

**DEATH REFERENCE No.5 OF 2004**  
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STATE OF BIHAR-----APPELLANT  
Versus  
DHARAMJAY PRASAD-----RESPONDENT  
**WITH**

**CR. APP (DB) No.284 of 2004**

DHARAMJAY PRASAD @ DHARAMJAY MAHTO  
SON OF LATE BALDEO MAHTO, RESIDENT OF VILLAGE  
SARKATTI, P.S. BARH, DISTRICT PATNA-----APPELLANT  
Versus  
STATE OF BIHAR-----RESPONDENT  
**WITH**

**CR. APP (DB) No.286 of 2004**

KARU MAHTO, SON OF LAKHAN MAHTO, RESIDENT OF VILLAGE  
SAIDPUR, P.S. BARH, DISTRICT PATNA-----APPELLANT  
Versus  
STATE OF BIHAR-----RESPONDENT  
**WITH**

**(CR. APP (DB) No.335 of 2004**

BINDA MAHTO, SON OF LATE SATYA DEO @ SAHDEO MAHTO,  
RESIDENT OF VILLAGE SARKATTI, P.S. BARH, DISTRICT,  
PATNA-----APPELLANT  
Versus  
STATE OF BIHAR-----RESPONDENT  
**\*\*\***

Reference made by Sri Md. Abdul Baqui, Additional  
District & Sessions Judge, IV, Barh (Patna) vide  
letter no.100/04 dated 25<sup>th</sup> day of March, 2004 and  
criminal appeals against the judgment dated  
22.3.2004 and order dated 24.3.2004 in Sessions  
Trial No.686 of 1995.

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For the Appellants : M/s Abhay Kumar Singh, Parmatma  
Singh, Brajesh Kumar & Bharat  
Bhushan, Advocates (In Criminal  
Appeal No.284/04)

Mr. B.K.Roy, Advocate  
(In Criminal Appeal No. 286/04)

M/s Rajendra Narain, Nawal  
Kishore Prasad & Satyendra

Prasad, Advocates  
(In Criminal Appeal No.335/04)

For the State : Mr. Lala Kailash Bihari Prasad,  
Additional P.P. (In all  
Criminal Appeals)

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## P R E S E N T

**THE HON'BLE JUSTICE SMT. MRIDULA MISHRA**

**THE HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM**

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**S.M.M.Alam, J.** Death Reference No.5 of 2004 (State of Bihar Versus Dharamjay Prasad) and three criminal appeals bearing Criminal Appeal No.284 (D.B.) (Dharamjay Prasad alias Dharamjay Mahto) as well as Criminal No.286 of 2004 (D.B.) (Karu Mahto Versus The State of Bihar) and Criminal Appeal No.335 of 2004 (D.B.) (Binda Mahto Versus The State of Bihar) arise out of one and the same judgment dated 2<sup>nd</sup> Day of March, 2004 passed in Sessions Trial No.686 of 1995 by 4<sup>th</sup> Additional District & Sessions Judge, Barh whereby and whereunder all the three appellants along with three other accused, who are absconders, were convicted for the offence under Section 302/34 of the Indian Penal Code. Besides that, appellants Karu Mahto and Binda Mahto were also convicted for the offence under Section 27 of the Arms Act. For the offence under Section 302/34 of the I.P.C., appellant Dharamjay Prasad Mukhiya was sentenced to death and ordered to be hanged by neck till his death. The other two appellants, namely, Karu Mahto and Binda Mahto, were sentenced to imprisonment for

life under Section 302/34 of the Indian Penal Code and further sentenced for seven years rigorous imprisonment for the offence under Section 27 of the Arms Act. The learned Additional Sessions Judge observed with direction that both the sentences shall run concurrently. For confirmation of death sentence awarded to appellant Dharamjay Prasad Mukhiya, the learned Additional Sessions Judge made reference to this Court whereas three appellants filed separate three criminal appeals and thus, the above-mentioned death reference along with three criminal appeals are before us.

