

(2007) 05 AHC CK 0327

Allahabad High Court

Case No: None

Udal Giri and Others
(In Jail)

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: May 25, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 148, 149, 302, 307, 452

Hon'ble Judges: Saroj Bala, J; Imtiyaz Murtaza, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Imtiyaz Murtaza, J.

Both these appeals are directed against the judgment and order dated 17.11.1999 passed by Special Judge/Addl. District Judge, Ghaziabad, in S.T. No. 6 of 1998 whereby the appellants Udal Giri, Shyam Pal Giri, Bhagirath Giri, Bhujver Giri, Upendra Giri, Naipal Giri, Asha Ram Giri @ Aashi and Prem Pal have been convicted u/s 148 I.P.C. and sentenced to R.I. for 2 years, u/s 307 I.P.C. and sentenced to 7 years R.I. and u/s 302 I.P.C. and sentenced to undergo imprisonment for life. The appellants Balraj Giri, Tukki Ram Giri, Satveer Giri, Ram Veer Giri and Babu Ram Giri are convicted u/s 506 I.P.C. and sentenced to 2 years R.I. and further convicted u/s 148 I.P.C. and sentenced to 2 years R.I.

2. Briefly stated, the incident which gave rise to these appeals is that on 24.3.1997 at about 2.45 p.m. after celebrating Holi the informant Kishan Pal alongwith his family members Mehar Chand, Mam Chand, Mahendra, Dinesh, Pappu and Devi Charan were sitting in the courtyard (Aangan) of Ami Chand. Lal man Pradhan was his nephew and since when he was elected as Pradhan, the Gosais of the village became inimical. Udal Giri. Asha Ram @ Aashi, Bhagirath, Upendra Singh, Kusum Veer,

Bhujveer. Prem Pal carrying country made pistols. Naipal and Shyam Pal carrying Lathis and Daya Ram armed with Pharsa reached there on the tractor of Naipal and Upendra was driving it, and stopped the Tractor in front of the lane and got down from the Tractor abusing them and told that they posed themselves as a Neta and they will teach them a lesson and all of them started firing and assaulting with Lathi and Pharsa. In the meantime, Saroopi wife of Mam Chand and Indra Devi daughter of Mam Chand reached there and they had also been fired upon. Mehar Chand fell down in the Aangan. Hearing the noises, Tej Pal, Kailash and Tara Chand also reached there and raised alarm. The accused persons fled away on the Tractor. When they tried to apprehend them Upendra and others again fired upon them and on that account they could not apprehend them and accused persons fled away inside the village. Mehar Chandra died on the spot in the courtyard. Mahendra, Dinesh, Pappu, Devi Charan, Mam Chand, Saroopi and Indra Devi sustained pellet, Lathi and Pharsa injuries. After the incident when he alongwith Satya Pal were taking the injured Pappu, Dinesh and Mahendra to the Police Station. Tukki carrying country made pistol, Balraj and Babu Ram carrying Pharsa and Satveer and Ramveer carrying Laihi met them and threatened them that if they will lodge the report they will also be killed like Mehar Chand. They returned and came to the police station from different route. Devi Charan, Mam Chand, Saroopui and Indra Devi were sent to Ghaziabad for treatment. The report was registered at 3.45 P.M. at Police Station, Pilkhua, District Ghaziabad.

3. After the registration of the case Sub Inspector S.S. Tyagi commenced investigation. He reached at the place of occurrence and prepared the inquest memo on the dead body of Mehar Chand which is Ext. Ka. 12. He also prepared a letter to C.M.O., photo lash, challan lash, sample" seal etc. which are Exts. Ka. 13 to Ka. 17. Thereafter, he recorded the statements of Kishan Pal, Mahendra Singh, Trilok Chand, Ravindra Singh, Lal. Man and Satyapal. He also collected the blood smeared and plain earth from the place of occurrence and prepared its recovery memo, which is Ext. Ka. 18. On 25.3.1997 he recorded the statements of the witnesses. Kailash, Tara Chand, Tej Pal, Mahendra Singh, Pappu, Dinesh Chand and Mahesh Chand. He prepared site plan, which is Ext. Ka. 21. He also prepared site plan of the place where the complainant was threatened for not lodging the report, which is Ext. Ka. 22. On 28.3.1997 he recorded the statements of Saroopi, Indra, Mam Chand Pal and Devi Charan. After completing the investigation he submitted the charge sheet against the accused persons.

