A SHEO SHANKAR SINGH

v.

STATE OF JHARKHAND & ANR.

(Criminal Appeal Nos. 791-792 of 2005)

FEBRUARY 15, 2011

B

[V.S. SIRPURKAR AND T.S. THAKUR, JJ.]

Penal Code, 1860 – s.302 r/w s.34 – Murder – Person shot down on road, while he was riding pillion seat of C *motorcycle driven by PW 16 – Appellant S allegedly drove his motorcycle to the left of PW16's motorcycle, while appellant U, riding pillion, fired gun shots at the deceased from close range – Allegation that accused-appellants were part of the coal mafia and deceased, a sitting member of the* D *State Legislative Assembly, incurred their wrath as he opposed their activities – Eye-witness account of PW16 and PW6 – Trial Court convicted the appellants and sentenced them to life imprisonment – High Court confirmed the conviction and also enhanced the sentence of life* E *imprisonment to sentence of death – On appeal, held: The deceased was perceived by the appellants as a hurdle in their activities – The depositions of all the witnesses satisfactorily prove that the appellants were seen hanging around the place of occurrence on the incident date and were seen together* F *riding a motorcycle proximate in point of time when the deceased was gunned down – Seizure evidence corroborated the prosecution version – Further corroboration from medical evidence – The prosecution proved beyond reasonable doubt , the sequence of events underlying the charge of murder* G *levelled against the appellants – Conviction upheld but sentence modified to life imprisonment instead of death sentence.*

H

Criminal Trial:

Motive – Importance of proof of motive – Distinction between cases where prosecution relies upon circumstantial evidence and where it relies upon the testimony of eye witnesses – Held: In the former category of cases, proof of motive itself constitutes a link in the chain of circumstances upon which the prosecution may rely – Proof of motive, however, recedes into the background in cases where the prosecution relies upon an eye-witness account of the occurrence – That is because if the court, upon a proper appraisal of the deposition of the eye-witnesses, comes to the conclusion that the version given by them is credible, absence of evidence to prove the motive is rendered inconsequential – Conversely, even if prosecution succeeds in establishing a strong motive for the commission of the offence, but the evidence of the eye-witnesses is found unreliable or unworthy of credit, existence of a motive does not by itself provide a safe basis for convicting the accused – That does not, however, mean that proof of motive even in a case which rests on an eye-witness account does not lend strength to the prosecution case or fortify the court in its ultimate conclusion – Proof of motive in such a situation certainly helps the prosecution and supports the eye-witnesses – The instant case rests upon the deposition of the eyewitnesses, hence, absence of motive would not by itself make any material difference, but if a motive is proved it would lend support to the prosecution version – The prosecution herein established the motive to fortify its charge against the accused-appellants.

Witness – Examination of – Delay in examination – Effect – Held: Mere delay in examination of a particular witness does not, as a rule of universal application, render the prosecution case suspect – In a case where the investigating officer has reasons to believe that a particular witness is an eye-witness to the occurrence but he does not examine him

A *without any possible explanation for any such omission, the delay may assume importance and require the Court to closely scrutinize and evaluate the version of the witness – But in a case where the investigating officer had no such information about any particular individual being an eye-*
B *witness to the occurrence, mere delay in examining such a witness would not ipso facto render the testimony of the witness suspect or affect the prosecution version – In the instant case, the trial court and the High Court had accepted the explanation offered by the investigating officer for delay*
C *– No reason to take a different view or to reject the testimony of the witness only because his statement was recorded a month and half after the occurrence.*

Identification – Test identification parade (TIP) – Purpose of – Held: TIP is conducted with a view to strengthening the
D *trustworthiness of the evidence – Such a TIP then provides corroboration to the witness in the Court who claims to identify the accused persons otherwise unknown to him – TIPs, therefore, remain in the realm of investigation – However, CrPC, does not oblige the investigating agency to necessarily*
E *hold a TIP nor is there any provision under which the accused may claim a right to the holding of a TIP – The failure of the investigating agency to hold a TIP does not, in that view, have the effect of weakening the evidence of identification in the Court – As to what should be the weight attached to such an*
F *identification is a matter which the Court will determine in the peculiar facts and circumstances of each case – In appropriate cases, the Court may accept the evidence of identification in the Court even without insisting on corroboration – On facts, the omission of the investigating*
G *agency to associate PW16 with the TIP in which PW1identified accused-appellant U did not ipso jure prove fatal to the case of the prosecution, although the investigating agency could and indeed ought to have associated the said witness also with the TIP especially when the witness had not claimed*
H *familiarity with the accused-U before the incident – The*

omission did not affect the credibility of the identification of the said appellant by PW16 in the Court – That is because the manner in which the incident had taken place and the opportunity which PW16 had, to see and observe the actions of appellant U were sufficient for the witness to identify him in the Court – Absence of TIP and the failure of the Investigating Officer to associate the witness with the same did not, therefore, make any material difference in the instant case.

Investigation – Deficiencies in investigation – Effect of, on prosecution case – Held: Deficiencies in investigation by way of omissions and lapses on the part of investigating agency cannot by themselves justify a total rejection of the prosecution case – On facts, the failure on the part of the investigating officer in sending the blood stained clothes to FSL and the empty cartridges to the ballistic expert was not sufficient to reject the version given by the eye witnesses – Especially so, when a reference to the ballistic expert would not have had much relevance since the weapon from which the bullets were fired had not been recovered from the accused and was not, therefore, available for comparison by the expert.

Sentence/Sentencing – Death sentence – Commutation to life, if warranted – 'Rarest of rare' test – Murder of sitting member of State Legislative Assembly – Accused-appellants were part of the coal mafia and deceased being opposed to such activities incurred their wrath and got killed – Trial Court convicted the appellants but did not find it to be a rarest of rare case and awarded them life sentence – High Court enhanced the sentence by imposing upon the accused-appellants the extreme penalty of death– Whether the present case was one of those rare of rarest cases where High Court was justified in imposing extreme penalty of death upon the appellants – No – Reasons being, firstly, because the appellants were not professional killers – Secondly, because even when the deceased was a politician there was no political

A *angle to his killing – Thirdly, because while all culpable homicides amounting to murder are inhuman, hence legally and ethically unacceptable yet herein there was nothing particularly brutal, grotesque, diabolical, revolting or dastardly in the manner of its execution so as to arouse intense and*
B *extreme indignation of the community or exhaust depravity and meanness on the part of the accused-appellants to call for the extreme penalty – Fourthly, because there was difference of opinion between the trial court and the High Court on the question of sentence to be awarded to the convicts –*
C *Considering all the circumstances, death sentence awarded to the accused-appellants commuted to life imprisonment.*

According to the prosecution, the accused-appellants were part of the coal mafia and deceased, a sitting member of the Jharkhand State Legislative
D **Assembly, opposed their activities and that because of this opposition, the appellants killed the deceased by shooting him down on the road, when he was riding the pillion seat of the motorcycle driven by PW 16-informant. It was alleged that the accused-appellant S drove his**
E **motorcycle to the left of PW16's motorcycle, whereupon accused-appellant U, riding pillion, shot the deceased from close range on his head on which he slumped on the back of PW16 thereby disturbing the balance of his motorcycle and bringing both of them to the ground; that**
F **thereafter the motorcycle driven by appellant-S was stopped by him a little ahead whereupon appellant-U got down and threatened PW16 that even he would be killed; that so threatened PW16 hurried away from the spot whereupon appellant U fired another bullet at the**
G **deceased, pushed his dead body down the side slope of the road, walked back to the motorcycle whose engine was kept running by appellant-S and they both fled away. The deceased died a homicidal death caused by gunshot injuries.**

H

The prosecution case rested entirely on the ocular testimony of PW16 and PW6, apart from the incriminating circumstances called in aid by the prosecution to lend support and corroboration to the testimony of the said two eye-witnesses. The trial court convicted the appellants under Section 302 r/w Section 34 IPC and sentenced them to undergo rigorous imprisonment for life. The appellant U was additionally convicted under Section 27 of the Arms Act. The conviction of the appellants was upheld by the High Court.

In the instant appeals, various questions arose for consideration viz. 1) whether the prosecution proved any motive for the commission of the crime alleged against the appellants and if so to what effect; 2) whether the prosecution proved beyond reasonable doubt, the sequence of events on which was based the charge of murder levelled against the appellants and finally 3) whether the present case was one of those rare of rarest cases in which the High Court could have awarded to the appellants the extreme penalty of death.

Partly allowing the appeals, the Court

HELD:1.1. The legal position regarding proof of motive as an essential requirement for bringing home the guilt of the accused is fairly well settled. There is a clear distinction between cases where prosecution relies upon circumstantial evidence on the one hand and those where it relies upon the testimony of eye witnesses on the other. In the former category of cases proof of motive is given the importance it deserves, for proof of a motive itself constitutes a link in the chain of circumstances upon which the prosecution may rely. Proof of motive, however, recedes into the background in cases where the prosecution relies upon an eye-witness account of the occurrence. That is because if the court upon a proper

A appraisal of the deposition of the eye-witnesses comes to the conclusion that the version given by them is credible, absence of evidence to prove the motive is rendered inconsequential. Conversely even if prosecution succeeds in establishing a strong motive for the B commission of the offence, but the evidence of the eye-witnesses is found unreliable or unworthy of credit, existence of a motive does not by itself provide a safe basis for convicting the accused. That does not, however, mean that proof of motive even in a case which rests on C an eye-witness account does not lend strength to the prosecution case or fortify the court in its ultimate conclusion. Proof of motive in such a situation certainly helps the prosecution and supports the eye- witnesses. [Para 13] [337-D-H; 338-A]

D 1.2. The case at hand rests upon the deposition of the eyewitnesses to the occurrence. Absence of motive would not, therefore, by itself make any material difference. But if a motive is indeed proved it would lend support to the prosecution version. [Para 14] [338-C]

E

1.3. In the instant case, the depositions of PW16, PW15 and PW19 are relevant on the question of motive. There is evidence to prove that a petrol pump stood in the name of PW15 which had been allotted in his name in the F Scheduled Tribe's quota. It is also evident that to establish and run the said petrol pump, PW15 had taken the help from appellant S and his father. Disputes between the original allottee and the appellant-S and his father had, however, arisen and manifested in the form of civil and G criminal cases between them. PW15 had in that connection taken the help of the deceased who had with the help of the police and local administration secured the restoration of the petrol pump to PW15 which annoyed the appellant-S and his father. There is also evidence to the effect that the deceased had acted against what has H

been described as 'coal mafia' of Dhanbad with the help of police and administration to prevent the coal theft in the region and the steps taken by the deceased had resulted in the arrest of the father of appellant S and a co-accused in connection with the said cases. Both these circumstances appear to have contributed to the incident that led to the killing of the deceased who was perceived by the appellants as a hurdle in their activities. [Paras 15, 20] [338-D; 340-F-H; 341-A-B]

Shivaji Genu Mohite v. The State of Maharashtra, **(1973) 3 SCC 219,** *Hari Shanker v. State of U.P.* **(1996) 9 SCC 40 and** *State of Uttar Pradesh v. Kishanpal and Ors.* **(2008) 16 SCC 73 – relied on.**

2.1. In the instant case, the evidence adduced by the prosecution in regard to the charge of murder levelled against the appellants comprises the following distinct features:

(i) Evidence suggesting that on the date of occurrence and proximate in point of time the appellants were seen together riding a black coloured motor cycle, without a registration number.

