SUPREME COURT OF INDIA

Ram Kr.Upadhya

Vs.

State of Bihar

Crl.A.Nos.690 with 615 and 616 of 1982

(M. M. Dutt and K. Jagannatha Shetty, JJ.)

24.02.1988

JUDGEMENT

DUTT, J.:-

1. These appeals are directed against the judgment of the Patna High Court affirming the order of the First Additional Sessions Judge, Arrah, convicting all the appellants under Ss. 302/34, IPC and S. 27of the Arms Act and sentencing each of them to rigorous imprisonment for life and rigorous imprisonment for three years respectively and further convicting the appellant Hare Krishna Singh under S. 379 IPC and sentencing him to rigorous imprisonment for three years; all the sentences are to run concurrently. The accused included two persons having the same name Paras Singh, one of Village Dhobaha, brother-in-law of Hare Krishna Singh, one of the appellants in Criminal Appeal No. 690 of 1982, and the other of Village Birampur and nephew of Jagdish Singh, the appellant in Criminal Appeal No. 616 of 1982. We shall hereinafter refer to the said two persons as 'Paras Singh of Dhobaha' and 'Paras Singh of Birampur' respectively.

2. The prosecution case as appearing from the Fardbeyan or the FIR lodged by one Sarabjit

Tiwary(P.W. 3), a social worker, on 12-12-1987 in the Arrah Sadar Police Station, was that on that day at about 7.00 a.m. he was going to his brother-in-law Raghubir Mishra and just he reached near the main gate of the Sadar Hospital, he saw seven persons, namely "(1) Hare Krishna Singh, resident of Dhanpura; (2) Sheo Narain Sharma, resident of Berkhembe Gali; (3 ') Ram Kumar Upadhaya, resident of village Dumaria; (4) Jagdish Singh's nephew of Birampur in military service; (5) brother-in-law of Hare Krishna Singh of Dhobabha in military service" and two more persons whom he could not indentify. All the said persons were armed with rifle, gun and pistol, and were standing near northern side of the eastern gate of the hospital. At that time, two Rickshaws were coming from the eastern side. In the front Rickshaw, Jitendra Choudhary and another person named Lallan Rai, resident of village Maniya, were sitting and in the rear Rickshaw there were two girls. As the Rickshaw of Jitendra Choudhary came near the persons mentioned. above, all of a sudden, Hare Krishna Singh fired at Jitendra Choudhary from his gun, whereupon the latter fell down from the Rickshaw with the rifle which he was carrying with him. The other persons also fired upon Jitendra Choudhary along with Hare Krishna Singh. as a result of which he died. After that Hare Krishna Singh picked up the rifle of Jitendra Choudhary and touching his body said, "He is dead, let us take to our heels." It may be mentioned here that the two girls referred to in the Fardbeyan or FIR are Premlata Choudhary (P.W. 1) and Sobha Choudhary (P.W. 2), sisters of the deceased Jitendra Choudhary.

3. After investigation by P.W. 9 the charge-sheet was submitted against all the appellants and they were put up for trial. The prosecution examined as many as 9 witnesses, of whom P.Ws. 1, 2, 3 and 8 were eyewitnesses. The defence of Hare Krishna Singh was that he was going to Patna along with the appellant Ram Kumar Upadhya and one Madan Singh in a Rickshaw and when the Rickshaw reached near the shop of Sita Ram, he received a bullet from behind and fell down. He looked back and saw that one Dipu Prasad and Ram Lal were firing. He also saw the deceased Jitendra Choudhary, Chhatu Choudhary and Lallan Rai (P.W. 8) firing from the eastern gate of the hospital. He examined five witnesses, D.Ws. 1 to 5, to prove the nature of injury sustained by him.

4. The defence of Paras Singh of Dhobaha was that he had not visited the village Dhanpura for the last fifteen years. The defence of other appellants is also a denial of their complicity in the crime.

5. The learned Additional Sessions Judge, after an elaborate discussion and analysis of the evidence adduced on behalf of the parties, accepted the prosecution case and convicted and sentenced the appellants as mentioned above. Regarding the injury sustained by Hare Krishna Singh, the learned Additional Sessions Judge was of the view that such injury had been deliberately introduced by him and held that he was not injured in the occurrence. On appeal by the appellants, the High Court affirmed their convictions and sentences. Hence these appeals by special leave.

