

(2008) 01 AHC CK 0068

Allahabad High Court

Case No: None

Veerpal and Others (In  
Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

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Date of Decision: Jan. 21, 2008

Acts Referred:

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 161, 169
- Penal Code, 1860 (IPC) - Section 148, 149, 302, 307, 452

Hon'ble Judges: R.N. Misra, J; M. Chaudhary, J

Bench: Division Bench

Final Decision: Dismissed

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### Judgement

R.N. Misra, J.

This appeal has been preferred by the appellants Veerpal, Satyavir, Jagbir, Kunwarpal, Vijaypal, Ajaypal, Harikesh, Harish Chandra, Hari Ram and Dharambir against the judgment and order dated 1.12.2004 passed by Shri S.K. Samadhiya, the then Addl. Sessions Judge, Agra in Sessions Trial No. 529 of 2003, by which they have been convicted for the "offences punishable under Sections 148 452 302 read with 149 and 307 read with 149 IPC and sentenced to undergo R.I. for three years in each under Sections 148 and 452 IPC, imprisonment for life u/s 302 read with 149 IPC and R.I. for 10 years u/s 307 read with 149 IPC. For the offence u/s 302 IPC a fine of Rs. 10,000/- has also been awarded to each appellants and in default of payment of fine R.I. for one year has been awarded. In connected Sessions Trial Nos. 677, 678 & 679 of 2003, the appellants Jagbir, Hari Ram and Harish Chandra were acquitted.

2. The facts giving rise to this case are as under:

The complainant-informant Amar Singh son of Kare Lai and accused-appellants were residents of village Paithra Burj, police station Khandauli district Agra. There

was some enmity between the parties regarding the electric theft. The accused-appellants were committing theft of electricity by means of "kattia" for which the father of the complainant-informant had raised objection. In that connection the accused-appellants had caused injuries to the uncle of the complainant-informant namely Biram Singh and Raghunath also. A criminal case was registered against the accused-appellants in which warrant of arrest were issued. Due to that enmity on 8.5.2003 at about 2:00 PM, this incident took place. Kare Lal, the father and Biram Singh, the uncle of the complainant-informant were sitting in the tin-shed (Bada). In the meantime, the accused-appellants having firearms (katta etc.) came there and all of sudden they started firing to kill the father and uncle of the complainant-informant. On hearing the sound of firing, Kishan Singh, Charan Singh and Dilip Singh came there. The accused-appellants made fire on them also. All of them sustained injuries. A minor boy namely Ravindra was playing there. He also sustained firearm injuries. Lakhan Singh, the brother of the complainant-informant went inside the room in the "Bada" but the accused-appellants also made fire on him. Kare Lai, Biram Singh and Lakhan Singh died on spot. Kishan Singh, Charan Singh, Dilip Singh, Ravi, Smt. Mahaviri, Ravindra and Lokendra Singh sustained injuries.

3. The complainant-informant lodged FIR Ext. Ka-1 of the occurrence at "police station Khanduali on the same day at about 3:15 PM, as is evident from the check report Ext,Ka-10. The police registered a case on crime No. 115 of 2003 and has started investigation as is evident from copy of the G.D. Ext. Ka-11. The police reached the spot and after inspecting the dead bodies of Lakhan Singh, Kishan Singh and Biram Singh, sealed them and prepared inquest reports Ext. Ka-37 to Ext. Ka-39 along with the connected papers. The dead bodies were sent for autopsy, which was conducted by Dr.R.S. Chaher on 9.5.2003. The post-mortem reports of Kare Lai, Lakhan Singh and Biram Singh are Ext. Ka-2 to Ext. Ka-4 respectively. The injured persons were also sent for medical examination. Dr. A.A. Khan examined the injuries of the injured persons. The injury reports of Kishan Singh, Dilip Singh, Ravindra, Charan Singh, Smt. Mahaviri Devi, Lokendra are Ext. Ka-5 to Ext. Ka-16. The Supplementary reports and X-ray reports are Ext. Ka-21 to Ext. Ka-23 and X-ray plates are. Ext. 18 to Ext. 27. The Investigating Officer inspected the spot and prepared the site plan Ext. Ka-17. He also recorded the statement of the witnesses. During investigation he arrested the accused-appellants Saudan Singh, Jagbir, Harish Chandra and Hari Ram and on their pointing out country made pistols and cartridges were also recovered, as is evident from the recovery memo Ext. Ka-24.

4. A separate investigation was made by the police regarding the recovery of the arms. The I.O. of that case prepared the site plan of the place of recovery and recorded the statements of the witnesses. The I.O. also collected the blood stained and simple soil from the place of occurrence and prepared memo Ext. Ka-18. Some empty cartridges and bullets were also recovered, the memo of which is Ext. Ka-19. The "Phawra" and handle of the Hand-pump allegedly used in the crime were also

recovered, the memo of which is Ext. Ka-20. The recovered articles were sent for scientific examination and the report of the Ballistic Expert is Ext. Ka-40. After completing investigation the 1.0. submitted charge-sheet Ext. Ka-26 in a murder case and Ext. Ka-31 to Ext. Ka-34 in the case under the Arms Act.

