

## Gaya Rai vs State Of Bihar on 28 July, 1968

**Equivalent citations: 1969(1)UJ470(SC), AIR ONLINE 1968 SC 41, 1969 UJ(SC) 470**

### JUDGMENT

Mitter, J.

1. These three appeals Nos. 117 of 1969, 129 of 1968 and 208 of 1968 by special leave arise out of one judgment of the Patna High Court disposing of Criminal Appeals Nos. 301, 303, 305, 306 of 1967 by the accused and Government Appeal No. 59 of 1967 and Death Reference No. 4 of 1967. Thirty one persons were charge-sheeted together and committed to stand their trial in the court of Session ii (sic) ne commitment proceeding. When the trial was about to commence it was found that one of the accused. viz., Bans Raj Singh, the sole appellant in Cr. A. No. 306 of 1967 before the High Court was absent. The trial had to be split into two and thirty of the accused were tried in Sessions Trial No. 143 of 1965 by the Sessions Judge of Shahabad. By judgment and order dated August 7, 1967 the Sessions Judge held only accused Gaya Rai, Shivadhar Rai, Jang Bahadur Rai and Fakkar Barhi, from out of six of the appellants in Cr. A. 117 of 1968 guilty under Section 302 read with Section 34 I. P. C. for committing the murder of eight persons and sentenced them to death. He also found them guilty of a charge under Section 302/149 and 148 I. P. C. but passed BO separate sentence in respect thereof. He held that they and other culprits had the common intention to commit the murders perpetrate and held these four persons guilty under Section 302/34 I. P. C. The other two appellants in Appeal No. 117/1968 before this Court are Ram Kishum Barhi and Siri Kishum Barhi. They along with several other accused were acquitted in the Session trial. The Government Appeal No. 59 of 1967 before the High Court was however accepted against them as also Rajkumar Rai and Deodhari Rai. The High Court convicted them under Sections 302/34, 392/149 and 148 I. P. C. and sentenced them to imprisonment for life under the first count passing no sentence against them under the other counts. Cr. A. No. 333 of 1967 before the High Court was allowed and the sentences passed against Bhardul Upadhaya and Kailash Singh were set aside. Tribeni Rai was found guilty under Section 302/34, 302/149 and 148 of the Penal Code and sentenced to undergo rigorous imprisonment for life under the first count but no separate sentence was passed on him on the other counts. The Government Appeal No. 59, 1967 was dismissed as against twelve other accused. Government Appeal against Ram Govind Singh was dismissed and Cr.A. 301/1967 before the High Court was allowed. Bans Rai Singh, the sole accused in Sessions Trial No. 130 of 1965 in the court of Sessions Judge of Shahabad was found guilty of a charge under Section 302 read with Section 109 I.P.C. and was sentenced to undergo imprisonment for life. His conviction was upheld by the High Court in Cr.A. No. 305 of 1967. State had appealed against the acquittal of nineteen persons by the Sessions Judge to the High Court.

2. Nine murders took place in village Puma Nokha in the district of Shahabad in Bihar in the night between 10th and 11th June 1964. The said village was only a small hamlet consisting of 20 to 25 houses situate at a distance of a quarter of a mile from the police station of Nokha. There were 6 or 7 families of Rajputs, four families of Ahirs, eight families of Barhis and 4 or 5 families of Busadhs in the said hamlet. There were two factions in the village one of the Ahirs and the other of the Rajputs. The Barhis were divided some siding with the Ahirs and some with the Rajputs. There can be no question that the enmity between the two factions was very bitter and led to the commission of serious crimes including murder from time to time. Two Ahirs were killed in April 1961 resulting in Case No. 5 (4) 61 registered at Nokha Police station on April 12, 1961. The accused in that case were Gaya Rai, Tilok Rai, Ramdhar Rai and others who were convicted by the Session Court but acquitted by the High Court. In 1962 there was a case No. 7(8) 62 under Section 147 of the Penal Code. In the year 1963 there was a criminal case against Gaya Rai and his brothers started by the Barhis. On February 28, 1964 Gaya Rai's brother, Tilak Rai and his uncle Nand Kumar Rai were murdered resulting in Case No. 8(2) 64, In this case Ramkrit Ahir and his sons Daroga, Harishankar and Subedar and his nephew, Shivshankar were put on trial, Harishankar and Subedar were acquitted by the trial court but Harishankar was murdered after his acquittal. As a result of the murders in February 1964 four armed constables and a Havildar were posted in the village as there was apprehension that- Gaya Rai's group might take revenge against Ramkrit Ahir and his family members. A Magistrate was also deputed to the village. The armed constables were staying in one of the houses of Ramkrit while the members of his family were occupying another house. The Magistrate was staying in a Khalihan at a distance of 200 yards south of the house of Ramkrit Ahir. The Magistrate left the village on June 8, 1964. On the night of the occurrence a Havildar and four constables were guarding Ramkrit's house.

