.'

75. It is no doubt true that the evidence of a close relative cannot simply be discarded as being an interested witness. We cannot view such evidence with an opaque form of mind mainly because P.W.24 is the son of the deceased. The evidence of such witness has to be looked into with a great deal of circumspection to discard any traces of "interestedness" radiating from the same. However, as we have noticed above the evidence of P.W.24 does not

have the effervescence of a natural and untainted description of the incident and signals out a grudge emanating from the inimical terms his father shared with Vikas Tiwary.

76. P.W.25 has stated about his presence in the Court premises on the day the incident had taken place and he had witnessed Vikas Tiwary and his accomplices firing with AK-47 rifles and exploding bombs. He has identified all the appellants as he had seen them roaming around on several occasions in Patratu. However, in his cross-examination he has deposed that the incident had already taken place by the time he had reached the place of occurrence. Even the Police had reached the place of occurrence prior to him. These facts clearly shows the fabricated nature of the evidence of P.W.25. Persisting with his evidence it also seems that the firing made by Vikas Tiwary and his accomplices have been conveniently left out by P.W.25 at the time of recording of his statement u/s 161 Cr.P.C. In fact, none of the features constituting his evidence finds place in his statement before Police. Mr. Surendra Singh, learned Senior Counsel has referred to a plethora of judgments on the issue of improvement in evidence during trial. In the case of "*Darshan Singh v. State of Punjab*" reported in (2024) 3 SCC 164, it has been held as follows:

31. If the PWs had failed to mention in their statements under Section 161CrPC about the involvement of an accused, their subsequent statement before court during trial regarding involvement of that particular accused cannot be relied upon. Prosecution cannot seek to prove a fact during trial through a witness

which such witness had not stated to police during investigation. The evidence of that witness regarding the said improved fact is of no significance.

77. In the case of “*Ankush Maruti Shinde And Ors. v. State of Maharashtra*” reported in (2019) 15 SCC 470, it has been held as follows:

“9.9. *Apart from the above, on considering the entire deposition of PW 8, we are of the opinion that PW 8 who claims to be an eyewitness, she is not a reliable and trustworthy witness. Her entire testimony in court is full of material omissions /contradictions/ improvements. Prior to her deposition in court, her two statements dated 6-6-2003 and 7-6-2003 were recorded by the police and the Magistrate respectively. The entire description of incident given by PW 8 in the court has not been stated by her in her earlier statements. This evidence has come for the first time during the deposition in court by way of an improvement. In her earlier statements, PW 8 has never given any details of the assault or the roles played by different persons during the incident. Even in the TI parade, she did not attribute any role to the persons she identified. The first time PW 8 gave any details about the incident or ascribed the roles to the accused persons was two-and-half years later in the court and never before that. Her failure to give any statement to the police and the two Magistrates either about the events occurring during the incident or the roles played by different persons render her evidence unreliable. When in her cross-examination, she was confronted with such omissions/improvements, she has taken only one thing that she told this to the police but she does not know why the police did not record the same. However, the same is not corroborated by any other evidence, more particularly the deposition of the IO and/or the Magistrates. Therefore, it is unsafe to rely upon the deposition of PW 8 and to convict the accused. It is also required to be noted that even according to PW 8, she was subjected to rape, however, the prosecution has miserably failed to prove the rape on her by leading cogent evidence, more particularly the forensic evidence. Therefore, to that extent also she is not reliable.”*

78. Similarly in the case of “Ajmer Singh and Ors. v. State of Punjab” reported in (1977) 1 SCC 659, it has been held as under:

“9. Another mistake which has occurred in the judgments of both the courts below is that they have not examined the statement of Mehar Singh PW 4 in the trial court with reference to his statement under Section 161 CrPC in one important respect. In his police statement Mehar Singh did not ascribe the infliction of any injury to appellants Mehar Singh and Bachan Singh. In fact in his statement to the police he did not ascribe the infliction of any injury to any accused except Ajmer Singh, Ujagar Singh, Chanan Singh and Ralla Singh. When he was confronted with that serious discrepancy, all that Mehar Singh could state was that it was incorrect that he had not ascribed the infliction of any injury to any accused except the four accused mentioned above. It is therefore apparent that he did not find it possible to give a satisfactory explanation of the discrepancy. This infirmity in Mehar Singh's statement was not noticed by the trial court or the High Court. As it is of great importance, and as the High Court has itself taken the view that it would be safe to rely on Mehar Singh's evidence, we do not find it possible to take the view, on the basis of Mehar Singh's own statement, that it would be safe to uphold the conviction of appellants Mehar Singh, Bachan Singh, Jarnail Singh, Sardara Singh and Surjit Singh. Benefit of doubt has already been given to accused Jogender Singh, Amar Singh and Ralla Singh, and we are inclined to think that Mehar Singh, Bachan Singh, Jarnail Singh, Sardara Singh and Surjit Singh are also entitled to the benefit of doubt.”