6. It is contended by Mr. Garg, learned counsel appearing on behalf of Hare Krishna Singh, one of the appellants in Criminal Appeal No. 690 of 1982, that the prosecution having failed to explain the injury sustained by the appellant in the same occurrence, such injury being a serious one, the

prosecution witnesses should be disbelieved. Counsel submits that in such circumstances, it should be held that the plea of the appellant of self-defence has been probabilised and that the prosecution must have withheld the true facts as to the genesis and origin of the occurrence. Further, it is submitted that in any event, it has cast a great doubt on the prosecution case and the benefit of that doubt should go to the appellant.

7. The question, however, is whether it is an invariable rule that whenever an accused sustains an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so, the prosecution case should be disbelieved. Before answering the question we may refer to a few decisions of this Court cited at the Bar. Mr. Garg has placed much reliance upon the decision of this Court in Lakshmi Singh v. State of Bihar, (1976) 4 SCC 394 : (AIR 1976 SC 2263). In that case, the accused sustained injuries in the same occurrence. Fazal Ali, J., who delivered the judgment of the Court, observed that no independent witness had been examined by the prosecution to support the participation of the appellant in the assault. Further, it was observed that the evidence of P.Ws. 1 to 4 clearly showed that they gave graphic description of the assault with regard to the order, the manner and the parts of the body with absolute consistency which gave an impression that they had given a parrot-like version acting under a conspiracy to depose to one set of facts and one set of facts only. In view of the nature of evidence of P.W.S.1 to 4, this Court accepted the contention made on behalf of the accused, particularly taking the entire picture of the narrative given by the witnesses, that P.Ws. 1 to 4 had combined together to implicate the accused falsely because of the long-standing litigation between them and the said witnesses. Thereafter, the Court considered the injuries that were inflicted on the person of the accused Dasrath Singh and laid down that where the prosecution fails to explain the injuries on the accused, two results follow : (1) that the evidence of the prosecution witness is untrue; and (2) that the injuries probabilise the plea taken by the appellants. The principle of law laid down in the earlier decision of this Court in Mohar Rai v. State of Bihar, (1968) 3 SCR 525 : (AIR 1968 SC 1281) was followed.

8. In Mohar Rai's case it has been laid down that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the case of altercation is a very important circumstance from which the court can draw the following inferences: (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version; (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable; (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

9. The principles that have been laid down in Lakshmi Singh's case (AIR 1976 SC 2263) have to be read in the context of the facts of that case. It has been already pointed out that the prosecution witnesses have been disbelieved by this Court before it considered the question of failure of the prosecution to explain the injuries sustained by one of the accused. If the prosecution witnesses had been believed in that case, the non-explanation of the injuries sustained by the accused would not have affected the prosecution case. Indeed, it has been laid down in Lakshmi Singh's case that the non-explanation of the injuries by the prosecution will not affect the prosecution case where injuries

sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries.

10. In Mohar Rai's case (AIR 1968 SC 1281) (supra), the first appellant Mohar Rai was convicted under S. 324, IPC for shooting and injuring P.W. 1 at the instigation of he second appellant Bharat Rai, who was himself convicted of an offence under S. 324 read with S. 109, IPC. The prosecution proceeded on the basis that the revolver (Ex, III), which was recovered from Mohar Rai, was the weapon that was used by him in the commission of the offence. The ballistic expert, who was examined as D.W. 1, was positive that the seized empties as well as the misfired cartridge could not have been fired from Ex.III. The evidence of D.W. 1 was accepted both by the trial court as well as by the High Court. This Court rejected the prosecution case that Mohar Rai had fired three shots from Ex. III. This Court held that once it was proved that the empties recovered from the scene could not have been fired from Ex.III, the prosecution case that those empties were fired from Ex.III by Mohar Rai stood falsified. Thereafter, the injuries sustained by the two appellants, Mohar Rai and Bharath Rai, were considered by the Court and it held that the prosecution had failed to explain the injuries sustained by the appellants and observed that the failure of the prosecution to offer any explanation in that regard showed that the evidence of prosecution witnesses relating to the incident was not true or, at any rate, not wholly true. Thus, in this case also the question of non-explanation of the injuries on the accused was considered by the court after it had rejected, on a consideration of evidence, the prosecution case that Mohar Rai had fired from the revolver Ex.III. In other words, if the prosecution case had been believed that the appellant Mohar Rai had fired from Ex.III injuring P.W. 1, the non-explanation of the injuries sustained by the accused would not have affected the prosecution case.