3. Eight out of nine persons murdered on the night of June 10, 1964 were sleeping on the roof of a temple in the western extremity of the village. The other victim Mukund was sleeping in a "pelani" south of the temple. According to the case of the prosecution, besides the said eight persons there were on the roof two other persons, namely, Mangar and Senicheri. These last two figured as prosecution witnesses Nos. 6 and 7 at the trial. All these ten persons belong to the same family. Of the persons murdered on the roof top, five were sons of Sanichari. They were Samroo, Muni, Sheomuni, Sheoprasad and Sri Ram. The other persons murdered on the roof were (1) Angad, son of Samroo, (2) Mangru, son of Mangar and (3) Palton, son of one Ramkrit Barhi. The last two persons, Mangar and Palton were Sanicheri's husband's brothers. Mangar figured as prosecution witness No. 6. The ninth person killed was Sanichari's husband, Mukund who lost his life near the pelani. The roof of the temple was only 9 ft. from the ground on one side and 11 ft. on the other.

It measured roughly 25' x 20'. It consisted of four compartments described in the judgment as comprising of three blocks, the northern block, the eastern block and southern block. Besides these blocks there was a dome of the temple which occupied roughly 8' x 8' on the roof top. To the north and east of the temple were situate the houses of the villagers. To the west of the temple were open fields. Immediately to the north of the temple at a distance of 6' from it, there was a mud-built dalan of the accused Fakkar Barhi, This dalan faced north. Adjacent to it on the western side was a room facing east used for tying cattle. To the east of it (the cattle shed) was another loom facing south called Paunta Ghar (a place used for storage of fodder). In between the dalan, the cattle shed

and the Paunta Ghar there was a strip of "sahan" lands measuring 5 to 6 steps from north to south and about five steps from east to west. To the east of this land there was a lane running north to south. The lane took a turn towards the east on the south and then joined a lane running north to south east of the temple. There was a piece of particular land about 16' wide from north to south adjacent north of the said Paunta ghar. The northern end of the lane by the sahan land of Fakkar Barhi led to this parti land. To the east of the land opposite the Paunta ghar was the house of Managar, P.W 6 The parti land was also accessible from the north by a lane which first ran north, then to east, then to south and then to east again leading to the house of Gaya Rai at a considerable distance from the parti land. The houses of the accused Fakkar Barhi and Ramkishun Barhi stood to the east of the temple with some space in between. The open palani where Mukund was sleeping was at a distance of 10 to 12 steps south of the temple. The temple itself belonged to Managar, P.W.6 and the female quarters (Zenani kita as it is called in the judgment ) of his house was at a distance of 25 steps north-east of the temple. The house of Ramkht Ahir two of whose nephews figured as prosecution witnesses Nos. 8 and 26--was close to the house of the accused Gaya Rai and north of the land already men-tioned. If one were to avoid the lane west of Gaya Rai's house and to go to the temple by a more round about way, he would have to travel about 400 yards.

4. The prosecution case was that the accused persons had entered into a conspiracy during the period 29-2-1964 to 11-6-1964 at various places mentioned in the charge to do and cause to be done various illegal acts, to wit, to kill Ramkrit, members of his family, his supporters and helpers, viz., Jagdeo Singh Jadav, Sema-rso Barhi and Muni Barhi and the members of their families and it was in pursuance of the said conspiracy that the nine murders were committed. The accused were charged under Section 120-B read with Section 369 I.P.C. Several of the accused viz., Ram Gobind Singh, Jugul Rai, Lallan Singh and Hansraj Singh were separately charged under Section 302 read with Section 109 I.P.C. for having abetted the commission of murder of the above nine persons. Ram Gobind Singh was also charged with having been found in possession of a gun with intent to use the same for an unlawful purpose, or to enable other persons to use it, to wit, Gaya Rai and others and such purpose had been carried into effect.

