(2010) 02 AHC CK 0139

Allahabad High Court

Case No: None

Mana @ Manni Lal Pasi		APPELLANT
	Vs	
State of U.P.		RESPONDENT

Date of Decision: Feb. 19, 2010

Acts Referred:

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 161, 231, 313
- Penal Code, 1860 (IPC) - Section 120B, 302, 34

Citation: (2011) 1 ACR 224

Hon'ble Judges: Rakesh Tiwari, J; Rajesh Chandra, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Rajesh Chandra, J.
Heard counsel for the appellant, learned A.G.A. and perused the record.

2. The appellant Mana @ Manni Lal has filed this appeal against the judgment and order dated 09.09.2005 passed by the Additional Sessions Judge/FTC, Court No. 22, Allahabad, convicting the appellant for the offence u/s 302 I.P.C. and sentencing him with imprisonment for life and a fine of Rs.5000/- with default stipulation.

3. In brief, the facts of the case are that the complainant Nandan submitted a written report at Police Station Kareli, District Allahabad on 6.8.2000 at 1.30 AM mentioning therein that his younger brother Sant Lal was having love affair with Km.Reena, daughter of Chottey Lal Pasi. When Chottey Lal came to know about this fact, he sent his daughter in his relation about a year back. On account of this enmity some altercation had also taken place between the complainant''s father and Chottey Lal and for the same enmity the accused appellant Mana @ Manni Lal, the real brother of Chottey Lal had also beaten

the deceased (Sant Lal) about six months back and had threatened for killing him. However, the matter was pacified due to intervention of local residents of the village. The complainant further mentioned in the FIR that on 5.8.2000 he, his brother Sant Lal and Mukesh were as usual lying on separate cots near " Pan Ki Gumti". At about 11.50 PM the accused appellant Mana @ Manni Lal came and opened fire upon the chest of Sant Lal with a country made pistol causing his death. After committing the crime, he ran away towards the village and was chased by the complainant and others but could not be caught. The complainant also expressed his belief that the murder was committed at the instigation of Chottey Lal.

4. On the basis of the written report, a check report was prepared at the police station and the case was registered in the General Diary at crime no. 68/2000 for the offence under Sections 302, 120B I.P.C. and the investigation ensued.

5. The Investigating Officer reached the spot and collected the empty cartridge from there. He also obtained plain and blood stained earth from the place of occurrence and prepared the site plan. The inquest report was also prepared on 6.8.2000 and was completed at 6.40 AM. The dead body was sealed and handed over to Constable Bale Ram and Constable Mujammil Hussain for being taken to mortuary.

6. During investigation, other accused Ghan Shyam was arrested by the police and on his pointing out, a country made pistol and an empty cartridge were recovered from his house and a case u/s 25 Arms Act was also registered against the co accused Ghan Shyam, which was investigated by SI Vishnu Kant Singh, PW5. He prepared the site plan of the place from where the alleged country made pistol was recovered and also recorded the statements of the witnesses of the case u/s 25 Arms Act. After obtaining the sanction for prosecution from the District Magistrate, submitted the charge sheet against the accused Ghan Shyam u/s 25 Arms Act.

7. The Station officer R.N.Dwivedi who was conducting the investigation for the offence u/s 302 IPC etc. recorded the statements of the witnesses, collected the post morten report of Sant Lal and after completing the investigation, submitted a charge sheet against the accused appellant Mana @ Manni Lal and co accused Ghan Shyam for the offence u/s 302 IPC.

8. Charge u/s 302 IPC was framed against the accused appellant Mana@ Manni Lal. The charges under Sections 302/34 IPC and Section 25 Arms Act were framed against the co accused Ghan Shyam. The accused denied the charges and claimed trial.