79. The aforesaid pronouncements highlight that improvements and exaggerations from the earlier statement of a witness which makes such evidence unreliable and untrustworthy. The evidence of P.W.25 falls within the four corners of these judgments on account of the inherent nature of improvement made which has been admitted by P.W.25 in his cross-examination.

80. P.W.4 (Dharmendra Kumar Singh) who is also a Police personal has claimed to have identified Vikas Tiwary through Video Conferencing but this witness has also stated about seeing Vikas Tiwary when he was apprehended and he had also seen him through photographs published in the newspapers. He had seen the appellant Vikas Tiwary fleeing away and he had identified him from the back. Since we have already discarded the evidence of P.W.7, P.W.11, P.W.13, P.W.14, P.W.15, P.W.16, P.W.17, P.W.18 and P.W.34 on the issue of identification of the appellant Vikas Tiwary and the evidence of P.W. 4 being similar and relatable to these witnesses such testimony cannot be an apparatus to convict the appellant Vikas Tiwary. Moreover, as we have come to a conclusive finding that only 2-3 persons were involved in the murderous assault upon Sushil Srivastava, the accusations against the accused persons as made by P.W.24 and P.W.25 further undermines the case of the prosecution.

81. It appears from the evidence of the Investigating Officer who has been examined as P.W.40 that Aman Srivastava another son of Sushil Srivastava had recorded a fardbeyan at Medica Hospital but the same does not mention any of the appellants being present at the place of occurrence and it also does not mention the presence of Avik Srivastava (P.W.24) which further nullifies the evidence of P.W.24.

82. The appellant Vikas Tiwary is said to have confessed and the said confessional statement has been exhibited

but there has been no incriminating material which have surfaced on such confession and the same being hit by Section 25 Evidence Act such confessional statement becomes inadmissible in evidence. Reference in support of the same is placed upon the case of “*Rahul v. State (NCT of Delhi) Ministry of Home Affairs and Anr.*” reported in (2023) 1 SCC 83, wherein it has been held as follows:

“30. *At this juncture, it may be noted that the trial court had allowed the entire disclosure statements of the three accused to be admitted in evidence by exhibiting the same as Exts. PW 39/B, PW 41/B and PW 41/C. The said statements were recorded by PW 48, Sandeep Gupta, when they were in police custody. The said statements being in nature of the confessions before the police were hit by Section 25 of the Evidence Act. The law in this regard is very clear that the confession before the police officer by the accused when he is in police custody, cannot be called an extra-judicial confession. If a confession is made by the accused before the police, and a portion of such confession leads to the recovery of any incriminating material, such portion alone would be admissible under Section 27 of the Evidence Act, and not the entire confessional statements. In the instant case, therefore the trial court had committed gross error in exhibiting the entire disclosure statements of the accused recorded by PW 48 P-1 Sandeep Kumar Gupta, for being read in evidence. Though, the information furnished to the investigating officer leading to the discovery of the place of the offence would be admissible to the extent indicated in Section 27 read with Section 8 of the Evidence Act, but not the entire disclosure statement in the nature of confession recorded by the police officer.”*

83. The detailed circumstances mentioned by us in the above-mentioned paragraphs clearly points to the absence of any culpability on the part of the appellant Vikas Tiwary of being involved in the gruesome and distressing murder of Sushil Srivastava.

84. So far as the appellant no. 2 Santosh Pandey in Criminal Appeal (DB) No. 597 of 2020 is concerned, P.W.2, P.W.4 and P.W.5 have failed to identify him. P.W.14 has identified this appellant but, in his cross-examination, he has deposed of not disclosing before the Superintendent of Police of his recognizing the appellant. P.W.16 and P.W.17 have identified the appellant but have not disclosed even an iota of participation of the appellant in the shoot out which makes such evidence redundant; more so when they were suspended along with several other Police personnel deputed for security of Sushil Srivastava with a threat as per P.W.34 to identify the accused persons in order to get the suspensions revoked. P.W.18 has stated about coming to know of the incident of firing and his identification of the appellant in the touchstone of such evidence dispels the veracity and truthfulness of his evidence. So far as P.W.24 and P.W.25 are concerned, we have already discussed and discarded such evidence while dealing with the appeal of Vikas Tiwary. The confessional statement of the appellant was recorded by the Investigating Officer examined as P.W.40. It is the case of the prosecution based on the evidence of P.W.8 that after the arrest of the appellant three mobiles were seized from his possession but it has not been ascertained as to in how and what manner the seizure of mobiles criminales the appellant. There appears to be no justifiable and cogent material inviting an order of conviction.