4. The post-mortem on the dead body of Mehar Chand was conducted by Dr. J.R. Jiani. He noted following ante-mortem injuries:

1. Gun shot wound of entry 3 cm x 1 $\frac{1}{2}$ cm. x chest cavity deep on (L) side chest 4 cm. below nipple at 5 O'clock position direction posteriorly. Underneath heart-punctured, lungs lacerated ribs 3rd anteriorly & 7th posteriorly fractured. A bullet recovered from posterior chest-wall.

2. Gun shot wound of entry 1 cm x 1 cm x chest cavity deep direction posteriorly communicating to Injury No. 3 underneath lungs lacerated, blackening present.
3. Gun shot wound of exit 1 cm x 1 cm x communicating to injury No. 2 on outer aspect of lower part of chest - underneath ♦ lung lacerated.
4. Gun shot wound of entry 1 cm x 1 cm x chest cavity deep direction posterior, a bullet recovered from post-wall of chest cavity. Lungs underneath lacerated.
5. Abrasion 1 ♦ cm x 1 cm abdomen below Xiphisternum.
5. In the opinion of the doctor cause of death of the deceased was shock and haemorrhage as a result of ante mortem injuries.
6. Dr. H.C. Dua examined the injured Mahendra Singh, Dinesh, Pappu on 24.3.1997 at 7.00, 7.15 and 7.25 P.M respectively, and noted following injuries:

Injuries of Mahendra Singh:

1. Lacerated wound just in front of lateral malleolus of Rt. ankle joint 1 ♦ cm x 1 cm x bone deep directing backward. Margins inverted. Oozing of blood present.
2. Lacerated wound over back of lateran malleolus of Rt. ankle joint 2 ♦ cm x 1 ♦ cm x bone deep margins everted. Injury communicating injury No. 1. Oozing of blood present.
3. Lacerated wound over back of Nose Rt. side 3/4 cm x 1:710 cm x skin deep. Oozing of blood present.

Injuries of Dinesh :

1. Lacerated wound in front of Rt. ankle joint 3 cm x ♦. cm x skin deep oozing of blood present.

Injuries of Pappu:

1. Linear abrasion over medial part of upper border of orbit of Rt. eye just below medial and of Rt. eye brow 1 ♦ cm long. Oozing of blood present.
2. Abrasion over Rt. side abdomen 1 ♦ cm x 3/10 cm 10 cm interal to umbilicus.
7. On 25.3.1997 he examined Smt. Indra at 10.30 A.M. Mam. Chand at 10.10 A.M., Devi Charan and Smt. Saroopi at 10.20 A.M and noted the following injuries.

Injuries of Smt. Indra:

1. Circular lacerated wound 3/10 cm x 3/10 cm x muscle deep over lateral aspect of Rt. let 17 cm below Rt. knee joint. Injury is surround by contused swelling in area 0.7 cm 0.4 cm.

Injury report of Mam Chand:

1. Circular abrasion over left side back 3/10 cm 3/10 cm 6 cm below shoulder. Soft scab present.
2. Circular abrasion over left side back lumbar region 10 cm lateral to spine measuring 3/10 cm x 3/10 cm. Soft scab present.

Injuries of Devi Charan:

1. Abrasion over Rt. side face 3/4 cm x 1 cm 6 cm lateral to Rt. angle of mouth clotted blood present.
2. Multiple abrasion over front of Rt. shoulder measuring between 2 cm x 1 cm to 3/4 cm x 1 cm three in number clotted blood present.

Injuries of Smt. Saroopi:

1. Soft scabbed abrasion in front of left forearm 1 cm x 3/4 cm 10 cm above wrist.
2. Circular abrasion over back of left leg 3/10 cm x 3/10 cm 10 cm ankle joint - soft scab present.

8. After the committal of the case the Sessions Judge framed charges against Tukki, Balraj, Satyaveer, Ramvir and Babu Ram under Sections 148 and 506 I.P.C. and against Asha Ram, Udal, Bhagirath, Upendra Singh, Bhujveer, Prempal, Naipal, Shyam Pal and Dayaram charges under Sections 148, 452, 504, 307/149 and 302/149 I.P.C. were framed.