9. The prosecution examined the complainant Nandan as PW1, who proved his written report Exhibit Ka1. The prosecution further examined PW2 Mewa Lal, PW3 Sharda Prasad and PW4 Roshan Lal. S.I. Vishnu Kant Singh, PW5, who had investigated the case u/s 25 Arms Act against the accused Ghan Shyam was then examined by the prosecution. He proved the site plan(Exhibit ka3) from where the country made pistol

was recovered. He also proved the charge sheet Exhibit Ka4, which was filed against the accused Ghan Shyam for the offence u/s 25 Arms Act after obtaining the sanction for prosecution from the District Magistrate, which has been proved as Exhibit Ka5.

10. The prosecution examined PW6, Head Constable Ram Chandra, who proved the chick report (Exhibit Ka6) of the case, which was registered u/s 302, 120B IPC and also proved the General Diary (Exhibit Ka7) at which the case was registered for the aforesaid offences. Sri R.N. Dwivedi (PW7), proved the memo (Exhibit Ka8) under which the empty cartridge was recovered from the spot. He also proved the memo (Exhibit ka 9) under which the blood stained and plain earth was taken from the spot. He further proved the site plan (Exhibit Ka10) of the place where murder of Sant Lal took place as also the charge sheet (Exhibit Ka11) which was submitted by him against the accused appellant Mana @ Manni Lal as well against the co accused Ghan Shyam for the offence u/s 302 IPC.

11. Dr. G.C. Saxena, PW8 who had conducted the autopsy upon the dead body of Sant Lal and proved the post mortem report as Exhibit Ka12 was also examined as prosecution witness. He had conducted the post mortem on 06.08.2000 at 3:00 p.m. and reported the following ante-mortem injuries.

1. Firearm wound of entry 1.5 cm x 1.5 cm oval in shape in middle part of chest just right to sternum 10 cm below the super sternal notch. The Doctor found that the surrounding area of wound of entry was blackened and tatooed.

2. Firearm wound of exit 2 cm x 2.5 cm right side back of chest 7 cm lateral to spine and 16 cm below neck. The margins were everted.

12. In the opinion of the Doctor, the death had taken place due to shock and hemorrhage as a result of ante mortem firearm injury.

13. The Trial Court then recorded the statements of the accused Mana and Ghan Shyam in which they denied having committed alleged incident and claimed that they had been falsely implicated due to enmity. However they did not produce any evidence in defence.

14. The Lower Court after considering the evidence on record acquitted the accused Ghan Shyam for the offence u/s 302 IPC, read with Section 34 IPC as well as for the offence u/s 25 Arms Act. The accused appellant Mana was however convicted for the offence u/s 302 IPC and was sentenced as referred to above.

15. The contention of the counsel for the appellant is that there is delay in lodging of the F.I.R. and that place of occurrence is not where the body of the deceased was found.

16. Now we proceed to examine as to whether there is any delay in filing of the FIR. According to the complainant Nandan the incident of murder took place at 11.50 PM on 5.8.2000. The first information report was lodged by him on 6.8.2000 at 1.30 AM i.e. 1

hour 40 minutes after the incident. The distance of the Police Station from the place of occurrence is 3 Kms as has been mentioned in the chick report Exhibit Ka6 and the inquest report Exhibit Ka2. Thus it is apparent that there is no undue delay in lodging of the FIR and there was no time for any deliberation and consultation with anybody else or for giving exaggerated account or coloured version of the incident. PW 1 Nandan the complianant has proved the FIR as Exhibit Ka1.

17. We may mention here that counsel for the appellant did not raise any objection with regard to the prompt lodging of the FIR at the time of the argument but argued that the scribe of the FIR Desh Raj Pradhan has not been examined in the court.

18. We considered this argument and we feel that non examination of the scribe Desh Raj Pradhan does not affect the prosecution case. The FIR has been proved by the complainant himself who had put his thumb impression on the FIR after hearing the contents of the same as has been stated by him in court. When the complainant himself has proved the first information report, it was not at all necessary to examine the person who had scribed the same specially when the scribe is not an eye witness of the crime committed.