2. The prosecution case, as per Exhibit 5, the fardbeyan of informant Harif Nonia (P.W.5) son of Keshav Nonia of village Shaidpur, P.S. Barh, District Patna recorded by S.I., Pyush Kant of Barh P.S. on 12.7.94 at 22 hours at village Saidpur, in brief, is that on the same day at about 4 P.M. while he along with his brother Ram swarath Chauhan, his nephew Pramod Chauhan, Manish Nonia, his uncle Shiv Balak Chauhan along his father Keshav Nonia were sitting together at the outer portion of his house (Dalan), they saw co-villagers Bhonu Mahto armed with rifle and Karu Mahto armed with pistol; Bablu Mahto, Binda Mahto of village Sarkatti armed with rifle, Surjan Mahto, Lalmuni Chauhan alias Chunnu Chauhan of village Chakjalal, P.S. Bhadaur armed with gun along with appellant Dharamjay Prasad Mukhiya coming to his Dalan. As soon as they reached at his **Dalan**, Dharamjay Prasad Mukhiya shouted and ordered Ram Swarath and Pramod (both

deceased to remain sitting otherwise they would be shot at. Being afraid, the informant along with Ram Swarath and Pramod and others tried to flee away whereupon appellant Dharamjay Prasad Mukhiya gave order to his associates to shoot both the deceased. On getting order from the appellant Dharamjay Prasad, all other accused persons entered into **Dalan** of the informant and accused Bablu Mahto opened fire from his rifle upon Pramod which caused injury on his chest. Thereafter accused Bhonu Mahto opened fire from his rifle causing injury to Pramod on his back just above his waist. After that, accused Surjan Mahto (absconding accused who did not face trial) opened fire from his gun at Ram Swarath which hit on his head who fell down and immediately thereafter accused Lalmoni Chauhan alias Chunnu Chauhan opened fire from his gun which punctured into the abdomen of Ram Swarath and appellant Binda Mahto opened fire from his rifle causing injury to Ram Swarath on his back. On receiving fire-arm injuries, Pramod Chauhan and Ram Swarath both fell down and died on the spot. It is further stated that appellant Karu Mahto also opened fire from his pistol aiming at the informant but the informant escaped unhurt. It is stated that after the occurrence all the accused persons raising slogans ran towards village Sarkatti. The motive behind the murder was that deceased Ram Swarath and his son Pramod used to supply labourers to work in the brick-kiln at Patna and appellant Dharamjay Prasad Mukhiya was demanding Rs.10/- per labourer as his commission to which

deceased Ram Swarath did not agree and due to that, all the accused persons under the leadership of Dharmajay Prasad Mukhiya committed murder of Ram Swarath and his son Pramod Chauhan. After the occurrence the informant Harif Nonia asked Shiv Balak Nonia (C.W.2) to inform the local Chawkidar, namely, Baleshwar Paswan (C.W.3) for giving information of the occurrence to the concerned Police Station whereupon Chawkidar Baleswhar Paswan went to Barh Police Station along with the informant and thereafter Sub-Inspector Pyush Kant (C.W.4) rushed to the place of occurrence and reached at the place of occurrence at about 10.00 P.M. on the same day where he recorded the fardbeyan of informant Harif Nonia (P.W.5). After recording the fardbeyan he sent the same to Barh P.S. where on receipt of the same, Inspector of Police cum-Officer Incharge Bigul Gari registered a case bearing Barh P.S. Case No.261 dated 13.7.1994 for the offence under Sections 147, 148, 149, 302 of the India Penal Code and on that basis, he drew up a formal F.I.R. (Ext.1). After registering the case at 4.00 P.M., the said Officer Incharge Bigul Gari (C.W.1) rushed to the place of occurrence at about 6 P.M. on 13.7.1994 to village Shaidpur and on reaching at the place of occurrence, he got the inquest reports prepared vide Exts.3 and 3/1 and sent the dead bodies of the deceased for post mortem. The post mortem was conducted by Dr.Nagina Paswan of Sadar Hospital, Barh as per Exts. 2 and 2/1. During investigation, C.W.1 Bigul Gari seized the blood stained

earth and other materials from the place of occurrence and prepared seizure list, recorded the statements of the witnesses, inspected the place of occurrence, obtained post mortem reports and thereafter submitted separate charge sheet in all three appeals against the appellants and others accused persons showing Surjan Mahto as absconder.

3. On submission of the charge sheet, the learned Additional Chief Judicial Magistrate, Barh took cognizance of the offence against accused persons under Sections 147, 148, 149, 302 and 307 of the Indian Penal Code and Section 27 of the Arms Act. Thereafter on 13.8.1995 he committed the case to the Court of Session. Thereafter the appellants along with others were tried and convicted and sentenced, as stated above. Appellant Dharamjay Prasad Mukhiya was sentenced to death for the offence under Section 302/34 of the Indian Penal Code by the learned Additional Sessions who made reference for confirmation of death sentence.