9. In order to prove its case the prosecution had examined 8 witnesses and the defence had examined four witnesses.

10. The Sessions Judge after considering the evidence of the prosecution has convicted the appellants, as aforesaid, and acquitted Dayaram.

11. We have heard Shri G.S. Chaturvedi, Sr. Advocate for the appellants and the learned A.G.A. for the State and perused the entire record.

12. The counsel for the appellants had challenged the findings of the trial court on various grounds. It was submitted that the appellants had no strong and immediate motive for committing the crime, the origin of occurrence is shrouded in mystery because the prosecution failed to explain the injuries of Naipal, the testimonies of the witnesses should be rejected because on the same evidence co-accused Dayaram was acquitted by the trial court. It was further submitted that Sessions Judge should have acquitted Naipal and Snhyam Lal on the same ground on which he had acquitted Dayaram. The plea of alibi of appellant Udal Giri should have been accepted by the trial court and the Sessions Judge has wrongly convicted appellant Tukki, Balraj, Babu Ram Satyaveer and Ramveer under Sections 148/506 I.P.C.

13. On the contrary learned A.G.A. Submits that the prosecution has proved its case beyond reasonable doubt, the time and place of occurrence and individual role of

the accused had been proved beyond reasonable doubt; the presence of eye-witnesses cannot be doubted because it was a day light occurrence and the injuries sustained by the injured witnesses proves their presence beyond reasonable doubt. It was further submitted that the Sessions Judge has rightly convicted the appellants after carefully analyzing the evidence in detail.

14. In order to appreciate the rival contentions of the learned Counsel for the parties it is necessary to consider the evidence placed on record.

15. P.W. 1 Kishal Pal deposed that on 24.3.1997 he alongwith Mehar Chand, Mahendra, Mam Chand, Dinesh, Pappu and Devi Charan were sitting in the courtyard of Ami Chand and were talking to each other. At about 2.45 P.M. on the tractor of Naipal, Udai, Asha Ram, Prem Pal, Bhupendra, Bhujveer, Bhagirath and Kusumveer carrying Katta, Naipal and Shyam Pal armed with Lathi and Dayaram armed with Pharsa reached there and stopped their tractor in front of the lane and got down from the tractor started abusing and threatening them. They started firing from the country made pistols and assaulted with Lathi and Pharsa. He raised an alarm and on his alarm Indra Devi and Saroopi Devi rushed there, They had also been assaulted and firing was also made on them. Tejpal, Kailash and Tara Chand also reached there and started raising alarm. Many people of the village had also reached there. On seeing them the accused started running away. Bhupendra and others had also fired but they could not apprehend them and accused persons ran away inside the village. Mehar Chand died on the spot. Mahendra, Mam Chand, Pappu, Dinesh, Devi Charan, Indra and Saroopi sustained injuries. He alongwith Mahendra on the motorcycle of Satyapal and Kailash, Pappu and Dinesh on a scooter were going to police station Pilkhuwa and when they reached near the field of Narayanpal, Tukki armed with Katta, Satyaveer, Ramveer armed with Lathi and Babu Ram and Balraj armed with Pharsa stopped them and threatened that they should go back otherwise they will also be killed like Mehar Chand. They reached the police station via a different route. The report was prepared on his dictation by Mool Chand which is Ext. Ka. 1. He further established that in the election of Pradhan his nephew Lalman was elected and on that count the accused were inimical."

16. P.W. 2, Mahendra Singh, deposed that on 24.3.1997 at 2.45 P.M. he was sitting in the courtyard of Ami Chand alongwith Kishan Pal, Mam Chand, Dinesh, Pappu, Mehar Chand, Devi Charan. They were talking with each other and in the meantime Udai, Asha Ram, Prem Pal, Bhupendra, Kusumveer, Bhujveer, Naipal, Bhagirath, Shyampal and Daya Ram reached there. Udai, Asha Ram, Prem Pal, Bhujveer, Upendra, Bhagirath and Kusumveer were carrying country made pistols, Naipal and Shyampal were armed-with Lathi and Daya Ram was armed with a Pharsa. All these accused persons came on the tractor of Naipal Giri. They had threatened them and started firing and assaulting with Lathi and Pharsa. Hearing the shots Indra Devi and Saroopi reached there. They were also fired upon and they sustained injuries. Kailash, Tej Pal and Tara Chand alongwith other villagers also reached there. Mehar

