

**CRIMINAL APPEAL (DB) No. 276 OF 1989**

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Against the judgment of conviction and order of sentence dated 31.05.1989 passed by learned Sessions Judge, Sitamarhi in Sessions Trial No. 7 of 1987 arising out of Shyampur Bhataha P.S.Case No. 31 of 1986, G.R. No. 1208 of 1986.  
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Sushil Nath Mishra, Son of Sri Nagina Mishra, Resident of Village Bhorha,  
P.S. Shyampur, Bhataha, District Sitamarhi

.....Accused....Appellant

Versus

The State of Bihar

.....Respondent

With

**CR. APP (DB) No. 321 of 1989**

Ram Chandra Tewary, Son of Late Deodhari Tewary, Resident of Village Bhorha, P.S. Shyampur Bhatha, District Sitamarhi

.....Appellant

Versus

The State of Bihar

.....Respondent

With

**CR. APP (DB) No. 323 of 1989**

1. Jagat Rai, Son of Rameshwar Rai  
2. Chaturbhuj Singh, Son of Durga Prasad Singh, Resident of Village Bhoraha, P.S. Shyampur Bhataha, District Sitamarhi

.....Accused....Appellants

Versus

The State of Bihar

.....Respondent

With

**CR. APP (DB) No. 341 of 1989**

1. Ram Ayodhya Tewary, Son of Late Deodhari Tewary, Resident of Village Bhorha, P.S. Shyampur Bhatha, District Sitamarhi.  
2. Ram Jas Rai, Son of Late Kodai Rai, Resident of Village Bhorha, P.S. Shyampur Bhatha, District Sitamarhi.

.....Appellants

Versus

The State of Bihar

.....Respondent

For the Appellants:- Mr. Triloki Nath Maitin, Sr. Advocate  
Mr. Rajeev Kumar Sinha, Advocate

For the State:- Ms. Shashi Bala Verma, Advocate

**(In Cr. Appeal Nos. 276/1989 & 323/1989 (D.B.))**

For the Appellants:- Mr. Aswini Kumar Singh, Sr. Advocate  
Mr. Rakesh Kumar, Advocate  
Mr. Pankaj Kumar Singh, Advocate  
Mr. Anuj Prakaash, Advocate

For the State:- Ms. Shashi Bala Verma, Advocate

**(In Cr. Appeal Nos. 321/1989 & 341/1989 (D.B.))**

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**P R E S E N T****THE HON'BLE MR. JUSTICE SHYAM KISHORE SHARMA****THE HON'BLE MR. JUSTICE AKHILESH CHANDRA**

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**Akhilesh Chandra, J.**

Hearing in the above four appeals along with Cr. Appeal No. 342 of 1989 (D.B.) was commenced during which an application was filed in Cr. Appeal No. 342 of 1989 (D.B.) that sole appellant Kedar Nath Mishra had already died, consequently said appeal vide order dated 21.01.2011 stands abated.

2. Above four appeals have been preferred by the appellants assailing their conviction and sentence awarded by learned Sessions Judge, Sitamarhi on 31<sup>st</sup> May, 1989 in Sessions Trial No. 7 of 1987 arising out of Shyampur Bhataha Police Station Case No. 31 of 1986, G.R. No. 1208 of 1986. Appellant Sushil Nath Mishra and Ram Chandra Tewary, besides deceased appellant Kedar Nath Mishra were convicted for the offence under Sections 302 & 148 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and three years respectively. Whereas appellant Jagat Rai, Chaturbhuj Singh, Ram Jas Rai and Ram Ayodhya Tewary were convicted under Section 302 read with Section 149 of the Indian Penal Code and Chaturbhuj Singh and Jagat Rai both were further convicted for the offence under Section 148 of the Indian Penal Code and accordingly sentenced to undergo rigorous imprisonment for life and three years respectively. Whereas appellant Ram Jas Rai and Ram Ayodhya Tewary were

hold guilty for the offence under Section 147 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years. The sentences are to run concurrently.

