
(2000) 07 AHC CK 0122

Allahabad High Court

Case No: Criminal Appeal No"s. 1795 and 2018 of 1999 and Ref. No. 8 of 1999

Guru Charan

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: July 3, 2000

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 307, 34, 392

Citation: (2000) CriLJ 4560

Hon'ble Judges: U.S. Tripathi, J; R.R.K. Trivedi, J

Bench: Division Bench

Advocate: Pt. M.C. Joshi, Ghan Shyam Joshi, Shashank Shekhar, A.D. Giri, V.C. Tiwari and C.P. Verma, for the Appellant; A.G.A., for the Respondent

Final Decision: Allowed

Judgement

U.S. Tripathi, J.

The above two appeals have been preferred against the judgment and order dated 28-7-1999 passed I by Sri J.P. Agarwal, special Judge, (D.A.A.), Etah in Sessions Trial No. 117 of 1997 convicting the appellants Guru Charan, Sunil and Pramod u/s 302 read with Section 34 I.P.C. and sentencing them to extreme penalty of death and convicting the appellant Brahma Pal u/s 307 I.P.C. and sentencing him to imprisonment for life. The learned Sessions Judge has also made reference No. 8 of 1999 for confirmation of death sentence awarded by him to appellants Guru Charan, Sunil and Pramod.

2. Both the appeals arise out of same judgment and order. Common question of facts and law are involved in both the appeals and therefore, those are being disposed of by a common judgment.

3. The prosecution story, briefly stated, was that appellants Sunil, Pramod and Brahma Pal are real brothers and are residents of village Yakootganj, P.S. Sahawar, District Etah. Appellant Guru Charan, Ramesh Narain deceased and his nephew Vijay

Kumar (P.W. 1) were also residents of same village. Some two years before the occurrence of this case Vinod, brother of appellant Sunil, was murdered, regarding which a report was lodged against Ramesh Narain deceased, Vijai Kumar (P.W.I) and one Vishwanath. Guru Charan appellant was witness of prosecution in the said case. The said case ended in acquittal. On account of it appellants were having enmity with Ramesh deceased and Vijai Kumar (P.W.I).

4. On 20-7-1997 Ramesh Narain deceased and Vijai Kumar (P.W. 1) had gone to Sahawar Bazar for getting repaired a stove " and making certain purchases. In the after noon Ramesh Narain deceased along with his son-in-law Jitendra alias Guddu deceased and Vijai Kumar (P.W. 1) was returning to his house in a private bus No. PB-12-0148. Ramesh Narain deceased was also having his licensed double barrel gun and bandolier of cartridges. Natthu (P.W.2) was also coming in said bus. Ramesh Narain deceased was sitting in 3rd row from front side. Vijai Kumar (P.W. 1) was sitting on back side, while Jitendra alias Guddu deceased was sitting beside Ramesh Narain deceased and Natthu (P.W.2) was sitting on the seats beside bonnet. At about 4.15 P.M. when the bus reached near Tali village for debarking passengers, appellants Sunil, Pramod, Guru Charan and Brahma Pal boarded the bus. Sunil and Pramod were having country made pistol, Guru Charan was having licensed rifle of 0.315 bore and Brahma Pal was having a knife. On entering into the bus the appellants fired on Ramesh Narain deceased due to which he died on the spot. Jitendra alias Guddu tried to save his life by getting down of the bus and running, but the appellants caught him hold, (sic) fired and killed. When Natthu (P.W.2) tried to save Jitendra alias Guddu deceased, Brahma Pal appellant inflicted knife injuries on him. When the driver of the bus namely Virendra tried to take the bus he was also attacked with knife. While leaving the spot the appellants took away double barrel gun and bandolier of cartridges of Ramesh Narain deceased.

5. Vijai Kumar (P.W. 1) along with driver of the bus went to P.S. Sahawar in a jeep where he lodged a written report (Ext. Ka-1) at 5.20 P.M. Chik F.I.R. (Ext. Ka-16) was prepared by Constable Brijesh Kumar, who made an endorsement of the same at G.D. report (Ext. Ka-17) and registered a case against the appellant under Sees. 302, 307 and 404/34 I.P.C.