Chand died on the spot. He, Dinesh, Pappu,, Devi Charan, Mam Chand, Saroopi and Indra sustained injuries. The accused persons ran away on the tractor and when they had tried to apprehend them, Upendra and other persons had fired upon them. After the occurrence he and Kishan Pal on the motorcycle of Satyapal and Dinesh and Pappu on the scooter of Kailash were going towards the police station and when they reached near the field of Narayan Pal at about 3.00 P.M., Tikku armed with Katta, Babu Ram and Balram armed with a Pharsa and Ramvir and Satyavir were armed with Lathi intercepted them and said that they will also be killed like Mehar Chand if they dare to lodge the report. They came back and had gone to the police station via different route. He was also medically examined at District Hospital, Ghaziabad.

17. P.W. 3, Tejpal, deposed that on 24.3.1997 at 2.45 P.M. he was present at his house. He heard some noises from the courtyard of Ami Chard and also heard sound of shots. He reached at the house of Ami Chand and saw that in the Ami Chand's courtyard, Kishan Pal, Mam Chand, Mahendra, Mehar Chand, Dinesh, Pappu and Devi Charan were sitting. Naipal. Upendra. Bhujveer, Asha Ram, Udal Giri, Prem Pal, Bhagirath, Daya Ram, Shyam Pal and Kusum Veer reached there and started assaulting with Kattas, Lathi and Pharsa. Mehar Chand died on the spot. Mahendra, Mam Chand, Dinesh, Pappu, Devi Charan, Indra and Saroopi had sustained injuries. The accused Asha Ram, Udal Giri, Prem Pal, Upendra, Bhujveer, Kusumveer and Bhagirath were armed with country made pistols, Naipal and Shyam Pal were carrying Lathi and Daya Ram had wielded Pharsa.

18. P.W. 4 Kailash deposed that on 24.3.1997 there was festival of Holi. At about 2.45 P.M. while he was returning to his house he saw hat in his courtyard, Mam Chand, Mahendra, Mehar Chand, Pappu, Dinesh, Kishan Pal and Devi Charan were sitting. From the northern lane of his courtyard Udal, Asha Ram, Upendra, Bhagirath armed with country made pistols and on the western exit Prem Pal, Bhujveer, Kusumveer armed with country made pistol and Naipal and Shyam Pal armed with Lathi and Daya Ram armed with Pharsa were standing and they were challenging that they will teach them a lesson and they started assaulting with their respective weapons. In the meantime Indra and Saroopi also reached there to save others but they had also received firearm injuries. Tej Pal and Tara. Chand also reached there alongwith other family members. Mehar Chand died on the spot. Mam Chand, Mahendra, Indra, Saroopi, Dinesh, Pappu and Devi Charan had sustained injuries. The accused persons ran away when they tried to apprehend them. Upendra and other accused had fired upon them. After the incident he took Pappu and Dinesh on his scooter and Kishan Pal and Mahendra were being taken on the motorcycle by Satyapal. It was further alleged that when they reached near the field of Narayan Pal, Tukki armed with country made pistol, Balraj and Babu Ram armed with Pharsa and Satyaveer and Ramveer armed with lathi were sitting there. They had stopped them and said that in case they will lodge the report they will also be killed like Mehar Chand. They returned to their village and went to the police station by a different

route. He further deposed that since Lalman Pal was elected as Pradhan of the village the accused became inimical.

19. P.W. 5 is Dr. Harishchandra Dua who had medically examined the injured persons.

20. P.W. 6 Dr. J.R. Jiyanji had conducted the post-mortem examination on the dead body of deceased Mehar Chand.

21. P.W. 7 Con. Surajveer Singh deposed that after the inquest on the dead body of Mehar Chand the investigating officer had handed over the dead body in a sealed cover to him and constable Ram Bahadur for carrying it to the mortuary.

22. P.W. 8 is investigating officer S.S. Tyagi who had submitted the charge-sheet against the accused persons,

23. D.W. 1 H.C. Ganga Prasad deposed that he was posted in R.P.F. Post, Tagalakabad and he had produced the G.D. and Beot Book.