5. All the accused-appellants were charged for the offences punishable under Sections 148 452 302 read with 149 and 307 read with 149 IPC. Accused-appellants Saudan Singh, Jagbir, Hari Ram and Harish Chandra were also charged for the offences punishable u/s 25 Arms Act. The accused-appellants denied the allegations levelled against them and alleged their false implications in this case due to enmity. They have given no evidence in defence. Accused-appellant Ajay Pal Singh has stated that his father Saudan Singh was a witness in attempt to murder case instituted against the deceased Lakhan Singh and injured Kishan Singh. Harish Chand has stated that Lakhan Singh, Kishan Singh had made fire on his wife Smt. Pista Devi and brother Jagbir before 5 or 6 months of the occurrence in question and for that incident his father had lodged report against them. Hari Ram, Saudan Singh and Jagbir have also referred the same incident.

6. In support of its case, the prosecution has examined Amar Singh PW-1, Ravindra Singh PW-2, Srati Mahaviri PW-3 and Dilip Singh PW-4 as eye-witnesses of the incident. PW-5 is Dr. R.S. Chaher, who had conducted the autopsy of three deceased persons. PW-6 is Dr. A.A. Khan, who had examined the injuries of Kishan and Ravindra. PW-7 is Gandhi Pd. Sharma, Head Constable, who had prepared the check report on the basis of written report of the complainant-informant and made entry in the G.D. for registration of the case. He was also witness of the recovery of the illicit arms. PW-8 is Dr. B.P. Seth, who had examined the injuries of Charan Singh, Mahaviri Singh and Lakhan Singh. PW-9 is Sub Inspector R.N. Tyagi, who had made primary investigation of the case and after that he had handed over the investigation to SHO Umesh Chandra Chaturvedi. He had prepared the site plan Ext. Ka-17 and taken blood stained soil and empty cartridges from the spot and prepared memos Ext. Ka-18 to Ext. Ka-20. PW-10 is Dr. Sunhari Lai radiologist, who had conducted X-ray of injured Kishan Singh, Bharat Singh and Ravi. He has proved the X-ray plates Ex.18 to Ex.27 and X-ray reports Ext. Ka-21 to Ext. Ka-23. PW-11 is Sub Inspector Umesh Chandra Chaturvedi, who had completed the investigation of the case and submitted charge-sheet Ext. Ka-26. PW-12 is constable Udai Veer, who had prepared the check report and made entry in the G.D. regarding registration of the case under the Arms Act.

7. We have heard Shri G.S. Chaturvedi and Shri G.S. Hazela, learned Counsels for the appellants and learned AGA assisted by Shri S.P.S. Rahghav, Senior Advocate for the prosecution and perused the evidence on record.

8. This occurrence took place on 8.5.2003 at about 2:00 PM and the FIR (Ext Ka-1) was lodged at the police station Khandauli on the same day at about 3:15 PM. The distance of the police station from the place of occurrence was about 2 kilometers.

Thus, there was no delay in the FIR. The learned Counsels for the appellants have contended that after the occurrence the police authorities reached there and after consultation the FIR was lodged, hence it was ante-timed but this report is unfounded. PW-7 Head Constable Gandhi Prasad Sharma has stated that on the basis of FIR(Ext. Ka-1) he had prepared the check report Ext. Ka-10 on 8.5.2003 at 3:15 PM and made entry in the G.D.(Ext. Ka-11) of the registration of the case. Further, he has stated that after registering the case he handed over the papers to Sub Inspector Veerpal Singh, who proceeded to the place of occurrence and his departure was entered in the G.D. Ext. Ka-12. The special report of the occurrence was sent on the same day to the higher authorities at 4:25 PM through constable Bhim Sen and entry of the same was made in the G.D. Ext. Ka-13. He has further stated in his cross-examination that on the said date no cognizable offence was registered prior or after the registration of this case.

9. Further, he has stated that the persons who had come to the police station along with complainant-informant Amar Singh were mentioned in the G.D. This fact disclosed by this constable mohrrir shows that the FIR was not ante-timed.

10. PW-1 Amar Singh, the complainant-informant of the case, who had lodged the report Ext. Ka-1 has stated that when the accused persons went away from the spot he dictated the FIR to Sheo Ram Singh, who was available there. Though the complainant-informant was literate person but he did not write the FIR in his own handwriting because his handwriting was poor as disclosed by him in examination-in-chief itself. It was pointed out from the side of the appellants that Sheo Ram Singh was not related to the complainant-informant and was resident of another village, which was situate at a distance of about 50 kilometers, therefore, his presence in the village in question was highly doubtful and it appears that much after the incident Sheo Ram Singh was called by the complainant-informant and after his consultation the FIR was written. It has also been pointed out that Sheo Ram Singh was a criminal. But PW-1 has explained the circumstances. In his cross-examination, he has admitted this fact that Sheo Ram Singh was resident of another village situate at a distance of about 50 kilometers from his village but fortunately he was present in the village on the date of incident. PW-1 has further stated that Smt. Mahaviri Singh, the wife of Lakhan Singh was treated as sister by Sheo Ram Singh and that was the only relation between both the families. Further, he has stated that Sheo Ram Singh was acquainted with deceased Lakhan Singh since long because once upon a time the sons of Sheo Ram Singh and Lakhan Singh were admitted in a common hospital and they knew each other in that connection. They were admitted in the hospital of Dr. Ramesh Prasad situate near Hari Parwat Chauraha, Agra about 12 or 14 years back. PW-1 has emphatically denied this fact that after incident Sheo Ram Singh was called and then the FIR(Ext. Ka-1) was written. Sheo Ram Singh had also accompanied the complainant-informant to the police station on a motor cycle. A number of persons of the village had gone to the police station at the time of lodging the FIR. The complainant-informant has also

denied this fact that Sheo Ram was a criminal. However, there is nothing on the record to show that Sheo Ram Singh was a criminal.