4. The specific defence of appellant Dharamjay Mahto alias Dharamjay Mukhiya is that Ex-Mukhiya Madan Mohan Singh, who lost election of Mukhiya against him, has falsely implicated him in this case. His further defence is that the father of informant, namely, Keshav Chauhan has illegally encroached **Gairmazarua Aam** land for which he had reported the matter to the Senior S.P. and due to that, the informant after bringing Sub-Inspector, Peyush Kant in his collusion, falsely implicated him in this

case after changing the original F.I.R. His further defence is that on the alleged date of occurrence he was attending the meeting of Janata Dal at M.L.A. Club and was not present on the village. The defence of the other accused is of false implication.

5. In order to prove the case, the prosecution has examined seven witnesses in this case, namely, Ram Sagar Prasad (P.W.1), Nagina Paswan (P.W.2), Chandrika Prasad (P.W.3), Dulari Devi @ Sundari Devi (P.W.4), Harif Nonia @ Chauhan (P.W.5), Chhattu Prasad (P.W.6) and Rajendra Prasad Yadav (P.W.7). Out of the aforesaid witnesses, P.Ws. 1 and 7 are the formal witnesses. They have proved the formal F.I.R. and fardbeyan of the informant besides the entire case diary which are Exts. 1, 5 and 6, respectively. Out of the remaining witnesses, P.W.2 is the doctor, who had conducted post mortem examination on the dead body of both the deceased. P.W.4 Dulari Devi @ Sundari Devi, who is said to be the mother of the informant and deceased Ram Swarath and grand-mother of deceased Pramod Chauhan, has been tendered for cross-examination. P.W.6 Chhattu Prasad is a witness of the inquest reports which are Exts. 3 and 3/1. P.W.3 is an independent witness whereas P.W.5 is the informant of this case.

6. From the record it transpires that four other witnesses were also examined under the provisions of Section 311 of the Code of Criminal Procedure. They are Bigul Gari Inspector of Police-cum-I.O. (C.W.1), Shiv

Balak Nonia (C.W.2), Chowkidar Baleshwar Paswan (C.W.3) and Peyush Kant Inspector of Barh P.S. (C.W.4). It is stated that this witness had recorded the fardbeyan of the informant and had prepared inquest reports. The fardbeyan of the informant is the basis of this case.

7. The defence has also examined ten witnesses in support of the defence case. They are Lakhan Mahto D.W.1, Kamlakant Prasad Sharma D.W.2, Arjun Sharma D.W.3, Ramakant Prasad Singh D.W.4, Bal Govind Prasad Singh D.W.5, Krishnadeo Prasad Singh D.W.6, Birendra Prasad Singh D.W.7, Nityanand Singh D.W.8, Umesh Prasad Singh D.W.9 and Arun Prasad D.W.10. The defence has also produced some documents which have been marked as exhibits.

8. Let me see - whether on the basis of the materials available on record, the prosecution case, as disclosed in the fardbeyan (Ext.3) of the informant (P.W.5), has been proved beyond all reasonable doubts or not ?

9. In order to find out - whether on the basis of the materials available on record it can be held that the prosecution has been able to substantiate the charges levelled against the accused persons beyond all reasonable doubt, I would like to firstly discuss the evidence of the prosecution witnesses and the evidence of the court witnesses. As stated above, altogether seven witnesses have been examined on behalf of the prosecution. P.W.1 is Ram Sagar Prasad. He is a formal



witness. He has proved the formal F.I.R which has been marked as Ext.1.

10. P.W.2 is Dr. Nagina Prasad, who had conducted post mortem examination on the dead body of Pramod Chauhan and Ram Swarath Chauhan on 13.7.94 at 4.45 P.M. and 5.20 P.M. His evidence is as follows :-

On 13.7.1994 at 4.45 P.M. he had conducted post mortem examination on the dead body of Pramod Chauhan and found the following injuries.

The eyes were open. Mouth was closed. Rigor mortis was present in all four limbs.

(i) Circular shaped lacerated wound over interior surface of left chest adjacent to sternum 1" in diameter margin was inverted. Skin was black and charred.

In surrounding area there were multiple dots like burns. Track passes inward. Sternum was fractured. This was wound of the entry.

(ii) Circular shaped lacerated wound over the back of abdomen adjacent to lumbar vertebra 1 1/2" in diameter margin was inverted.

On dissection skull meninges and brain matters were intact, lungs were pale, liver was pale, kidneys and spleen were pale. Heart was ruptured and left side of diaphragm was also ruptured and directed towards abdomen. Stomach contained digested food. Small and large

intestine was full of gases. Time passed since death within 6 to 46 hours from the time of examination. Cause of death was due to shock and haemorrhage caused by fire-arm injury. He has proved post mortem report which has marked as Ext.2.