6. Investigation of the case was taken up by Bhagwan Sahai, I.O. (P.W.4) who visited the spot, conducted the inquest of the dead body of Ramesh Narain and Jitendra alias Guddu and got prepared inquest reports and other relevant papers (Ext.Ka-2 to Ka-9) through S.I. Salig Ram Gautam. The I.O. inspected the place of occurrence and prepared site plan (Ext. Ka-10). He interrogated Vijai Kumar (P.W. 1). He also took into possession blood stained and simple earth, empty cartridges and wad pieces from the ,spot, sealed it in different containers and prepared recovery memo (Ext. Ka-11 and Ka-12). He also took into possession the pieces of Rexene of the seat of Bus on which the deceased was sitting and a stove and prepared recovery memos (Ext. Ka-13 and Ka-14). The dead bodies of the Ramesh Narain and Jitendra alias

Guddu deceased were sealed and sent for post mortem.

7. Virendra Singh driver of the bus was sent to community Health Centre, Sahawar where he was medically examined on 20-7-1997 at 5.40 P.M. by Dr. Girish Chandra (P.W.5) who found following injury on his person :-

Lacerated wound 2.5 cm x .5 cm on the top of skull 11 cm above from the ear and 18 cm from bridge of nose. Deep bone uncoverage.

8. General condition of the patient was poor, advised X-ray and referred to District Hospital, Etah for treatment. The injury was kept under observation, caused by blunt and hard object and was fresh in duration.

9. Autopsy on the dead body of Ramesh Narain deceased was conducted on 21-7-1997 at 11.30 A.M. by Dr. Narendra Babu Katiyar (P.W. 3) who found following ante mortem injuries on his person :-

1. Gun shot wound through and through lacerated on front of head and middle of head 17 cm x 3 cm x brain cavity deep (brain matter coming out) 4 cm above left ear, 12 cm above right ear from base of nose and including both eye brows. Bleeding present.

2. Gun shot wound of entry 1 cm x 1 cm x left lateral abdomen cavity (through) lacerated, margins Inverted with blackening and tattooing in area of 5 cm x 4 cm, on left iliac crest, 19 cm from umbilicus.

3. Gun shot wound on exit 1 cm x 1 cm x communicating to injury No. 2 right lateral abdomen 18 cm from umbilicus at 10 "O" clock. Lacerated, Direction left to right.

4. Gun shot wound of entry 1.5 cm x 1 cm x left chest cavity deep. Margins lacerated and inverted 10 cm from nipple at 7 "O" clock position. Tattooing present, direction downwards to right.

5. Gun shot wound of entry 1 cm x 1 cm x right back (abdomen) 4 cm from mid line, 8 cm above right iliac crest. Lacerated inverted. Blackening present.

6. Gun shot wound of entry 1 cm x 1 1/2 cm x through on outer aspect of left knee lacerated, inverted.

7. Gun shot wound of entry 1 cm x 1 cm x communicating to injury No. 5 on front and upper part of left knee. Lacerated, inverted.

10. On internal examination brain matter was found eaning out. Peritoneum was lacerated. Cavity contained 2 litres clotted blood. Stomach contained about 15 ounce pasty food in process of digestion. Small intestine, large intestine, gall bladder and right kidney were lacerated.

11. Two yellow coloured bullets recovered from abdomen.

12. According to opinion of Doctor cause of death was due to coma and shock as a result of injuries noted above. The Doctor prepared post mortem report (Ext. Ka-2).

13. Autopsy on the dead body of Jitendra alias Guddu was conducted on same day at 12.00 noon by Dr. Narendra Babu Katiyar (P.W.3), who found following ante mortem injuries on his person :-

1. Gun shot wound of entry 1.5 cm x 1.5 cm x left chest cavity deep on left chest, 3 cm from left nipple at 2 "O" clock position. Lacerated, inverted. Blackening present. Direction left to right.

2. Gun shot wound of entry 2.5 cm x 2.5 x left chest cavity deep on left upper chest below mid end of left clavicle. Lacerated inverted. Blackening present. Direction left to right.

3. Gun shot wound of exit (pellets) four in No. 0.5 cm x 0.5 cm x communicating to injury No. 2 on right lateral chest, 4 cm below axilla in an area of 5 cm x 3 cm. Lacerated inverted, Two wad pieces and one Gatta (wad) recovered from right lateral wall of chest below axilla with pellets 15 in number.