5. The charge of conspiracy was based mainly on the recovery of a number of letters from the house of Gaya Rai during the investigation. Post-cards and letters were also recovered from the residences of the accused Sheedhari Rai and Inderpuri at some distance from puma Nokha.

6. The accused did not cite any defence witnesses nor did they get themselves examined under Section 342-A of the CrPC. Their statements were however recorded under Section 342 Cr.P.C. Their case was that they had not entered into any conspiracy as alleged and none of them were guilty of the murders in question. They also complained that the Investi-gating Officer who had a bad record of service was colluding with Remkrit Ahir and Jagdeb Singh and had aided them in implicating the accused in the crime of murder. Pleas of alibi were taken by several of the accused that Rambachan Rai (Bechan Rai), Sheo-dhari Rai and Jang Bahadur Rai were at the relevant time in Dhanbad jail on account of their having been found travelling without ticket from Sasaram to Dhanbad.

7. That the crimes were committed by a large number of persons who intimately knew the village after mature planning admits of no doubt. The night was Amavasya (night of the No Moon). A party of armed constables was camping in the village approximately at a distance of 150 yards from the temple. That the culprits had come fully prepared to use their guns is clear from the way in which the murders were committed. There can further be little doubt that they also knew that they might encounter members of the armed constabulary and had come in sufficiently large number to meet the arms which might be used against them. All the persons killed had injuries from guns fired from a very close range and some of them had injuries from sharp cutting weapons also. These circumstances leave very little room for doubt that the murders were committed as a result of a criminal conspiracy between those who had participated in it. As regards others whose identification was not proved beyond doubt the case rests on the evidence furnished by the letters seized during the course of investigation.

8. At the trial the persons who gave evidence as eye witnesses to the occurrence were P. Ws. 6 and 7 (Managar and Sanichari) and P. W. 21. P. W. 21 claimed to have witnessed the gun fire and assault on the victim Mukund. The Sessions Judge did not find himself able to rely on the testimony of P. Ws. 6 and 21 and the High Court agreed with that view.

9. Managar, P. W. 6 who claimed to have been on the roof top along with the murdered people had no gun-fire injury on his person and the injuries which he had were simple in nature. He got himself examined at Sasaram hospital at 2 p. m. on 11th June 1964. The Sessions Judge found himself unable to accept Managar's statement that he was on the roof top along with others who were killed. There were also considerable discrepancies between his statement as recorded in the first information report and that given in court. The Sessions Judge took the view that the injuries on his person must have been caused in a manner very different from that stated by him and in all probability he had received these injuries by a fall in the course of running away. He did not accept Managar's presence on the roof top. For reasons given by him he also found himself unable to accept the evidence of Ramkrit P.W. 21 who claimed to have seen assault on Mukund and the High Court was of the same view.

10. The version of Sanichari given in the Sessions trial and accepted by both the Sessions Judge and the High Court, may be summarised as follows. Eight persons out of ten excluding herself and her grandson Angad had got up the roof to sleep. As Angad was unwell and wanted to sleep near his father she took him up by a bamboo ladder fixed against a wall and she herself was sleeping on a blanket in the northern block. Managar (P. W 6), her husband's brother was sleeping on the southern side of the eastern block of the temple; Angad was sleeping on the north and to the further north were her five sons, besides Palton and Mangru who were all sleeping on "ledhras". She had a torch with her and after climbing the roof she had pulled the ladder up. Her husband, Mukund and his brother, Ramkrit were sleeping in the palani south of the temple. She woke up on hearing a sound produced by persons climbing on to the roof by a ladder. It was about midnight and she flashed her torch and saw about 30 or 35 persons on the roof, of whom she could identify 22. She gave the names of these persons in the trial court. All these persons were known to her for a long time as they were all people of the same village. At the trial she went inside the dock and identified all the said 22 accused persons named by her. According to her, five of the accused, namely, Gaya