11. P.W.2 has further deposed that on the same day at 5.20 P.M. he held post mortem examination on the dead body of Ram Swarath Chauhan and found the following injuries.

Eyes were semi-open; mouth was closed; rigor mortis was present in all four limbs.

(i) Circular shaped lacerated wound over the left iliac region with blackened and charred skin, margin was inverted  $\frac{1}{4}$ " in diameter. This was wound of entry.

(ii) Circular shaped lacerated wound over the back of abdomen just above the left iliac next  $\frac{1}{2}$ " in diameter, margin inverted. This was wound of exit.

On dissection, skull meninges in brain matters were intact lung, liver, kidneys, spleen were pale. Heart was empty, stomach was empty and small intestine was ruptured. The age of injuries was within 6 to 36 hours. Cause of death was due to shock and haemorrhage caused by injuries of fire-arms such as rifles and guns. He has proved post mortem report of deceased Ram Swarath Chauhan which has been marked as Ext.2/1. He has also proved two

inquest reports of the aforesaid deceased which have been marked as Exts.3 and 3/1, respectively.

12. The evidence of P.W.2 coupled with post mortem reports Exts. 2 and 2/1 and the inquest reports Exts. 3 and 3/1 establishes beyond doubt that the death of deceased Pramod Chauhan and Ram Swarath Chauhan was homicidal caused by fire-arm injuries.

13. P.W.3 Chandrika Prasad is said to be the eye-witness of the occurrence. His evidence is that the occurrence took place more than three years ago at about 4 P.M. in the evening. At that time, he was going south of the village and when he reached near the Dalan of Kansi Zamadar he saw Dharamjay Mukhia coming from south followed by six persons, namely, Surjan Mahto, Lal Muni Chauhan alias Chunnu Chauhan, Bablu Mahto, Binda Mahto, Gonu Mahto and Karu Mahto. They were armed with rifles, guns and pistols. Pramod, Ram Swarath (both deceased) and Harif tried to run away from that place whereupon Dharamjay Mukhiya asked them to sit down but Pramod, Ram Swarath and Harif ran towards Dalan where Dharamjay Mukhiya exhorted all other accused persons to open fire upon which Bablu Mahto fired shot with his rifle which hit Pramod on his chest, Gonu Mhato fired shot with his rifle which hit Pramod on his back above the waist. Surjan Mahto opened fire with his gun which hit Ram Swarath on his head. Lalmuni Chauhan opened fire with his gun which hit Ram swarath on his abdomen. Binda Mahto fire shot with his rifle which hit Ram Swarath on his

back. Karu Mahto fired shot with his pistol at Harif but Harif remained unhurt. Pramod and Ram Swarath died at the spot. The motive of the occurrence was that Ram Swarath used to hire labourers to brick-kiln at Patna on contract basis. Appellant Dharamjay Mukhiya was demanding **Rangdari** tax from him but Ram Swarath refused to give **Rangdari** tax to him and due to that, this occurrence had taken place. In cross-examination at paragraph 50 he has stated Dharamjay Mukhiya had not demanded any extortion money from deceased Ram Swarath in his presence. He has also admitted that Dharamjay Mahto is continuing as Mukhiya for the last 15 years and prior to that, Madan Mohan Singh was the Mukhiya of village Rahima.

14. P.W.4 Dulari Devi alias Sundari Devi is the mother of the informant and deceased Ram Swarath and grandmother of Pramod Chauhan. She has been tendered for cross-examination. In cross-examination, no question was asked from her on the point of occurrence. So, her evidence is not relevant in this case.

15. P.W.5 Harif Nonia is the informant of this case. His evidence is that the occurrence took place about three years and 17-18 days back on a Tuesday at about 4 P.M. At that time he was at his Dalan. His brother Ram Swarath, father Kesho Chauhan, uncle Shiv Balak Chauhan, nephews Pramod Chauhan and Manoj Chauhan were also present there. He saw appellant Dharamjay Mukhiya along with Bhonu Mahto, Bablu Mahto, Surjan Mahto, Lalmuni alias Chunnu Chauhan, Binda Mahto and Karu Mahto coming towards Dalan.