4. Incised wound 3.5 cm x 3.5 cm x right chest cavity deep on right chest 13 cm above right iliac crest lateral. Margins clean cut.

14. On internal examination 4th, 5th and 7th ribs on left side and 5th, 6th, 7th and 10th ribs on right side were fractured. Pleura was lacerated. Both lungs were lacerated. Thoracic cavity contained about 1 litre fresh and clotted blood. Peritoneum was lacerated. Cavity contained about 1 litter of clotted blood. Stomach contained about 1.15 ml. of Semi-digested food. Large intestine contained gases and faecal matter. Gall bladder was lacerated.

15. One Yellow colour pellet recovered from right back of chest. One Gatta (wad) and two wad pieces and 15 pellets were recovered from right lateral chest wall.

16. In the opinion of Doctor cause of death was shock and haemorrhage as a result of injuries noted above. The Doctor prepared post mortem report (Ext. Ka-3).

17. Natthu Singh (P.W.2) was shifted to S.R.N. Medical College, Agra and his injuries were examined on 21-7-1997 at 3.50 A.M. by Dr. Ram Babu (P.W.6) who found following injuries on his person :-

1. One stab wound elliptical in shape 1 1/2 x 1/2 x abdominal cavity deep 1-1 1/2 away from left umbilicus at 11 "O" clock position. Loop of intestine coming out, bleeding present.

2. One horizontal elliptical wound 1" x 1/2" x depth not probed, 3" away left to umbilicus at 3 "O" clock position.

3. One elliptical wound present 6" away at 10 "O" clock position to right A.S.I, spine. Placed vertically.

4. One stab wound on scalp over occipital area 1/2" x 1/4" x not proven size 1/2 x 1/4" x not proven. Bleeding present.

18. Margins of all wounds were clear. The doctor opined that it was fresh case of stabbed injuries. All injuries were kept under observation and fresh in duration. Patient admitted and police informed for dying declaration.

19. The I.O. interrogated other witnesses on 21-7-1997. On 22-7-1997 he arrested Guru Charan appellant at 12.10 P.M. in village Jamalpur near temple. At that time he was carrying. 315 bore rifle and 6 cartridges, which were taken into possession. Thereafter, Sri Bhagwan Sahai (P.W.4) was transferred and remaining investigation was conducted by Sri Raj Pal Singh, who on completion of investigation submitted charge sheet (Ex. Ka-15) against the appellants.

20. Fired cartridges recovered from the spot and licensed gun of Guru Charan appellant were sent to Joint Director, Forensic Science Laboratory, Uttar Pradesh, Lucknow for comparison and report. Report dated 23-12-1997 (Ext. Ka-20) was submitted by Sri Ramashray Pandey, Assistant Director, Forensic Sciences Laboratory, Uttar Pradesh, Lucknow.

21. During trial, all the appellants were charged with the offence punishable u/s 302 read with Section 34, 307 read Section 34 and Section 392 I.P.C.

22. The appellants pleaded not guilty and their defence was that they were falsely implicated on account of enmity.

23. The prosecution in support of its case examined Vijay Kumar (P.W. 1), Natthu Singh (P.W.2) as witnesses of facts besides Dr. Narendra Babu Katiyar (P.W. 3) Sri Bhagwan Singh, I.O. (P.W.4), Dr. Girish Chandra (P.W.5) and Dr. Ram Babu (P.W.6). The appellants did not adduce any evidence in their defence.

24. The learned Additional Sessions Judge on considering the evidence of the prosecution held that the prosecution has successfully proved that appellants Sunil, Pramod and Guru Charan in furtherance of their common intention did commit murder of Ramesh Narain and Jitendra alias Guddu, deceased and appellant Brahma Pal committed murderous assault on Natthu singh (P.W.2). Accordingly, he convicted appellants Sunil, Pramod and Guru Charan u/s 302 read with Section 34 and sentenced them to death, convicted appellant Brahma Pal u/s 307 I.P.C. and sentenced him to life imprisonment.

25. We have heard Sri A.D. Giri, learned senior counsel appearing for appellant Guru Charan, Sri V.C. Tiwari, learned Senior counsel for appellants Sunil, Pramod and Brahma Pal and the learned A.G.A. for respondent and perused the evidence on record.