19. In Anil Kumar Vs. State of U.P., a similar objection was raised that the scribe of F.I.R. namely Umesh Kumar Dixit was not examined by prosecution to the prejudice of the defence. The Apex Court observed as under:

As Umesh Kumar Dixit was not an eyewitness to the incident there was no necessity to examine him. Umesh Kumar Dixit could have showed no light. He could not have stated whether the appellant was present or not. Therefore no prejudice has been caused to the appellant.

20. In view of the above, we conclude that the first information report of the incident was given at the police station promptly and without any undue delay.

21. So far as the place of occurrence is concerned, it has been mentioned in the first information report that the deceased Sant Lal and the witnesses were lying on their cots near "Pan Ki Gumti". This fact has been stated by the complainant Nandan on oath and has not been disputed by the defence by giving any contrary suggestion. Moreover, the investigating officer R.N. Dwivedi has prepared the site plan of the spot (Exhibit Ka 10) in which the place of occurrence has been shown near the "Gumti". In the inquest report (Exhibit Ka 2) it has further been mentioned that the dead body was found on a cot near the "Gumti". Thus the place of occurrence is also established by the evidence produced by the prosecution.

22. The learned counsel for the appellant contended that the F.I.R. was allegedly lodged at the police station on 06.08.2000 at 1:30 a.m. but still the inquest proceedings started at 5:30 a.m. although the investigating officer had reached the spot in the night itself. The submission is that these facts indicate that the F.I.R. was not in existence at the time

when the inquest was conducted. We have given our thoughtful consideration to this submission and we find that the same does not hold much water. The complainant Nandan has stated on oath that after the occurrence having taken place at about 11:45 p.m., he got the report scribed by Desh Raj Pradhan and, thereafter, handed over the same at the police station. The prosecution has examined the Head Constable Ramchandra Sonkar PW6 who stated on oath that the check report of this case (Exhibit Ka 6) was prepared by him and, thereafter, he had registered the case in the General diary (Exhibit Ka 7). The time of registration of the case has clearly been mentioned in the check report as well as the General diary as 1:30 a.m. of 06.08.2000. The defence has not given any suggestion to the Head Constable Ramchandra Sonkar that the first information report was not lodged at the time at which it is alleged to have been lodged. It has also not been suggested that the first information report has been ante-timed. Thus the filing of the F.I.R. on 06.08.2000 at 1:30 a.m. cannot be doubted. The investigation officer R.N. Dwivedi PW7 has stated on oath that after receiving the information of the incident, he had reached the spot where the copies of the check report and the General Diary were made available to him but due to insufficiency of light the proceedings of inquest could not be started in the night. He has further stated that the inquest was conducted at 5:30 a.m. During cross examination it was suggested to this witness that at the time of inquest the first information report had not been registered but the witnesses denied the suggestion. It is also important to notice that the crime number and sections under which the case was registered find place in the inquest report which suggests that before the preparation of the inquest report the first information report had come into existence.

23. The learned counsel for the appellant submitted that Sharda Prasad is the witness of inquest and has been examined by the prosecution as PW3 but he has stated that he had put his thumb impression on the inquest report at the police station. We considered over the argument and we feel that the discrepancy is not very material. The witness has stated that the dead body was sealed at the spot. He has not denied that the "panchnama" was prepared at the spot. What he says is that his thumb impression was taken thereon at the police station. We feel that this statement of PW3 Sharda Prasad is not believable. If the I.O. had prepared the inquest at the spot there was no reason for him not to obtain his thumb impression at the spot. The learned counsel for the appellant further argued that PW4 Roshan Lal has also not supported the prosecution version and has stated that the inquest was prepared at the police station, the plain and blood stain earth from the spot was not taken in his presence nor any memo was prepared in this regard. It is true that PW4 Roshan Lal has not supported the prosecution and has been declared hostile but even in the absence of his testimony it is proved by the investigating officer R.N. Dwivedi that the inquest report was prepared at the spot and the plain and blood stain earth was also taken under memo (Exhibit Ka 9). There is no reason to disbelieve the statement of I.O. in this regard. Moreover, it has nowhere been suggested to the I.O. that the inquest was not prepared and signed at the spot.