24. D.W. 2 Con. Rajendra Singh deposed that he was posted as Constable R.P.F. On 24.3.1997 he was posted there alongwith accused Udal Giri. On 24.3.1997 he was the writer of the G.D. On that date at 5.45 A.M., G.D. No. 15 Con. Udal Giri and Con. Nafe Singh had gone out of police station. This G.D. entry is in the hand writing of Meer Singh. He returned at 6.10 P.M. as mentioned in the G.D. No. 47. This G.D. is also signed by Udal Singh. Copy of G.D. entries are Exts. Kha 1 and Kha. 2.

25. D.W. 3 is Con. Nafe Singh. He stated that on 24.3.1997 Ravangi of Udal Singh was with him as mentioned at 5.45 A.M. and they returned at 6.10 P.M.

26. D.W. 4 is Shiv Shanker Gautam, Pharmacist, District Jail, Ghaziabad. He deposed that in the year 1997 Dr. Rajesh Prasad was Medical officer in the District Jail. He recognised his hand-writing. On 25.3.1997 he alongwith him had conducted the medical examination of Naipal Giri. In the medical examination report three injuries are mentioned and all the injuries were caused by blunt object. Medical Examination report of Naipal is Ext. Kha. 3.

27. The first submission of the counsel for the appellant is that there was no motive for committing the crime. It was submitted that election of Pradhan had taken place three years back and nothing had happened between the parties since then.

28. In the first information report it was the case of the prosecution that accused persons were annoyed with them since Lalman was elected Pradhan and this was the motive for the crime alleged by the prosecution. This was also admitted by the prosecution witnesses that enmity was on account of election of Pradhan. P.W. 1 Kishan Pal had also stated that the people of Gosai community were inimical since his nephew was elected as Pradhan. Similarly, P.W. 2 Mahendra Singh also stated that accused persons came at the place of occurrence and said that they posed themselves as "Neta" and they will teach them lesson for becoming Pradhan. The

correctness of conviction cannot be tested on the touchstone of lack of sufficient motive if the...evidence establishes beyond reasonable doubt that the accused had committed the crime. The motive for doing a criminal act is generally a difficult area for the prosecution, as one cannot normally see into the mind of another. It is sound principle to remember that every criminal act was done with a motive but its corollary is not that no offence was committed if the prosecution fails to prove the precise motive of the accused to commit it, as it is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended. The consistent case of the prosecution is that on account of election of Pradhan there was enmity in the mind of the accused persons and on that account this occurrence took place. There is no reason to disbelieve the statement of the witnesses with regard to enmity. There is also no suggestion as to why the witnesses are falsely implicating the innocent persons and there must be some reason for false implication also. It is also important to mention that in a case which turns on the direct evidence, the motive does not play any important role.

29. Learned Counsel for the appellants further submitted that the injuries sustained by Naipal Giri are proved by D.W. 4 Shiv Shankar Gautam. These injuries are not explained by the prosecution. It was further argued that the origin of the incident is also shrouded in mystery.

30. We do not find any substance in this submission because the prosecution case cannot be disbelieved only on account of non-explanation of injuries of Naipal, which are simple in nature. Moreover, none of the witnesses were suggested that Naipal had also sustained injuries in the same occurrence, Naipal in his statement u/s 313 Cr.P.C. stated that he was assaulted by Mahendra, Mam Chandra and Ami Chandra. There was no suggestion to the witnesses that these persons had assaulted Naipal. It is too well settled that the prosecution is not bound to explain each and every injury on the accused persons irrespective of the nature of the injury and in respect of some minor injury on the accused. The Apex Court in the case of [Takhaji Hiraji Vs. Thakore Kubersing Chamansing and Others](#), has held in paragraph 17 as under:

17. The first question which arises for consideration is what is the effect of non-explanation of injuries sustained by the accused persons. In *Rajender Singh v. State of Bihar* 1, *Ram Sunder Yadav v. State of Bihar* and *Vijayee Singh v. State of U.P.* all three-Judge Bench decisions, the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of

the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear, cogent and credit worthy and where the court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.