(ii) Evidence establishing seizure of the motor cycle on which the deceased was riding from the place of occurrence and that which was being driven by appellant-'S' from his factory.

(iii) The eye witness account of the occurrence as given by PW16 and PW6.

(iv) Medical evidence, supporting the version of PW 16, that he sustained injuries when he fell from the motor cycle being driven by him on the deceased who was on the pillion being shot by appellant 'U'. [Para 21] [341-C-H]

A 2.2. The depositions of all the witnesses satisfactorily prove that the appellants were seen hanging around the place of occurrence on the incident date and were seen together riding a motorcycle without registration number going towards Govindpur at around 1.30 p.m. which is B proximate in point of time when the deceased was gunned down. From the deposition of PW1 it is further proved that the witness had identified appellant-U as the person who was riding the motorcycle sitting behind appellant-S not only in the Court, but also in the test C identification parade held during the course of investigation. [Para 27] [344-D-E]

2.3. It is clear that while the motorcycle on which the deceased was travelling along with PW16 was seized from the place of occurrence in terms of seizure memo, D the Motor Cycle used by accused was seized from the premises owned by appellant-S. From a reading of the seizure memo it is evident that the motorcycle was a black colour, Caliber Bajaj make with no registration number on the plate. From the motorcycle was recovered E a certificate of registration and fitness showing the name of the brother of appellant-S, as its owner. [Para 28] [345-F-H; 346-A]

2.4. The prosecution led evidence to prove that the F empty cartridges of 9 M.M. bullets were seized from the place of occurrence. One of the empty cartridges was recovered from near the dead body while the other was recovered from the mud footpath on the southern side of the road. This is evident from the seizure memo. In G addition and more importantly is the seizure of light green T-shirt of the complainant- (PW-16) with blood stains at the arm and back thereof. The T-shirt is torn near the left shoulder. Blue coloured jeans worn by the witness was also seized with a tear on the left knee. The deposition of PW1 and PW2 support these seizures H

which corroborate the version of the prosecution that the occurrence had taken place at the spot from where the dead body, the motorcycle, the empty cartridges and the blood stained earth were seized. The seizure of the T-shirt and the Jeans worn by PW16 with bloodstains on the T-shirt, scratches damaging the T-shirt near the left shoulder and the Jeans on the left knee also corroborates the prosecution version that when hit by the bullet fired by the pillion rider of the motorcycle driven by appellant-S, the motorcycle on which the deceased was travelling lost its balance bringing both of them down to the ground and causing damage to the clothes worn by PW16 and injuries to his person. The Courts below correctly appreciated the evidence produced by the prosecution in this regard and rightly concluded that the seizure of the articles mentioned above clearly supports the prosecution version and the sequence of evidence underlying the charge. [Para 29] [345-B-G]

2.5. The third aspect is the medical evidence, supporting the version of PW16 that he had sustained injuries when he fell down from the motor cycle after the deceased had been shot by the appellant-U. The medical certificate goes on to state that the injuries had been caused by hard and blunt substance. The making of the requisition by the Medical Officer (by which PW16 was sent for treatment with request for issue of an injury report), the medical examination of PW16 and presence of injuries on his person were satisfactorily proved by the prosecution and go a long way to support the prosecution version that PW16 was driving the motorcycle at the time of the incident and had sustained injuries once he lost his balance after the deceased sitting on the pillion was shot by the appellant-U. [Paras 30, 31] [345-H; 346-B-C; F-H]

2.6. PW16 was cross-examined extensively but his deposition was accepted by the Courts below who found

A the version to be both consistent and reliable. There is nothing inherently improbable about the manner in which PW16 narrated the occurrence or his presence on the spot. There is not even a suggestion of any enmity between the appellants and the witness nor a bias
B favouring the prosecution to make his version suspect. The narration given by the witness is natural and does not suffer from any material inconsistency or improbability of any kind. The presence of the witness on the spot is proved by PWs 1 & 2, both of whom reached
C the place of occurrence immediately after hearing about the killing of the deceased and met PW16 on the spot. Both these witnesses have testified that the T-shirt worn by the witness was bloodstained and the motorcycle which he was driving was lying on the spot with the dead
D body of the deceased at some distance. Both of them have signed the statement made by PW16 before the police which constitutes the first information report about the incident in which both of them have claimed that they have seen appellant-S with one other person going on
E the motorcycle whom they could identify. The presence of PW16 on the spot is testified even by PW6, also an eye-witness to the occurrence. That apart the presence of injuries on the person of the PW16 duly certified by the medical officer concerned, and the fact that the T-shirt
F worn by him was torn at two different places corresponding to the injuries sustained by him also corroborates the version given by the witness that he was driving the motorcycle as claimed by him when the deceased was gunned down. [Para 34] [348-F-H; 349-A-E]
G

2.7. The first information report was registered without any delay and PW16 was medically examined on the incident date itself, though late in the evening. All these circumstances completely eliminate the possibility
H of the witness being a planted witness. The testimony of

this witness and the deposition of the PWs 1 and 2 prove his being with the deceased before the incident and being on the spot immediately after the occurrence with bloodstains on his clothes with the motorcycle being driven by him lying nearby. Therefore, the finding recorded by the two courts below that the deceased was travelling with PW16 on the latter's motorcycle from Dhanbad to Nirsa at the time of the occurrence and was, therefore, a competent witness who could and has testified to this occurrence, as the same took place, is affirmed. [Para 35] [349-F-H; 350-A-B]

3.1. Identification of an accused in the Court by a witness constitutes substantive evidence in a case although any such identification for the first time at the trial may more often than not appear to be evidence of a weak character. That being so, a test identification parade (TIP) is conducted with a view to strengthening the trustworthiness of the evidence. Such a TIP then provides corroboration to the witness in the Court who claims to identify the accused persons otherwise unknown to him. Test Identification parades, therefore, remain in the realm of investigation. The Code of Criminal Procedure does not oblige the investigating agency to necessarily hold a test identification parade nor is there any provision under which the accused may claim a right to the holding of a test identification parade. The failure of the investigating agency to hold a test identification parade does not, in that view, have the effect of weakening the evidence of identification in the Court. As to what should be the weight attached to such an identification is a matter which the Court will determine in the peculiar facts and circumstances of each case. In appropriate cases the Court may accept the evidence of identification in the Court even without insisting on corroboration. [Para 37] [350-F-H; 351-A-C]

A 3.2. The omission of the investigating agency to associate PW16 with the test identification parade in which PW1identified the appellant-U will not *ipso jure* prove fatal to the case of the prosecution, although the investigating agency could and indeed ought to have
B associated the said witness also with the test identification parade especially when the witness had not claimed familiarity with the appellant-U before the incident. Even so, its omission to do so does not affect the credibility of the identification of the said appellant by
C PW16 in the Court. That is because the manner in which the incident has taken place and the opportunity which PW16 had, to see and observe the actions of appellant-U were sufficient for the witness to identify him in the Court. This opportunity was more than a fleeting glimpse
D of the assailants. Appellant-U was seen by the witness pillion riding the motorcycle, coming in close proximity to his motorcycle, shooting the deceased from close range, stopping at some distance and coming back to the motorcycle where the deceased and the witness had
E fallen, abusing and threatening the witness and asking him to run away from the spot. All this was sufficient to create an impression that would remain imprinted in the memory of anyone who would go through such a traumatic experience. It is not a case where a chance and uneventful glance at another motorcyclist may pass
F without leaving any impression about the individual concerned. It is a case where the nightmare of the occurrence would stay in the memory of and indeed haunt the person who has undergone through the experience for a long long time. Absence of a test
G identification parade and the failure of the Investigating Officer to associate the witness with the same does not, therefore, make any material difference in the instant case. [Para 40] [353-D-H; 354-A-C]

H *Malkhansingh and Ors. v. State of M.P.* (2003) 5 SCC

746; *Pramod Mandal v. State of Bihar* (2004) 13 SCC 150; *Aqeel Ahmad v. State of Uttar Pradesh* 2008 (16) SCC 372 – relied on. A

Krishna Govind Patil v. State of Maharashtra 1964 (1) SCR 678 – referred to. B

4.1. It is true that not only according to PW16 but also according to PW1, PW2 and the Investigating Officer, the T-shirt worn by PW16 was bloodstained which was seized in terms of the seizure memo referred to earlier. It is also true that a reference to the forensic science C laboratory would have certainly corroborated the version given by these witnesses about the T-shirt being bloodstained and the blood group being the same as that of the deceased. That no explanation is forthcoming for the failure of the prosecution in making a reference to the D forensic science laboratory which could have strengthened the version given by PW16 too is not in dispute. However, the failure of the investigating agency to make a reference would not in the circumstances of the case discredit either the version of the witnesses that E the T-shirt was bloodstained when it was seized or constitute a deficiency of the kind that would affect the prosecution version. Failure to make a reference to forensic science laboratory is in the circumstances of the case no more than a deficiency in the investigation of the F case. Any such deficiency does not necessarily lead to the conclusion that the prosecution case is totally unworthy of credit. Deficiencies in investigation by way of omissions and lapses on the part of investigating agency cannot in themselves justify a total rejection of the prosecution case. [Para 42] [354-F-H; 355-A-C] G

4.2. The failure on the part of the investigating officer in sending the blood stained clothes to the FSL and the empty cartridges to the ballistic expert would not be sufficient to reject the version given by the eye witnesses. H

A **That is especially so when a reference to the ballistic expert would not have had much relevance since the weapon from which the bullets were fired had not been recovered from the accused and was not, therefore, available for comparison by the expert. [Para 44] [356-E]**