11. The FIR Ext. Ka-1 contained the necessary facts i.e. date, time and place of occurrence, names of the accused persons, injured and witnesses. It was argued by the learned Counsels for the appellants that in the FIR Ext. Ka-1 there was no mention of the names of Smt. Mahaviri Singh, Lokendra Singh and Ravi as injured but later on the medical reports were obtained. PW-1 Amar Singh has explained this latches. He has stated that Mahaviri and Ravindra Singh had got minor injuries, therefore, he did not mention their names in the FIR. This explanation of PW-1 is acceptable. Moreover, every minor details is not expected to be mentioned in the FIR, particularly in the situation where the three members of the family of the complainant-informant were killed and a number of persons were injured.

12. In such situation the complainant-informant could not be expected to mention those facts in the FIR, which could be asked in the cross-examination before the Court. In the case of Navratan Mahato v. State of Bihar 1979 Cri.L.J 1295, the Hon"ble Apex Court has opined that no mention of details in the FIR is no ground to reject the prosecution case. Further, in the case of State of Gujrat v. N.D. Patel and Ors. 1993 SCC 590, the Hon"ble Apex Court has observed that the mere fact that a witness did not disclose a particular fact before the police but disclose it before the Court is no ground to discard his testimony, particularly when he is injured and his presence on the spot was doubtless. In the present case before us, PW-1 Amar Singh has stated that he had told the 1.0. that in this incident Mahaviri and Ravindra Singh had also sustained injuries and they were present on the spot, but he did not know under what circumstances the 1.0. did not write this fact in his statement u/s 161 Cr.P.C. PW-9 is Sub Inspector R.N. Tyagi, who had conducted the primary investigation of the case has stated that when he had visited the spot Mahaviri and Lokendra had not met him, therefore, he could not say whether they had sustained injuries or not.

13. The motive behind the occurrence as alleged by the prosecution was that prior to the incident, the father of the complainant-informant had lodged the report in the police station against the accused persons because they were committing electric theft by means of "Katia". Aggrieved by the said report the accused persons had brutally assaulted the uncle of the complainant-informant namely Raghunath and Biram Singh, the deceased. In that case warrant of arrest had been issued by the magistrate concerned against the accused-appellants Harikesh, Saudan Singh and Veerpal. This fact is also mentioned in the FIR Ext. Ka-1. PW-1 Amar Singh has corroborated this fact before the Court also. In his very examination-in-chief, he has stated" that on 11.12.2002 his father had forbidden the accused-appellants from committing electric theft by means of "Katia". The accused persons felt it ill and Harikesh, Saudan Singh and Veerpal had abused and assaulted his father and when his uncle Biram Singh and Raghunath wanted to intervene, they were also assaulted

by the accused persons by country made pistols. Kishan Singh son of Biram Singh(deceased) had lodged report of this incident at police station Khanduali in which warrants of arrest were issued against them. In his cross-examination, PW-1 could not say from which Court warrant of arrest had been issued against the accused persons in the electric theft case but he had seen the police while making raid at the house of the accused persons to arrest them. PW-9 Sub Inspector R.N. Tyagi, who had made part investigation of the case has stated in the last part of his cross-examination that in connection with the electric theft, a case u/s 307 IPC had been registered at police station Khanduali by the order of the Senior Superintendent of Police, Agra, which had been investigated by Sub Inspector Veerpal Singh. However, the final report u/s 169 Cr.P.C. had been submitted by the I.O. in that case. A protest petition against the final report had been lodged by the complainant-informant of that case before the magistrate concerned and warrant of arrest had been issued against the accused persons. However, about 15 days back to this incident of murder, warrant of arrest was recalled unexecuted. This evidence of I.O. clearly shows that there was motive for this crime because just before 15 days of this incident warrants of arrest had been issued by the magistrate concerned against the accused persons in the electric theft case and the same were returned back by the police unexecuted. Therefore, this argument of the learned Counsel for the appellant is not acceptable, that there was no immediate motive for this crime.

14. In the case of State of Himachal Pradesh v. Jeet Singh 1999 (4) SCC 376, the Hon'ble Apex Court has made the following observations:

It is almost impossible for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person offended.

Sometimes on trifling matters, heinous crimes are committed. For example, persons travelling in a bus or train are being murdered by the accused under the presumption that they will get the considerable money from their possession and after crime it is found that the injured or deceased had only a few rupees in his pocket. Though, it is not necessary for the prosecution to allege or prove the motive but when the motive is alleged it must be proved.

15. In the case of State of Haryana v. Sher Singh and Ors. 1981 SC 317, it has been opined that the prosecution is not bound to prove the motive, moreso, when crime is proved by direct evidence.

16. In the case of Rameshwar and Ors. v. State of U.P. IVL 2003 ACC 581, the Division Bench of this Court has held that when there is direct evidence, the motive is not important. As we will discuss later on, this case is fully proved by direct evidence.