24. In view of the above discussion we are not inclined to accept this argument of the counsel for the appellant that the F.I.R. was not in existence when the inquest report was prepared or that the inquest was not prepared and signed at the spot.

25. It is then contended by the counsel for the appellant that there is irregularity in investigation and the material contradiction in the prosecution story establishes that prosecution had miserably failed to prove its case.

26. So far as this argument of the learned counsel for the appellant is concerned that the inquest report was not prepared in the night though the investigating officer had reached the spot in the night, the investigating officer has stated on oath that due to insufficiency of light he started the inquest at 5:30 a.m. There is nothing unusual in it. For a closer examination of dead body sufficient light is required. In these circumstances the examination of dead body at 5:30 a.m. does not creat any doubt. The I.O. has stated that in the meantime he remained busy in finding out the accused.

27. Further submission is that according to the complainant Nandan the investigating officer reached the spot at 7:00 a.m. whereas according to the investigating officer he had reached the spot in the night itself. We considered over this argument also and we feel that there is nothing contradictory in it. The investigating officer might have reached in the night and may not have called the complainant at the spot. He prepared the inquest report in the morning and may be that thereafter he called the complainant Nandan at 7:00 a.m. and prepared the site plan at his instance as has been stated by him (the investigating officer R.N. Dwivedi).

28. The learned counsel for the appellant then argued that the prosecution has failed to prove that the murder of Sant Lal was committed by the accused appellant. It appears that some unkown miscreant murdered Sant Lal without being noticed by anybody and the appellant was falsely implicated in the case due to enmity. His further contention is that there was no light at the spot and as such it was not possible for any witness to identify the assailant. The source of light has not been mentioned in the F.I.R. nor has been stated by the complainant Nandan in his statement given to the investigating officer u/s 161 Cr.P.C. The presence of lantern was stated only at the time of evidence in Court but the investigating officer did not find lantern burning at the spot nor any lantern was produced before him.

29. We have considered over the argument that source of light has not been mentioned in the F.I.R. The purpose of F.I.R. is to set the criminal law in motion. The object of lodging of the report at the police station in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the seen of occurrence. The F.I.R. is not an encyclopaedia to contain all the details. It is not intended to be a detailed document. Each and every minute detail is not expected to be given in the F.I.R. Hon''ble the Supreme Court in Animireddy Vankata

Ranamma v. Public Prosecutor High Court of Animireddy Venkata Ramana and Others Vs. Public Prosecutor, H.C. of A.P., has observed:

Each and every detail of the incident is not necessary to be stated in F.I.R. It is not meant to be encyclop"-dic. While considering the effect of some omissions in the F.I.R. on the part of the informant, a Court cannot fail to take into consideration the probable physical and mental condition of the first informant.

30. In the present case the real brother of the informant Nandan had been murdered in his presence hence, he being shocked and perturbed cannot be expected to give each and every detail in the report. In these circumstances omission of source of light in the F.I.R. is inconsequential. The complainant Nandan when examined in Court categorically stated that at the time the crime was committed a lantern was burning at the spot. The learned counsel for the appellant argued that according to the complainant Nandan he had mentioned this fact in the F.I.R. that the lantern was burning at the spot though in fact there is no such mention. We considered over the argument and we feel that the complainant Nandan may not be remembering the fact whether the presence of lantern was mentioned by him in the F.I.R. or not due to lapse of memory as his statement was recorded in the Court after one and a half year.