3. The prosecution case based on Exhibit – 4 fardbeyan of P.W. 13, Arun Kumar Tewary recorded by P.W. 14, Satrugana Pd. Singh (Sub-Inspector) at 21.00 hours (9.00 P.M.) at village Bhorhan (P.O.) on 03.11.1986 is that on the said day (03.11.1986, Monday) at about 6.15 P.M. while the informant was sitting in eastern verandah on a cot in his baithka and his elder brother Ram Naresh Tewary (deceased) aged 40 years was enjoying bone fire by the side of the road to the north of the baithka, one lantern was also hanged at the door, suddenly, informant could see appellants Ram Chandra Tewary, Chaturbhuj Singh, Sushil Nath Mishra and Jagat Rai armed with country made pistol, deceased Kedar Nath Mishra armed with nepali kothila and appellants Ram Jas Rai, Ram Ayodhya Tewary besides one Jia Lal Rai (died during trial) armed with lathi having iron fixed at the edge coming from west and immediately appellant Ram Chandra Tewary shot at deceased Ram Naresh Tewary hitting his right forehead followed by firing by appellant Sushil Nath Mishra hitting right waist resulting Ram Naresh Tewary felling down. Thereafter, appellants Ram Jas Rai, Ram Ayodhya Tewary and Jiya Lal Rai (died during trial) caught hold of his hands and legs, then deceased appellant Kedar Nath Mishra cut his neck by kothila and thereafter appellant Jagat Rai fired in sky to terrorize the people

and fled away through fields towards south-east. On hearing sound of firing P.W. 4 Angad Pandey, P.W. 1 Ashok Pandey, P.W. 5 Praduman Pandey, P.W. 11 Bachcha Rai, P.W. 12 Nand Kishore Rai and P.W. 2 Ram Prasad Sah etc. arrived and seen the miscreants running with respective arms. The informant by dint of fear kept himself confined in the middle room of the baithka, did not dare to come out. It is further case of the prosecution that there is long drawn litigation with appellant Ram Chandra Tewary for a piece of land besides false involvement of prosecution side in several murder and dacoity case at his instance, though the cases have been dismissed. Rests of the miscreants are brother and associates of Ram Chandra Tewary. It is also stated that on 29.10.1986 one unanimous inland letter was received containing threats of killing the deceased and P.W. 4 Angad Pandey besides three more namely, Nand Kishore Rai (P.W. 12), Ram Sewak Singh (P.W. 10) and Ram Ayodhya. On basis of the above fardbeyan Shyampur Bhataha Police Station Case No. 31 of 1986 was registered on 04.11.1986 at 8.00 A.M. for the offences under Sections 147, 148, 149 and 302 of the Indian Penal Code and Section 27 of the Arms Act and on completing investigation police submitted charge-sheet. Case was committed to the Court of Sessions, where trial was commenced on 12<sup>th</sup> March 1987. After framing the charges against the accused persons who pleaded their innocence but ultimately the appellants who faced the trial were hold guilty and sentenced, accordingly giving rise to these five

appeals out of which one Cr. Appeal No. 342 of 1989 (D.B.) preferred by one of the convict Kedar Nath Mishra has already abated due to his death.

4. In support of the prosecution case besides producing documentary evidence vide Exhibits (*i.e. Exhibit – 1 : Carbon copy of the Inquest Report; Exhibit – 2 : Seizure list of 03.11.1986; Exhibit – 2/1 : Seizure list of 04.11.1986; Exhibit – 3 : Post Mortem Report; Exhibit – 4 : Fard Beyan; Exhibit – 5 : Sketch Map; Exhibit – 6 : Formal F.I.R; Exhibit – 2/2 : Seizure list; Exhibit – 7 : Challan; and Exhibit – 8 : Endorsement in the pen of Alakh Narain Singh and his signature on challan*). The prosecution has examined altogether eighteen witnesses out of whom P.W. 6 Suraj Pandey, P.W. 7 Khalil Ansari, P.W. 8 Gopendra Rai, P.W. 10 Ram Sewak Singh, P.W. 11 Bachcha Rai and P.W. 12 Nand Kishore Rai were tendered for cross-examination, whereas P.W. 3 Raghubar Dayal Prasad, P.W. 15 Naresh Prasad Mandal, P.W. 16 Kamla Singh, P.W. 17 Alakh Narain Singh and P.W. 18 Ram Suresh Tewary are formal witnesses and practically there is nothing in their evidence for consideration. P.W. 1 Ashok Pandey, P.W. 2 Ram Prasad Sah, P.W. 4 Angad Pandey, P.W. 5 Praduman Pandey and P.W. 13 Arun Kumar Tewary, the informant, have come as eye-witnesses. Whereas P.W. 9 Dr. Awadh Kishore has held autopsy on the dead-body and proves post mortem report and P.W. 14 Satrughana Pd. Singh is the Investigating Officer.