B

Ram Bihari Yadav v. State of Bihar and Ors. **(1998) 4 SCC 517;** *Surendra Paswan v. State of Jharkhand* **(2003) 12 SCC 360;** *Amar Singh v. Balwinder Singh and Ors.* **(2003) 2 SCC 518 – relied on.**

C **5. The fact that the motorcycle on which the deceased was travelling along with PW16 was found at the place of occurrence is amply proved by the evidence adduced by the prosecution. It is also clear that the motorcycle in question did not belong either to the** D **deceased or to PW16. In the circumstances there is no improbability in the version of PW16 that the said motorcycle had been borrowed by him from his friend. The mere fact that the owner of the motorcycle or PW16 had not applied for release of the motorcycle in their** E **favour does not in the least affect the prosecution case muchless does it render the same doubtful in toto. [Para 45] [356-G-H; 357-A-B]**

6. The incident in question had taken place around F **2.45 p.m. The statement of PW16 was recorded by the investigating officer at around 4.15 p.m. on the same day based on which first information report was registered in the police station. The copy of the first information was received by the jurisdictional magistrate the next day. Apart from PW16, the statement was also signed by PW1** G **and PW2. All the three witnesses have stood by what has been attributed to them in the first information report. Also, there was absence of any unexplained or abnormal delay in the registration of the case and the despatch of the first information report to the jurisdictional magistrate. [Para** H **46] [356-G-H; 357-C-G]**

7.1. No doubt there was delay of one and half months in the recording of statement of PW-6, however, the same does not by itself justify rejection of his testimony. The legal position is well settled that mere delay in the examination of a particular witness does not, as a rule of universal application, render the prosecution case suspect. It depends upon circumstances of the case and the nature of the offence that is being investigated. It would also depend upon the availability of information by which the investigating officer could reach the witness and examine him. It would also depend upon the explanation, if any, which the investigating officer may offer for the delay. In a case where the investigating officer has reasons to believe that a particular witness is an eye-witness to the occurrence but he does not examine him without any possible explanation for any such omission, the delay may assume importance and require the Court to closely scrutinize and evaluate the version of the witness but in a case where the investigating officer had no such information about any particular individual being an eye-witness to the occurrence, mere delay in examining such a witness would not *ipso facto* render the testimony of the witness suspect or affect the prosecution version. [Para 49] [359-D-H; 360-A]

7.2. The investigating officer, in the instant case, stated that PW6 had met him for the first time on 2nd June, 2000 and that he recorded his statement on the very same day. He further stated that prior to 2nd June, 2000 he had no knowledge that PW6 was a witness to the occurrence. Even PW6 has given an explanation how the investigating officer reached him. According to his deposition the Inspector had told him that he had come to record his statement after making an enquiry from the person who was sitting on the pillion of his motorcycle on the date of occurrence. The pillion rider had also informed him that his statement had been recorded by the police. The Trial

A **Court and the High Court have accepted the explanation offered by the investigating officer for the delay. There is no reason to take a different view or to reject the testimony of this witness only because his statement was recorded a month and half after the occurrence.**
B **[Para 51] [360-F-H; 361-A-B]**

Ranbir and Ors. v. State of Punjab **(1973) 2 SCC 444;** *Satbir Singh and Ors. v. State of Uttar Pradesh* **(2009) 13 SCC 790 – relied on.**

C **8. PW6 clearly stated that he has seen the deceased going on a motorcycle on the date of the occurrence and that appellant-S had brought his motorcycle to the left of the motorcycle of the deceased whereupon appellant-U pillion rider had shot the deceased in the head. The**
D **version given by the witness does not admit of being understood to suggest that the witness reached the place of occurrence after the occurrence had taken place. What the witness has stated is that he went to the place where the deceased had fallen 5-7 minutes after the occurrence**
E **was over. Witnessing the occurrence cannot be confused with going to the place where the deceased had fallen. On a careful reading of the deposition of the witness it is clear that there is no infirmity in the same that may justify the rejection of the version of PW6. Both**
F **the Courts below rightly accepted the testimony of PW 6 while finding the appellants guilty. [Para 52] [361-B-E]**

9. In the instant case, the High Court was, however, not justified in imposing the extreme penalty of death upon the appellants for reasons more than one. Firstly,
G **because the appellants are not professional killers. Even according to the prosecution they were only a part of the coal mafia active in the region indulging in theft of coal from the collieries. The deceased being opposed to such activities appears to have incurred their wrath and got**
H **killed. Secondly, because even when the deceased was**

a politician there was no political angle to his killing. Thirdly, because while all culpable homicides amounting to murder are inhuman, hence legally and ethically unacceptable yet there was nothing particularly brutal, grotesque, diabolical, revolting or dastardly in the manner of its execution so as to arouse intense and extreme indignation of the community or exhaust depravity and meanness on the part of the assailants to call for the extreme penalty. Fourthly, because there was difference of opinion on the question of sentence to be awarded to the convicts. The Trial Court did not find it to be a rarest of rare case and remained content with the award of life sentence only which sentence the High Court enhanced to death. Considering all these circumstances, the death sentence awarded to the appellants deserves to be commuted to life imprisonment. [Para 60] [365-E-H; 366-A-B]

Jagmohan Singh v. The State of U.P **(1973) 1 SCC 20**; *Bachan Singh* v. *State of Punjab* **(1980) 2 SCC 684**; *Machhi Singh and Ors. v. State of Punjab* **(1983) 3 SCC 470**; *Farooq alias Karattaa Farooq and Ors. v. State of Kerala* **(2002) 4 SCC 697**; *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* **(2009) 6 SCC 498**; *State of Maharashtra v. Prakash Sakha Vasave and Ors.* **(2009) 11 SCC 193 – relied on.**

10. In the result, the judgments and orders under appeal are affirmed with the modification that instead of sentence of death as awarded by the High Court, the appellants shall suffer rigorous imprisonment for life. [Para 61] [366-B-C]

Case Law Reference:

(1973) 3 SCC 219	**Relied on**	**Para 13**

A	(1996) 9 SCC 40	Relied on	Para 13
	(2008) 16 SCC 73	Relied on	Para 13
	(1964) 1 SCR 678	Referred to	Para 36
B	(2003) 5 SCC 746	Relied on	Para 37
	(2004) 13 SCC 150	Relied on	Para 38
	(2008) 16 SCC 372	Relied on	Para 39
	(1998) 4 SCC 517	Relied on	Para 42
C	(2003) 12 SCC 360	Relied on	Para 42
	(2003) 2 SCC 518	Relied on	Para 43
	(1973) 2 SCC 444	Relied on	Para 49
D	(2009) 13 SCC 790	Relied on	Para 50
	(1973) 1 SCC 20	Relied on	Para 54
	(1980) 2 SCC 684	Relied on	Para 55
E	(1983) 3 SCC 470	Relied on	Para 56
	(2002) 4 SCC 697	Relied on	Para 57
	(2009) 6 SCC 498	Relied on	Para 58
	(2009) 11 SCC 193	Relied on	Para 59
F			

CRIMINAL APPELATE JURISDICTION : Criminal Appeal Nos. 791-792 of 2005.

From the Judgment & Order dated 6.5.2005 of the High
G Court of Jharkhand at Ranchi in Criminal Appeal (DB) No. 43 of 2004 and Criminal Revision No. 136 of 2004.

WITH

Criminal Appeal No. 793-794 of 2005.

H

U.R. Lalit, A.T.M. Rangaramanujam, Sunil Kumar, Ashok Kumar Singh, Prakhar Sharma, Anu Gupta, S Biswajit Meitei, S. Chandra Shekhar, P. Sharma, M.K. Jha, Anil K. Jha, Lalita Kaushik, V.N. Raghupathy for the appearing parties. A

The Judgment of the Court was delivered by B

T.S. THAKUR, J. 1. These appeals by special leave are directed against a common judgment and order dated 6th May, 2005 passed by the High Court of Jharkhand at Ranchi whereby the conviction of appellant-Sheo Shankar Singh under Section 302 read with Section 34 IPC and that of appellant-Umesh Singh under Section 302 read with Section 34 IPC and Section 27 of the Arms Act have been confirmed and the sentence of rigorous imprisonment for life imposed upon the said two appellants by the Trial Court enhanced to the sentence of death. Criminal Revision Petition No.136 of 2004 seeking enhancement of sentence imposed upon Umesh Singh and Sheo Shankar Singh has been consequently allowed by the High Court while Criminal Revision Petition No.135 of 2004 filed against the acquittal of three other accused persons Md. Zahid, Premjeet Singh and Uma Shankar Singh dismissed. C D E

2 Briefly stated the prosecution case is that on 14th April, 2000, the deceased-Shri Gurudas Chatterjee, a sitting member of Jharkhand State Legislative Assembly was returning to Nirsa from Dhanbad riding the pillion seat of a motorcycle that was being driven by the first informant Apurba Ghosh, examined at the trial as PW 16. At about 2.45 p.m. when the duo reached a place near Premier Hard Coke, Apurba Ghosh, the informant heard the sound of a gunshot from behind. He looked back only to find that appellant-Sheo Shankar Singh was driving a black motorcycle on the left of the informant with an unknown person, later identified as Umesh Singh, sitting on the pillion seat carrying a pistol in his hand. Umesh Singh, the pillion rider, is alleged to have fired a second time from close range which hit the deceased-Gurudas Chatterjee in the head, who slumped F G H

A on the back of the informant thereby disturbing the balance of the motorcycle and bringing both of them to the ground. The motorcycle driven by Sheo Shanker Singh was stopped by him a little ahead whereupon Umesh Singh the pillion rider got down; walked back to the place where the deceased had fallen, B abused the informant verbally and asked him to run away from there failing which even he would be killed. So threatened the informant hurried away from the spot whereupon Umesh Singh-appellant fired a third bullet at the deceased, pushed his dead body down the side slope of the road, walked back to the C motorcycle whose engine was kept running by Sheo Shankar Singh and fled towards Nirsa. Some people are said to have run towards them but were scared away by Umesh Singh with the gun. The motorcycle did not have a registration number. A crowd is said to have gathered on the spot that included Abdul D Kudus Ansari (PW1) and Lal Mohan Mahto (PW2) who disclosed that they had seen Sheo Shankar Singh and one unknown person moving on a motorcycle without a registration number sometime before the occurrence.