11. On the other hand, in Bhaba Nanda Sarma v. State of Assam, (1977) 4 SCC 396 : (AIR 1977 SC 2252) it has been categorically laid down by this Court that the prosecution is not obliged to explain the injuries on the person of the accused in all cases and in all circumstances. It depends upon the facts and circumstances of each case whether the prosecution case becomes reasonably doubtful for its failure to explain the injuries on the accused. In Ramlagan Singh v. State of Bihar, (1973) 3 SCC 881 : (AIR 1972 SC 2593) this court again examined the question and it has been laid down that the prosecution is not called upon in all cases to explain the injuries received by the accused persons. It is for the defence to put questions to the prosecution witnesses regarding the injuries of the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain the injuries on the person of the accused. In the instant case also, the injury sustained by the appellant Hare Krishna Singh, has not been put to the prosecution witnesses and so they had no occasion to explain the same. In such circumstances, as laid down in Ramlagan Singh's case, the non-mention of the injuries on the person, of the appellant in the prosecution evidence would not affect the prosecution case, which has been accepted by the courts below.

12. In Onkarnath Singh v. State of U.P., (1975) 3 SCC 276 : (AIR 1974 SC 15-50) this court has reiterated its view as expressed in Bankey Lal v. State of U.P., (1971) 3 SCC 184 : (AIR 1971 SC 2233) and Bhagwan Tana Patil v. State of Maharashtra, (1974) 3 SCC 536 : (AIR 1974 SC 21) that

the entire prosecution case cannot be thrown overboard simply because the prosecution witnesses do not explain the injuries on the person of the accused. Thereafter, it was observed as follows (at p. 1557 of AIR) :-

"Such non-explanation, however, is a factor which is to be taken into account in judging the veracity of the prosecution witnesses, and the court will scrutinise their evidence with care. Each case presents its own features. In some case, the failure of the prosecution to account for the injuries of the accused may undermine its evidence to the core and falsify the substratum of its story, while in others it may have little or no adverse effect on the prosecution case. It may also, in a given case, strengthen the plea of private defence set up by the accused. But it cannot be laid down as an invariable proposition of law of universal application that as soon as it is found that the accused had received injuries in the same transaction in which the complainant party was assaulted, the plea of private defence would stand prima facie established and the burden would shift on to the prosecution to prove that those injuries were caused to the accused in self-defence by the complainant party. For instance where two parties come armed with a determination to measure their strength and to settle a dispute by force of arms and in the ensuing fight both sides receive injuries, no question of private defence arises."

13. Much reliance has been placed by Mr. Garg on the following observation of Fazal Ali, J. in Jagdish v. State of Rajasthan, (1979) 3 SCR 428 : (AIR 1979 SC 1010 at p. 1011) :-

"It is true that where serious injuries are found on the person of the accused, as a principle of appreciation of evidence, it becomes obligatory on the prosecution to explain the injuries, so as to satisfy the court as to the circumstances under which the occurrence originated. But before this obligation is placed on the prosecution two conditions must be satisfied;

1. that the injuries on the person of the accused must be very serious and severe and not superficial;

2. that it must be shown that these injuries must have been caused at the time of the occurrence in question."

14. In Jagdish's case, the High Court believed the prosecution witnesses and accepted the prosecution case that the injuries found on the deceased were very severe which resulted in his death and this Court agreed with the view taken by the High Court in convicting the appellant under S. 302 IPC.