5. Defence has come out with an assertion of false implication due to enmity, completely denied their involvement and produced one defence witness Biswanath Prasad besides producing Exhibits (*i.e. Exhibit – A : Certified copy of order-sheet dated 5.8.81 of Case No. 281/81; Exhibit – A/a : Certified copy of order-sheet of Case No. 36/85-86; Exhibit – B : Certified copy of notice issued by Consolidation Officer; Exhibit – C : Original deed of Rehannama of 1.4.71; Exhibit – C/a : Original deed of Rehannama of 4.9.74; Exhibit – D : Certified copy of Informatory petition of 23.6.86 filed by Ram Chandra Tewary; Exhibit – D/a : Certified copy of Informatory petition of 29.11 filed by Kedar Nath Mishra; Exhibit – E : Certified copy of F.I.R. of Shyampur Bhataha P.S. Case No. 15/82; Exhibit – E/a : Certified copy of F.I.R. of Shyampur Bhataha P.S. Case No. 40/83; Exhibit – F : Petition dated 28.4.1986 filed by Ram Chandra Tewary in Consolidation Case No. 265/86-87; Exhibit – G : Certified copy of Service Report of Consolidation Case No. 265/86-87; Exhibit – H to H (b) : Three petitions of Kedar Nath Mishra dated 30.5.86, 14.6.86 and 14.6.86; Exhibit – I & I/a : Two Notices u/S 144 Cr.P.C; Exhibit – E/e : Certified copy of F.I.R. dated 16.11.72 G.R. 1169/72; Exhibit – J : Certified copy of sale deed dated 1.6.84; Exhibit – E/c : Certified copy of F.I.R. of Shyampur Bhataha P.S. Case No. 28/86; Exhibit – K : Certified copy of Khatian of Khata No. 893; Exhibit – L : Certified copy of Wasika Kewala Bailakalami dated 22.2.83*

*executed by Suwansh Thakur in favour of Smt. Chandkala Devi; Exhibit – M : Written Report of Shyampur Bhataha P.S. Case No. 15/82 Ext. E; Exhibit – M/a : Written Report of Shyampur Bhataha P.S. Case No. 40/83 Ext. E/a; Exhibit – M/b : Written Report of Shyampur Bhataha P.S. Case No. 28/86 Ext. E/c)* to show long drawn litigation not only with the informant, but with all the witnesses claiming themselves to be an eye-witness and also their complaints against P.W. 14, the Investigating Officer at least for last six months before the alleged occurrence and on basis thereof it is submitted by learned counsel for the appellants that entire prosecution case is concocted against the appellants with the help of Investigating Officer, who arrived at the place of occurrence prepared inquest report, thereafter manufactured fardbeyan and only after knowing about outcome of autopsy of the dead-body forwarded fardbeyan and formal First Information Report to the Court which could be received there on 05.11.1986.

6. Now it is to be seen in this appeal whether prosecution has been able to substantiate the charges against the appellants beyond any shadow of reasonable doubt or findings of the court below requires any interference.

7. P.W. 1, Ashok Pandey has stated that at about 6.15 P.M. on 03.11.1986 he was getting his wheat curshed in flour mill, suddenly heard sound of firing and rushed towards dera of deceased Ram Naresh Tewary, where one lantern was giving light and opposite the house fire of ghura was also giving light. He



could be able to see appellant Ram Chandra Tewary, Chaturbhuj Singh, Sushil Nath Mishra and Jagat Rai armed with country made pistol surrounding the road from both end and appellant Ram Ayodhya Tewary, Ram Jas Rai and Jiya Lal Rai (died during trial) caught hold of hands and legs of Ram Naresh Tewary (deceased) and appellant Kedar Nath Mishra (died during trial) was cut his neck by nepali kothila. Ram Naresh Tewary (deceased) was lying on earth from where this witness could see this part of the occurrence. Witnesses Angad Pandey (P.W. 4) and Nand Kishore Rai (P.W. 12) were also present and when they made an attack to resist the miscreants received threat to be killed and the miscreants succeeded to escape towards south-east. Only thereafter, this witness arrived near the deceased. During cross-examination in paragraph 7-8 this witness admits that at flour mill he heard sound of two continuous gun firing and while he was in the way heard sound of third firing and from the way it was not possible to see the place of occurrence. He was 10-11 yards behind the place from where he could see the third firing and place from where he claimed to see the occurrence is at distance of about 20 yards. Further in cross-examination he admits the litigations with defence side. Similarly, P.W. 2, Ram Prasad Sah was at his grossery shop after hearing the sound of firing rushed with a three cell torch arrived at road and seen the occurrence with P.W. 4, Angad Pandey likewise P.W. 1, that means from a distance of about 20 yards. In cross-examination at paragraph 3 he states that prior to his arrival