Rai, Ramdhar Rai, Bachan Rai. Jangbahadur Rai and Ramkishun Barhi had a gun each with them and others had bhalas, garassas, fersas and other weapons. She accosted the accused and asked them what had made them come there where-upon Gaya Rai told her that they had come after Somaru and Mukand and that she need not have any apprehension for herself. The five persons with guns went to the eastern side of the roof and fired guns facing west. As a result of such firing all her five sons, her grandson Angad and her grand nephews Mangru and Palton were shot dead. She also saw Sheodhar and Jagarnath using their garassas on the victims. The accused Sheopunjan assaulted Magar with a garasas. They then all got down from the roof by means of a ladder placed at the southern side of the temple. After they left she climbed down by means of a ladder herself on the eastern side of the temple and Managar, P. W. 6 fell down while trying to climb down. She met Ramprabesh, Ram Ashis and Ramraj Ahir, P. Ws. 8, 26 and 31 respectively and Ramkrit, her husband's brother, P. W. 21 after getting down. She narrated the entire occurrence and named all the 22 accused whom she had recognised. Ramkrit told her that three persons killed her husband and ran away. These were Fakker, Raj Kumar Rai and Deodhari Rai. The constables of the armed force also came to the spot and she narrated the story to them. She gave her torch to Managar and the latter went to the police station. Some time thereafter a Sub-Inspector of Police came from the Thana to whom she related what she had seen. In the morning she left for Sasaram and from there she went to her nephew Sarwan who was working at Dehri and came back to Nokha four days thereafter. In cross-examination she admitted that she was not in the habit of sleeping on the roof of the temple but on that particular night she had done so as to nurse her grandson Angad who was ill and could not sleep, and wanted to go up to his father. She had massaged Angad with oil. Managar P. W. 6 was sleeping close to her. After the accused had run away she went near the deceased and found that blood was flowing all over the roof. She herself fell down on the roof and some blood soiled her clothes She had shown her blood-stained cloths to the Sub Inspector Police but the Sub Inspector did not take the same from her.

11. Sanichari's evidence was attacked on various grounds before the High Court as also before us. The High Court remarked "that Sanichari's evidence was so natural and convincing that it was difficult to discard the same" and we are of the same view.

12. The first information report was lodged by Managar and the hour thereof was given at 1.30 a. m. In the first information report mention was made of five persons armed with guns and the others armed with garassas etc. It also stated that P. Ws, 8, 26 and 31 among others had seen the accused persons running away from the spot. The informant is claimed to have been assaulted by Sheopujan on the back with a lathi and as he lay down quietly they left him treating him to be dead.

13. Both courts have found on the evidence that there was very bitter enmity between Gaya Rai and members of his family on one side and Ramkrit Ahir and his family on the other as also Somaroo, Muni and others who are Barhis. The injury report, the postmortem reports and the evidence of the doctors who performed the postmortem make it clear that all the persons murdered on the roof top had suffered injuries by fire arms used at very close range and all of them excepting Angad, son of Managar P. W. 6 had received injuries from sharp cutting weapons. In the case of Mangru a bullet was extracted from the brain of the deceased and this was the solitary injury in his case. Shiv Muni, Sri Ram and Shiv Prosad also received several injuries caused by tire arms. The body of Mukund

Barhi killed in the palani bore marks of multiple injuries some caused by fire arms and the others by sharp-cutting weapons.

14. The Sessions Judge did not accept the evidence of Ram-raj Ahir and Ramprabesh Singh, P. Ws. 26 and 31 who claimed to have seen the accused persons fleeing away while they were coming towards the temple on hearing the gun-fire. The Sessions Judge found himself unable to accept the evidence of these witnesses for various reasons. P. Ws. 8 and 26 were sons of Dukhi, a paternal cousin of Ramkiit while P. W. 231 was also a partisan witness. All these three persons were in their teens at the time of the occurrence and were sleeping south of Zenani kita of Ramkrit Ahir near about the place where the Havildar and the armed constables were sleeping. All of them claimed to have been roused from their sleep by noise of gunfire and claimed to have run towards the west through the lane leading to the parti land north of the Pounta Ghar of Fakkur Barhi. P W. 31 claimed to have flashed a torch and according to this witness some of the accused were also flashing their torches and in the light so given out these three witnesses claimed to have seen 20 to 25 persons running away towards the northwest of the temple. According to these witnesses they identified Gaya Rai, Bachan Rai, Ramadhar Rai, Jung Bahadur Rai and Ramkishan each having a gun while others were carrying Farasa etc. P. W. 8 claimed in addition to have identified 16 others by name besides these viz., Tribenai Rai, Kaiash Singh and Bhadrul Upadhyay by face. The last three persons were also claimed to have been identified by P. W. 26. The Sessions judge disbelieved their evidence on several grounds, viz., (1) They were highly interested witnesses whose evidence was not corroborated.

by independent evidence of persons of reliable character. (2) It was not possible for them to see the culprits running away from the spot they claimed to have reached because their view towards the west would be obstructed by the dalan of Fakkur Barhi and the witnesses had mentioned different places from where they claimed to have seen the culprits; (3) the rifle party was staying in a place in front of Ramkrit's house to protect the members of his family and it was difficult to believe that P. W. 8 and P. W. 26 who were only 19 and 15 years of age would run toward the temple immediately after the gun fire was heard coming from that side; (4) these witnesses did not mention the names of the culprits before P. W 25, the Havildar who was an independent witness and (5) the Investigating Officer did not notice mark of any gunfire or any wad indicating that the witnesses had been fired at by the culprits after torches had been flashed.