17. Now we come to the evidence given by the eyewitnesses regarding the incident in question. The learned Trial Court has accepted the prosecution evidence. PW-1 Amar Singh, the complainant-informant of the case and son of deceased Kare Lai

has stated that on 8.5.2003 at about 2:00 PM, he was urinating in the bathroom near his tin-shed (Bada). His father Kare Lai and uncle Biram Singh were sitting in the teen-shed. He saw the accused persons coming in the Bada having country made pistols in their hands. All of sudden they opened fire on Kare Lai and Biram Singh, who died on spot. On hearing the sound of firing and cries of deceased he also raised alarms on which, his neighbourers Charan Singh and Kishan Singh also reached there. His relative Dilip Singh, who had also came to his house, reached there. The accused persons made fire on them also. Ravindra Singh and Lokendra, the minor boys were playing there. They also sustained injuries. At that time Lakhan Singh, elder brother of the complainant-informant was also present in the Bada. To save his life Lakhan Singh ran away in a "Kothari" constructed in the Bada and bolted the door from inside. The accused persons chased him and broke open the door. First of all, accused persons made fire in the "Kothari" from window and after breaking the door they entered the "Kothari" and made several fires on Lakhan Singh, who also died on spot. Smt. Mahaviri, wife of Lakhan Singh was also there. She also sustained injuries. The learned Counsels for the appellants have argued that when Smt. Mahaviri wife of Lakhan Singh was also present there, why she did not intervene and why the blood of the deceased Lakhan Singh was not found on her clothes? But this argument of the learned Counsels for the appellants is not acceptable because in such situation where three members of family had been killed and a number of persons had been injured and the accused persons were armed with firearms, no would have muster the courage to face them.

18. In the case of [Hardev Singh Vs. Harbhej Singh and others](#), , the Apex Court has made the following observations:

Non-intervention by relatives of deceased including eye-witnesses during the assault on the victim to protect him, in our opinion is wholly unsustainable. Since accused were armed with deadly weapons and relatives of witnesses were unarmed, in such situation it was absurd to expect any intervention and if they were to do so, it would have led to some more casualties.

19. In the case of Jaishree Yadav v. State of U.P.JT 2004 (6) 519, the Hon"ble Apex Court has made following observations:

PW sons did not make effort to save his father (deceased), who was profusely bleeding - no blood on the clothes of son - he did not even touch the body of deceased - son educated man, the FIR was got written by some other person - no ground to suspect his presence on spot. In our opinion different people react differently to a given situation. Explanation of son sufficient that since his father was died, hence, he did not touch his body.

20. PW-1 Amar Singh has faced a very length cross-examination from the side of the defence but he has given no benefit to the defence. All the questions put in the cross-examination were very satisfactorily answered by this witness. A question was

asked from the defence side that why he did not inform the police on telephone. He has stated that the telephone of the police station was not in the working order. This fact has been corroborated by PW-7 H.C. Gandhi Prasad Sharma. He has stated in his cross-examination that on the date of incident the telephone of police station was not working. PW-9 Sub Inspector R.N. Tyagi, 1.0. of the case has also stated in his cross-examination that R.T. Set was working but the telephone was not working. As such the explanation given by PW-1 is quite correct. Regarding the medical examination of Smt. Mahaviri Singh and Lokendra on the next date of incident, PW-1 has stated that they had sustained simple injuries, therefore, their medical examinations were made on the next day. PW-7 constable Gandhi Prasad Sharma has stated that Lokendra and Mahaviri had, come to the police station and in G.D. No. 45 time 4:30 PM, there was mention of the fact that "Chitti Mazroobi" had been handed over to Smt. Mahaviri and Lokendra. This fact clearly shows that explanation given by the complainant-informant is quite correct. It was argued by the learned Counsels for the appellants that in his statement dated 24.11.2003 PW-1 had named only 6 accused persons but in his subsequent statement dated 11.2.2004 he named 11 accused persons and as such created serious doubt regarding the involvement of all these appellants in the incident in question. But we are of the opinion that this contradiction is immaterial, moreso, PW-1 was not confronted with this situation in the cross-examination. In his statement dated 11.2.2004, he told the names of all the 11 assailants and no cross-examination on this point was made, therefore, this uncrossexamined testimony could not be disbelieved. His presence on the spot could not be doubted because he had also sustained injuries. This argument of the learned Counsel for the appellants had also no force that Mahaviri Singh and Lokendra had not sustained injuries, therefore, they were not medically examined on the date of incident but on the next day they were examined and as such their injuries were fabricated. But we see no force in this contention because Dr. A.A. Khan had examined the injuries of these two injured persons on 9.5.2003 at 10:40 and 10:50 AM and found following injuries.

Mahaviri Singh

(1) Multiple pin head abrasion (tattooing marks) in area 10 CM X 7 CM over (Rt.) forearm & elbow soft scab present.

(2) Reddish contusion 4 CM X 1 CM over middle part of left forearm.

Lokendra

(1) Multiple pin headed abrasion in area whole of face except soft scab present.

21. The injuries of both the injured were caused by firearms and were one day old as opined by the Doctor, therefore, their presence on the spot could not be doubted.

22. In his cross-examination, PW-1 has stated that he was urinating in the latrine room constructed in the Bada. He had seen the incident from iron-bars fixed in the

doors. The I.O. has mentioned bathroom in the site plan Ext. Ka-17. However, he (PW-9 R.N. Tyagi) could not say whether there was any "Jungla" in the latrine room or not. This was slackness on the part of the I.O. He should have inspected minutely the doors and windows etc. of the latrine room. PW-1 has stated that he had told the I.O. that he had seen the occurrence from inside the latrine room through iron-bars fixed in the door but he did not mention this fact in his statement u/s 161 Cr.P.C.