85. The appellant Vishal Singh in Criminal Appeal (DB) No. 579 of 2020 seems to have been suspected to be a part of the gang which had conspired and executed with precision such devious plan in eliminating Sushil Srivastava. A plea of alibi has been taken by the appellant and Mr. Anoop Prakash Awasthi, learned counsel has placed reliance on certain bills which demonstrates that the appellant was present at Ranchi when the incident had taken place but such plea appears to suffer from an inherent weakness as mere bills which can be manufactured and fabricated cannot and should not form the spine of such plea. The plea of alibi as raised by the learned counsel for the appellant is, therefore, negated. The appellant Vishal Singh seems not to have been put on Test Identification Parade and his identification in the Dock is after a delay of three years. The identification for the first time in Court has its innate weakness and, in this context, we may refer to the case of “*Kanan and Ors. v. State of Kerala*” reported in (1979) 3 SCC 319, wherein it has been held as follows:

“1..... This is all the evidence on the basis of which the appellants have been convicted. We have gone through the evidence of all these witnesses and we are unable to agree with the High Court that there was any legal evidence to support the conviction of all the appellants. So far as PW 25 is concerned, his evidence is full of serious infirmities. To begin with, he had come to the village in question in order to consult a dentist which was the only occasion for his presence in the village. As there was no accommodation in the travelling bungalow, he persuaded the Chowkidar to let him stay in his room. The evidence of PW 25 is that he consulted Dr Sabastian and got his tooth extracted. Neither

Dr Sabestian was examined by the prosecution nor was any register produced to show that the witness had actually got himself examined by the Doctor. This serious omission raises a serious doubt about the very presence of PW 25 on the night of the occurrence. Secondly, PW 25 says that he heard an explosion, and if this was so, as he was ill, his first impulse and natural conduct would be to remain confined in the room rather than to go out to look as to what was happening around and invite danger. At any rate, the witness only identified the appellant Kanan and M.P. Veluyudhan as persons who were running away near the place of occurrence. The witness, however, did not say that he saw these witnesses either entering the police station and attacking it or coming out from the police station with explosives or arms. There was a huge crowd after the police station was attacked and if these two appellants were seen running away that by itself would not show that they had taken part in the raid. Finally the witness has clearly admitted that he knew these two appellants by face and yet named them while identifying them in court. It is not understandable as to how the witness gave the names of the appellants when he knew them only by face which indicates that names of the accused must have been supplied by someone else and this introduces an element of doubt in his testimony. Both the trial court and the High Court have found that the mere fact that no T.I. parade was held would not destroy the evidence of PW 25. With due respect, we feel that the High Court erred in law in taking this view. It is well settled that where a witness identifies an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous T.I. parade to test his powers of observation. The idea of holding T.I. parade under Section 9 of the Evidence Act is to test the veracity of the witness on the question of his capability to identify an unknown person whom the witness may have seen only once. If no T.I. parade is held then it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in Court. In these circumstances, therefore, we feel that it was incumbent on the prosecution in this case to

have arranged T.I. parade and got the identification made before the witness was called upon to identify the appellant in the Court. On this ground alone, the testimony of PW 25 becomes unworthy of credence and must be excluded from consideration. In this view of the matter, even if the evidence of PWs 17 and 18 regarding the participation of the accused in conspiracy to raid the police station be accepted, the evidence being of very vague nature, the appellant cannot be convicted because there is no evidence to show that the appellants were members of that conspiracy. Apart from this, PWs 17 and 18 named Piyachi as being the person in the meeting where it was decided to raid the police station. From the evidence of these witnesses, it appears that they were also co-conspirators. In the circumstances, the evidence of these witnesses was that of an accomplice and could not be accepted without further corroboration....”