P.W. 4 Angad Pandey was there, but P.W. 1 Ashok Pandey, P.W. 11 Bachcha Rai and P.W. 12 Nand Kishore Rai arrived. Subsequently, on recall he has proved Material Exhibit – III, the torch belonging to him and handed to the Investigating Officer. He further admits litigations with the defence side.

8. P.W. 4, Angad Pandey stated that on hearing sound of gun fire he rushed towards place of occurrence with his torch and could be able to see what other two witnesses have narrated with the help of torch light and the light available at the place of occurrence, and in paragraph 3, he admits that he could see the occurrence from a distance of 20 yards and seen after cutting of throat of deceased by accused Kedar Nath Mishra, the miscreants fled away. In paragraph 4 he admits the litigations with defence side and also on recall proved, material, Exhibit – III/2, the torch.

9. P.W. 5, Praduman Pandey has come to say that while he was getting his torch repaired he could heard sound of firing arrived at the scene and could be able to see what other four witnesses narrated. In paragraph 3 likewise other witnesses referred to above, he said that he witnessed the occurrence from a distance of 20-25 yards and Kedar Nath Mishra (appellant, died during trial) took no time in cutting the throat and all fled away. He further speaks that after successful escape of miscreants he arrived at the place of occurrence had consultation with informant Arun Kumar Tewary, P.W. 13 and in subsequent paragraphs admits long drawn litigation with defence side and on recall prove

Material Exhibit – III/1, the torch.

10. From the evidence of above witnesses, it appears that they claimed to rush only after hearing sound of firing and could see the later part of the occurrence, i.e. cutting of throat of the deceased by deceased appellant Kedar Nath Mishra who took no time in doing so and the miscreants immediately left the place resorting third firing. It is the prosecution case that first two firings were done in quick succession by two miscreants. Soon thereafter, third part of occurrence began during which deceased appellant Kedar Nath Mishra said to have caused cut injury on the throat that too without taking any time and if P.W. 1 could be able to hear sound of third firing in the way at least 10-11 yards behind the place from where all the persons claimed to see, it seems not possible for P.W. 1 to witness the occurrence in any manner at best, if at all he could have been able to see the miscreants fleeing, but all the witnesses afore-discussed claimed to see later part of the occurrence that too from a good distance, i.e. 20-25 yards meaning thereby 60-75 feet. From such a distance viewing the minor details appears not possible, especially when it was a dark winter evening and the witnesses claimed to see in the light coming from the lantern and bone fire that was caused only by some straws nothing else. It also appears not acceptable that the miscreants as said were having four pistols will permit anybody to flash torch towards them to witness the occurrence but will not caused any harm to them.

11. Now remains only the informant Arun Kumar

Tewary, P.W. 13 coming as a person witnessing the occurrence since beginning. In examination-in-chief he almost has narrated what is stated in his fardbeyan including long drawn litigation and he further states that the officer-in-charge, P.W. 14 on arrival took charge of dead-body. After inspection, recorded his fardbeyan, he proves the same as Exhibit – 4. He further claims to produce the unanimous inland letter, containing threats, but the same is not on record. In paragraph 8 of cross-examination he asserts that till arrival of police he was there with the dead-body of his elder brother where he arrived after successful escape of the miscreants, but his this statement stands falsified by the Investigating Officer, Satrugana Prasad Singh (P.W. 14) who claimed to arrive at place of occurrence at 8.15 P.M. after learning about a rumour of gun firing at 7.15 at the police station where he recorded Sanha Entry No. 36 dated 03.11.1986 and left the police station to arrive at the place of occurrence at 8.15 P.M. where he found the dead-body in pool of blood, inspected the same, prepared the inquest report in presence of P.W. 3 Raghubar Dayal Prasad and P.W. 10 Ram Sewak Singh and admitted inquest report, Exhibit – 1. At 9.00 P.M. he got fardbeyan of informant (Exhibit – 4) recorded and assumed charge of investigation during which he prepared seizure list. Inspected the place of occurrence and recorded statement of one witness engaged for whole night in patrolling of village. On 04.11.1986 in the morning at about 6.00 A.M. send the dead-body for post mortem examination to hospital with Hawaldar Sattan