23. Thus, explanation given by this witness is quite satisfactory. The tin-shed in the "Bada" has been shown by the I.O. in the site plan. The dead body of Biram Singh was found at place "A", Kare Lai at place "B" and Lakhan Singh at place "C". All the witnesses have clearly stated that after sustaining gunshot injuries Kare Lai wanted to run away but he fell down at place "B" where dry plants of "Mustard" had been kept. The dead body of Lakhan Singh was found inside the room. This was specific case of the prosecution also. The Floor of the room in which Lakhan Singh was murdered was "Katcha" and the I.O. found blood there. The I.O. had taken the blood and simple soil from the place of occurrence as is evident from memo Ext. Ka-18. He also found "Phawra" and handle of hand-pump, which were blood stained and prepared memo Ext. Ka-20. A number of empty cartridges were also found on the spot, which were taken by the I.O. and memo Ext. Ka-19 was prepared. These memos had been prepared by Sub Inspector R.N. Tyagi. The recovered articles were sent to the Ballistic Expert. However, there is no report of chemical examiner in the file about the blood stained soil, Phawra and handle of hand-pump etc. but there is a report of the Ballistic Expert Ext. Ka-45 regarding empty cartridges recovered from the spot. The report of the Ballistic Expert shows that some cartridges were fired from country made, pistols and some were not.

24. The learned Counsels for the appellants have argued that some bullets were found on the spot which could have been fired from S.L.R. (Self Loading Rifle), which was a prohibited bore arm. On the basis of this report, he has further argued that some unknown persons had committed this crime and due to enmity these appellants have been falsely implicated in this case. He has also referred a newspaper Ext. Ka-113 and statement of DW-4 Raj Kumar Sharma, who had alleged himself to be the Senior Editor of newspaper "Amar Ujala" published from Agra. The learned Counsels for the appellants have tried to establish that Smt. Mahaviri, wife of deceased Lakhan Singh had told the news reporter that some military personnels had committed murders. Smt. Mahaviri has denied this fact. The I.O. has also stated that Smt. Mahaviri had not told him that any military personnel was involved in this crime. A plain reading of the news published in the newspaper Ext. Ka-113 also shows that Smt. Mahaviri Singh had named all the accused persons, who were named in the FIR Ext. Ka-1. There was mention of some military personnels also in the news but no name was disclosed. From this news it appears that Rajpal and Nayan Singh sons of Saudan Singh, one of the convicts in this case were serving in military, though they were not named as accused in this case.

25. The learned Trial Court has rightly observed that if two persons of the family of the accused were serving in the military, it was quite possible that they might have provided the bullets of S.L.R. to his family members, who might have been used in this crime. The learned Trial Court has further rightly observed that there is no report of Ballistic Expert or any other evidence on the record to show that the bullets of S.L.R. could not be fired from any country made pistols or other weapons. This observation is also very probable and natural because illiterate villagers could not be expected to correctly identify the nature and make of the firearms used by the appellants in the crime. The witnesses simply saw that the accused persons were armed and they told the I.O. and the Court that they were armed with country made pistols.

26. In these circumstances, it cannot be said that any outsider except the present appellant had made fire from the prohibited bore arms on the assailants. DW-4 Raj Kumar Sharma has stated in his very examination-in-chief that Smt. Mahaviri was telling something to the police officials present on spot but he could not hear the actual words uttered by her. However, he heard that she was making mention of some "Fauzy". This statement of DW-4 also washed out the defence case that some outsiders had committed this crime. In his cross-examination, this witness himself created doubt. He was employed in the newspaper "Amar Ujala". In the news itself his name was not mentioned. His identity card was not renewed after 29.4.1998. Thus, any news alleged to have been published in the newspaper "Amar Ujala" on the basis of his information was not reliable at all.

27. PW-1 has honestly admitted that he did not enter the room in which Lakhan Singh was murdered therefore, he could not see, which of the accused persons had made fire on. Lakhan Singh inside the room. But he has clearly stated that all the accused persons had chased Lakhan Singh, some entered the room, some remained outside, some made fire from a window of the room and some made fire inside the room. In the site-plan Ext. Ka-17, the I.O. mentioned the window of the room in which Lakhan Singh was murdered. The prosecution witnesses have stated that in that window only iron-bars were fixed but wooden doors were not fixed. As such the statement of prosecution witnesses was quite reliable that some of the accused person had made fire from that window inside the room.

28. PW-2 is Ravindra, a boy aged about 12 years and injured in this case and his statement was recorded on 11.11.2004, whereas the incident had taken place on 8.5.2003. Thus, it is evident that at the time of incident he was aged about 10 or 11 years. He has named all the accused persons in his statement. He has further stated that he was playing in the "Bada" along with Lokendra Singh. Biram and Kare Lai were sitting there. Lakhan Singh was also there. The complainant-informant was also there. All the accused persons having country made pistols in their hands came there and opened fire on Kare Lai, Biram Singh and Lakhan Singh and they died on spot. He had also sustained firearm injuries. Lokendra Singh had also sustained

firearm injuries. Both (Ravindra and Lokendra) were examined on 8.5.2003 and 9.5.2003 and their injury reports are Ext. Ka-7 and Ext. Ka-16, which have been proved by Dr. A.A. Khan, PW-6 and Dr. B.P. Seth PW-8 respectively.

29. In his cross-examination PW-2 has stated that at the time of incident he was student of class VI. He and Lokendra were playing in the "Bada" with the wooden Gadi. One of the wheels of that Gadi had developed some defect and they were curing it. In the meantime, all the accused persons entered the Bada and made fire. They had also sustained injuries. They were very much afraid. Lakhan Singh entered the room in the Ba4a. The assailants had broken the wooden door, which was bolted from inside by Lakhan Singh. The handle of hand-pump was also lying in the Bada. Accused Saudan Singh had "Phawra" in his hand. The door was opened by the accused persons by "Phawra" and handle of handpump etc. Since he did not enter in the room in which Lakhan Singh was murdered, he could not say whether Saudan Singh had used "Phawra" in the marpeet or not. He had not told the I.O. that Kare Lai and Biram Singh "were assaulted by Saudan Singh by "Phawra". He has further stated that he along with Lokendra Singh were standing beneath "Neem tree" in the Bada. He was admitted in the hospital and remained there for 2 or 3 days. Dilip Singh, Kishan Singh and Charan Singh were also there. The defence could not catch anything in it's favour from this witness.