26. Sri A.D. Giri, learned counsel for the appellant Guru Charan contended that appellant Guru Charan had no motive to commit murder of deceased, as he was

simply witness in the murder case against the deceased Ramesh Narain. That role assigned to appellant Guru Charan was that he caused injuries on deceased with .315 bore rifle, but the report of Ballistic Expert shows that empty cartridges found inside the bus were not fired with the licensed gun of the appellant. That prosecution witnesses were not reliable, their presence on the spot was doubtful and the prosecution withheld the driver of the bus namely Virendra Singh, who also sustained injuries in same transaction. Sri V.C. Tiwari, learned counsel for the appellants Sunil, Pramod and Brahmpal contended that the prosecution case was camouflaged impression. A dacoity was committed in the bus and it was given shape of pre-planned murder. The F.I.R. in the case was ante timed, was prepared with some external aid and alleged witnesses of fact were not present on the spot and are not reliable. On the other hand, the learned A.G.A. contended that the prosecution has proved its case.

27. It is not disputed that Ramesh Narain deceased sustained gun shot injuries in the occurrence and died on the spot. It is also not disputed that Jitendra alias Guddu sustained gun shot and knife injuries in the occurrence and died on the spot. The medical evidence of Dr. Narendra Babu Katiyar (P.W. 3) clearly proved that both the deceased sustained gun shot and knife injuries and died due to above injuries

28. The motive alleged by the prosecution was that before two years of the occurrence of this case Vinod, brother of appellant Sunil, was murdered and Ramesh Narain deceased, Vijay Kumar (P.W. 1) and one Vishwanath were involved in the said murder. They were tried for the said murder, but were acquitted by the Court. On account of it, Sunil, Pramod and Brahmapal, who are real brothers of Vinod and appellant Guru Charan, who was witness in the said case were having enmity with the deceased. Vijay Kumar (P.W. 1) has stated about said motive. There is no denial about the above motive from the side of appellants. Thus, the motive alleged by the prosecution and stated by Vijay Kumar (P.W. 1) and others is unchallenged and un rebutted.

29. However, the learned counsel for the appellant Guru Charan contended that on the own admission of Vijay Kumar (P.W. 1) besides Vinod Kumar, Lalta Prasad, Jawala Prasad, Raman and Kumari Sadhna were also injured in the said occurrence and Guru Charan was only a witness in the said case and that there was no other enmity with him. Guru Charan had no concern with the family of Sunil and others and therefore, he had no motive against Ramesh Narain deceased. It is true that no other enmity with the appellant Guru Charan has been suggested excepted that he was also a witness in the murder of Vinod in which Ramesh Narain deceased was accused. The appellants Sunil, Pramod and Brahmpal had motive. Assuming that motive alleged against Guru Charan appellant was weak, in the instant case, the prosecution has relied on ocular witnesses and therefore, weakness of motive against the appellant Guru Charan is of no much help.

30. It is not disputed that occurrence took place on 20-7-1997. The appellants had not disputed about the date of occurrence. The medical evidence also supports the above date of occurrence.

31. The prosecution alleged that the occurrence took place at 4.15 P.M. The learned Counsel for the appellants disputed the above time of occurrence and according to them the occurrence took place in the night and the F.I.R. was ante timed. The report of occurrence was lodged at 5.20 P.M. Admittedly, Virendra Singh, the Driver of the bus had also sustained injuries in the same transaction, in which the two deceased sustained injuries. Vijay Kumar (P.W.I) stated that after the occurrence he along with Virendra Singh came to P.S. Sahawar where he lodged report. Copy of G.D. report No. 21 dated 20 7-1997 of P.S. Sahawar (Ext. Ka-17) contained the endorsement that Vijay Kumar (P.W. 1) came to Police Station along with Driver of bus No. PB-12/0148 at 5.20 P.M. Injuries of Virendra Kumar were examined on the same day at 5.40 P.M. by Doctor Girish Chandra (P.W. 5). It was suggested to Dr. Girish Chandra that he mentioned wrong time of examination in the injury report on pressure of police. But he denied the above suggestion and stated that he had mentioned the time in the injury report, when he actually examined the injured. There is no other evidence on record to show that general diary report (Ext. Ka-17) and injury report of Virendra Kumar (Ext. Ka-18) were ante timed. As such there is nothing on record to disbelieve the time of occurrence alleged by the prosecution.