15. According to the High Court each and every one of the reasons given by the Session Judge was erroneous. The High Court held that the Sessions Judge had made a confusion in regard to the place which these witnesses claimed to have reached and from where they saw the accused fleeing. According to the High Court their definite evidence was that they had come to the parti land north of the Punta Ghar of Fakkur Barhi which was undisputedly open towards the west. It is not necessary for us to set down the evidence of these witnesses on this point After examining the deposition of these witnesses, we are of the view that the High Court came to the correct conclusion that "when the witnesses described the parti land in front of the dalan of Fakkur Barhi, they had committed no error or confusion but the confusion was sought to be created in their cross-examination only". According to the High Court this evidence did not run counter to that of the Investigating Officer. The High Court also drew support from the evidence of the Havildar, P W. 25 who had said that he

had seen all these three going towards the west. Further, according to the Havildar the rifle party did not go along that land as it used to be very dirty but they followed the longer route from the eastern and southern side of the temple which meant covering a distance of about 400 yards. The Havildar also stated that though he did not remember what the persons present at the temple had said exactly he was able to recount having Sanichari saying that kamkishun had finished her family, evidently referring to Ram-kishnu Darhi. According to the High Court although the evidence of P.W. 25 did not support the statements of P. Ws. 7, 8, 26 and 31 to the fullest extent he did not contradict their evidence. Even in regard to the identity of the accused, the Havildar's testimony lends support to the statement of the witnesses. Sanichari's account of the firing on the roof top was found to be substantially correct by the High Court in view of the fact that 17 bullet marks were found on the dome of the roof facing east. The account of Sanichari as to where the dead bodies were at the time of firing was not borne out completely by the position of the bodies on the roof as noted by the Investigating Officer who however found a blanket there on which Sanichari claimed to have slept as also some Lodh-ras. Doubt was sought to be raised as to Sanichari's evidence as she was away for four days immediately after the occurrence and was not available when the superior police officers arrived at the scene of occurrence on 11th June 1964. The High Court held that her explanation of not being in the village was quite convincing as she had been examined by the Investigating Officer and her statement was recorded at the spot soon after the occurrence and much before the arrival of the superior officers. Much was sought to be made of the fact that her blood-stained cloth was not seized by police, but it is impossible to believe that if Sanichari was there at all she would not have climbed on to the roof after hearing the murder of her sons and grandson and if she did so, she was bound to get her cloth soiled by blood which was flowing fairly on the top of the roof. Again much cannot be made of the discrepancy in her evidence as given in the committing court and in the Sessions trial as to whether she remained on the roof top till the sunrise or whether she got down from there before. A further criticism was levelled against her evidence as regards identification on the ground that she had defective eye sight and could not have identified the accused but in the Sessions Court she had gone into the dock and correctly identified the 23 accused persons named by her by catching hold of their hands. Ordinarily it would be difficult to accept the claim of a person to have identified 22 persons at the dead of an Amavasya night but there can be no doubt that the culprits had to light their torches to take their aim with the guns at various persons and in that light the culprits who were well known to Sanichari could easily be identified. Besides the shooting of eight persons and the inflicting of quite a large number of injuries with cutting weapons was bound to have taken some time however quick the culprits may have been and this would have afforded sufficient opportunity to Sanichari to identify them. Besides, they all had to go up by a ladder one by one and it was not as if a number of persons had climbed on to the roof top from all sides in which case it would have been difficult for any person on the roof top to note correctly the assailants who had collected there.

16. Ramkrit Barhi, P. W. 21 was not believed by the Sessions Judge and the High Court did not take a different view.

17 Before the High Court a contention had been raised that the first information report could not have been recorded at 1.30 a. m. on the night of 11th June and the action of the Investigating Officer in making a note of that hour went against inspiring any confidence in its correctness. Criticism was

also raised that he did not go in search of the accused that very night. The High Court held that as the police station was situated at a distance of two furlongs only from the place of occurrence it would not be difficult for a first information to be lodged immediately after the crimes were perpetrated. The High Court strongly relied on the fact that the first information report was made very soon after the incident leaving little scope for deliberation.