31. The learned counsel for the appellant further argued that although according to the complainant Nandan he had informed the investigating officer that the lantern was burning at the spot but according to the investigating officer no such statement was given by him nor he found any lantern at the spot. We considered over the argument and we feel that the statement of the complainant Nandan that the lantern was burning at the spot cannot be disbelieved merely because such statement has not been recorded by the investigating officer or the investigating officer failed to collect the lantern which was lighting at the spot at the time of incident.

32. In this connection a reference to the judgment of the Apex Court in Dhanaj Singh @ Shera and Others Vs. State of Punjab, may be made wherein the following observations have been made:

In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the I.O. if the investigation is designedly defective.

33. In view of the above judgment of Hon"ble Apex Court it is clear that if there is any defect in the investigation then the prosecution cannot be made to suffer on that account. It is the result of faulty investigation that the investigating officer did not mention the source of light in the statement of the complainant recorded u/s 161 Cr.P.C. or did not advert to the fact as to whether there was any source of light at the spot. The complainant Nandan has categorically stated that a lantern was burning there and we do not find any

reason to disbelieve his testimony in this regard. Thus we conclude that a lantern was lighting at the spot at the time of murder of Sant Lal. We confirm the finding of the Trial Court in this regard.

34. The learned counsel for the appellant then pointed out that the Trial Court in its judgment has noted that in the investigation and in the site plan, it has been mentioned that the accused was seen running in the torch light, hence, it cannot be concluded that the accused was not identified when he ran after committing the murder. His contention is that neither the complainant Nandan nor the investigating officer has anywhere stated that there was any torch light at the spot. We considered over the argument and we feel that the said observation of the Trial Court is not supported by any evidence on record. However, the above said discrepancy does not affect the prosecution version because it has already been concluded that lantern was burning at the spot at the time of incident and identification of assailant was possible.

35. At this juncture a judgment of Hon''ble Supreme Court in Kedar Singh and others v. State of Bihar 1998 S.C.C. (Cr.) 907 may be referred in which the following has been observed:

It has also to be observed that even in a full dark night, there is never total darkness. There can be other means to identify another through the shape of his body, clothes, gait, manner of walking etc.-etc. Identification is possible by voice too.

36. Thus as per the observations made by the Apex Court in the above judgment even if there is no light at the spot the identification of the assailants is not impossible as even in full dark night there is never total darkness. In these circumstances even if it is taken for the sake of argument that the lantern was not burning at the spot, though we have believed that lantern was there, the identification of the appellant was possible as the complainant Nandan was lying on another cot near the cot of the deceased Sant Lal and was familiar with him since before.

37. Here we would also like to deal with this argument of the learned counsel for the appellant that in the site plan the distance between the place of occurrence and the place where the complainant and the witness Mukesh were lying on the cot has been shown as 18 steps. His contention is that from such a distance the assailant could not have been identified by the complainant Nandan.

38. We considered over the argument. The place where the complainant was lying has been shown by the investigating officer on the basis of hearsay evidence. The investigating officer himself had not seen as to where the complainant was lying. What he has noted in the site plan is on the basis of the statement of the complainant which had led to the preparation of the site plan. In these circumstances it was for the defence to cross examine the complainant Nandan on the point as to whether he had indicated the place to the investigating officer where he was lying on the cot. In the absence of any

such examination, the distance shown by the investigating officer in the site plan cannot be said to have been proved by evidence and thus cannot be believed. The defence has nowhere suggested to the complainant Nandan that he was not lying near the cot of Sant Lal and infact his cot was at a distance of 18 steps. The argument is therefore not acceptable.

39. The learned counsel for the appellant submitted that it has been mentioned in the F.I.R. that Mukesh was also lying on another cot at the time of alleged incident and this Mukesh has not been examined in the Court as a witness. According to the learned counsel for the appellant the non-production of Mukesh clearly establishes that he was not ready to give false evidence about any occurrence as given in the F.I.R. His non-examination creates grave doubt with regard to the incident and adverse inference should be drawn against the prosecution.