3. On hearing a rumour about the killing of the deceased E MLA, Sub Inspector of Police Ramji Prasad (PW17) rushed to the spot and recorded the statement of Apurba Ghosh (PW16) in which the informant narrated the details of the incident as set out above. The statement of Apurba Ghosh constituted the First Information Report in the case which was signed not only by F Apurba Ghosh but also by Abdul Kudus Ansari (PW1) and Lal Mohan Mahto (PW2). Based on the said statement/FIR a case under Section 302/34 and 120B of IPC and Section 27 of the Arms Act was registered in Police Station Govindpur and the investigation commenced.

G

4. In the course of the investigation an inquest report was prepared by BDO, Shishir Kumar Sinha, while the investigating officer seized two empties of 9 M.M. bullet engraved with "HP 59/2" at the bottom from the spot, apart from the red Hero Honda splendour motorcycle bearing registration No. WB 38

H

E 7053 on which the deceased was travelling at the time of occurrence. Blood-stained T Shirt and a light blue coloured jeans worn by Apurba Ghosh were also seized, besides blood-stained earth from the place of occurrence.

5. On 15th April, 2000 investigation was taken over by Shri Raja Ram Prasad (PW18) who on 16th April, 2000 seized the black coloured Bajaj Caliber motorcycle allegedly being driven by appellant-Sheo Shankar Singh at the time of the commission of the offence. In addition, a Test Identification Parade was got conducted in which Abdul Qudus Ansari (PW1) identified the accused appellant-Umesh Singh. After completion of the investigation a charge-sheet was eventually filed against the accused persons for offences punishable under Section 302/34/120B and 201 of the Indian Penal Code. Appellant-Umesh Singh was further charged with an offence punishable under Section 27 of the Arms Act. The accused were committed to the Court of Sessions at Dhanbad who made the case over to the Court of Additional Sessions Judge XIII, Dhanbad for trial before whom the accused pleaded not guilty and claimed a trial.

6. At the trial the prosecution examined 20 witnesses while the accused remained content with two in defence. The trial court by its judgment dated 18th November, 2003 found the appellants Sheo Shankar Singh and Umesh Singh guilty of the charges under Section 302/34 IPC. Appellant-Umesh Singh was further held guilty of the charge under Section 27 of the Arms Act. Out of the remaining six accused persons, the trial court found Narmedeshwar Pd. Singh @ Chora Master, Bijay Singh and Md. Nooren Master guilty of the charge under Section 302 read with Section 120B of the IPC. Accused Uma Shankar Singh, Premjee Singh and Md. Zahid were, however, acquitted for insufficiency of evidence against them.

7. By a separate order dated 20th November, 2003 passed by the Trial Court, appellants Sheo Shanker Singh and Umesh Singh were sentenced to undergo rigorous imprisonment for life. Appellant-Umesh Singh was in addition

A sentenced to undergo rigorous imprisonment for three years under Section 27 of the Arms Act. Similarly, accused Narmedeshwar Pd. Singh @ Chora Master, Bijay Singh and Md. Nooren Master were sentenced to undergo rigorous imprisonment for life under section 302/120B IPC.

B

8. Aggrieved by their conviction and sentence, the appellants herein and the other three convicts filed criminal appeals No.43 and 78 of 2004 before the High Court of Jharkhand at Ranchi. Criminal Revision Petition No.135 of 2004 was filed by Apurba Ghosh against the acquittal of C accused Uma Shankar Singh, Premjeet Singh and Md. Zahid, while Criminal Revision Petition No.136 of 2004 prayed for enhancement of the sentence imposed upon the appellants from life to death.

D 9. By the judgment and order impugned in these appeals the High Court acquitted Narmedeshwar Pd. Singh @ Chora Master, Bijay Singh and Md. Nooren Master and allowed criminal appeals No.43 and 78 to that extent. The conviction of appellants Sheo Shankar Singh and Umesh Singh was upheld E by the High Court and the sentence imposed upon them enhanced to the sentence of death by hanging. Criminal Revision Petition No.135 of 2004 against the acquittal of Uma Shankar Singh, Premjeet Singh and Md. Zahid was, however, dismissed and their acquittal affirmed. The present appeals F assail the correctness of the said judgment and order as noticed above.

10. We have heard Mr. U.R. Lalit, learned senior counsel for the appellants, Mr. A.T.M. Rangaramanujam and Mr. Sunil Kumar, learned senior counsels appearing for the respondents G at considerable length. We have also been taken through the evidence on record and the judgments of the Courts below. We shall presently advert to the submissions made by learned counsel for the parties but before we do so we may at the outset point out that the cause of death of late Shri Gurudas Chatterjee H being homicidal was not disputed and in our view rightly so. That

is because the evidence on record amply proves that the deceased died of gunshot injuries sustained by him in the head. The deposition of Dr. Shailender Kumar (PW14) who conducted the post-mortem examination of the deceased along with two other doctors viz. Prof. Dr. Rai Sudhir Prasad, and Dr. Chandra Shekhar Prasad leaves no manner of doubt that the death of Shri Gurudas Chaterjee was the result of two ante-mortem gunshot wounds, which the witness has described as under in his deposition in the Court and the post-mortem report, Ex.5:

> I. Fire arm wound of entrance ¾ cm x ½ cm cavity deep with inverted margins and abrasion collar located on the front of upper portion of left side of face about 1.5 cm in front of Pinna of left ear. No burning, singing or tattooing were seen.
>
> II. Fire arm exit wound 1¼ cm x ¾ cm cavity deep with inverted margins placed 2.5 cm above the mid zone of right eye brow. No evidence of abrasion collar seen.
>
> III. Fire arm wound of entrance ¾ cm diameter, cavity deep with inverted margins and abrasion collar on left side of back of head in prito occipital area 5 cm away from left ear low. No burning, singing or tattooing were seen.
>
> IV. Fire arm exit wounds ¾ cm diameter cavity deep with inverted margins and protruding brain matter in the left side of back of head in perito occipital area 2 cm away from left ear low. No abrasion collar was seen.
>
> Injury no.IV is the exit wound of injury no.1 and injury no.2 is exit wound of injury no.3 as it was confirmed by the track of blood clot and laceration found in dissection.
>
> V. Lacerated wounds:
>
> (a) 1cm x ½ cm x scalp deep on the right side of forehead, 6 cm above the inner end of right eye brow.

(b) ¾ cm x ½ cm x scalp deep on occuipttal.

VI. Abrasions:

(a) 1-½ cm x ¾ cm on middle of left side of forehead.

(b) 2½ cm x 1½ cm with tail of 3 cm x ½ cm horizontally placed on back of right shoulder.

(c) ½ cm linear abrasion of 9 cm x 1/3 cm horizontally placed on back of lower portion of left side of chest.

(d) 2½ cm x ¾ cm on back of left side flank of abdomen."

On dissection

Multiple fractures of frontal and both parietal bones were found Stomach contain about 100 M.L. semi digested rice and sag. All viscera were pale, heart and bladder empty.

Opinion

In our opinion death occurred instantaneously due to aforementioned cranio – cerebral injuries resulting from the fire arm.

Time elapsed since death – between 18 and 24 hrs. before the time of post-mortem."

11. In the light of the above there is no gainsaying that the deceased died a homicidal death caused by gunshot injuries. Apart from the fact that cause of the homicidal death was never questioned by the accused before the trial court, the appellate court or even before us, the line of cross- examination of the doctor who conducted the post-mortem examination too does not question the veracity of the opinion of the medical expert that the deceased had died because of the gunshot injuries received by him. It is true that the doctor has not been able to specifically state which of the two gunshot injuries had proved

fatal, but that in our opinion is wholly inconsequential, having regard to the sequence of events unfolded by the deposition of the witnesses examined at the trial.

12. Coming then to the substratum of the prosecution case we need point out that the same rests entirely on the ocular testimony of Apruva Ghosh (PW16) and Prasant Banerjee (PW6), apart from the incriminating circumstances called in aid by the prosecution to lend support and corroboration to the testimony of the said two eye-witnesses. We shall take up for discussion the deposition of the said witnesses, but before we do so we may deal with the question whether the prosecution has proved any motive for the commission of the crime alleged against the appellants and if so to what effect.

13. The legal position regarding proof of motive as an essential requirement for bringing home the guilt of the accused is fairly well settled by a long line of decisions of this Court. These decisions have made a clear distinction between cases where prosecution relies upon circumstantial evidence on the one hand and those where it relies upon the testimony of eye witnesses on the other. In the former category of cases proof of motive is given the importance it deserves, for proof of a motive itself constitutes a link in the chain of circumstances upon which the prosecution may rely. Proof of motive, however, recedes into the background in cases where the prosecution relies upon an eye-witness account of the occurrence. That is because if the court upon a proper appraisal of the deposition of the eye-witnesses comes to the conclusion that the version given by them is credible, absence of evidence to prove the motive is rendered inconsequential. Conversely even if prosecution succeeds in establishing a strong motive for the commission of the offence, but the evidence of the eye-witnesses is found unreliable or unworthy of credit, existence of a motive does not by itself provide a safe basis for convicting the accused. That does not, however, mean that proof of motive even in a case which rests on an eye-witness account does not lend strength to the prosecution case or fortify the court

A in its ultimate conclusion. Proof of motive in such a situation certainly helps the prosecution and supports the eye- witnesses. See *Shivaji Genu Mohite v. The State of Maharashtra,* (1973) 3 SCC 219, *Hari Shanker v. State of U.P.* (1996) 9 SCC 40 and *State of Uttar Pradesh v. Kishanpal and Ors.* (2008) 16
B SCC 73.

14. The case at hand rests upon the deposition of the eyewitnesses to the occurrence. Absence of motive would not, therefore, by itself make any material difference. But if a motive is indeed proved it would lend support to the prosecution
C version. The question is whether the prosecution has established any such motive to fortify its charge against the appellants.