32. The prosecution has relied on ocular testimony of Vijay Kumar (P.W. 1) and Natthu Singh (P.W.2). Vijai Kumar (P.W.I) stated that on the date of occurrence he had gone to Sahawar along with Ramesh Narain deceased and on the after noon was returning to his village along with the deceased Ramesh Narain and Jitendra alias Guddu by private bus No. PB-12-0148. The witness stated that he was sitting on back seat of bus while deceased Ramesh Narain was sitting on front side near window. Jitendra alias Guddu was sitting besides Ramesh Narain deceased and Natthu Singh (P.W.2) was sitting on five seater seat parallel to the bonnet. Besides deceased Ramesh Narain and Jitendra alias Guddu, Natthu Singh, (P.W.2) who was also residing in village of deceased, sustained injuries. It is admitted to Vijai Kumar (P.W. 1) that he was also accused in the murder case of Vinod Kumar along with Ramesh Narain and was equally inimical with the appellants .Jitendra alias Guddu who was son-in-law of Ramesh Narain deceased was murdered by the appellants and Natthu Singh (P.W.2) who was of the same village and was known to the appellants was also injured. But surprisingly no injury was sustained by Vijai Kumar (P.W. 1). The witness has further stated that when the appellants were firing shots on his uncle he did not come near the deceased to save him. He also stated that all other passengers of the bus started running leaving the bus when the incident of firing started, but he remained sitting beneath the seat where he was sitting. He again stated that he had seen the appellants while boarding the bus and firing. He further stated that he could not know whether the appellants saw him or not. The reaction of the witness is against human conduct. As mentioned above the

appellants had not spared even the son-in-law of Ramesh Narain deceased and Natthu Singh (P.W.2) resident of said village who had no direct enmity with them. But Vijai Kumar (P.W. 1) who was equally inimical with the appellants was spared. The explanation offered by the witness that he was sitting beneath the seat which he was occupying in the bus and did not get down of the bus and therefore appellants probably could not notice him and could not cause injury is highly improbable. The occurrence had taken place inside the bus at 4.15 P.M. in the month of July. Other passengers of the bus left the bus. If the witness was so inhuman that he did not try to save his uncle and even did not raise alarm to seek help of other passengers, it cannot be said that appellant could have not taken notice of the presence of the witness in the bus and was observing the occurrence so minutely as he has narrated, the appellants must have taken notice of his presence and would have not spared him. The absence of injury on the person of Vijai Kumar (P.W. 1) creates grave doubt in his presence on the spot.

33. Vijai Kumar (P.W.I) stated that on the date of occurrence he had gone to Sahawar in the morning by another bus and at about quarter to four P.M. he joined the company of Ramesh Narain and Jitendra alias Guddu deceased at Sahawar bus stand. He has not specified the purpose for which he had gone to Sahawar. He further stated that on the date of occurrence he went with Ramesh Narain deceased by chance. What the witness was doing at Sahawar from morning to 3.45 P.M. has not been explained. This shows that the explanation of the witness regarding his presence with the deceased is not convincing.

34. The Investigating Officer Sri Bhagwan Sahai (P.W. 4) has stated that after registration of the case at Police Station he interrogated Virendra and thereafter proceeded to place of occurrence along with complainant Vijai Kumar (P.W. 1) to the spot. He conducted inquest of the dead body of the two deceased and interrogated the complainant. That the complainant remained with him on the spot till 9.30 - 10.00 P.M. Inquest report of the Ramesh Narain deceased (Ext. 2-A) shows that complainant Vijai Kumar (P.W.I) was also one of the Punchas and had signed the inquest report. But Vijai Kumar (P.W. 1) stated in his cross examination that after handing over written report to Head Constable at the P.S. he went to sleep and did not know what happened thereafter. The report was handed over to Head constable at 5.20 P.M. That he regained conscious at 9.00 - 10.00 P.M. and by the time the I.O. had returned to police station. He did not know whether the I.O. had gone to the spot on the night of occurrence along with police officers or not. He did not know at what place the I.O. prepared any documents regarding dead body. However, the witness admitted his signature on the inquest report of deceased Ramesh Narain but he stated that his signature was obtained by S.I. at the police station. Thus, according to Vijai Kumar (P.W. 1) after lodging the report he did not go to the spot in the said night. But the I.O. stated about the presence of the witness on the place of occurrence till 9.00 to 10.00 P.M. It leads to infer that the I.O. wanted to strengthen the presence of witness by suggesting that he came to the spot along with him, he

conducted inquest in his presence and visited the spot on his pointing out which was totally denied by Vijai Kumar (P.W.I). The above over doing on the part of the I.O. shows that Vijai Kumar (P.W.I) was not present on the spot at the time of occurrence and was subsequently called at the police station where he lodged the report and signed inquest reports.