86. In the case of “**Jaspal Singh @ Pali v. State of Punjab**” reported in (1997) 1 SCC 510, it has been held as under:

“13. It is common premise that although the appellants were arrested on 27-7-1991, yet the investigating agency did not hold TI parade. The identification of the appellants in the Court made by Gurjant Singh (PW 3) and Ram Singh (PW 4) cannot be accepted with certainty as reliable identification. If this be so, the attempt of the prosecution to establish the identity of the accused in the present crime has to be rejected and, therefore, it is not possible to connect any of the appellants with the present crime.”

87. Mr. B.M. Tripathi, learned Senior Counsel for the informant has placed reliance in the case of “**Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)**” reported in (2010) 6 SCC 1, wherein it has been held as follows:

“255. Mr. Jethmalani has further argued on the proposition that mere dock identification is no identification in the eye of the law unless corroborated by previous TIP before the Magistrate. It has been further argued that in any case, even identification in

court is not enough and that there should be something more to hold the accused liable. In support of his arguments, he placed heavy reliance on the decision of this Court in Hari Nath v. State of U.P. [(1988) 1 SCC 14 : 1988 SCC (Cri) 14] and Budhsen v. State of U.P. [(1970) 2 SCC 128 : 1970 SCC (Cri) 343] A close scrutiny of these judgments will reveal that they in fact support the case of the prosecution. These judgments make it abundantly clear that even where there is no previous TIP, the court may appreciate the dock identification as being above board and more than conclusive.

258. *The learned Solicitor General submitted that, even otherwise, an adverse inference ought to be drawn against the appellants for their refusal to join the TIP. This view has found favour time and again by this Court. It is pertinent to note that it is dock identification which is a substantive piece of evidence. Therefore even where no TIP is conducted no prejudice can be caused to the case of the prosecution.”*

88. As held in “Sidhartha Vashisht @ Manu Sharma” (supra) Dock identification without holding of a Test Identification Parade will be considered to be a conclusive piece of evidence. However, such identification has to be considered in the facts and circumstances of the case and evidently when the entire mechanism of identification is designed to ensure the participation of the appellant which is palpable from the evidence of the witnesses such evidence creates a grave doubt over the case of the prosecution. Even though several of the witnesses claimed themselves to be the eye-witnesses but the degree of inconsistency in every sphere of their evidence brings even the identification of the appellants through Video Conferencing within the realm of doubt.

89. The case of the appellant no. 1 Dilip Sao in Criminal Appeal (DB) No. 599 of 2020 predominantly falls within

the category of the case of the appellant Vishal Singh. As per P.W.9 and P.W.10 a mobile and a motorcycle were recovered from the possession of the appellant but neither they were produced before the Court nor an ascertainment has been made by the prosecution regarding the nexus of such recovery with the alleged incident. The other features of the case of this appellant are almost similar to the case of Vishal Singh and none of the circumstances can designate the appellant as having participated in the shootout.

90. So far as the appellant no. 2 Rahul Deo Pandey in Criminal Appeal (DB) No. 599 of 2020 is concerned, he was lodged in Jai Prakash Narayan Central Jail, Hazaribagh in connection with a case when the incident had occurred. Despite the same in order to denude the appellant of his innocence the prosecution through its witnesses have tried to instill an accusation against him of participating in the incident. P.W.14, P.W.16, P.W.17 and P.W.18 have identified the appellant though Video Conferencing but no specific role of the appellant has been assigned by them. P.W.2 goes to the extent of having seen him from the back but at the same time he has admitted to some doubt regarding such identification. P.W.4 and P.W.5 have failed to identify the appellant and P.W.18 has though identified him but he has stated about coming to know about the incident which further denigrates his evidence so far as identification of the appellant is concerned. The other aspect of the case is of a spy who had disclosed that the present appellant had confided over mobile to Vikas Tiwary

regarding Sushil Srivastava being taken for production in Court and after the murder was committed it was Vikas Tiwary who had in turn informed the appellant about the murder. Neither any witnesses have stated about the appellant Rahul Deo Pandey and Vikas Tiwary having phones in their possession nor any mobiles were seized or the CDR has been proved by the prosecution. The effect of withholding of such vital piece of evidence has been considered in the case of *“Tomaso Bruno & Another Versus State of Uttar Pradesh”*, reported in (2015) 7 SCC 178 and the relevant reads thus:

“26. *The trial court in its judgment held that non-collection of CCTV footage, incomplete site plan, non-inclusion of all records and sim details of mobile phones seized from the accused are instances of faulty investigation and the same would not affect the prosecution case. Non-production of CCTV footage, non-collection of call records (details) and sim details of mobile phones seized from the accused cannot be said to be mere instances of faulty investigation but amount to withholding of best evidence. It is not the case of the prosecution that CCTV footage could not be lifted or a CD copy could not be made.*