18. It was argued before us that the plea of alibi raised on behalf of Sheodhar Rai, Bachan Rai, Jung Bahadur Rai and Rang-bahadur Rai should not have been discarded. The plea was sought to be rested on certified copies of order sheets of the Magistrate's court at Dhanbad and certified copies of bail bonds. The High Court found itself unable to accept the genuineness of these documents as the bond of Jang Bahadur did not bear his signature although it was purported to have been executed on his behalf. Similarly the vakalat executed on his behalf bore the signature of Ramjanam Rai only. The High Court observed that :

"If the plea was a truthful one, crushing and simple evidence was available to the defence to be adduced to prove to the hilt that four of the accused, three of whom are said to have been armed with guns were in Dhanbad jail."

The High Court also relied on the fact that Gaya Rai who was well-to-do person could not be expected to have got only one of them enlarged on bail on 13th August 1964 and not the other, three when a bail of Rs. 500/- only was required to be furnished for each of the accused. The High Court held that although P. W. 7 had claimed to have identified as many as 22 persons P. W. 8 had named only accused 1 to 9 and 11 to 21. P. W. 31 did not identify a few of them, P. W. 26 identified 11 persons on the date of his deposition in court. All these eleven had been iden-

tified by P. Ws. 7, 8 and 31 by name. In these circumstances the High Court held that these eleven were surely members of the gang who had committed the crimes. These eleven were Gaya Rai, Ramdhori Rai, Shivdhar Rai, Bichan Rai, Jung Bahadur Rai, Rang Bahadur Rai, Raj Kumar Rai, Deodhari Rai, Ram Kishun Barhi, Sri Kishun Barhi and Fakker Barhi.

Besides having entered into a conspiracy to commit the murders the Sessions Judge had held they had actually taken a leading part in the crimes. It was urged before the High Court and before us that Gaya Rai and his party might have sought vengeance on Ramkrit Ahir and the members of his family but there was no motive for them to shoot Borhis on the roof top. The High Court found that Ramkrit Ahir at the time of the occurrence was in jail and though the culprits it was out to wreak vengeance mainly against the Ahirs they had animus against the Birhis who were helping them. In the result the High Court accepted the Death Reference with regard to the four of the accused in Cr. A. 306 of 1967. The High Court also accepted the Government Appeal as against Raj Kumar Rai, Deodhari Rai and Sri Kishan Barhi and Ram-kishun Barhi. The first two are appellants along with Tribeni Rai in Cr. A. 129 of 1968 while last two, as already noted, are the appellants in Cr. A. 117/1968. Shri Kishun Barhi and Ram Kishun Barhi were named by P. Ws 8 26 and 31; they were also named in the first information report and claimed to have been identified by P. W 7. The High Court allowed the Govt. appeal and set aside their acquittal and convicted them under Sections 302/34, 303/149 and 148 of the Penal Code. These two were however sentenced to rigorous



imprisonment for life under the first count and no sentence was passed against them on the other two counts.

19 In our view the High was right in convicting all the appellants in Cr. A. 117/1968 and the two appellants, Deodhari Rai and Raj Kumari Rai out of the three appellants in Appeal No. 129 of 1968. The case of these two appellants in Appeal No. 129/68 stands on the same footing as those of the appellants in Appeal No. 117/68, and their conviction must be upheld. The murders were committed in a very brutal way and indiscriminately but there is no evidence as to which of the appellants had used his fire arm on any particular victim. They are all equally responsible for the deaths caused but in view of what we have stated and in view of the fact that four were sentenced to life imprisonment we are of the view that those who have been sentenced to death should also be sentenced instead to rigorous imprisonment for life. Except as above Cr A No. 117 of 1963 stands dismissed, as also Cr. A. 129 of 1968 in so far as the appellants Deodhari Rai and RAJ Kumar Rai are concerned.