30. PW-3 is Smt. Mahaviri, wife of deceased Lakhan singh. She was also injured. She has stated that she was also present in the Verandah of Bada at the time of incident. She has named all the 11 accused persons in her statement, who had committed this crime. According to her, all the accused persons were armed with country made pistols. They made fire on Kare Lal, Biram Singh and Lakhan who died on spot. In this incident she had also sustained injuries. Lokendra, Ravi, Amar Singh, Charan Singh and Dilip Singh had also sustained injuries. When her husband entered the room the accused persons broke up the door and made fire on him.

31. In his cross-examination, she has stated that her residential house was situate at some distance from "Bada". This Bada was constructed for the cattle. Regarding the presence of Amar Singh, she has stated that at the time of incident he was in the latrine room constructed in the "Bada" and saw the incident from there. She had also sustained injuries on her neck, but that injury was caused while she was running away. She had sustained firearms injuries. The blood stained clothes of this lady were not taken by the I.O., because she had not shown the same to the I.O.

32. PW-4 is Dilip Singh, relative of the complainant-informant. He was brother-in-law of the complainant-informant. He has stated that he had come to the complainant's house to meet her sister Smt. Mahaviri. He was present there since two days. He also named all the accused persons who had participated in this crime. In his cross-examination he has stated that the I.O. had not inspected the spot in his presence. He had sustained injuries and had become unconscious. He regain consciousness in the emergency ward of S.N. Medical College, Agra. He did not

know who had brought him to the hospital. In his cross-examination, he has stated that there was hand-pump in the Bada and from there he saw the incident. Further, he has stated that when Kare Lai and Biram Singh succumbed to the injuries, he became unconscious. Nothing has come out of the cross-examination of this witness, which could help the defence. This fact is not disputed that he was related to the complainant-informant. There is nothing on the record to show that he had not come to the house of the complainant-informant, therefore, this injured witness cannot be disbelieved.

33. PW-5 Dr. R.S. Chaher had prepared the postmortem reports Exts Ka-2 to Ka-4. The autopsy of the deceased were conducted on 9.5.2003 from 2:00 PM to 4:45 PM. The following ante-mortem injuries were found on the person of the deceased.

#### Ante-Mortem Injuries of Kare Lal

(1) Firearm entry wound 2.5 cm X 1.5 cm cavity deep over left lateral side of chest wall. Margins inverted. Blackening & tattooing present. Gun powder marks present in an area of 20 cm x 12 cm around the wound, bullet recovered from right thoracic cavity size 3 cm x 0.7 cm.

(2) Firearm entry wound of oval shape involving Rt. eye, upper part of nose & forehead, size 7 cm X 5 cm x cavity deep, blackening present on margins, margins are inverted in some parts. Eye Ball is lacerated. Concerning bones are fractured and Rt. side of fronto parietal bone fractured.

(3) Firearm Exit wound 8 cm x 6cm x cavity deep at mid of parietal region (Top of Head) brain matter coming out. Bones concerned are fractured. Bleeding (clotted blood) present. Margins are everted.

In the internal examination, the membranes, brain, pleura and lungs were found lacerated.

#### Ante-Mortem Injuries of Lakhan Singh

(1) Lacerated firearm entry wound size 1.5 cm x 1 cm muscle deep over middle 1/3 of left leg region and bullet recovered from muscle tissue. Bullet size 3 cm long, diameter 0.7 cm.

(2) Multiple pellets injuries over left side of face, some are rounded, some are oval in shape, size vary from 0.5 cm to 0.8 cm in diameter, muscle deep, pellets recovered.

(3) Gun powder marks present all over the face more on Rt. side upto neck.

(4) Cornea conjunctiva, pupil of right eye are lacerated, gun powder mark present over conjunctiva, pellet recovered from Rt. eye.

(5) Firearm entry wound size 5 cm x 4 cm x cavity deep at 3 cm above interior angle of Rt. scapula (over back of chest). Margins are inverted with multiple pellets punctured wound size 0.5 cm x 6 cm x muscle/cavity deep medially in an area of 6

cm. Blackening and tattooing present around the wound. Plastic web pellets recovered.

(6) Firearm exit wound size 3 cm x 2.5 cm x cavity deep over 2 cm above the junction of medial 1/3 & lateral 2/3 of Rt. clavicle. Margins are everted. Injury nos.5 & 6 are correlated to each other on probing.

(7) Lacerated wound size 3 cm X 1 cm x muscle deep on Rt. side of face, 2 cm away to lateral area of nose transversely.

(8) Firearm entry wound size 1.5 cm x 1 cm x bone deep, on the Rt. side of face on mandible 2 cm below & 2 cm lateral to angle of mouth. Margins inverted, fracture of mandible present, bullet not recovered that may be reflected back out.

(9) Gun Powder mark over Rt. side of chest over and around the Rt. nipple 4 cm around the nipple, also extending up to the Rt. axilla and upper & middle part of Rt. arm anteriorly with 5 cm wide ship form.