15. In regard to this point we may cite two other decisions relating to the plea of the accused of private defence. In Munshi Ram v. Delhi Administration (1968) 2 SCR 455 : (AIR 1968 SC 702) it has been held by this Court that although the accused have not taken the plea of private defence in their statements under S. 342 Cr. P.C., necessary basis for that plea had been laid in the cross-examination of the prosecution witnesses as well as by adducing defence evidence. It has been observed that even if an accused does not plead self-defence, it is open to the court to consider such plea if the same arises from the material on record. The burden of establishing that plea is on the accused and that burden can be discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record.

16. Munshi Ram's case arises out of a dispute over the possession of land. The case of the appellants that their relation was a tenant of the disputed land for over thirty years and that his tenancy was never terminated, was accepted by this Court. In other words, the appellants were found to be in lawful possession of the land in question and that P.Ws. 17 and 19 had gone to the land with their friends, P.W. 19 being armed with a deadly weapon, with a view to intimidating the relation of the appellants, whose tenancy was not terminated. They were held to be guilty of criminal trespass and of constituting an unlawful assembly. In the context of the above facts, this Court made the observation that it is open to the court to consider the plea of private defence even though the same does not find place in the statement under S. 342 Cr. P.C.

17. The next case that has been relied upon by Mr., Garg is that of State of Gujarat v. Bai Fatima, (1975) 3 SCR 993 : (AIR 1975 SC 1478), in that case, on behalf of the appellants the decision in Munshi Ram's case (AIR 1968 SC 702) (supra) was relied upon in regard to the question of the plea of private defence. In rejecting the contention of the accused, this Court pointed out that not only the plea of private defence was not taken by the accused in their statements under S. 342, Cr.P.C., but no basis for that plea was laid in the cross-examination of the prosecution witnesses or by adducing any defence evidence. As regards the injuries sustained by one of the accused, this Court observed as follows :-

"In material particulars the evidence of the three eye-witnesses as also the evidence of dying declaration of the deceased before P. W. Gulamnabi is so convincing and natural that no doubt creeps into it for the failure of the prosecution to explain the injuries on the person of respondent No. 1. The prosecution case is not shaken at all on that account."

18. We have referred to the above decisions in extenso in order to consider whether it is an invariable proposition of law that the prosecution is obliged to explain the injuries sustained by the accused in the same occurrence and whether failure of the prosecution to so explain the injuries on the person of the accused would mean that the prosecution has suppressed the truth and also the genesis or origin of the occurrence. Upon a conspectus of the decisions mentioned above, we are of the view that the question as to the obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In other words, it is not an

invariable rule that the prosecution has to explain the injuries. sustained by the accused in the same occurrence. The burden of proving the guilt of the accused is undoubtedly on the prosecution. The accused is not bound to say anything in defence. The prosecution has to prove the guilt of the accused beyond all reasonable doubts. If the witnesses examined on behalf of the prosecution are believed by the Court in proof of the guilt of the accused beyond any reasonable doubt, the question of the obligation of the prosecution to explain the injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and in what circumstances injuries have been inflicted on the person of the accused.

19. The accused may take the plea of the right of private defence which means that he had inflicted injury on the deceased or the injured person in exercise of his right of private defence. In other words, his plea may be that the deceased or the injured person was the aggressor and inflicted injury on the accused and in order to defend himself from being the victim of such aggression, he had inflicted injury on the aggressor in the exercise of his right of private defence. As has been held in Munshi Ram's case (AIR 1968 SC 702) (supra) the burden of establishing the plea of private defence is on the accused and the burden can be discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. It, therefore, follows that simply because the accused has received injuries in the same occurrence, it cannot be taken for granted that the deceased or the injured person was the aggressor and consequently, he had to defend himself by inflicting injury on the deceased or the injured person.

20. All the decisions of this Court which have been referred to and discussed above, show that when the Court has believed the prosecution witnesses as convincing and trustworthy, the Court overruled the contention of the accused that as the prosecution had failed to explain the injuries sustained by the accused in the same occurrence, the prosecution case should be disbelieved and the accused should be acquitted. Thus, it is not the law or invariable rule that whenever the accused sustains an injury in the same occurrence, the prosecution has to explain the injuries failure of which will mean that the prosecution has suppressed the truth and also the origin and genesis of the occurrence.