Paswan (not examined) and Chowkidar Khalil Ansari, P.W. 7 and thereafter, again prepared some seizure list, arrested Jiya Lal Rai (accused died during trial). On arrival to police station got formal First Information Report registered at 8.00 A.M. and thereafter again returned to place of occurrence (village) for further investigation and recording statement of witnesses. The Investigating Officer further claims that he verified the statement of the witnesses who witnessed the occurrence from that place. In cross-examination he admits that on arrival at the place of occurrence he first prepared the inquest report, but undisputedly the informant was not present at the time of preparation of inquest report wherein only P.W. 3 and P.W. 10 appeared as witness. Had the informant been present, his fardbeyan ought to have been recorded first, but as claimed by the prosecution including informant and the Investigating Officer fardbeyan was recorded at 9.00 P.M. Whereas inquest report was prepared on 8.15 P.M. and in paragraph 13 the Investigating Officer further admits absence of informant. P.W. 13 at the relevant time when he speaks that during preparation of inquest report he could not be able to know about the manner of actual occurrence from any villager. If it is so, and the informant who comes as an eye-witness of the occurrence right from beginning till end cannot be accepted as trustworthy witness. In absence of anyone witnessing causing fire arm injury to the deceased, the allegation of shooting at the deceased by appellant Ram Chandra Tewary and Sushil Nath Mishra come under clouds

which could not be removed by prosecution.

12. As stated earlier, it further seems difficult to accept that other witnesses who rushed from there respective places only after hearing sound of firing could be able to see the later part of the alleged occurrence from a distance of 60-75 feet. So, the allegations as regard to deceased Kedar Nath Mishra including other appellants further becomes doubtful.

13. The Investigating Officer, P.W. 14 though has denied filing of complaint against him by the appellants, but in presence of Exhibit – H(a) and H(b) respectively dated 30.5.1986 and 14.6.1986 containing endorsement of the police officials respectively dated 6.6.1986 and 16.6.1986. Thereon it can very well be said that the defence side had been raising complaints against the Investigating Officer roughly from six months before the occurrence.

14. P.W. 9, Dr. Awadh Kishore on autopsy found the following anti-mortem injuries upon the person of deceased :-

**External Injuries:-**

(i) *An oval shaped penetrating wound with inverted margin black in colour measuring 1" x 1/2" placed on right side of forehead at the junction of the skin and hair 2 1/2" above the mid of right eye brow continuing to cranial cavity.*

(ii) *An oval shaped penetrating wound with inverted margin black in colour measuring 1" x 3/4" placed on the right side of waist 2 1/2" below the mid of right illiac crest*

*communicating with a round shaped perforated wound measuring 1½" diameter placed posterior and right lateral of the anus touching the adjacent margin of the external sphincter of anus with everted margin. Brass cap and one pad of bullet were found near the anus with focus.*

*(iii) An incised wound starting from a point 2½" below of the right ear lobule to the same point on the opposite side of the right neck anteriorly just below the chin measuring 7" x 1½" x deep to body of vertebra cutting all ascending and descending structure of the neck in either side.*

**Internal Injuries:-**

*On opening of cranium brain matter was found lacerated and a bullet was recovered from the brain matter. The internal injury was due to external injury no. (i)*

*On opening of thoracic and abdominal cavity no abnormality was found.*

No doubt, the above injuries are consistent with the manner there inflicting upon the dead-body, but at the same time the post mortem report, Exhibit – 3 further raises finger against the Investigating Officer as it appears from Exhibit – 3 that dead-body arrived at archery at 5.00 P.M. on 04.11.1986 leading to autopsy being held on the next morning at 9.30 P.M., i.e. on 05.11.1986. As per P.W. 14, the dead-body was dispatched from place of occurrence (village) at 6.00 A.M. on 04.11.1986. It took 11.00 hours to arrive at hospital. This delay could have been explained

by examining Chowkidar and Hawaldar accompanying the dead-body out of whom only Chowkidar Khalil Ansari, P.W. 7 was tendered but Hawaldar (Sattan Paswan) for the reasons best known to the prosecution has not been examined nor their statement in this regard finds place in the case diary.