15. Depositions of Apurba Ghosh (PW16), Aamlal Kisku
D (PW15) and Arup Chatterjee (PW19) are relevant on the question of motive and may be briefly discussed at this stage. Arup Chatterjee (PW19) happens to be the son of the deceased Gurudas Chatterjee. According to this witness the appellants and most of their family members constitute what is
E described by him as "coal mafia" of Dhanbad whom the deceased used to fight, with the help of the police and administration to prevent the theft of coal in the region. The witness further states that Aamlal Kisku had a petrol pump situate at Belchadi, which petrol pump was given by Shri Kisku
F to the accused-Sheo Shanker Singh for being run. Aamlal Kisku being an illiterate adivasi was, according to the witness, being kept as a bonded (bandhua) labourer by the appellant on payment of Rs.30/- per day. The witness further states that Aamlal Kisku approached the deceased for help and the later
G with the help of police and administration got the ownership of the petrol pump restored to Shri Kisku. Both these steps namely prevention of theft of coal in the region and restoration of the petrol pump to Aamlal Kisku annoyed the appellant-Sheo Shanker Singh, for which reason the deceased was done to

H

death after he had won his third consecutive election to the State Assembly. A

16. In cross-examination the witness has expressed his ignorance about the land where the petrol pump was installed and about the source of income of Aamlal Kisku. The witness also expressed ignorance about the expenditure involved in the installation of the pump or the source from where Shri Kisku had arranged finances. The witness stated that criminal cases were pending before the Court against Sheo Shanker Singh and Narmedeshwar Pd. Singh and his sons, but expressed ignorance about filing of the civil suit by Narmadeshwar Singh regarding the petrol pump in dispute. Witness claimed to have heard a conversation between Aamlal Kisku and the deceased regarding the dispute over the petrol pump. B C

17. Aamlal Kisku (PW15) has, in his deposition, stated that he owns a petrol pump in Belchadi which was allotted to him out of the Advasi quota. Since he was not familiar with the business in the sale of oil and lubricants he had taken help from Narmedeshwar Pd. Singh and Sheo Shanker Singh. Subsequently Sheo Shanker Singh-appellant started treating him like a labourer and did not render any accounts regarding the petrol pump. He, therefore, made complaints to the company and approached late Gurudas Chatterjee MLA, and it was after long efforts that the petrol pump was restored to the witness. Sheo Shankar Singh and Narmedeshwar Pd. Singh had extended threats to him regarding which he had informed the police. D E F

18. In cross-examination the witness stated that the business of petrol pump was carried on by him in partnership with Sheo Shanker Singh for 4-5 months in the year 1997. No partnership-deed was, however, written. He did not know whether any joint account with the appellants had been opened in Poddardih branch of Allahabad Bank. He also did not know whether sales tax registration was in joint names and whether the land belonged to Sheo Shankar Singh. The witness admits G H

A that he had lodged a criminal case against Sheo Shankar Singh, Rama Shanker Singh and Rajesh Singh and that another case was filed against Narmedeshwar Pd. Singh also. The witness denied that the petrol pump had been installed with the help of the money provided by Sheo Shanker Singh and
B Narmedeshwar Pd. Singh and that the cases referred to by him had been lodged against the said two persons on the incitement of others.

19. Apurba Ghosh (PW16) apart from being an eye-witness to the incident also mentions about a petrol pump
C situated on G.T. Road at Nirsa owned by a person belonging to Scheduled Tribe community but was being run by Narmedeshwar Pd. Singh illegally. The deceased fought against them with the help of Police and local administration because of which the ownership of the petrol pump was got
D restored to the owner concerned. The witness also refers to a statement made by the deceased regarding coal theft 5 or 6 days before the incident in question as a result whereof Narmedeshwar Pd. Singh and Nooren Master were both sent to jail.

E

20. There is thus evidence to prove that a petrol pump situated at G.T. Road at Nirsa stood in the name of Aamlal Kisku which had been allotted in his name in the Scheduled Tribe's quota. It is also evident that to establish and run the said
F petrol pump Aamlal Kisku had taken the help from Shri Narmedeshwar Pd. Singh and Sheo Shankar Singh. Disputes between the original allottee and the appellant-Sheo Shankar Singh and his father Narmedeshwar Pd. Singh had, however, arisen and manifested in the form of civil and criminal cases between them. Aamlal Kisku had in that connection taken the
G help of the deceased who had with the help of the police and local administration secured the restoration of the petrol pump to Shri Kisku which annoyed the appellant-Sheo Shankar Singh and his father Narmedeshwar Pd. Singh. There is also evidence to the effect that the deceased had acted against

H

what has been described as 'coal mafia' of Dhanbad with the help of police and administration to prevent the coal theft in the region and the steps taken by the deceased had resulted in the arrest of Narmedeshwar Pd. Singh and Nooren Master in connection with the said cases. Both these circumstances appear to have contributed to the incident that led to the killing of the deceased who was perceived by the appellants as a hurdle in their activities.

21. That brings us to the most critical part of the case in which we shall examine whether the prosecution has proved beyond a reasonable doubt, the sequence of events on which is based the charge of murder levelled against the appellants. The evidence adduced by the prosecution in this regard comprises the following distinct features:

(i) Evidence suggesting that on the date of occurrence and proximate in point of time the appellants were seen together riding a black coloured motor cycle, without a registration number.

(ii) Evidence establishing seizure of the motor cycle on which the deceased was riding from the place of occurrence and that which was being driven by appellant-Sheo Shankar Singh from his factory.

(iii) The eye witness account of the occurrence as given by Shri Apurva Ghosh PW16 and Shri Prabshant Banerjee PW6.

(iv) Medical evidence, supporting the version of PW 16, that he sustained injuries when he fell from the motor cycle being driven by him on the deceased who was on the pillion being shot by appellant Umesh Singh.

We propose to deal with each one of the above aspects *ad seriatim*.

22. Abdul Kudus Ansari (PW1), in his deposition before

A the trial court stated that on 14th April, 2000 i.e. the date of occurrence while he was at "Amona turn" (Mod in Hindi) he saw appellant-Sheo Shankar Singh going towards Nirsa on a Caliber Motorcycle at about 11.15 A.M. The witness further states that he was at Amona Mod till around 1 p.m.-1.15 p.m. B when he saw appellant-Sheo Shankar Singh going towards Gobindpur on a motorcycle with another person on the pillion seat. At about 2.45 p.m. when he was at his house, he heard that the deceased M.L.A. had been murdered. He reached the spot where some persons were already present. The person C who was driving the motorcycle on which the deceased was riding said that appellant-Sheo Shanker Singh was driving the motorcycle while the person sitting behind had fired the shots. In a Test Identification Parade the witness claims to have identified appellant-Umesh Singh as the person whom he had seen on the pillion seat of the motorcycle driven by appellant- D Sheo Shankar Singh on the date of the occurrence. The witness was extensively cross-examined by the defence, but there is nothing in the deposition which would render the version given by him doubtful and unworthy or credence. The fact that the witness is a signatory to the statement of Apurba Ghosh E (PW16), which statement was recorded by the Investigating Officer on 14th April, 2000 at about 4.15 p.m. only shows that he had indeed reached the place of occurrence immediately after hearing about the killing of the deceased as stated by him in his deposition in the court; and that he had not only offered F but actually identified the pillion rider in the Test Identification Parade.

23. To the same effect is the deposition of Lal Mohan Mahto (PW2) who in his deposition stated that on 14th April, G 2000 at about 11 A.M. he saw the deceased going towards Dhanbad on a motorcycle, who told him to stay near the party office at Ratanpur. After some time he saw appellant-Sheo Shanker Singh riding a motorcycle without a registration number and going towards Nirsa. Around 1.30 P.M. again he saw the H said appellant going towards Govindpur by the same

motorcycle with one other person sitting on the pillion seat. Around 3 P.M. there was a hue and cry that M.L.A. Shri Gurudas Chatterjee had been killed. He reached the G.T. Road at Deoli and found the deceased soaked in blood. Apurva Ghosh (PW16) told the witness that while appellant-Sheo Shanker Singh was driving the motorcycle the person sitting behind had fired the bullet that killed the deceased. The witness identified the appellant-Sheo Shanker Singh as the person who was driving the motorcycle and appellant-Umesh Singh as the person who was sitting on the pillion seat.

24. In cross-examination this witness has, inter alia, stated that he reached the place of occurrence on hearing the noise about the killing of the deceased. There was a crowd, The police had arrived on the spot after few minutes of his reaching there. He told the police he could identify the person sitting behind Sheo Shankar Singh and that he knew Apurva Ghosh (PW16) from the date of incident itself. He had seen Sheo Shankar Singh standing near Khalsa hotel on the date of the incident. At that time there was nobody with him. The witness denies being a member of Maharashta Coordination Committee (MCC). He admitted being a member of the Committee formed for the construction of a memorial to Gurudas Chatterjee.

25. The deposition of Subodh Chandra Kumbhkar (PW8) goes to show that the appellant-Umesh Singh was seen by the witness on 14th April, 2000 at 11.00 a.m. at Amona turn (Mod) when he visited the restaurant of the witness for food. The witness further stated that he had seen appellant-Sheo Shankar Singh on the same day in the morning towards the side of the weigh bridge (Kanta). Appellant-Sheo Shankar Singh was at that time with Vijay Singh Chaudhari.

26. In cross-examination this witness has stated that the license to run the restaurant (described as Hotel by the witness) is in the name of his brother Nagenddra Nath Kumbhkar. He is running the hotel for the past 10-12 years. The witness does

A not know where Umesh Singh used to work and had no acquaintance with him. The witness denied the suggestion that he used to ask Umesh Singh about his well being whenever he met him. Umesh Singh had on that date taken food in the hotel of the witness and gone away. There were several others B like Tapan Bharti and Mantoo present in the restaurant. The witness denied the suggestion that he had made a false statement that he had seen Sheo Shankar Singh and Umesh Singh on the date of the incident. There is nothing in the deposition of even this witness that could render his version C unworthy of credence.

27. The depositions of all the witnesses referred to above, in our opinion, satisfactorily prove that the appellants were seen hanging around the place of occurrence on 14th April, 2000 and were seen together riding a motorcycle without registration D number going towards Govindpur at around 1.30 p.m. which is proximate in point of time when the deceased was gunned down. From the deposition of Abdul Kudus Ansari (PW1) it is further proved that the witness had identified Umesh Singh as the person who was riding the motorcycle sitting behind E appellant-Sheo Shankar Singh not only in the Court, but also in the test identification parade held during the course of investigation.

28. Coming to the second aspect on which the prosecution F has led evidence in support of its case we may point out that while the motorcycle on which the deceased was travelling along with Apurba Ghosh PW16 was seized from the place of occurrence in terms of seizure memo marked Exh.3, the Motor Cycle used by accused was seized from the premises of G Kalyans Vyapor Brisket Udyog owned by the appellant-Sheo Shankar Singh. This seizure was made on 16th April, 2000 at 2.20 p.m. From a reading of the seizure memo it is evident that the motorcycle was a black colour, Caliber Bajaj make with no registration number on the plate. From the motorcycle was recovered a certificate of registration and fitness showing the H

name of Jai Shankar Singh, son of N.P. Singh of Nirsa, as its owner. Jai Shankar Singh, it is noteworthy, is none other than the brother of appellant-Sheo Shankar Singh.