20. The case of the appellant Tribeni Rai in Appeal No. 129/1968 however stands on a different footing. He was not identified in the occurrence by Sanichari, P. W. 7. His name did not occur in the first information report. He had however been identified by face by P. Ws 8 and 26 in court. These two witnesses had also identified him in the test identification parade held in Buxar Sub Jail on 26th August 1964. The most incriminating circumstance against him was the mention of his name in a letter dated 9th March 1964 (Ex. 38/24). This letter was written by the accused Sheodhar Rai to the accused Jung Bahadur. There can be no doubt that the crimes referred to in the letter were the acts of one or other of the factions in Nokha. Sheodhar Rai wrote to say that:

"These Ahirs have been injured as a result of the gun fire which you had opened from the roof. They are of Dinara police station. They are getting themselves treated privately. .... All the Rajputs and Brahmens of the whole Division are ready. Tribeni and Fakkar have brought and given a good Article (acha Saman) to Gaya Bhaiya. All the sons of Krit have been imprisoned. No accused had been left outside (the jail). Gaya Bhaiya says we have to remain calm for some time, for the present. Kailash and other persons are ready whole-heartedly at the cost of their lives. . .

The Sub Inspector of Police has got the application for gun (licence) in your name by Gaya Bhaiya. . . . It is hoped, of course, that the licence (for gun) would be issued in your name within a week."

It is quite clear that Gaya and Fakkar mentioned in the letter are two of the accused in this case and Krit is no other than Ramkrit Ahir. It also shows that one Tribeni had given a good article (ache saman) to Gaya and both courts have held that the words "ache saman" meant a fire arm. The letter also shows that this Tribeni had acquired a gun licence. If therefore Tribeni mentioned in this letter is the appellant before us, there can be little doubt that he was a member of the conspiracy to commit murders. In his statement under Section 342 Cr. P. C. Tribeni had stated that there was a number of persons having the name of Tribeni in his village and in neighbouring villages. The Sessions Judge held that the identity of Tribeni mentioned in his letter had not been established beyond reasonable doubt, and he therefore found himself unable to hold that the appellant was a

co-conspirator of the conspiracy in question. Nevertheless he was held to be one of the culprits who had taken part in the murders because of his identification as mentioned above. We find ourselves unable to accept the view of the High Court and of the Sessions Judge that he did take part in the crimes as alleged. Although he was arrested on or about 9th July the last identification parade was not held until 25th August 1964. According to the appellant himself he was a good footballer and he was well known in the neighbourhood of Purna Nokha. His name was not given out by P. Ws 8 and 26 immediately after the commission of the crimes. Besides the occurrence of the name Tribeni in the letter dated 9th March 1964 and his identification by P. Ws. 8 and 26 the High Court relied on an additional circumstance, namely, the fitting of a pair of red-coloured shoes on Tribeni Rai's feet out of 15 suspects. In our view this circumstance ought not to be taken into consideration at all. It is well known that shoes of standard make sold by shoemakers will fit thousands of persons and merely because a particular pair seized by the Investigating Officer at the place of occurrence fitted the appellant out of 15 suspects there would be no ground for holding that this circumstance should be taken into consideration in weighing the evidence against him. Once it is held that the identity of the person named Tribeni mentioned in the letter of 9th March was not established beyond doubt, the other evidence against him falls far short of the standard required to establish his guilt. There is much to be said in his favour that the appellant was well known in villages surrounding Nokha because of his activities in sport and as such it would not be difficult to pick him out in a test identification parade. The fact that such a parade was held long after his apprehension is also a factor to be taken in his favour.

21. For all these reasons we are not satisfied that Tribeni Rai was one of the persons who had taken part in the heinous crimes perpetrated on the night of 10th and 11th June, 1964 and he should be given the benefit of doubt. We therefore acquit him of the charges he has been found guilty and he is directed to be set at liberty.

22. This leaves us with the appeal of Bans Raj Singh in Cr.A.30.206 of 1968, As has been noted already he was tried separately from the other 30 accused persons because he was absent on the day the trial against the thirty commenced. He was charged under Section 120-B read with Section 302 I.P.C. with the allegation that he along with 30 others had agreed to do and cause to be done illegal acts, to wit, to kill Ramkrit Ahir and his family members, and various other persons. There was also an alternative charge against him under Section 100 read with Section 302 with the allegation that he along with others had abetted the commission of the murders of nine persons mentioned and in consequence of such abetment the murders had been committed. The offence of conspiracy and abetment, as already noted above, are said to have been committed between 29th February 1964 and 11th June 1964 at villages Purna Nokha and Bharurah, P.S. Nokha, village Inderpuri P.S. Dehri, District Shahabad, village Katauna P.S. Rampure, district Jaunpore (U.P.) Birla Hostel, Benaras Hindu University and other places within and outside the District of Shahabad. The appellant was a resident of Katauna. His name did not occur in the first information report nor was he said to have been present at the scene of the murder. He was not identified by any of the prosecution witnesses. He was convicted by the Sessions Judge by judgment dated 7th August 1967 of the charge under Section 109 read with Section 302 I.P.C. and sentenced to rigorous imprisonment for life. This was upheld by the High Court. His complicity in the conspiracy was rested principally on a letter dated 28th March 1964 said to have been written by him to Sheodhar Singh. There is a