Bhonu Mahto, Bablu Mahto and Binda Mhato were armed with gun whereas Surjan Mahto and Lalmuni were armed with gun and Karu Mahto was armed with a pistol. They all came in front of his Dalan. Dharamjay Mukhiya asked Ram Swarath and Pramod to sit at the same place otherwise he would shoot them. Out of fear, Ram Swarath and Pramod started fleeing away towards Dalan and then Dharmajay Mahto ordered to open fire whereupon Bablu fired shot from his rifle which hit Pramod on his chest, Bhonu Mahto fired shot from his rifle which hit on his back above waist, Surajan Mahto fired shot from his gun which hit Ram Swarath on his head, Lalmuni Chauhan fired shot from his gun which hit Ram Swarath on his abdomen, Binda also fired shot from his rifle which hit Ram Swarath on his back and Karu Mahto fired shot from his pistol at him but he remained unhurt. Being injured Ram Swarath and Pramod fell down and died on the spot and then all the accused persons fled away. He has further deposed that Ram Swarath and Pramod used to send labourers to the brick-kiln in Patna. Dharamjay Mukhiya used to demand Rs.10/- per labourer as extortion money from them but Ram Swarath told that he was a poor man and was not in a position to pay money whereupon Mukhiya Jee had threatened him to teach lesson. He has further deposed that the police had recorded his statement at his house at about 10 O' clock in the night and on the said statement, he had put his signature (Ext.4) which was also signed by witnesses, namely, Shiv Balak and Kailash Prasad Chauhan whose

signatures have been marked as Exts. 4/1 and 4/2, respectively.

At paragraph 16 of his evidence, P.W.5 has stated that he had gone to Barh P.S. with Baleshwar Paswan (C.W.3) and returned from that place along with the police. The police had made enquiry from him at the police station. He has further deposed that he had not stated the name of the accused persons to S.I. of Police at Barh P. S. rather at his house he disclosed the names of the accused persons. He has further deposed that he along with Baleshwar stayed at the police station for about one to one and half hours and although S.I. of Police and the constables were present at the police station but they did not obtain his signature or his thumb impression on any paper. At paragraph 17, P.W.5 has deposed that after coming to the place of occurrence, S.I. of Police firstly prepared inquest reports of the dead bodies in presence of Shiv Balak, Kailash and Kesho Chauhan and then recorded his statement. At paragraph 23 he has deposed that besides the members of his family, many people of the village from far off and neighbouring area had watched the occurrence. At paragraph 30, P.W.5 has deposed that the accused persons had fired at lest 8 to 9 shots and even at the time of running away, they had fired 2 to 3 shots. At paragraph 35, he has deposed that the blood in huge quantity had fallen at the place of occurrence which was in the area of 2' to 3' on the land where Pramod had fallen. He has further deposed that the

blood was also spread in an area of 2' to 3' on the land where Ram Swarath had fallen. At paragraph 49, P.W.5 has stated that when he had gone to Barh Police station with the Chowkidar four more persons had also accompanied him at that time. He was crying there and sitting near the police Station and did not know whether any person informed the police about the occurrence but he could not tell the names of the accused persons because he was shocked. At paragraph 51, P.W.5 has deposed that after arrival of the police he and his father discussed about the occurrence and names of the accused persons to be given to the police. At paragraph 53 he has denied the suggestion that his fardbeyan was changed by the police. At paragraph 63, he has stated that Dharamjay Mukhiya had never demanded any extortion money in his presence.

16. Chhathu Prasad is P.W.6. He is a co-villager of the informant. His evidence is that the occurrence took place on 12.7.1994 and on hearing sound of firing he went to Dalan of Kesho Chauhan at about 4 P.M. and saw the dead bodies of Pramod and Ram Swarath lying there with mark of bullet injury. The police arrived at the place of occurrence at about 6 A.M. and prepared inquest reports of both the dead bodies on which he put his signatures (Exts. 4/2 and 4/3). He has also proved the signatures of witness Sahdeo Chauhan on the two inquest reports which have been marked as Exts.4/4 and 4/5. At paragraph 24 of his cross-examination, this witness has deposed that there is interpolation on Ext.3 and there is overwriting

on the date and after overwriting date "12/7" has been written as "13/7".

17. P.W.7 Rajendra Prasad Yadav is again a formal witness. He has proved the fardbeyan recorded by S. I. Sri Peyush Kant which has been marked Ext.5. He has also proved the signature of Sri Bigulgari, Officer Incharge on the first information report. Being formal witness, the evidence of P.W.7 is not material in this case.