(10) Firearm entry wound size 1 cm diameter, cavity deep with inverted. Margins over Rt. lateral side of abdomen. Blackening, tattooing & gun powder mark present around the wound, powder mark in area of 3 cm diameter, bullet recovered from abdominal cavity, intestine & spleen are lacerated, bullet of size 3 cm X 7 cm recovered.

(11) Gun powder marks over lower part of abdomen on Rt. side in area of 10 cm X 8 cm below umbilicus, G.P. marks also present over Rt lower part.

(12) Abrasion 4 cm X 2 cm over anterior surface of upper 1/3 Rt. forearm.

(13) Lacerated wound 1 cm x 1 cm x muscle deep at left axillary fold in upper part.

In the internal examination the pleura, right lung, peritoneum and spleen were found lacerated. There was fracture of 7<sup>th</sup> rib.

#### Ante-Mortem Injuries of Biram Sinah

(1) Firearm Entry wound 1.5 cm X 1.5 cm x muscle bone deep at Rt. arm in middle 1/3 part. Margins are inverted. Conical shaped metallic bullet recovered from Rt. arm tissue.

(2) Firearm entry wound of size 8 cm x 5 cm cavity deep. Transverse, 4cm Rt. Lateral to mid line at level of 9<sup>th</sup> & 10<sup>th</sup> Thoracic vertebrae. Margins are inverted, plastic web & metallic pellets recovered from wound & some pellets recovered from linear & abdominal cavity & sealed.

(3) Firearm entry wound size 1 cm X 1cm at Tragus of left ear margins are inverted.

(4) Firearm exit wound size 2.5 cm X 1.5 cm over back of left ear, 4 cm on posterior side of left ear. Margins are everted on probing wound No. (3) & (4) were found communicating to each other.

(5) Firearm entry wound size 5 cm X 2.5 cm x oval cavity deep (on probing)....(P.T.) are inverted. Major vessels, arteries & veins are lacerated on probing this wound communicates to oral cavity and fracture of left side of mandible with fracture teeth of left lower gums are present.

In the internal examination 11<sup>th</sup> & 12<sup>th</sup> Ribs were found fractured. The major vessels of neck were lacerated, the peritoneum, buccal cavity, teeth, tongue, pharynx, liver and gall bladder were also lacerated.

34. PW-6 Dr. A.A. Khan had examined the injuries of Kishan, Dilip and Ravi in S.N. Medical College, Agra. He has proved the injury reports Exts. ka-5, Ka-6 and Ka-7.

According to the injury reports, the following injuries were sustained by the injured persons.

#### 1. Kishan

(1) Lacerated wound 3 cm x 1 cm x depth not probed due to surgical reasons on Rt. side of face (on maxillary prominence) probably Gun shot wound of entry. No blackening, no tattooing, K.U.O. Adv. X-ray. CT scan. Gun powder mark on face present.

(2) Lacerated wound 2 cm X 1cm x bone deep on It. eyebrow.

#### 2. Dilip

(1) Lacerated wound 5 cm x 1 cm x bone deep on top of skull. K.U.O. Adv. X-ray/CT scan.

(2) Lacerated wound 1.5 cm x 1 cm x depth not probed due to surgical reasons on base of neck in Rt. Postereo region. Tattooing present. K.U.O. Adv. X-ray probably it is gunshot wound of entry. Gun Powder Mark present.

(3) Lacerated wound 0.5 cm x 0.5 cm x depth not probed due to surgical reasons, lateral aspect of Rt. upper arm at its middle third diffuse swelling & deformity, K.U.O. Adv....X-ray.

(4) There are three lacerated wounds Size-1 cm X 0.5 cm x skin to muscle deep on Rt. lat. Aspect of chest, K.U.O. Adv. X-ray.

#### 3. Ravi

(1) Lacerated wound 7 cm X 4 cm X muscle deep on lat. aspect of Lt. shoulder, K.U.O. Adv. X-ray. In the margins, black Gun powder mark present.

(2) Lacerated wound 6 cm x 3 cm x bone deep on dorsal aspect of Lt. hand including proximal phalynx of ring finger, K.U.O. Advised X-ray.

All the injuries were examined on 8.5.2003 from 3:35 PM to 4:00 PM. The injuries were caused by gunshot and kept under observation. The injuries were fresh.

35. Dr. A. A. Khan had also prepared the supplementary injury reports of Ravindra, Kishan and Charan Singh or. 16.5.2003, which is Ext. Ka-9. The supplementary reports of Ravindra, Kishan and Charan Singh are as follows:

Ravindra

Fracture of Ivth & Vth Phalanges (proximal) seen. Few pellets density also seen.

Kishan

No bony injury seen. Two metallic densities were seen in soft tissue of Rt. side of face.

Charan Singh

(1) Fracture lateral half of Rt. Clavicle seen one metallic density of bullet was seen at rt. infraclavicular region. Another bullet of low density was seen on Rt. lat. wall of chest. Depth could not be ascertained.

(2) A bullet density was seen in soft tissue of chest on Rt. lat. side.

36. In the opinion of Doctor concerned, injuries were caused by firearms & grievous in nature.

PW-8 Dr. B.P. Seth had examined the injuries of Charan Singh and Lokendra Singh in District Hospital, Agra. He has proved the injury reports Exts. Ka-14 and Ka-16.

37. According to the injury report, the following x-ray injuries were sustained by Charan Singh.

1. Charan Singh

(1) Lacerated wound 4 cm X 1 cm x scalp deep over (rt.) side top of head, fresh clotted blood present. Admitted, KUO.