31. The counsel for the appellant submitted that the Sessions Judge did not rely upon the testimonies of the witnesses with regard to participation of Dayaram and their testimony should also be rejected for other accused because the Sessions Judge did not find the testimonies of the witnesses totally reliable. We are not in agreement with the above submission of the learned Counsel for the appellant because as a rule of universal application it cannot be said that when a portion of the prosecution evidence is discarded as unworthy of credence, there cannot be any conviction. It is always open to the court to differentiate between an accused who has been convicted and those who have been acquitted. It is a settled position of law that when the prosecution is able to establish its case by acceptable evidence, though in part, the accused can be convicted even if the co-accused have been acquitted on the ground that the evidence led was not sufficient to fasten guilt on them. But where the position is such that the evidence is totally unreliable, and it will be impossible to separate the truth from falsehood to an extent that they are inextricably mixed up and in the process of separation an absolute new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, conviction cannot be made.

32. The Apex Court in the case of [Sucha Singh and Another Vs. State of Punjab](#),

Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence, prayer is to apply the principle of "falsus in una falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove the guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove the guilt of other accused persons. Falsity of a particular material witness or a material particular would not ruin it from the beginning to the end. The maxim "falsus uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liars. The maxim "falsus

in uno falsus in omnibus " has not received general acceptance nor has this maxim come to occupy status of a rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See Nisar Ali v. State of U.P.) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. (See Gurcharan Singh v. State of Punjab) The doctrine is a dangerous one, especially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it: has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab v. State of M.P. and Ugar Ahir v. State of Bihar) An attempt has to be made to, as noted above, in terms of the felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new cast has to be reconstructed by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See Zwinglee Ariel v. State of M.P. and Balaka Singh v. State of Punjab) As observed by this Court in State of Rajas than v. Kalki normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in Krishna Mochi v. State of Bihar. Accusations have been clearly established against the accused-appellants in the case at hand. The courts below have categorically indicated the distinguishing features in evidence so far as acquitted and convicted accused are concerned.

33. The Sessions Judge has acquitted Dayaram on the ground that neither the injured nor the deceased had sustained any injury of Pharsa which is alleged to have been used by Dayaram. The Sessions Judge rightly acquitted Dayaram and on the ground of his acquittal, whole prosecution case cannot be disbelieved.

34. The appellant Udai Giri had taken a plea of alibi and he examined D.W. 1 H.C. Ganga Prasad D.W. 2 constable Rajendra Singh and D.W. 3 constable Nafe Singh to prove that on the date of occurrence he was posted and present at RPF Post Tughlakabad. He had left police outpost for official duty at 5.45 a.m. and returned at 6.10 p.m. The Sessions Judge had considered this plea and rightly rejected the same because there was no evidence to show that through out this period he remained on his duty. The place of occurrence was about 40-50 km. from Delhi where he was posted. The time of occurrence is 2.45 p.m. and he can easily reach at 6 p.m. at RPF post Tughlakabad. The Sessions Judge has also held that the statement of D.W. 3 cannot be accepted that they remained whole day at Gate No. 579 A. We are of the opinion that the Sessions Judge has rightly disbelieved the plea of alibi of appellant Udai Giri.

35. It was submitted that Naipal and Shyam Lal are alleged to be armed with lathi and they did not cause any injury to the injured or the deceased. The Sessions Judge should have also given same benefit to these persons who are alleged to have used lathi. We find force in this submission of the learned Counsel because in our opinion the lacerated wounds and the contusions and abrasions are not such injuries which could be attributed to the persons who were carrying lathi. Mahendra Singh had sustained 3 small lacerated wounds of very small dimension. P.W. 5 Dr. Harish Chand Dua stated that injuries No. 1 and 2 were caused by fire arm. Dinesh had sustained one lacerated skin deep wound on right knee. Pappu had sustained two small abrasions. Smt. Indra had sustained one round lacerated wound 3/1-0 cm. X 3/10 cm x muscle deep Mam Chand had received two round abrasions of 3/10 x 3/10 cm. Devi Charan had sustained two simple injuries which were in the opinion of the doctor were caused by friction against hard object. Smt. Swaroopi had received two abrasions. After carefully examined the above injuries we are of the view that these injuries were either caused by stray pellets or some have sustained injuries while they were running to save their lives. We are of the view that Naipal Giri and Shyam Pal are also entitled to the same benefit which was extended to Dayaram by the Sessions Judge. The appellants Naipal Giri and Shyam Pal are also entitled for the benefit of doubt and are acquitted of the charges levelled against them.