18. Now turn comes to the evidence of the court witness as I have already stated above that four witnesses were examined as court witnesses under the provisions of Section 311 of the Code of Criminal Procedure. The first witness is Bigulgari, Inspector of Police Barh Police Station. He is the Investigating Officer of this case. His evidence is that on 13.7.1994 he was posted as Officer Incharge at Barh P.S. On that day he received the fardbeyan of the informant Harif Nonia of village Shaidpur recorded by S.I. Peyush Kant on the basis of which he registered this case and took up investigation. During investigation he visited the place of occurrence which is Dalan of the informant and the deceased persons situated at village Shaidpur facing east. There are two rooms inside the verandah of Dalan. On the same verandah, he found the dead body of Ram Swarath Chauhan lying towards south and the dead body of Pramod lying towards north which was lying in a pool of blood. He found a cot kept in the courtyard in front of verandah. He also found the blood fallen on the ground



below the cot and on the cot. At paragraph 8, he has deposed that there is no mention about the deputation of S.I. Peyush Kant in the case diary in connection with this case. At paragraph 17, he has deposed that from the case diary it would not be clear as to when S.I. Peyush Kant had left for place of occurrence. At paragraph 21, he has deposed that Peyush Kant had prepared the inquest reports. At paragraph 34, he has deposed that he had not collected the evidence with regard to sending of the labourers to the brick-kiln by the deceased. At paragraph 43, he has denied that he changed the first fardbeyan.

19. C.W.2 is Shiv Balak Nonia. His evidence is that on 12.7.1994 at about 4 P.M. he was at the Dalan of Ram Swarath. His brother Kesho Nonia, Ram Swarath Nonia, Pramod Nonia, Harif Nonia, Manoj Nonia were also there. In the meantime, Dharamjay Mukhiya, Bablu Mahto, Bhonu Mahto, Binda Mahto, Surajan Mahto, Lalmuni Chauhan alias Chunnu Chauhan and Karu Mahto came there. Bablu Mahto, Bhonu Mahto and Binda Mahto were armed with rifles, Surajan Mahto and Lalmuni Chauhan were armed with gun, Karu Mahto was armed with pistol and Dharamjay Mukhiya was unarmed. All of them came to Dalan. Dharamjay Mukhiya asked Ram Swarath and Promod to remain sitting there whereupon Ram Swarath and Pramod stood up and tried to flee away then Dharamjay Mukhiya shouted to kill him. Then all the above named accused persons entered into the verandah. Bablu Mahto fired with his rifle at Pramod on his chest, Bhonu Mahto fired with his rifle at Pramod on

his back just above the waist, Surjan Mahto fired with his gun at Ram Swarath on his head, Lalmuni Chauhan fired with his gun at Ram Swarath on his abdomen, Binda fired with his rifle at Ram Swarath on his back above the waist. Ram Swarath and Pramod fell down. Karu Mahto fired with his pistol at Harif but missed. Pramod died at the spot and later on, Ram Swarath also died. At paragraph 7, he has deposed that deceased persons used to supply labourers to the brick-kiln. Dharamjay Mukhiya used to demand Rs.10/- per labourer as extortion money. At paragraph 15 he has deposed that he had gone to inform Baleshwar Chowkidar and he came to know that Baleshwar Paswan had gone to Police Station to inform the police about the occurrence. At paragraph 18, he has deposed that he had gone to Barh Police Station with the dead body. About 40 to 50 people of the village had also gone and he had stayed at Barh for the whole night and returned home next day after cremating the dead body.

20. C.W.3 is Baleshwar Paswan, Chowkidar 9/3. His evidence is that about 3 to 4 years ago at about 3 P.M. Harif Nonia (informant) had come running to his village. He (Harif Nonia) told him that murder has been committed at his house and asked him to come to the Police Station. Harif Nonia did not disclose who had killed whom, although he had made enquiry from Harif Nonia with regard to the names of the assailants and deceased. He has further deposed that when he reached village Shaidpur at the house of Harif Nonia he saw two dead bodies lying by

the side of ditch (not at verandah) which was in front of the house of Harif Nonia at a distance 5 to 6 Bans. The dead bodies were of Ram Swarath and his son. He has further deposed that he went to Barh Police Station with Harif Nonia and firstly, he along with Harif Nonia went to the Dy.S.P. Dy.S.P. directed him to go to the police station. And then both came to the Barh Police Station. The S.I. of Police interrogated Harif Nonia and then both the persons returned to village Shaidpur with S.I. Peyush Kant. At paragraph 11 C.W.3 has deposed that he had made enquiry from Harif Nonia as to who were the assailants. He did not disclose the name of any person. He again asked the names of the assailants but Harif Nonia did not disclose the name of any accused. At paragraph 17 C.W.3 has deposed that Harif Nonia had not stated the name of any accused at the police station.