40. We have considered over the argument. It is no doubt true that Mukesh named in the F.I.R. as an eye witness has not been examined by the prosecution but that does not mean that the entire prosecution case be thrown out. It is being observed that the public is having indifferent attitude in the investigation of crime. People are generally reluctant to come forward to depose before the Court. It will, therefore not be correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined.

41. In this connection the judgment of the Apex Court in the State of A.P. v. S. Rayappa 2006 (54) A.C.C. 831 can be referred wherein the following observations have been made:

It has now almost become a fashion that the public is reluctant to appear and depose before the Court especially in criminal case because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are a harassed lot. They are being threatened, intimidated and at the top of all they are subjected to lengthy cross-examination. In such situation, the only natural witness available to the prosecution would be the relative witness. The relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. The only requirement is that the testimonly of the relative witnesses should be examined cautiously.

42. The other judgment of Hon''ble the Apex Court on the point is Ambika Prasad and Another Vs. State of (Delhi Administration, Delhi), wherein the independent witnesses though available were not examined. The Apex Court observed as under:

It is next contended that despite the fact that 20 to 25 persons collected at the spot at the time of incident as deposed by the prosecution witnesses, not a single independed

witness has been examined and, therefore, no reliance should be placed on the evidence of PW5 and PW7. This submission also deserved to be rejected. It is known fact that independent persons are reluctant to be a witness or to assist the ivestigation. Reasons are not far to seek. Firstly, in cases where injured witnesses or the close relative of the deceased are under constant threat and they dare not depose truth before the Court, independent wintesses believe that their safety is not guaranteed. That belief cannot be said to be without any substance. Other reason may be the delay in recording the evidence of independent witnesses and repeated adjournments in the Court. In any case, if independent persons are not willing to cooperate with the investigation, prosecution cannot be blamed and it cannot be a ground for rejecting the evidence of injured witnesses.

43. In Sheelam Ramesh v. State of A.P. 1999 SCC (Cri.) 1437 the Apex Court opined:

Courts are concerned with quality and not with quantity of evidence and in a criminal trial, conviction can be based on the sole evidence of a witness if it inspires confidence.

44. Yet again in Pohlu v. State of Haryana 2005 SCC (Cri.) 1496 the Apex Court observed:

It is true that it is not necessary for the prosecution to multiply witnesses, if it prefers to rely upon the evidence of the eyewitnesses examined by it, which it considers sufficient to prove the case of the prosecution. However, the intrinsic worth of the testimony of the witnesses examined by the prosecution has to be assessed by the Court. If their evidence appears to be truthful, reliable and acceptable, the mere fact that some other witnesses have not been examined, will not adversely affect the case of the prosecution.

45. In Babu Ram and Anr. v. State of U.P. and Ors. 2002 (2) J.I.C. 649 (SC) Hon''ble the Supreme Court observed as under:

It is settled that non-examination of an eye witness cannot be pressed into service like a ritualistic fromula for discarding the prosecution case with a stroke of pen. An effort should be made at appreciating the worth of such evidence as has been produced. If the evidence coming from the mouth of the eye witnesses examined in the case is found to be trustworthy and worth being relied on so as to form safe basis for recording a finding of guilt of the accused person then non-examination of yet another witness who would have merely repeated the same story as had already been narrated by other reliable witnesses would not cause any dent or infirmity in the prosecution case.

46. A perusal of the Trial Court record reveals that the prosecuting officer had moved an application in the Trial Court on 14.11.2002 mentioning therein that the witness Mukesh Kumar has sided the accused and is under their pressure and is not likely to tell the truth to the Court, hence, he may be discharged. In the trial the public prosecutor is expected to produce evidence in support of the prosecution and not in derogation of the prosecution case. If in the opinion of the public prosecutor the witness is not going to

support the prosecution version then the public prosecutor was well within his rights to discharge him.