36. The prosecution has proved its case against Udai Giri, Bhagirath Giri, Bhujveer Giri, Upendra Giri, Asharam Giri alias Ashi and Prem Pal beyond reasonable doubt. The time and place of occurrence is not seriously challenged by the defence. The presence of witnesses cannot be doubted because the place of occurrence being the house of the deceased and the presence of family members is quite natural and their presence is also corroborated by the injuries sustained by them during the

course of incident. The injuries of the injured are also not challenged by the prosecution. All these appellants were carrying fire arm and role of firing was attributed to them right from the lodging of the report, during the course of investigation and the testimonies recorded in court. The medical evidence also corroborates the eye witness account. The injured and deceased had sustained numerous fire arm injuries. The acquittal of other accused does not impair the testimonies of the eye witnesses because it is always open to the court to differentiate between an accused who has been convicted and those who have been acquitted. It is settled position of law that when the prosecution is able to establish its case by acceptable evidence, though in part, the accused can be convicted even if the co-accused has been acquitted on the ground that the evidence led was not sufficient to fasten guilt on them.

37. Now we will examine the case of appellants Tukki, Balraj, Babu Ram, Satveer and Ramvir, who have been convicted by the Sessions Judge only under Sections 148/506 I.P.C. The allegation against them is that while the informant was taking the injured to the police station they had stopped them and threatened not to lodge the report and on account of their threats they could not go to the police station for lodging the first information report. We have carefully considered the allegations against them. The witnesses have not specified as to who had extended threats to them. The witnesses did not mention that anyone of them tried to assault them. It is highly surprising that none of them tried to assault them while they all were heavily armed. It is also important to mention that there is general allegation of extending threats. It was nowhere mentioned that who had extended threats. People do not ordinarily act in unison. If all the accused persons were present and they were also inimical it is difficult that they did not try to assault them and only extended threats. We are of the view that omnibus inclusion of all the accused in extending threats is not safe to rely upon. It is important to mention that Sessions Judge given the benefit of doubt to Dayaram, who was alleged to be armed with a Pharsa, in the absence of any corroborative injury and we have also given the benefit of doubt to other two accused namely, Naipal and Shyam Lal on the ground that there was no typical injury of the weapon which they are alleged to be armed with. Thus in our opinion appellants Tukki, Balraj, Babu Ram, Satveer and Ramvir, are also entitled to the benefit of doubt and they are acquitted of the charges under Sections 148/506 I.P.C.

38. For the reasons stated above, the above appeals are decided as under:

Appeal No. 3223 of 1999 of appellants Udal Giri, Bhagirath Giri, Bhujveer Siri and Upendra Giri is dismissed. The conviction and sentences awarded by the trial court to the appellants are affirmed. Appellant, Bhujveer Siri and Upendra Giri are on bail. They are directed to surrender to serve out the sentence. The C.J.M. Ghaziabad is also directed to take the appellants Bhujveer Giri and Upendra Giri into custody forthwith on receipt of a copy of this judgment and take them to jail to serve out the

sentences awarded by the trial court and affirmed by us. The appellants Udal Giri, Bhagirath Giri are in jail. They shall be kept there to serve out the sentences awarded by the trial court and affirmed by us.

39. Appeal No. 3223 of 1999 of appellants Shyam Pal Giri, Naipal Giri, Balraj Giri, Tukki Ram Giri, Staveer Giri, Ram Veer Giri and Babu Ram Giri is allowed. The order dated 17.11.1999 passed by Special Judge/Addl. District Judge, Ghaziabad regarding the appellants Shyam Pal Giri, Naipal Giri, Balraj Giri, Tukki Ram Giri, Staveer Giri, Ram Veer Giri and Babu Ram Giri is set aside. They are acquitted of the charges. They are on bail. They need not surrender. Their bail bonds and sureties are discharged.

40. Crl. Appeal No. 38 of 2000 of appellants Asha Ram Giri @ Ashi and Prem Pal is dismissed. The conviction and sentences awarded by the trial court to the appellants are affirmed. They are on bail. They are directed to surrender to serve out the sentence. The C.J.M., Ghaziabad is also directed to take the appellants Asha Ram Giri @ Ashi and Prem Pal into custody forthwith on receipt of a copy of this judgment and take them to jail to serve out the sentences awarded by us.

41. Office is also directed to send a copy of this order to the C.J.M. Ghaziabad for necessary compliance and C.J.M. Ghaziabad shall also send the compliance report to this court within three months.