(2) Firearm wound of entry 2 cm x 1 cm x muscle deep (cavity deep) over (rt.) back of chest at near inferior angle of scapula. Margins inverted, tattooing charring present, fresh clotted blood present. Adv X-ray of chest, fresh clotted blood present.

(3) Firearm wound 0.5 cm x 0.5 cm x muscle deep over front of (Rt.) shoulder, tattooing marks over whole of shoulder & upper 1/3 part of Rt. upper arm & front of chest. Adv. X-ray.

(4) Firearm wound 3 cm X 1 cm x muscle deep over web spine of (Rt.) thumb & index, tattooing, charring & blackening present over palm.

The Injury of charan Singh was examined on 8.5.2003 at 3:00 PM. According to the Doctor, Injury No. 1 was caused by hard blunt object and Injury Nos. 2,3 and 4 by some firearm. All injuries were fresh.

38. PW-9 is Sub Inspector R.N. Tyagai, who had made part investigation of the case. As soon as the FIR was registered at the police station he proceeded to the spot. Head Constable Ram Prakash was also with him. He inspected the dead body of all the three deceased persons and prepared inquest memos Exts. Ka-37 to Ka-39. The blood stained soil, empty cartridges, handle of the hand-pump and "phawra" were also taken by him from the spot and prepared the memos. He had informed the higher authorities on telephone. He had sent the dead bodies on the next day for autopsy. The inquest memos were also prepared on 9.5.20 03. It has been argued from the side of appellants that this shows the manipulation in the prosecution case because on the date of incident, it was not sure who had committed this crime. But this argument has no force. This witness has clearly stated that when he reached the place of occurrence, it was dark. There was no arrangement of light etc., therefore, on the next day he prepared the inquest etc. and sent the dead bodies for autopsy. PW-1 has also stated the same thing. This explanation of the I.O. is acceptable. The post-mortem report also shows that all the deceased had sustained fire-arms injuries and cause of death was ante-mortem injuries, therefore, prosecution case cannot be disbelieved on the ground that the I.O. prepared the inquest and sent the dead bodies for autopsy on the next day.

39. PW-11 Umesh Chandra Chaturvedi had completed the investigation. He had recorded the statements of witnesses and submitted charge-sheet Ext. Ka-26. He had also recovered some arms from the accused persons. However, the learned Trial Court acquitted the accused persons Harishcandra, Saudan Singh, Hari Ram and Jagbir Singh for the offences punishable under Sections 25 Arms Act, therefore, we need not discuss the evidence of recovery of weapons given by the prosecution. The witnesses of the inquest were outsiders. It was argued by the learned Counsels for the appellants that no person of the village concerned was made witness to the inquest and it created doubt in the prosecution case. But this argument is not acceptable. The learned Trial Court has given a very plausible reasoning for that. The incident in question was so fearful three persons of the family of the complainant-informant were brutally murdered and a number of persons were injured. In such circumstances, no village people could have mustered courage for coming forward in favour of the prosecution.

40. The learned Counsels for the appellants has pointed out some contradictions in the statements of the prosecution witness. But these contradictions are not material and not going to affect the credibility of the witnesses. Admittedly, the parties were residents of village and were not highly educated, therefore, some contradictions were bound to occur.

41. In the case of Krishna Mochi v. State of Bihar 2002 SC 81, the following observations have been made by the Apex Court:

The witness may not stand the test. of cross-examination which may be sometime because he is a bucolic person and is not able to understand the questions put to

him by the skilful cross-examiner and at times under the stress of cross-examination, witness certain answers are snatched from him. When a rustic or illiterate witness faces an astute lawyer, there is bound to be imbalance and, therefore, minor discrepancies have to be ignored.

42. The learned Counsel for the appellants has further argued that all the witnesses are interested and related witness and no independent witness has been produced by the prosecution in this case, therefore, the prosecution case cannot be believed. But we see no force in this contention. Normally, the independent persons do not intervene in the matters of others due to fear or a number of circumstances and relatives and family members only make courage to depose regarding the occurrence because they are the worse sufferers. In a catena of decisions, it has been observed that evidence of interested or related witness cannot be ignored only on the ground that they are related or interested. But their testimony has to be scrutinized with care. The following case may be cited for the purpose:

1. [Ravi Vs. State Rep. by Inspector of Police,](#)
2. [Krishna Mochi and Others Vs. State of Bihar,](#)
3. Appa Bhai v. State of Gujrat 1998 Supp. (SCC) 241
4. [Seeman @ Veeranam Vs. State, by Inspector of Police,](#)

43. Regarding the lack of independent witnesses, the following observations of Hon'ble Apex Court in the case of Krishna Mochi (Supra) are very material.

It is a matter of common experience that in the recent times there has been a sharp decline of ethical values in public life even in developed countries much less a developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or their evidence is not found to be credible by courts for manifold reasons, one of the reasons may be that they do not have courage to depose against an accused because of threats to their life, moreso, when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political, economic or other including muscle power.

44. In view of our above discussions, we are of the considered opinion that the prosecution case is well proved and the learned Trial Court has rightly convicted the appellants and sentenced them disclosed earlier. This appeal is devoid of merits and is liable to be dismissed.

45. The appeal is dismissed and the judgment and order passed by the learned Trial Court are hereby confirmed.

46. The appellants are in jail. They shall remain in jail to serve out the sentences awarded by the learned Trial Court and confirmed by us. Let a copy of this judgment and order be sent to Chief Judicial Magistrate, Agra for compliance and report within two months.