35. Vijai Kumar (P.W. 1) further stated that when the bus driver tried to take the bus he was assaulted by knife, but the injury report (Ext. Ka-18) of Virendra, driver of the bus and evidence of the Dr. Girish Chand (P.W. 5) show that Virendra has sustained one lacerated wound which was caused by blunt and hard object. He has not sustained any knife injury. Vijai Kumar (P.W. 1) further stated that appellant Guru Charan caught hold Jitendra alias Guddu and made him fall down. On his falling down Pramod and Sunil fired on him from a distance of about two feet. He had seen Guru Charan firing on Jitendra alias Guddu. The witness has not stated that knife injury was caused on Jitendra alias Guddu. But post mortem report of Jitendra alias Guddu shows that he has also sustained one incised wound 3.5 cm x 12.5 cm on right side chest. Thus, the evidence of Vijai Kumar (P.W. 1) is also contradictory to the medical evidence.

36. Vijai Kumar (P.W. 1) specifically stated that appellant Guru Charan had licensed .315 bore rifle and he fired on Ramesh Narain deceased with his above rifle. That empty cartridges of .315 bore had fallen on the spot inside the bus. The I.O. had collected empty cartridges of .315 bore from the spot. The licensed rifle of Guru Charan appellant was also taken into possession. The empty cartridges recovered from the spot and the rifle of Guru Charan appellant were sent to Forensic Science Laboratory for comparison and report and test report (Ext. Ka-20) shows that disputed cartridges (Ext-1) of .315 bore were not fired from rifle No. AB-96-1197. Thus, the own document of the prosecution shows that empty cartridges of .315 bore found on the spot were not fired by the licensed rifle of the appellant Guru Charan.

37. Vijai Kumar (P.W.I) admitted that after the occurrence he came to police station Sahawar along with Virendra Driver in a jeep. But neither he took nor tried to take Natthu (P.W.2) (who was lying injured on the spot) with him. Assuming that Ramesh Narain and Jitendra had died and there was no hurry to take them to hospital or to police station, Natthu had sustained severe injuries and he needed medical aid urgently. But Virendra Kumar did not care to take him to hospital in the jeep by which he came to police station. His above conduct again creates doubt of his presence on the spot.

38. In view of the above material discrepancies in the evidence of Vijai Kumar (P.W. 1) and improbabilities referred to above we are of the view that Vijai Kumar (P.W. 1) was not present on the spot, or inside the bus in which occurrence took place and his testimony is not reliable.

39. The next witness of the occurrence is Natthu Singh (P.W.2). He claimed that on the date of occurrence he had gone to Sahawar along with one Raj Kumar and in the after noon was returning to his village Yakootganj by bus No. PB-12-0148. Ramesh Narain and Jitendra alias Guddu deceased were also sitting in the said bus. When the bus reached near village Tali the appellants Guru Charan, Sunil, Pramod and Brahmpal boarded the bus with their respective weapons and fired on Ramesh Narain deceased who died on the spot. Jitendra alias Guddu got down of the bus and started running but he was caught by the appellants and they fired on him. Appellant Brahmpal caused knife injuries on him (witness) and he fell down on the spot.

40. As mentioned above Dr. Ram Babu (P.W. 6) had examined the injuries of Natthu Singh (P.W.2) on 21-7-1997 in S.N. Medical College, Agra at 3.50 A.M. The witness had sustained injuries in the occurrence. Learned counsel for the respondent contended that injuries on the person of the witness proved his presence on the spot. The injuries on the person of the witness is no doubt guarantee of his presence but it is no guarantee that he is speaking truth.