29. Apart from the seizure mentioned above, the prosecution has led evidence to prove that the empty cartridges of 9 M.M. bullets with HP-59-II and Triger mark on them were seized from the place of occurrence. One of the empty cartridges was recovered from near the dead body while the other was recovered from the mud footpath on the southern side of the road. This is evident from the seizure memo marked Exh.1/9. In addition and more importantly is the seizure of light green T-shirt of the complainant-Apurba Ghosh (PW-16) with blood stains at the arm and back thereof. The T-shirt is torn near the left shoulder. Blue coloured jeans worn by the witness was also seized with a tear on the left knee. The deposition of Abdul Qudus (PW1) and Lal Mohan Mahto (PW2) support these seizures which corroborate the version of the prosecution that the occurrence had taken place at the spot from where the dead body, the motorcycle, the empty cartridges and the blood stained earth were seized. The seizure of the T-shirt and the Jeans worn by Apurba Ghosh (PW16) with bloodstains on the T-shirt, scratches damaging the T-shirt near the left shoulder and the Jeans on the left knee also corroborates the prosecution version that when hit by the bullet fired by the pillion rider of the motorcycle driven by appellant-Sheo Shankar Singh, the motorcycle on which the deceased was travelling lost its balance bringing both of them down to the ground and causing damage to the clothes worn by Apurba Ghosh (PW16) and injuries to his person. The Courts below have, in our opinion, correctly appreciated the evidence produced by the prosecution in this regard and rightly concluded that the seizure of the articles mentioned above clearly supports the prosecution version and the sequence of evidence underlying the charge.

30. The third aspect on which the prosecution has led evidence and which we need to examine before we go to the

A deposition of the eye witnesses is the medical evidence, supporting the version of Apurba Ghosh (PW16) that he had sustained injuries when he fell down from the motor cycle after the deceased had been shot by the appellant-Umesh Singh. Reliance is in this regard placed by the prosecution upon the B request made by Ramjee Prasad (PW17) to the Medical Officer, Primary Health Centre, Govindpur by which Apurba Ghosh (PW16) was sent for treatment with a request for issue of an injury report. The requisition is dated 14th April, 2000 and records three injuries which the witness had sustained apart C from the complaint of pain in the chest and the body. Dr. S.C. Kunzni of Primary Health Centre, Govindpur accordingly examined the injured Apurba Ghosh (PW16) at 10.25 p.m. on 14th April, 2000 and found the following injuries on his person:

D

1. Complain of chest pain.

2. An abrasion about ½" x ½" injury on the left knee it. And blackish colour.

3. An abrasion on the lateral malloouo of left leg which E is ¼" x ¼" size.

4. Abrasion about ½" in radius on circular in size and blackish crust on the left shoulder.

5. Complain of body ache.

F

31. The certificate goes on to state that the injuries had been sustained within 8 hours and had been caused by hard and blunt substance. The making of the requisition, the medical examination of the injured, the presence of injuries on his person have been, in our opinion, satisfactorily proved by the G prosecution and go a long way to support the prosecution version that Apurba Ghosh (PW16) was driving the motorcycle at the time of the incident and had sustained injuries once he lost his balance after the deceased sitting on the pillion was shot by the appellant-Umesh Singh.

H

32. Time now to examine the eye-witness account of the occurrence. In his deposition before the trial court Apurba Ghosh (PW16) stated that according to a previously arranged programme he had borrowed a Hero Honda motorcycle from one of his friends and reached the house of the deceased Gurudas Chatterji at 7.00 a.m. After visiting the party office and talking to some persons there the deceased returned to his residence at 9.30 a.m., had his meals and left for Dhanbad at about 10.15 a.m. On the way they visited Mylasia Company and finally started for Dhanbad from there at 11.00 a.m. At Govindpur Block they met Lal Mohan Mahto (PW2) who was told by the deceased to remain at the party office till he returned from Dhanbad. They started from Dhanbad at about 12.00 noon and reached Kalyan Bhawan for the meeting in which the MLA met the people assembled there. In the meantime the witness went to the mining office which was closed and handed over a sum of Rs.9850/- to the Peon for making a deposit of the same towards royalty. The witness then returned to the place where the meeting was convened and started back for Nirsa at around 1.30 p.m. on the motorcycle with the deceased sitting on the pillion seat. At about 2.45 p.m. they crossed Premier Hard Coke, situated at G.T. Road, when the witness heard the sound of firing from behind. On this he turned back only to see that one 100 CC black coloured Caliber motorcycle which was being driven by the appellant-Sheo Shankar Singh with an unknown person sitting on the pillion carrying a pistol in his right hand, was on his left. The person fired a second shot which hit the deceased who slumped on the back of the witness with the result that the balance of the motorcycle got disturbed bringing the witness and the deceased down to the ground. The appellant-Sheo Shankar Singh stopped the motorcycle being driven by him at some distance whereupon the man sitting at the back ran towards the deceased verbally abusing the witness and asking him to run away. On seeing this, the witness started running towards the west. The unknown person went near the MLA and fired another shot and pushed the dead body towards the slope on the side of the road. The unknown person then ran

back to the motorcycle driven by Sheo Shanker Singh who was waiting for him with the engine of the motorcycle running.

33. The witness further stated that a crowd assembled near the place of occurrence including Lal Mohan Mahto (PW2) and Abdul Kudus Ansari (PW1) who stated that they had seen Sheo Shankar Singh riding 100 CC black colour Caliber motorcycle without a registration number going towards Nirsa. After some time they had again seen appellant-Sheo Shankar Singh coming back from Nirsa going towards Govindpur. At about 1.15 p.m. Sheo Shankar Singh was again seen by these two witnesses going towards Govindpur on the same motorcycle with a person sitting on the pillion seat. The witness proved the statement recorded by the investigating officer after the police arrived at the spot, which statement has been marked Exh.1/6. The witness also identified in the Court Sheo Shankar Singh as the person driving the motorcycle and Umesh Singh as the person who had fired the bullets that killed the deceased. He further stated that he was given treatment for the injuries sustained by him and that his bloodstained clothes as also the motorcycle were seized.

34. The witness was cross-examined extensively but his deposition has been accepted by the Courts below who have found the version to be both consistent and reliable. Mr. Lalit, learned senior counsel all the same took pains to read before us the entire deposition of this witness, in an attempt to show that he was not actually present on the spot with the deceased at the time of the occurrence either driving his motorcycle or otherwise. He urged that the witness could not have looked back while driving the motorcycle and that the fleeting glimpse he may have got of the assailant was not enough for the witness to identify him. We do not think so. There is in the first place nothing inherently improbable about the manner in which the witness has narrated the occurrence or his presence on the spot. There is not even a suggestion of any enmity between the appellants and the witness nor a bias favouring the prosecution

to make his version suspect. The narration given by the witness is natural and does not suffer from any material inconsistency or improbability of any kind. Having said that we must also note that the presence of the witness on the spot is proved by PWs 1 & 2, Abdul Kudus Ansari and Lal Mohan Mahto both of whom reached the place of occurrence immediately after hearing about the killing of the deceased and met Apurba Ghosh (PW16) on the spot. Both these witnesses have testified that the T-shirt worn by the witness was bloodstained and the motorcycle which he was driving was lying on the spot with the dead body of the deceased at some distance. Both of them have signed the statement made by Apurba Ghosh (PW16) before the police which constitutes the first information report about the incident in which both of them have claimed that they have seen Sheo Shankar Singh with one other person going on the motorcycle whom they could identify. The presence of Apurba Ghosh (PW16) on the spot is testified even by Prasant Banerjee (PW6), also an eye-witness to the occurrence. That apart the presence of injuries on the person of the Apurba Ghosh (PW16) duly certified by the medical officer concerned, and the fact that the T-shirt worn by him was torn at two different places corresponding to the injuries sustained by him also corroborates the version given by the witness that he was driving the motorcycle as claimed by him when the deceased was gunned down.

35. It is noteworthy that the first information report was registered without any delay and Apurba Ghosh (PW 16) medically examined on 14th April, 2000 itself though late in the evening. All these circumstances completely eliminate the possibility of the witness being a planted witness. The testimony of this witness and the deposition of the PWs Abdul Kudus Ansari and Lal Mohan Mahto prove his being with the deceased before the incident and being on the spot immediately after the occurrence with bloodstains on his clothes with the motorcycle being driven by him lying nearby. We have, therefore, no difficulty in affirming the finding recorded

A by the two courts below that the deceased was travelling with Apurba Ghosh (PW16) on the latter's motorcycle from Dhanbad to Nirsa at the time of the occurrence and was, therefore, a competent witness who could and has testified to this occurrence, as the same took place.

B

36. Mr. Lalit, then argued that while a test identification parade had been conducted in which the appellant-Umesh Singh was identified by Abdul Kudus Ansari (PW1) as the person who was the pillion rider with Sheo Shankar Singh driving the motorcycle, the version of Apurba Ghosh (PW16) C was not similarly put to test by holding a test identification parade for him also. He urged that while the identification of the accused in the Court is the substantive evidence and a test identification parade only meant to reassure that the investigation of the case is proceeding in the right direction, D the failure of the prosecution to offer an explanation for not holding a test identification parade for this witness would cast a serious doubt about the credibility of the witness and his version that it was the appellant-Umesh Singh who had shot the deceased. Relying upon the decision of this Court in *Krishna* E *Govind Patil v. State of Maharashtra* 1964 (1) SCR 678, Mr. Lalit argued that Umesh Singh had not been identified properly and cannot, therefore, be convicted in which event Section 34 will not be available to convict appellant-Sheo Shankar Singh also.