21. C.W.4 is Peyush Kant, Sub-Inspector of Police, Barh Police Station. His evidence is that he had recorded the fardbeyan of the informant (Ext.5) and had prepared the inquest reports of the two dead bodies which have been marked as Exts. 3 and 3/1. He has further deposed that he got information about the occurrence through rumour that firing was going on in village Shaidpur and then he rushed to village Saidpur. At paragraph 10 he has admitted that there is overwriting in column 8 of Exhibit 3 below the signatures of Chhathu Prasad and Sahdeo Prasad and there are over-writings in the date mentioned at columns 3, 8 and 9 of Ext.3/1. At paragraph

17 he has denied the suggestion that he had changed the original fardebyan of this case.

22. It appears from the record that on the direction of the High Court, an enquiry was conducted with regard to the genuineness of the fardbeyan and during enquiry, this witness admitted that it is a fact that fardbeyan as well as inquest reports are not in his handwritings. Thus, it is established beyond doubt that the statement of the informant that C.W.4 Peyush Kant had recorded his fardbeyan is totally false. Likewise, the statement of C.W.4 Peyush Kant that he had prepared inquest reports of dead bodies is also false.

23. The contention of the defence counsel was that the first information report which was in the handwriting of Peyush Kant was changed and substituted with the present fardbeyan as in the first fardbeyan no name of any accused was mentioned. His submission was that besides the admission of C.W.4 Peyush Kant that the fardbeyan and inquest reports were not in his handwritings and he has wrongly deposed that the fardbeyn and inquest reports were in his handwriting, there are other evidence on record to believe that the original fardbeyan had been changed. In this regard first of all he has referred the evidence of C.W.3 Baleshwar Paswan Chowkidar No.9/3 who has deposed that he had accompanied the informant to Barh P.S. and at Barh P.S., S.I. of Police had interrogated Harif Nonia but Harif Nonia had not stated the names of the accused persons at the time of his statement at the

police Station (vide paragraph 17). He submitted that this statement of C.W.3 further finds corroboration from the evidence of P.W.5 Harif Nonia (informant) who has deposed at paragraph 16 that he had gone to Barh P.S. with Baleshwar Paswan (C.W.3) and the police had enquired him at the police station but he had not stated the names of the accused persons to S.I. of Police at Barh Police Station. He again referred paragraph 49 in which informant (P.W.5) has stated that after the occurrence when he had gone to Barh Police Station with Chowkidar four more persons had accompanied him at that time, when the police asked him he simply said that the murder had been committed but he could not tell the names of the accused persons because he was shocked. The learned defence counsel again referred paragraph 18 of C.W.2 Shiv Balak Nonia in which he has stated that he had gone to Barh Police Station with dead body, about 40 to 50 people of the village had also gone but he had not talked with anyone at Barh Police Station and after the post mortem he returned to the village on the next day. I have gone through the above referred statements of the witnesses and I am in full agreement with the view of the learned defence counsel that the above statements of the witnesses establish beyond doubt that for the first time when the informant along with C.W.2 Shiv Balak Nonia and C.W.3 Baleshwar Paswan Chowkidar went to Barh Police station, neither he nor any other persons disclosed the names of any accused which establishes beyond doubt that

the fardbeyan of this case is ante-dated and probably has been changed in view of the admission of C.W.4 Peyush Kant that the same is not in his handwriting. The fact that the dead bodies were also brought to the police Station vide paragraph 18 of C.W.3 establishes that before recording the fardebyan the dead bodies were removed from the place of occurrence and so, the preparation of inquest reports at the place of occurrence by C.W.4 Peyush Kant is also doubtful and this doubt is confirmed by the admission of C.W.3 in the enquiry that the inquest reports are not in his handwritings. Thus, the first contention of the learned defence counsel that the fardebyan is ante-dated and perhaps substituted, becomes established.