47. The Apex Court in Hukam Singh and Ors. v. State of Rajasthan 2000 (41) ACC 662 observed as under:

When the case reaches the stage envisaged in Section 231 of the Code, the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution." It is clear from the said section that the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution case. At the said stage, the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined.

48. The Hon''ble Court further observed as under:

The situation in a case where the prosecution cited two categories of witnesses to the occurrence, one consisting of persons closely related to the victim and the other consisting of witnesses who have no such relation, the Public Prosecutor''s duty to the Court may require him to produce witnesses from the latter category also subject to his discretion to limit to one or two among them. But if the Public Prosecutor got reliable information that any one among that category would not support the prosecution version, he is free to state in Court about that fact and skip that witness being examined as prosecution witness. It is open to the defence to cite him and examine him as defence witness. The decision in this regard has to be taken by the Public Prosecutor in a fair manner. He can interview that witness before hand to enable him to know well in advance the stand which that particular person would be adopting when examined as a witness in Court.

49. In view of the above pronouncement of the Apex Court it is clear that the public prosecutor is not obliged to examine the witness in the Court who is not going to support the prosecution version. If the accused feels that the witness will support his case or will throw some light upon his innocence then the accused may examine him as a defence witness.

50. In view of the entire above discussion it is clear that non-examination of Mukesh is not fatal to the prosecution case.

51. The learned counsel for the appellant also submitted that the only witness supporting the prosecution version is the complainant Nandan, who is the real brother of the deceased Sant Lal. He being the close relative of the deceased should not be believed and his testimony should not be relied upon for the conviction of the appellant. We have considered over the above said submissions and we feel that the evidence of PW1 cannot be thrown away merely on the ground that he happens to be the real brother of the deceased. What the Court is required is to weigh his evidence carefully and with great caution. Relationship is not a factor to affect the credibility of a witness.

52. Hon"ble the Supreme Court in Masalti Vs. State of U.P., observed as under:

Though the evidence of an interested or partisan witness has to be weighed by the Court very carefully but it would be unreasonable to contend that evidence given by a witness should be discarded only on the ground that it is evidence of a partisan or interested witness. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice.

53. Again in Rizan and Another Vs. State of Chhatisgarh, through The Chief Secretary, Govt. of Chhatisgarh, Raipur, Chhatisgarh, the Hon"ble Apex Court held as under:

Relationship is not a factor to affect credibility of a witness. It is more often than not a relation would not conceal the actual culprit and make allegations against the innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

54. Yet in Namdeo v. State of Maharashtra 2007 (58) ACC 414 the Hon"ble Supreme Court held as under:

A close relative cannot be characterized as an "interested" witness. He is a natural witness. His evidence, however, must be scrutnised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the "sole" testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.

55. We have carefully gone through the evidence of PW1 Nandan. He has stated on oath that on the date of occurrence he, his brother Sant Lal and Mukesh were lying on seperate cots near "Pan Ki Gumti". At about 11:50 p.m. the accused appellant Mana @ Manni Lal came there and opened fire upon the chest of Sant Lal which caused his death. The witness has been cross-examined at length but there is nothing in his cross-examination which may create any doubt in his testimony with regard to manner of the incident. We have already held that a lantern was burning at the spot. In this background it is apparent that it would not have been difficult for the complainant to identify the assailant. It is also to be noted that the appellant and the complainant are of the same village and are known to each other since before. Therefore, there could not have been any mistake on the part of the complainant in identifying the appellant at the time of incident.

56. Apart from the above the ocular testimony of the complainant Nandan is fully corroborated by the medical evidence. PW1 Nandan says that the fire was opened by the appellant at the chest of the deceased Sant Lal. In the postmortem examination one ante-mortem fire armed wound of entry was found on the middle part of the chest and a

corresponding fire arm exit wound was found on the right side back of chest. Around the wound of entry blackning and tatooeing was present. Dr. G.C. Sinha PW8 has stated in his cross-examination that the fire was made from within a distance of 3 feet. Thus his evidence fully supports this version of the complainant Nandan that the fire was opened from a close range causing death of Sant Lal.