F

37. It is fairly well-settled that identification of the accused in the Court by the witness constitutes the substantive evidence in a case although any such identification for the first time at the trial may more often than not appear to be evidence of a G weak character. That being so a test identification parade is conducted with a view to strengthening the trustworthiness of the evidence. Such a TIP then provides corroboration to the witness in the Court who claims to identify the accused persons otherwise unknown to him. Test Identification parades, therefore, remain in the realm of investigation. The Code of

H

Criminal Procedure does not oblige the investigating agency to necessarily hold a test identification parade nor is there any provision under which the accused may claim a right to the holding of a test identification parade. The failure of the investigating agency to hold a test identification parade does not, in that view, have the effect of weakening the evidence of identification in the Court. As to what should be the weight attached to such an identification is a matter which the Court will determine in the peculiar facts and circumstances of each case. In appropriate cases the Court may accept the evidence of identification in the Court even without insisting on corroboration. The decisions of this Court on the subject are legion. It is, therefore, unnecessary to refer to all such decisions. We remain content with a reference to the following observations made by this Court in *Malkhansingh and Ors. v. State of M.P.* (2003) 5 SCC 746 :

> "It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification

A parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these
B parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the
C courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See *Kanta Prashad* v. *Delhi Admn.* AIR 1958 SC 350, *Vaikuntam Chandrappa* v. *State of A.P.* AIR 1960 SC 1340, *Budhsen* v. *State of U.P.* (1970) 2
D SCC 128 and *Rameshwar Singh* v. *State of J&K.* (1971) 2 SCC 715)"

38. We may also refer to the decision of this Court in *Pramod Mandal v. State of Bihar* (2004) 13 SCC 150 where this Court observed:

E

"20. It is neither possible nor prudent to lay down any invariable rule as to the period within which a test identification parade must be held, or the number of witnesses who must correctly identify the accused, to
F sustain his conviction. These matters must be left to the courts of fact to decide in the facts and circumstances of each case. If a rule is laid down prescribing a period within which the test identification parade must be held, it would only benefit the professional criminals in whose cases the
G arrests are delayed as the police have no clear clue about their identity, they being persons unknown to the victims. They, therefore, have only to avoid their arrest for the prescribed period to avoid conviction. Similarly, there may be offences which by their very nature may be witnessed by a single witness, such as rape. The offender may be

H

unknown to the victim and the case depends solely on the identification by the victim, who is otherwise found to be truthful and reliable. What justification can be pleaded to contend that such cases must necessarily result in acquittal because of there being only one identifying witness? Prudence therefore demands that these matters must be left to the wisdom of the courts of fact which must consider all aspects of the matter in the light of the evidence on record before pronouncing upon the acceptability or rejection of such identification."

39. The decision of this Court in *Malkhansingh's* case (supra) and *Aqeel Ahmad v. State of Uttar Pradesh* 2008 (16) SCC 372 adopt a similar line of the reasoning.

40. The omission of the investigating agency to associate Apurba Ghosh (PW16) with the test identification parade in which Abdul Kudus Ansari (PW1) identified Umesh Singh will not *ipso jure* prove fatal to the case of the prosecution, although the investigating agency could and indeed ought to have associated the said witness also with the test identification parade especially when the witness had not claimed familiarity with the appellant-Umesh Singh before the incident. Even so, its omission to do so does not, in our opinion, affect the credibility of the identification of the said appellant by Apurba Ghosh (PW16) in the Court. That is because the manner in which the incident has taken place and the opportunity which Apurba Ghosh (PW16) had, to see and observe the actions of appellant-Umesh Singh were sufficient for the witness to identify him in the Court. This opportunity was more than a fleeting glimpse of the assailants. Appellant-Umesh Singh was seen by the witness pillion riding the motorcycle, coming in close proximity to his motorcycle, shooting the deceased from close range, stopping at some distance and coming back to the motorcycle where the deceased and the witness had fallen, abusing and threatening the witness and asking him to run away from the spot. All this was sufficient to create an impression that

A would remain imprinted in the memory of anyone who would go through such a traumatic experience. It is not a case where a chance and uneventful glance at another motorcyclist may pass without leaving any impression about the individual concerned. It is a case where the nightmare of the occurrence B would stay in the memory of and indeed haunt the person who has undergone through the experience for a long long time. Absence of a test identification parade and the failure of the Investigating Officer to associate the witness with the same does not, therefore, make any material difference in the instant C case.

41. Mr. Lalit next contended that according to the prosecution case and deposition of Apurba Ghosh (PW16), the T-shirt worn by him had got bloodstained when the deceased was shot. He urged that although the T-shirt was seized by the D investigating officer the same was not sent to the forensic science laboratory for examination and for matching the blood group of the deceased with that found on the T-shirt nor were the empty cartridges seized from the spot sent to the Ballistic Expert. This was, according to the learned counsel, a serious E discrepancy which adversely affected the prosecution version that Apurba Ghosh (PW16) indeed was the driver of the motorcycle on which the deceased was a pillion rider.

42. It is true that not only according to Apurba Ghosh F (PW16) but also according to Abdul Kudus Ansari (PW1), Lal Mohan Mahto (PW2) and the Investigating Officer, the T-shirt worn by Apurba Ghosh (PW16) was bloodstained which was seized in terms of the seizure memo referred to earlier. It is also true that a reference to the forensic science laboratory would have certainly corroborated the version given by these G witnesses about the T-shirt being bloodstained and the blood group being the same as that of the deceased. That no explanation is forthcoming for the failure of the prosecution in making a reference to the forensic science laboratory which could have strengthened the version given by Apurba Ghosh H (PW16) too is not in dispute. The question, however, is whether

the failure of the investing agency to make a reference would in the circumstances of the case discredit either the version of the witnesses that the T-shirt was bloodstained when it was seized or constitute a deficiency of the kind that would affect the prosecution version. Our answer is in the negative. Failure to make a reference to forensic science laboratory is in the circumstances of the case no more than a deficiency in the investigation of the case. Any such deficiency does not necessarily lead to the conclusion that the prosecution case is *totally* unworthy of credit. Deficiencies in investigation by way of omissions and lapses on the part of investigating agency cannot in themselves justify a total rejection of the prosecution case. In *Ram Bihari Yadav v. State of Bihar and Ors.* (1998) 4 SCC 517 this Court while dealing with the effect of shoddy investigation of cases held that if primacy was given to such negligent investigation or to the omissions and lapses committed in the course of investigation, it will shake the confidence of the people not only in the law enforcing agency but also in the administration of justice. The same view was expressed by this Court in *Surendra Paswan v. State of Jharkhand* (2003) 12 SCC 360. In that case the investigating officer had not sent the blood samples collected from the spot for chemical examination. This Court held that merely because the sample was not so sent may constitute a deficiency in the investigation but the same did not corrode the evidentiary value of the eye-witnesses.

43. In *Amar Singh v. Balwinder Singh and Ors.* (2003) 2 SCC 518 the investigating agency had not sent the firearm and the empties to the forensic science laboratory for comparison. It was argued on behalf of the defence that omission was a major flaw in the prosecution case sufficient to discredit prosecution version. This Court, however, repelled that contention and held that in a case where the investigation is found to be defective the Court has to be more circumspect in evaluating the evidence. But it would not be right to completely throw out the prosecution case on account of any such defects, for doing so

would amount to playing in the hands of the investigating officer who may have kept the investigation designedly defective. This Court said:

> "It would have been certainly better if the investigating agency had sent the firearms and the empties to the Forensic Science Laboratory for comparison. However, the report of the ballistic expert would in any case be in the nature of an expert opinion and the same is not conclusive. The failure of the investigating officer in sending the firearms and the empties for comparison cannot completely throw out the prosecution case when the same is fully established from the testimony of eyewitnesses whose presence on the spot cannot be doubted as they all received gunshot injuries in the incident."

44. In the light of the above the failure on the part of the investigating officer in sending the blood stained clothes to the FSL and the empty cartridges to the ballistic expert would not be sufficient to reject the version given by the eye witnesses. That is especially so when a reference to the ballistic expert would not have had much relevance since the weapon from which the bullets were fired had not been recovered from the accused and was not, therefore, available for comparison by the expert.

45. It was argued by Mr. Lalit that the version given by Apurba Ghosh (PW16) about his having borrowed the motorcycle on which the deceased was travelling with him on the pillion on the fateful day had not been corroborated by examining the owner of the motorcycle. The fact that no effort was made by Apurba Ghosh (PW16) or by the owner to have the motorcycle released in his favour also, contended the learned counsel, adversely reflected upon the veracity of the case set up by the prosecution. We do not think so. The fact that the motorcycle on which the deceased was travelling along with Apurba Ghosh (PW16) was found at the place of

occurrence is amply proved by the evidence adduced by the prosecution. It is also clear that the motorcycle in question did not belong either to the deceased or to Apurba Ghosh (PW16). In the circumstances there is no improbability in the version of Apurba Ghosh (PW16) that the said motorcycle had been borrowed by him from his friend. The mere fact that the owner of the motorcycle or Apurba Ghosh (PW16) had not applied for release of the motorcycle in their favour does not in the least affect the prosecution case muchless does it render the same doubtful in toto.

46. It was also contended by Mr. Lalit that the first information report was not lodged as claimed by the prosecution. According to the learned counsel if appellant-Sheo Shankar Singh had been named in the first information report, there is no reason why the investigating officer would not have gone after him before taking any further step in the matter. The argument has not appealed to us. The incident in question had taken place around 2.45 p.m. The statement of Apurba Ghosh (PW16) was recorded by the investigating officer at around 4.15 p.m. on the same day based on which first information report No.90/2000 was registered in the police station. The copy of the first information was received by the jurisdictional magistrate on 15.4.2000. Apart from Apurba Ghosh (PW16) the statement was also signed by Abdul Kudus Ansari (PW1) and Lal Mohan Mahto (PW2). All the three witnesses have stood by what has been attributed to them in the first information report. In the absence of any unexplained or abnormal delay in the registration of the case and the despatch of the first information report to the jurisdictional magistrate we have no reason to hold that the obvious is not the real state of affairs as claimed by Mr. Lalit.

47. We may now turn to the deposition of Prasant Banerjee (PW6) who is the other eye-witness to the occurrence. This witness has in his deposition before the trial court stated that on 14th April, 2000 he was at a distance of about 100 yards

A from the place of occurrence. According to the witness while he was going on his motorcycle with Ravi Ranjan Prasad, on the pillion seat the deceased Gurdas Chatterjee was going on the pillion seat of another motorcycle. Appellant-Sheo Shankar Singh was following the deceased on a motorcycle with
B appellant-Umesh Singh sitting on the pillion of that motorcycle. The witness further states that appellant-Sheo Shankar Singh took the motorcycle to the left of the motorcycle on which the deceased was travelling whereupon appellant-Umesh Singh who was sitting on the pillion fired two shots because of which
C the deceased fell down on the south side of the G.T. Road. The motorcycle of appellant-Sheo Shankar Singh stopped at a short distance whereupon the appellant-Umesh Singh got down from the motorcycle and came to the place where the deceased was lying and then fired another shot at him, pushed him so that his
D body rolled down the slope. Appellant-Umesh Singh then returned to the motorcycle and went away towards Nirsa. The witness further stated that he knew both the accused-appellants.