24. The next contention of the learned defence counsel was that neither the informant nor any other witnesses are actually the eye-witnesses of the occurrence and that they had not seen the actual occurrence and in this connection he has placed reliance upon the evidence of the doctor. The evidence of the doctor, who is P.W.2, shows that he had found only one fire-arm injury on the person of each of the deceased. According to him, one injury was wound of entry and another injury was wound of exit but according to the evidence of P.W.3, P.W.5 (informant) and C.W.2, firstly Bablu Mahto shot at deceased Pramod Chauhan on his chest, then Gonu shot at him with rifle causing injury on his back and chest. Likewise, according to the evidence of above said three

witnesses, Ram Swarath was shot at by Surjan Mahto, Lalmuni Chauhan and Binda Mahto. Thus, the presence of only one fire-arm injury on each of the deceased establishes beyond doubt that the prosecution case that the deceased Pramod had been shot at by two persons and Ram Swarath had been shot at by three persons is false. Under such circumstance, I have no hesitation to hold that the manner of occurrence, as disclosed in the fardebyan and in the evidence of the prosecution witnesses and in the evidence of the court witnesses, does not stand proved rather it stands falsified by the evidence of the doctor.

25. The next contention of the learned defence counsel was that the prosecution has also failed to establish the place of occurrence of this case. In this regard, he has referred the evidence of C.W 3 Chowkidar Baleshwar Paswan, who has deposed that he had seen the dead bodies in the ditch in front of the verandah of the informant and not at his verandah when he for the first time visited the place of occurrence. The learned defence counsel submitted that the statement of C.W.3 establishes that verandah was not the place of occurrence as disclosed in the fardbeyan and in the evidence of the prosecution witness. I am of the view that this contention of the leaned defence counsel also finds support from the evidence of C.W.1 Bigulgari who is the Investigating Officer of this case who has deposed at paragraph 2 that he had found the dead bodies of Ram

Swarath and Pramod lying on the verandah but he had found the blood lying on the ground below the cot which was kept in front of verandah. The evidence of C.W.1 does not disclose that the blood in huge quantity was found lying on the verandah where the dead bodies were found lying. This goes to show that the verandah is not the actual place of occurrence. The presence of blood at the cot kept in front of verandah and below the said cot, establishes that both the dead bodies were taken out from some other places. The evidence of the Chowkidar that he had found the dead bodies in ditch shows that there was every possibility that the dead bodies were brought to the verandah from the said place and non-presence of blood at the verandah and non-seizure of the blood from the said verandah establishes that the verandah is not the actual place of occurrence. Moreover, the evidence of C.W.1 as well as C.W.4 Peyush Kant does not show that they had seen any mark of violence caused by fire-arm at the wall or surface of the verandah nor the evidence shows that they had recovered any bullet or pellet from the said place. This fact also establishes that the verandah is not the actual place of occurrence. Under the circumstances, I hold that the prosecution has also failed to prove the place of occurrence of this case.

26. As regards the motive, I find no supporting evidence that the appellant Dharamjay Mukhiya had ever demanded any Rangdari tax from the deceased in presence of any witnesses and so, the motive does not stand proved.



27. On the basis of the evidence discussed above, I am of the view that the prosecution has miserably failed to prove the charges levelled against the appellants and as such, the conviction of the appellants under Section 302/34 of the I.P.C. and under Section 27 of the Arms Act cannot be upheld. Consequently, the death sentence passed against appellant Dharamjay Prasad Mukhia for the offence of murder under Section 302/34 of the I.P.C. and the sentence of rigorous imprisonment for life passed against appellants, Karu Mahto and Binda Mahto as well as R.I. for seven years awarded to them under Section 27 of the Arms Act cannot be upheld.

28. In the result, Death Reference No.5 of 2004 is answered in the negative and separate criminal appeals filed by three appellants bearing Criminal Appeal No.284 of 2004(DB), Criminal Appeal No.286 of 2004(DB) and Criminal Appeal No.335 of 2004 are allowed. The conviction and death sentence passed against Dharamjay Prasad @ Dharamjay Mahto under Section 302/34 of the Indian Penal Code are set aside. The conviction and sentence passed against the appellants Karu Mahto and Binda Mahto under Section 302/34 of the I.P.C. as well as under Section 27 of the Arms Act are also set aside. Accordingly, all the three appellants are acquitted of their respective charges framed under Section 302/34 of the I.P.C. and under Section 27 of the Arms Act. Appellants, namely, Karu Mahto and Binda Mahto are on bail, as such they are discharged from the liability of

their bail bonds. Appellant Dharamjay Mahto @ Dharamjay Mahto is in jail, he is directed to be set at liberty at once, if not wanted in any other case.

(Syed Md. Mahfooz Alam, J.)

Mridula Mishra, J. I agree.

(Mridula Mishra, J.)

Patna High Court, Patna  
The 28<sup>th</sup> November, 2008  
A.F.R. (B.T.)