21. The learned Additional Sessions Judge has not believed the case of Hare Krishna Singh that he had sustained a bullet injury in the same occurrence and he has given reasons therefor. The High Court has, however, come to the finding that Hare Krishna Singh was admitted in the hospital in an injured condition immediately after the occurrence. We do not propose to reassess evidence on the question as to whether Hare Krishna Singh had sustained any injury or not. We may assume that he had sustained a bullet injury in the same occurrence. But, even then, in the facts and circumstances of the case the prosecution, in our opinion, is not obliged to account for the injury and that the failure of the prosecution to give a reasonable explanation of the injury would not go against or throw any doubt on the prosecution case.

22. The injury that was sustained by Hare Krishna Singh was on the back. The P.Ws. 1 and 2, the two sisters of the deceased Jitendra Choudhary, denied the suggestion put to them on behalf of Hare Krishna Singh that their brother Jitendra Choudhary had been shooting from his rifle. P.W. 3, who is an independent witness and was present on the scene of occurrence, also denied the suggestion of the defence that there was firing on Hare Krishna Singh. P.W. 8 Lallan Rai also denied such suggestion of the defence. Hare Krishna Singh made a statement under S. 313, Cr.P.C. It is not his case that in self-defence he had fired at the deceased Jitendra Choudhary. He denied that he had any firearms with him or that he had fired at Jitendra Choudhary. He also denied that none of the accused had any weapon with him. All the eye-witnesses have stated that the appellant Hare Krishna Singh had fired on Jitendra Choudhary as a result of which he died. The prosecution witnesses have been believed by the learned Additional Sessions Judge and the High Court. In the circumstances, we do not think that the materials on record including the statement of Hare Krishna Singh under S. 313, Cr.P.C., probabilise any case of self-defence or that the deceased had inflicted on him the injury by firing at him from his rifle.

It may be that two empties were found by the side of the dead-body of the deceased, but the High Court has rightly observed that the presence of the empties does not necessarily mean that the deceased had fired. The High Court points out that three live cartridges were also recovered from the pocket of the deceased at the time of inquest and observes that keeping of empty cartridges by the side of body of the deceased cannot be ruled out. We do not find any infirmity in the view expressed by the High Court. It is not at all amenable to reason that the deceased had started from his house along with his two sisters with a view to fighting with the accused. In the circumstances, we are of the view that the appellant Hare Krishna Singh has been rightly convicted and sentenced as above.

23. Now we may deal with the case of Paras Singh of Dhobaha, one of the appellants in Criminal Appeal No. 690 of 1982. He was found with the accused persons including Hare Krishna Singh. It is not disputed that he is the brother-in-law of Hare Krishna Singh, as he has been described in the FIR. It is the categorical evidence of P.Ws. 1, 2, 3 and 8 that Paras Singh of Dhobaha had fired at the deceased Jitendra Choudhary. He has been identified by P.W. 1 in the T. I. Parade. In the circumstances, we do not find any reason to interfere with the order of conviction and sentence passed by the Courts below.

24. So far as Paras Singh of Birampur. the nephew of Jagdish Singh and the sole appellant in Criminal Appeal No. 616 of 1982, is concerned, his case stands on a different footing. Indeed, Mr. Rajendra Singh, the learned Counsel appearing on behalf of the appellant, has challenged the very presence of the appellant, Paras Singh of Birampur, at the time of occurrence.

25. In the FIR, his name has not been mentioned. It has only been stated, "Jagdish Singh's nephew who is in military job of Birampur". Jagdish Singh may have more than one nephew. The I.O. (P.W. 9) in his evidence has stated that before the arrest of Paras Singh of Birampur. he did not know his