27. *As per Section 114 Illustration (g) of the Evidence Act, if a party in possession of best evidence which will throw light in controversy withholds it, the court can draw an adverse inference against him notwithstanding that the onus of proving does not lie on him. The presumption under Section 114 Illustration (g) of the Evidence Act is only a permissible inference and not a necessary inference. Unlike presumption under Section 139 of the Negotiable Instruments Act, where the court has no option but to draw a statutory presumption, under Section 114 of the Evidence Act, the court has the option; the court may or may not raise presumption on the proof of certain facts. Drawing of presumption under Section 114 Illustration (g) of the Evidence Act depends upon the nature of fact required to be proved and its importance in the controversy, the usual mode of proving it; the nature, quality and cogency of the*

evidence which has not been produced and its accessibility to the party concerned, all of which have to be taken into account. It is only when all these matters are duly considered that an adverse inference can be drawn against the party.

28. *The High Court held that even though the appellants alleged that the footage of CCTV is being concealed by the prosecution for the reasons best known to the prosecution, the accused did not invoke Section 233 CrPC and they did not make any application for production of CCTV camera footage. The High Court further observed that the accused were not able to discredit the testimony of PW 1, PW 12 and PW 13 qua there being no relevant material in the CCTV camera footage. Notwithstanding the fact that the burden lies upon the accused to establish the defence plea of alibi in the facts and circumstances of the case, in our view, the prosecution in possession of the best evidence, CCTV footage ought to have produced the same. In our considered view, it is a fit case to draw an adverse inference against the prosecution under Section 114 Illustration (g) of the Evidence Act that the prosecution withheld the same as it would be unfavourable to them had it been produced.”*

91. This brings us to the angle of conspiracy as all the appellants have been convicted u/s 302 of the IPC with the aid of Section 120B of the IPC as the prosecution has sought to bring all the appellants within the field of collusion, connivance and deceit as it is the case of the prosecution that a plan was hatched and executed in eliminating Sushil Srivastava. In “*Mukesh v. State (NCT of Delhi)*” reported in (2017) 6 SCC 1, it has been held as follows:

“286. *As already stated, in a criminal conspiracy, meeting of minds of two or more persons for doing an illegal act is the sine qua non but proving this by direct proof is not possible. Hence, conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. Moreover, it is also relevant to note that conspiracy being a continuing offence continues to subsist till it is executed or rescinded or frustrated by the choice of necessity. In K.R. Purushothaman v. State of Kerala [K.R. Purushothaman v. State of Kerala, (2005) 12 SCC 631 : (2006) 1 SCC*

(Cri) 686] , the Court has made the following observations with regard to the formation and rescission of an agreement constituting criminal conspiracy : (SCC pp. 637-38, para 13)

“13. To constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of the conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implication. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the court to keep in mind the well-known rule governing circumstantial evidence viz. each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. Criminal conspiracy is an independent offence in the Penal Code. The unlawful agreement is sine qua non for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the plan would not per se constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement.”

287. After referring to a catena of judicial pronouncements and authorities, a three-Judge Bench of this Court in *State v. Nalini* [*State v. Nalini*, (1999) 5 SCC 253 : 1999 SCC (Cri) 691] summarised the principles relating to criminal conspiracy as under : (SCC pp. 515-18, para 583)

“583. Some of the broad principles governing the law of conspiracy may be summarised though, as the name implies, a summary cannot be exhaustive of the principles.

1. Under Section 120-A IPC offence of criminal conspiracy is committed when two or more

persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.

2. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may for example, be enrolled in a chain — A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such

person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed [United States v. Falcone, 109 F 2d 579 (2d Cir 1940)] by Judge Learned Hand that “this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders”.

8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or

express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime.”

288. *The rationale of conspiracy is that the required objective manifestation of disposition of criminality is provided by the act of agreement. Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interest of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co-conspirators. An agreement of this kind can rarely be shown by direct proof; it must be inferred from the*

circumstantial evidence of cooperation between the accused. What people do is, of course, evidence of what lies in their minds. To convict a person of conspiracy, the prosecution must show that he agreed with others that they would together accomplish the unlawful object of the conspiracy. (See Firozuddin Basheeruddin v. State of Kerala [Firozuddin Basheeruddin v. State of Kerala, (2001) 7 SCC 596 : 2001 SCC (Cri) 1341] .)”