57. The learned counsel for the appellant lastly submitted that the appellant has been implicated falsely due to enmity but it has nowhere been explained as to what was the enmity between the deceased and the appellant Mana @ Manni Lal. The appellant Mana has also not stated anything in his statement u/s 313 Cr.P.C. that he was having such and such enmity with the deceased or the complainant Nandan. A bald statement that the appellant has been implicated falsely due to enmity is not sufficient. The defence is supposed to give some details of the enmity on account of which the accused says that he has been implicated falsely. The Trial Court has rightly come to the conclusion that the evidence of the complainant Nandan is fully reliable and has rightly accepted his evidence in convicting the accused appellant for the murder of Sant Lal. He also argued that there was no motive with the appellant to committ murder of Sant Lal. We considered over this argment. It has been held by the Hon''ble Apex Court in several judgments that the motive pales into insignificance when direct eyewitness account about the offence is available.

58. Hon''ble the Supreme Court in Rajesh Govind Jagesha Vs. State of Maharashtra, held as under:

Where the direct evidence regarding the commission of an office is worthy of credence and can be believed, the question of motive becomes, more or less, academic. Motive may be relevant in a case based upon circumstantial evidence only, being one of the circumstances.

59. In the instant case the eyewitness account of the murder has been given by the complainant Nandan and as such even if the motive has not been proved by the prosecution, the conviction can be based upon the sole testimony of Nandan who in our opinion is wholly reliable witness.

60. In the present case PW1 Nandan has given the background facts which may have pursuaded the appellant Mana to committ murder of Sant Lal. The complainant Nandan has alleged in the F.I.R. that the deceased Sant Lal was having love affairs with Kumari Reena D/o Chottey Lal Pasi and on that account the appellant Mana who is the real brother of Chottey Lal had beaten Sant Lal about 6 months back and had also threatened him of his life. This fact has also been stated by the complainant Nandan on oath. No searching cross-examination has made on this point and simply this much has been suggested by the defence that there was no such affair between the deceased Sant Lal and Kumari Reena. Thus from the evidence of complainant Nandan it is proved on record that there was a love affair between the deceased Sant Lal and Kumari Reena and on

that account some altercation had taken place between the appellant and Sant Lal and the appellant had also threatened him of killing. The prosecution could not be expected to do better than bringing on record the previous background which may have led the appellant to commit the crime. It was not for the prosecution to explain as to why did the accused-appellant act in such a violent manner by committing the murder of deceased over the previous background i.e. love affairs between the deceased and Kumari Reena. Thus the prosecution hase also proved the motive for the commission of crime. Even if it is taken for the sake of argument that the motive has not been proved, the conviction of the appellant can be based on the evidence of the complainant Nandan.

61. Although it had not been pointed out at the time of arguments but we find from the record that the investigating officer R.N.Dwivedi has stated that since it was 9:00 p.m., the inquest was not carried due to insufficiency of light. This statement suggests as if the investigating officer had reached the spot at 9:00 p.m. We feel that this statement has been made due to slip of tongue as it has been proved on record that the incident of murder took place on 05.08.2000 at 11:50 p.m. and the F.I.R. was lodged on 06.08.2000 at 1:30 a.m., hence, the question of the investigating officer reaching the spot on 05.08.2000 at 9:00 p.m. does not arise.

62. In our considered opinion the complainant Nandan is a truthful and reliable witness and his evidence has been found inherently probable and wholly trustworthy. There is nothing on record to affect the credibility of the evidence of Nandan and his evidence cannot be discarded on any ground.

63. The prosecution has succesfully proved the prompt lodging of the F.I.R., the place of occurrence, the motive for the crime as well as the commission of crime by the appellant Mana.

64. In view of the entire discussion the appeal is liable to be dismissed and is accordingly dismissed.