48. In cross-examination this witness stated that he
E remained on the spot for 10-15 minutes after the occurrence during which time Ravi Ranjan was with him. He and Ravi Ranjan then proceeded to Panchat. He did not lodge any report in the police station but the witness told his wife, son and father about the occurrence. He knew the deceased for the last 10-
F 12 years prior to the occurrence but had not visited his house. He was summoned to the police station in the month of April 2000 but could not meet the officer in-charge. The police recorded his statement one and half months after the occurrence at Nirsa. The witness further states that the first shot
G from the motorcycle was fired from behind that injured the back portion of the head of MLA while the second shot was fired by appellant-Umesh Singh after he got down from the motorcycle which too had injured the deceased in his head. The witness further stated that a large crowd had assembled at the place
H of occurrence during the time he remained on the spot but he

did not talk to any person nor remember any persons having talked to him. The witness also denies the suggestion made to him that he had old friendship with appellants-Umesh Singh and Sheo Shankar Singh or that he had been frequently visiting the house of both the appellants. The witness stated that he went to the place where Gurdas Chatterji had fallen after 7-8 minutes and that 10-15 persons had arrived at the piace of occurrence before he reached there. The witness denied the suggestions that he is a member of the political party of the deceased-Gurdas Chatterji.

49. Mr. Lalit contended that Mr. Prasant Banerjee (PW-6) was not an eye-witness as he had come to the place of occurrence 7-8 minutes after the occurrence. He also argued that the witness had not made any statement to the police till 2nd June, 2000 which renders his story suspect. There is no doubt a delay of one and half months in the recording of statement of Prasant Banerjee (PW-6). The question is whether the same should by itself justify rejection of his testimony. Our answer is in the negative. The legal position is well settled that mere delay in the examination of a particular witness does not, as a rule of universal application, render the prosecution case suspect. It depends upon circumstances of the case and the nature of the offence that is being investigated. It would also depend upon the availability of information by which the investigating officer could reach the witness and examine him. It would also depend upon the explanation, if any, which the investigating officer may offer for the delay. In a case where the investigating officer has reasons to believe that a particular witness is an eye-witness to the occurrence but he does not examine him without any possible explanation for any such omission, the delay may assume importance and require the Court to closely scrutinize and evaluate the version of the witness but in a case where the investigating officer had no such information about any particular individual being an eye-witness to the occurrence, mere delay in examining such a witness would not *ipso facto* render the testimony of the witness

A suspect or affect the prosecution version. We are supported in this view by the decision of this Court in *Ranbir and Ors. v. State of Punjab* (1973) 2 SCC 444 where this Court examined the effect of delayed examined of a witness and observed:

B "..... The question of delay in examining a witness during investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got-up witness to falsely support the prosecution case. It is, therefore, essential that the "Investigating Officer should be asked C specifically about the delay and the reasons therefore....."

50. Again in *Satbir Singh and Ors. v. State of Uttar Pradesh* (2009) 13 SCC 790 the delay in the examination of the witness was held to be not fatal to the prosecution case. D This Court observed:

"32. Contention of Mr. Sushil Kumar that the Investigating officer did not examine some of the witnesses on 27th January, 1997 cannot be accepted for more than one reason; firstly, because the delay in the investigation itself E may not benefit the accused; secondly, because the Investigating Officer (PW 8) in his deposition explained the reasons for delayed examination of the witnesses....."

51. The investigating officer has, in the instant case, stated F that Prasant Banerjee (PW6) had met him for the first time on 2nd June, 2000 and that he recorded his statement on the very same day. He has further stated that prior to 2nd June, 2000 he had no knowledge that Prasant Banerjee (PW6) was a witness to the occurrence. Even Prasant Banerjee has given G an explanation how the investigating officer reached him. According to his deposition the Inspector had told him that he had come to record his statement after making an enquiry from the person who was sitting on the pillion of his motorcycle on the date of occurrence. Ravi Ranjan the pillion rider had also H informed him that his statement had been recorded by the

police. The Trial Court and the High Court have accepted the explanation offered by the investigating officer for the delay. We see no reason to take a different view or to reject the testimony of this witness only because his statement was recorded a month and half after the occurrence.

52. Coming then to the second facet of the submission made by Mr. Lalit, we find that the contention urged by the learned counsel is not based on an accurate reading of the deposition of the witness. The witness has clearly stated that he has seen the deceased going on a motorcycle on the date of the occurrence and that appellant-Sheo Shankar Singh had brought his motorcycle to the left of the motorcycle of the deceased whereupon appellant-Umesh Singh pillion rider had shot the deceased in the head. The version given by the witness does not admit of being understood to suggest that the witness reached the place of occurrence after the occurrence had taken place. What the witness has stated is that he went to the place where the deceased had fallen 5-7 minutes after the occurrence was over. Witnessing the occurrence cannot be confused with going to the place where the deceased had fallen. On a careful reading of the deposition of the witness we do not see any infirmity in the same that may justify the rejection of the version of PW6. Both the Courts below have, in our opinion, rightly accepted the testimony of Prashant Banerjee PW 6 while finding the appellants guilty.

53. That brings us to the question whether the present is one of those rare of rarest cases in which the High Court could have awarded to the appellants the extreme penalty of death.

54. In *Jagmohan Singh v. The State of U.P* (1973) 1 SCC 20 a Constitution Bench of this Court held that in cases of culpable homicide amounting to murder the normal rule is to sentence the offender to imprisonment for life, although the Court could for special reasons to be recorded in writing depart from that rule and impose a sentence of death. The Court held that while a large number of murders are of the common type,

A there are some that are diabolical in conception and cruel in execution. Such murders cannot be wished away by finding alibis in the social maladjustment of the murderer. Prevalence of such crimes speaks in the opinion of many, for the inevitability of death penalty not only by way of a deterrence but as a token
B of emphatic disapproval by the society.

55. In *Bachan Singh v. State of Punjab* (1980) 2 SCC 684 this Court examined the constitutional validity of Section 302 IPC and sentencing procedure provided in Section 354 (3) of the Code of Criminal Procedure and ruled that Section 302 of
C the Indian Penal Code, 1860 did not violate Article 19 or Article 21 of the Constitution of India. It was further held that while considering the question of sentence to be imposed for the offence of murder the Court must record every relevant circumstance regarding the crime as well as the criminal and
D that if the Court finds that the offence is of an exceptionally depraved and heinous character and constitutes on account of its design and the manner of its execution, a source of grave danger to the society at large, it may impose the death sentence. Taking note of the aggravating circumstances relevant
E to the question of determination of the sentence to be imposed upon an offender, this Court held that death sentence could be imposed only in the rarest of rare cases when the alternative option was unquestionably foreclosed. This Court observed:

F "209. .....Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and Figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency — a fact which
G attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and
H

humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed." A B

56. In *Machhi Singh and Ors. v. State of Punjab* (1983) 3 SCC 470 this Court followed the guidelines flowing from *Bachan Singh's* case (supra) and held that death sentence could be imposed only in the rarest of rare cases when the collective conscience of the community is so shocked that it would expect the holders of judicial power to inflict the death penalty irrespective of their personal opinion as regards the desirability or otherwise of retaining death penalty as a sentencing option. This Court enumerated the following circumstances in which such a sentiment could be entertained by the community: C D

"(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. E

(2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland. F G

(3) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath; or in cases of "bride burning" or "dowry deaths" or when H

A murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members
B of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child or a helpless woman or old or infirm person or a person vis-a-
C vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community"

57. In *Farooq alias Karattaa Farooq and Ors. v. State of*
D *Kerala* (2002) 4 SCC 697 this Court was dealing with a case where the appellant was alleged to have thrown a bomb on an under-trial prisoner at the jail gate resulting his death and severe injuries to others. Relying upon the decision of this Court in *Bachan Singh* case and in the case of *Machhi Singh*
E (supra) this Court held that the extreme penalty of death was not called for and accordingly commuted the sentence to life imprisonment.

58. In *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498 this Court once again
F reviewed the case law on the subject and reiterated that although judicial principle of imposition of death penalty were far from being uniform the basic principle that life imprisonment is the rule and death penalty an exception, would call for examination of each case to determine the appropriateness of
G punishment bearing in mind that death sentence is awarded only in rarest of rare cases where reform is not possible. The discretion given to the Court in such cases assumes importance and its exercise rendered extremely difficult because of the irrevocable character of that penalty. The Court
H held where two views are possible imposition of death sentence

would not be appropriate, but where there is no other option and where reform was not possible death sentence may be imposed. Applying the principles evolved in *Bachan Singh* case and in the case of *Machhi Singh* (supra) this Court commuted the death sentence awarded to one of the appellants to life imprisonment holding that the case did not satisfy the "rarest of rare" test to warrant the award of death sentence, even when the decapitation of the victim's body and its disposal was termed brutal.

59. *State of Maharashtra v. Prakash Sakha Vasave and Ors.* (2009) 11 SCC 193 too was a case where this Court while setting aside the acquittal of the accused awarded life imprisonment to him. That was a case where the accused was alleged to have hit the deceased with an axe with such great force that the axe got struck into the head of the deceased and the handle of the axe was also broken.

60. Coming to the case at hand we are of the opinion that the High Court was not justified in imposing the extreme penalty of death upon the appellants. We say so for reasons more than one. Firstly, because the appellants are not professional killers. Even according to the prosecution they were only a part of the coal mafia active in the region indulging in theft of coal from the collieries. The deceased being opposed to such activities appears to have incurred their wrath and got killed. Secondly, because even when the deceased was a politician there was no political angle to his killing. Thirdly, because while all culpable homicides amounting to murder are inhuman, hence legally and ethically unacceptable yet there was nothing particularly brutal, grotesque, diabolical, revolting or dastardly in the manner of its execution so as to arouse intense and extreme indignation of the community or exhaust depravity and meanness on the part of the assailants to call for the extreme penalty. Fourthly, because there was difference of opinion on the question of sentence to be awarded to the convicts. The Trial Court did not find it to be a rarest of rare case and

A remained content with the award of life sentence only which sentence the High Court enhanced to death. Considering all these circumstances, the death sentence awarded to the appellants in our opinion deserves to be commuted to life imprisonment.

B

61. In the result, we affirm the judgments and orders under appeal with the modification that instead of sentence of death awarded by the High Court, the appellants shall suffer rigorous imprisonment for life. The appeals are accordingly allowed but only in part and to the extent indicated above.

C

B.B.B. Appeals partly allowed.