reference in the letter to the passing away of Tilak and his contact with Jung Bahadur Rai accused. If he note at the bottom of the letter which is not over his signature is omitted, there is nothing to show that the writer was aware of any conspiracy between the accused to take revenge on Ramkrit Ahir or anybody else. The letter without the note obviously refers to the business of running a hotel which the writer wanted to take up and his obvious disappointment because his hopes were not likely to be fulfilled. The note however asks the addressee to come to Banaras and being with him 38 wala saman obviously referring to a gun of 38 bore. The note also goes on to record that food for the saman viz., 12 kaur (cartridges ) had been kept at Benaras. It also refers to a murder committed within Dinara Police station. Once it is proved that the appellant was the writer of the foot note it would be quite easy to hold that he joined hands with the accused to commit some crimes with a gun and particularly in view of the long standing enmity of the accused with Ahir and reference to the death of Tilak. The letter was sought to be proved by one Subedar Singh of Puma Nokha. This witness claimed to know the appellant Gaya Rai and said that he knew his younger brother, Jung Bahadur Rai. The latter according to him was reading in class X in Nokha High School at the same time as the appellant. He also claimed to know the handwriting of Jung Bahadur Rai and referred to certain postcards dated 24-3-1964 and 31-3-1964. His claim to know the handwriting of Bans Raj Singh in Ex.11/12 was rested on his statement that he had known the appellant for 8 or 9 years, that he and his brother Hans Raj were residents of village Ratauna in the district of Jaunpur, that the appellant was studying in Udai Pratap, College in Banaras in 1956 with Shivdhar Rai accused and All this gave him an opportunity to know the appellant and he had seen the appellant writing on many occasions. In cross-examination he said that he had seen the appellant writing on about 50 or 60 occasions and for the first time he had done so in 1958 and for the last time in 1968. The last occasion was during the Dussehra at the dalan of Gaya Rai, appellant when he was writing on an inland letter to somebody in Ratauna. He however disclaimed further knowledge and said that he had no concern with the contents of the letter written in 1968. In our view both the Sessions Judge and the High Court had gone wrong in holding that the handwriting of the appellant in the note of the letter Ex 11/12 had been satisfactorily established. The letter written by Jung Bahadur to Shivdhar Rai dated 31-3-1964 is hardly incriminating against the appellant. The letter of Jung Bahadur to Shivdhar Rai refers to the appellant's brother Bansraj having come to Varanasi and to the purchase of samans by Bhagwat. There was also an incomplete letter of 11th April 1964 addressed to Bans Raj and Hansraj and was to the effect that cartridges worth Rs. 440/- had been purchased. The last two letters would certainly direct suspicion towards Bans Raj but if the hand-writing of Bans Raj in the letter of 28th March 1964 is not proved, it is not possible to hold that Bans Raj was actually taking any part in any conspiracy. The Sessions Judge held that he had taken part in the conspiracy and the High Court upheld that finding mainly relying on the evidence of Subedar Singh. Although the High Court referred to the opinion of the Handwriting Expert which was not favourable to the prosecution case, the learned Judges noted that they had themselves compared the specimen writing of the appellant with those on Ex 11/12 and on their visual test it appeared ' that the appellant was cautious enough to recognise his handwriting in this specimen.' It is not necessary to refer to the other evidence mentioned in the judgment of the High Court. In our view in the absence of confirmation by the handwriting expert that the writing on Ex. 11/12 was that of the appellant, the High Court should not have taken upon itself to compare the specimen writing with that mentioned in the exhibit and come to the conclusion that the writing was that of the appellant even though there had been an attempt to disguise it. We find ourselves unable to hold

that the footnote to the letter of 28th March Ex 11/12 was in the handwriting of the appellant. Although there were incriminating references to the appellant in some of the other letters, in the absence of proof as to who has writing the said foot-note we much hold that the charge of the appellant having been a party to the conspiracy to the murder had not been satisfactory established, The appellant was therefore be acquitted and we direct him to be set at liberty.