92. In the case of “*R. Venkatkrishnan v. CBI*” reported in (2009) 11 SCC 737, it has been held as follows:

“72. *Criminal conspiracy in terms of Section 120-B of the Code is an independent offence. It is punishable separately. Prosecution, therefore, must prove the same by applying the legal principles which are applicable for the purpose of proving a criminal misconduct on the part of an accused. A criminal conspiracy must be put to action and so long a crime is merely generated in the mind of the criminal, it does not become punishable. Thoughts, even criminal in character, often involuntary, are not crimes but when they take concrete shape of an agreement to do or cause to be done an illegal act or an act which is not illegal but by illegal means then even if nothing further is done, the agreement would give rise to a criminal conspiracy.*

73. *The ingredients of the offence of criminal conspiracy are:*

- (i) an agreement between two or more persons;*
- (ii) the agreement must relate to doing or causing to be done either*
 - (a) an illegal act;*
 - (b) an act which is not illegal in itself but is done by illegal means.*

Condition precedent, therefore, for holding the accused persons guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of a fact which must be established by the prosecution viz. meeting point of two or more persons for doing or causing to be done an illegal act or an act by illegal means.

74. *The courts, however, while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is, thus, difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the level of involvement of the accused persons therein are relevant factors. For the said purpose, it is necessary to prove that the propounders had expressly agreed to or caused*

to be done the illegal act but it may also be proved otherwise by adduction of circumstantial evidence and/or by necessary implication. (See Mohd. Usman Mohammad Hussain Maniyar v. State of Maharashtra [(1981) 2 SCC 443 : 1981 SCC (Cri) 477] .)

81. *A conspiracy may further be a general one and a separate one. A smaller conspiracy may be a part of a larger conspiracy. It may develop in successive stages. (Nirmal Singh Kahlon v. State of Punjab [(2009) 1 SCC 441 : (2009) 1 SCC (Cri) 523 : (2008) 14 Scale 639]) New techniques may be invented and new means may be devised for advancement of common plan. For the said purpose, conduct of the parties would also be relevant.”*

93. The theory of conspiracy as propounded by the prosecution seems to be devoid of its basic tenets. In fact, after the incident had taken place, the investigation seems to have taken out a leaf from the articles in the newspapers showing the culpability of the appellant Vikas Tiwary in the murder of Sushil Srivastava and accordingly proceeded on such lines. The entire case of the prosecution though have tried to instill a conspiracy theory but neither from the conduct of the accused persons nor from any material collected during investigation meeting of minds of the appellants to execute such dastardly act has surfaced. The solitary feature of a conspiracy having been hatched seems to be the telephonic conversation between the appellant Vikas Tiwary and the appellant Rahul Deo Pandey after Sushil Srivastava had left the Jail for the Court for production and after his murder was committed but once again these are vague assertions as neither any mobile was seized nor the CDR exhibited. The theory of conspiracy is built up on the purported enmity existing between Sushil Srivastava and Vikas Tiwary. None of the features assorted

by the prosecution demonstrates that a conspiracy was indeed hatched by the appellants and the murder of Sushil Srivastava was the ultimate outcome of such conspiracy.

The prosecution has remained silent about the involvement of another person namely, Raj Singh who was a shooter and according to P.W.11 his name had appeared in the newspapers also. P.W.40 who is one of Investigating Officers has stated about coming to know regarding the involvement of Raj in the shoot out which has surfaced in course of investigation. Another of the Investigating Officer who has been examined as P.W.41 had explored such angle to a certain extent by visiting Sultanpur to seek the remand of Raj as he was in jail but since Raj was shifted to another prison in Bareilly such effort seems to have petered out. This would further characterize the manner in which the investigation was carried out as despite receiving information about Raj being one of the shooters and despite having located him the Police had acted in an utter nonchalant and indifferent manner decimating the lead it had got and closing the chapter on one of the prime suspects.

94. Thus, on the basis of the discussions and reasonings enunciated above, we hereby set aside the judgment and order of conviction and sentence dated 11.09.2020 (Sentence passed on 22.09.2020) passed by Sri Amit Shekhar, learned Additional Sessions Judge-VI, Hazaribagh in S.T. No. 141 of 2016.

95. All these appeals are allowed.

96. Since the appellants are in custody they are directed to be released immediately and forthwith if not wanted in any other case.

97. Pending I.As., if any, stands closed.

(Rongon Mukhopadhyay, J.)

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand at Ranchi

Dated, the 18th day of February, 2026.

A. Sanga /-

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