name and he cannot say how many nephews Jagdish Singh has. The only distinctive particular for identification, as given in the FIR, is that the nephew is in military service. The prosecution has not adduced any evidence to show that the appellant is in military service, and that no other nephew of Jagdish Singh is in such service. Thus, the prosecution has not been able to identify the appellant Paras Singh of Birampur with the description of Jagdish Singh's nephew as given in the FIR. The most significant fact is that P.W. 3 failed to identify the appellant in the T. I. Parade. P. W. 8 did not attend the T. I. Parade. His case is that he was not called to attend the T. I. Parade. On the other hand, it is the defence case that P.W. 8 was called but he did not attend the T. I. Parade. Whatever might have been the reason, the fact remains that no attempt was made by the prosecution to have Paras Singh of Birampur identified by P.W. 8. In such circumstances, the High Court was not justified and committed an error of law in relying upon the statement of P.Ws. 3 and 8 made before the police mentioning the name of Paras Singh of Birampur. It is true that P.Ws. 3 and 8 identified Paras Singh of Birampur in Court, but such identification is useless, particularly in the face of the fact that P.W. 3 had failed to identify him in the T. I. Parade. In the circumstances, the prosecution has failed to prove the complicity of Paras Singh of Birampur in the crime. Indeed, the prosecution has failed to prove that Paras Singh of Birampur was present at the time of occurrence. His conviction and sentence cannot, therefore, be sustained.

26. Now we may consider the cases of the remaining two accused, namely, Sheo Narain Sharma, the remaining appellant in Criminal Appeal No. 690 of 1982, and Ram Kumar Upadhaya, the sole appellant in Criminal Appeal No. 615 of 1982. These two appellants have been convicted as a consequence of their sharing the common intention to murder the deceased Jitendra Choudhary. Both of them have been named in the FIR. It is submitted by the learned Counsel appearing on behalf of these two appellants that no specific overt act has been attributed to either of them. It may be that they were found in the company of Hare Krishna Singh and Paras Singh of Dhobaha but, the learned Counsel submits, that fact will not be sufficient to impute common intention to them.

27. So far as the appellant Ram Kumar Upadhaya is concerned, there is evidence that he went with Hare Krishna Singh, but there is no evidence that he had also left the place of occurrence with him. It is the evidence of all the eye-witnesses, namely, P.Ws. 1. 2, 3 and 8 that Hare Krishna Singh had fired a shot at the deceased Jitendra Choudhary, hitting him in the face and he rolled and fell down from the Rickshaw in front of the gate. Thereafter, Paras Singh of Dhobaha also fired at the deceased. After specifically mentioning the names of Hare Krishna Singh and Paras Singh of Dhobaha as persons who had fired at the deceased. P.W. 3 stated chat thereafter two/three firings took place and all the accused went to the shop of Sita Ram in front of the gate on the road from where they also fired upon Jitendra Choudhary. P.W. 8 in his evidence has also made a general statement that all the accused started firing upon Jitendra Choudhary. It is not readily understandable why the witnesses did not specifically mention the names of Sheo Narain Sharma and Ram Kumar Upadhaya, if they had also fired at the deceased. Except mentioning that these two appellants were present, no overt act was attributed to either of them.

28. The question is whether the crime was committed by Hare Krishna Singh and Paras Singh of Dhobaha in furtherance of the common intention of these two appellants also. Common intention

under S. 34, IPC is not by itelf an offence. But, it creates a joint and constructive liability for the crime committed in furtherance of such common intention. As no overt act whatsoever has been attributed to the appellants, Ram Kumar Upadhaya and Sheo Narain Sharma, it is difficult to hold, in the facts and circumstances of the case, that they had shared the common intention with Hare Krishna Singh and Paras Singh of Dhobaha. When these two appellants were very much known to the eye-witnesses, non-mention of their names in the evidence as to their participation in firing upon the deceased, throws a great doubt as to their sharing of the common intention. The convictions and sentences of these two appellants also cannot, therefore, be sustained.

29. For the reasons aforesaid, the convictions and sentences of Hare Krishna Singh and Paras Singh of Dhobaha are affirmed. Criminal Appeal No. 690 of 1982, in so far as it relates to Hare Krishna Singh and Paras Singh of Dhobaha, is dismissed.

30. The conviction and sentence of Sheo Narain Sharma are set aside and he is acquitted of all the charges. Criminal appeal No. 690 of 1982, in so far as it relates to Sheo Narain Sharma, is allowed.

31. Criminal Appeal No. 615 of 1982 is allowed. The conviction and sentence of Ram Kumar Upadhaya are set aside and he is acquitted of all the charges.

32. Criminal Appeal No. 616 of 1982 is allowed. The conviction and sentence of Paras Singh of Birampur are set aside and he is acquitted of all the charges.

Order accordingly.

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