41. According to the prosecution and evidence of Natthu Singh (P.W.2) he sustained knife injuries caused by appellant Brahmpal at about 4.15 P.M. on 20-7-1997. Dr. Ram Babu (P.W. 6) who examined his injuries on 21-7-1997 at 3.50 A.M. stated that it was fresh case of stab injuries and injuries were fresh in duration. He further stated that by fresh injuries he meant the injuries caused within 6 to 10 hours, he also found that injuries 1 and 3 were bleeding and caused by one weapon. Fresh injuries are the injuries which are caused within 6 hours. No doubt there may be variation of two hours on either side. Thus the fresh injuries could be termed injuries within 4 to 8 hours, and not more than 8 hours. But the injuries of Natthu Singh (P.W.2) were examined after about 12 hours. It has nowhere been stated by Dr. Ram Babu (P.W. 6) that injuries were 12 hours old.

42. Natthu Singh (P.W.2) claimed that after the occurrence he was brought to police station, he was medically examined at Sahawar, thereafter- shifted to Etah and from Etah he was shifted to Agra. But Dr. Ram Babu (P.W.6) who examined Natthu Singh (P.W.2) at S.R.N. Medical College, Agra stated that no reference slip was shown to him. The prosecution has not filed the injury report or reference slip prepared at Sahawar or Etah. Vijai Kumar (P.W. 1) stated that after the occurrence he came to police station along with Virendra in a jeep. But Natthu Singh (P.W.2) who was lying injured was not taken to police station in the said jeep. Natthu Singh (P.W.2) stated that he was taken to police station by police. Which of the police officer brought Natthu Singh (P.W.2) from the spot to police station is not clear as the I.O. Sri Bhagwan Sahai stated that Natthu Singh (P.W.2) did not meet him on the date of occurrence.

43. Natthu Singh (P.W.2) has also stated that appellant Guru Charan was having licensed .315 bore rifle and appellants Pramod and Sunil were having country made

pistols of .315 and .312 bore. His above evidence that Guru Charan was having licensed rifle of .315 bore and caused injuries by above rifle to Ramesh narain and Jitendra is also belied by the report of Ballistic Expert that cartridges of .315 bore found in the bus were not fired from the licenced rifle of Guru Charan. The witness has also not explained as in what circumstances Jitendra alias Guddu deceased sustained knife injury as his evidence was that appellants Pramod, Sunil and Guru Charan fired on Jitendra alias Guddu.

44. As mentioned above the evidence of Dr. Ram Babu (P.W.6) falsifies the case of prosecution that Natthu Singh (P.W.2) sustained injuries in the same transaction in which Ramesh Narain and Jitendra alias Guddu deceased sustained injuries. The evidence of Natthu Singh (P.W.2) is also not in conformity with the medical evidence and therefore, in view of the discrepancies in the evidence of Natthu Singh (P.W.2) pointed out" above, we are of the view that the Natthu Singh (P.W.2)is not wholly reliable witness.

45. Learned counsel for the appellants pointed out certain short comings and discrepancies in investigation as the I.O. had omitted to mention relevant materials in the inquest report, Chitthi Majrubi of Virendra and other relevant papers prepared in connection with investigation. But we do not find it necessary to discuss the above discrepancies as the ocular witnesses relied on by the prosecution are not reliable.

46. Since Vijai Kumar (P.W. 1) and Natthu Singh (P.W.2) are not reliable and the other witnesses of the occurrence namely Virendra Singh Driver and other passengers of the bus had not been examined and no explanation for their non-examination has been given, we are of the view that the prosecution utterly failed to establish the guilt of appellants for the murder of Ramesh Narain and Jitendra alias Guddu deceased and murderous assault on Natthu Singh (P.W.2) Both the appeals thus, succeed and reference sent by Sessions Judge fails.

We, accordingly allow the Criminal Appeal No. 1795 of 1999, Guru Charan v. State of U.P. and Criminal Appeal No. 2018 of 1999 Sunil and Ors. v. State of U.P., and reject the Reference No. 8 of 1999 and set aside the conviction and sentence of appellants Sunil, Pramod, Guru Charan and Brahmpal and acquit them of the offences to which they stood charged with. Appellants Sunil, Pramod and Guru Charan are in Jail. They shall be released forthwith unless liable to be detained in connection with some other case. Appellant Brahmpal is on bail. His bail is cancelled and sureties are discharged. He need not surrender.