15. To crown all, the Investigating Officer has mentioned Shyampur Bhataha P.S. Case No. 31 of 1986 at the top of inquest report, Exhibit – 1 leading the same entry in the post mortem report, Exhibit – 3. When the formal First Information Report was instituted at 8.00 A.M. on 04.11.1986 how and why the case number finds place in the inquest report, Exhibit – 1 which was prepared at 8.15 A.M. on 03.11.1986. This could have been explained by the Investigating Officer himself, but the prosecution offers no explanation of such kind of happenings. In absence whereof, it can be said that investigation was tainted. No doubt, the copy of First Information Report instituted on 04.11.1986 could normally be received to the court on 05.11.1986, but in the instant case receiving of copy of fardbeyan, formal First Information Report etc. to the Court on 05.11.1986. When the formal First Information Report was instituted at 8.00 A.M. on 04.11.1986 and prior to its receipt to the Court, post mortem was conducted at 9.30 A.M. on 05.11.1986 gives room to the learned counsel for the appellant to submit that in fact the Investigating Officer received some definite information at 7.15 P.M. on 03.11.1986 as regard to manner and cause of death of the deceased and proceeded thereon



for the place of occurrence after recording sanha entry (deliberately withheld) and on due deliberation after autopsy prepared anti dated fardbeyan of the informant making the same consistent with the injuries found on the dead-body and prepared some other materials. Thus, entire prosecution case coupled with the investigation is tainted one and must be discarded. In support of the contentions the learned counsel placed reliance upon a decision of Apex Court in a case of *State of Andhra Pradesh v. Punati Ramulu and Others reported in AIR 1993 S.C. 2644*, wherein in paragraph 5 it is held:-

*“.....Once we find that the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in this case, and had prepared the first information report after reaching the spot after due deliberations, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would have stooped to fabricate evidence and create false clues.....”.*

16. The learned counsel further placed reliance on an another decision of Apex Court in a case of *Motilal and Another v. State of Rajasthan reported in 2009(7) SCC 454*, wherein paragraphs 9-11 it is held:-

*9. It is true as observed by the High Court that if the FIR is timely lodged and investigation is undertaken immediately, in a given case, the delayed receipt of the report by the Ilaqa Magistrate would not be fatal to the*

*prosecution. It would depend upon the facts of each case. There cannot be any generalization. There is a purpose behind the enactment of Section 157 of the Code of Criminal Procedure, 1973 (in short "the Code"). The statutory requirement that the report has to be sent forthwith that itself shows the urgency attached to the sending of the report. In a given case it is open to the prosecution to indicate reasons for the delayed dispatch or delayed receipt. This has to be established by evidence.*

*10. Apart from that, the unexplained discrepancy in the timings as recorded in the inquest report and the FIR has to be kept in view. It is the prosecution version that the FIR was lodged at 10.50 a.m. If that was so, it was required to be explained by the investigating officer by plausible evidence on record, as to how the inquest was undertaken at 10.30 a.m. at a point of time when the FIR was not in existence. The High Court has lightly brushed aside the plea of the appellants that it may be the lapse on the part of the investigating officer.*

*11. It is true that a faulty investigation cannot be a determinative factor and would not be sufficient to throw out a credible prosecution version. But in the instant case there is no explanation offered even to explain the discrepancies.*

17. On overall consideration and the materials on record and hearing rival contentions made by the learned counsels for the appellants and the learned counsel representing the State, we are of the view that prosecution has come out with the case with the help of the witness inimical with the accused persons having long drawn litigation but failed on material points to establish guilt

of the appellants beyond any shadow of reasonable doubts. To crown all, the investigation of the case was also conducted by a person having some grudge/grievances against the accused persons and committed unexplained errors adding further damage to the prosecution case. Thus, it can very well be said that the prosecution has not been able to establish the charges against the appellants beyond any shadow of reasonable doubts. And once created doubt is not successfully removed. The appellants under law are entitled for the benefits.

18. In the result, conviction and sentence of all the appellants are hereby set-aside. All these four appeals stands allowed and the appellants, namely, Sushil Nath Mishra, Ram Chandra Tewary, Jagat Rai, Chaturbhuj Singh, Ram Ayodhya Tewary and Ram Jas Rai are set free from the liabilities of their respective bail-bonds furnished on their behalf.

(Akhilesh Chandra, J.)

**Shyam Kishore Sharma, J. - I agree.**

(Shyam Kishore Sharma, J.)