(2007) 04 AHC CK 0285

Allahabad High Court

Case No: None

Anand Pal		APPELLANT
	Vs	
State of U.P.		RESPONDENT

Date of Decision: April 13, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 15, 157, 161, 174
- Evidence Act, 1872 - Section 35
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 307

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

Bench: Division Bench

Final Decision: Dismissed

Judgement

Saroj Bala, J.
These criminal appeals having arisen out of the judgment and order dated October 30, 2000 passed by the 1st Additional Sessions judge, Aligarh in Sessions Trial No. 855 of 1997, State v. Jaswant Singh and Ors. whereby convicting and sentencing all the appellants for the offence punishable u/s 302 read with Section 149 I.P.C. and sentencing them with rigorous imprisonment for life and fine of Rs. 5000/- each and in default to undergo rigorous imprisonment for one year, are being decided by a common order.

2. The facts giving rise to these appeals are: Ramswaroop allas Neksay son of Pitambar r/o village Parora disappeared twenty days before the incident and his family members suspected the hand of Anand Pal son of Gokul Singh first informant"s nephew (one. of he deceased) in his missing. On March 25, 1997 at about 10 A M. Anand Pal his brother Ramveer, and son Satyaveer were irrigating their fields. At: the same time all the accused-appellants excopt appellant Jaswant Singh reached there and catching hold of Anand pal and Ramveer proceeded towards the village. Satyaveer and Sunder Singh followed them. The appellant Bhoora alias Bhudev son of Neksay with the help of co-accused appellants tied Anand Pal with the Neem tree situated in front of his house.

When Ramswaroop and Kunwarpal protested, the accused- appellant Jaswant, present there since before, opened fire at Anand Pal and appellant Prempal gave a spade blow and he died instantaneously. Ramveer was subjected to brutal assault by all the appellants with bricks. When Gokul Singh father of Anand Pal tried to intervene he was subjected to assault by the appellants with bricks. The first informant Sunder Singh (P.W. 1) got scribed the written report (Ext. Ka-1) of the incident from Asadnllah Khan and laid it at P.S. Barla on 25.3.1997 at 12.30 P.M. On the basis of the written report chick F.I.R. (Ext.Ka-28) was prepared and crime was registered at serial number 11 of the general diary at 12.30 P.M. on 25.3.1997 Ext. Ka-29).

3. The injured Ramveer was medically examined by Dr. Qamar Ahmad (P.W. 4) on 25.3.1997 at 1.15 P.M. and L.W. 7cm. X 1 cm. X bone deep on left side head, L.W. 3 cm. X 1 cm. X bone deep at the chin with fracture of mandible, contusion 6 cm. X 4 cm. on left side of face and contusion 4 cm. X 3 cm. on top of head were found. Injuries were caused by blunt object and kept under observation. The injury report is (Ext. Ka-5). He succumbed to the injuries at M.S. District Hospital Aligarh on 26.3.1997 at 12.30 A.M.

4. The injured Gokul Singh also succumbed to the critical injuries the same day.

5. The inquest on the dead body of Anand Pal was conducte at the spot on 25.3.1997 by S.I. Arsad Ali Tomar (P.W. 5). The inq est memo is (Ext.Ka-6). The challan- lash (Ext.Ka-7), photolash (Ext. Ka-8), report to C.M.O. (Ext. Ka-9) and specimen seal (Ext. Ka-10) were prepared during the course of inquest and the dead body in sealed bundle with papers was sent to mortuary. The inquest on the dead body of Gokul Singh was conducted by S.I. Ranvir Nagar (P.W.-6) on 26.3.1997. The inquest memo is (Ext. Ka-11). The letter to R.I. (Ext. Ka-12), letter to C.M.O. (Ext. Ka-13), photolash (Ext Ka. 14), Challanlash (Ext. Ka-15), specimen seal (Ext. Ka 16) were prepared and sealed bundle containing the dead body along with papers was handed over to the constables for transportation to the mortuary. He conducted inquest on the dead body of Ramveer the same day The inquest memo is Ext. Ka-17. He prepared form No. 33 (Ext. Ka- 18), challanlash (Ext. Ka-19), photolash (Ext. Ka-20), letters to R.I. and C.M.O; (Ext. Ka-21 and Ext. Ka- 22) and specimen seal during the course of inquest After completion of inquest the dead body in sealed bundle was sent to the mortuary.

6. The autopsy on the dead bodies of Anand Pal, Ramveer and Gokul Singh was conducted on 26.3.1997 by Dr. R.K. Mittal (P.W. 3) and their postmortem certificates are (Exts. Ka-2, Ka- 3 and Ka.- 4), On the person of deceased Anand Pal ante mortem injuries namely abrasion 1 cm. X 1 cm. front right side chest 4 cm. below right nipple, incised wound 8 cm. X 1 cm. X bone deep just below chin in midline and gun shot wound of entry with blackening 1cm. X 1 cm. X cavity deep on left side neck, oblique upwards into brain cavity, upper part of neck 5 cm. behind left ear with fracture of left temporal bone were found. One metallic bullet was recovered from brain. The death was caused due to shock and haemorrhage as a result of ante mortem injuries.

7. On the person of deceased Ramveer ante- mortem injuries stitched wound 5 cm. long with 3 stitches left side forehead vertical, I.W. 3 cm X 1/2cm. X muscle deep lower part of left eyelid, stitched wound 2 cm. long with 2 stitches below left side chin with fracture of frontal and temporal bones were found. The brain and membranes were congested. Blood clot was found under injury No. 1 on left side. The cause of death was shock and haemorrhage as a result of ante mortem injuries.

8. On the dead body of Gokul Singh, ante mortem injuries I.W. 4/1/2 cm X 2 cm. X bone deep top of scalp midline, L.W. 1 cm. X 1/1/2 cm. X bone deep left side scalp 10 cm. above left ear, L.W. 2 cm. X 2 cm. X bone deep front and middle of scalp 7 cm. above bridge of nose, L.W. 3 X 2cm X bone deep front and middle of scalp 2 cm. below injury No. 3, abrasion 3 cm. X 2 cm. right side neck middle portion, were found. There was fracture of frontal, both temporal, parietal, and occipital bones in pieces. Brain and membranes were lacerated and blood clots were present. The cause of death was shock and haemorrhage as a result of ante mortem injuries.

9. The crime was investigated by S.I. Balbir Singh (P.W. 7). The investigating officer visited the place of offence and prepared the site plan Ext. Ka-24. He took in police custody an empty cartridge of 315 bore, plain and blood smeared earth and two blood smeared bricks under the memo (Ext. Ka-25). The blood smeared earth and bricks etc. were sent to Forensic Science Laboratory. The chemical examination report is Ext. Ka-27, After interrogation of witnesses and competing the necessary formalities the investigating officer submitted the charge sheet Ext. Ka-26 against the accused-appellants.

10. The committal proceedings were conducted by the C.M. Aligarh who vide order dated 14.8.1997 committed the accused-appellants to the court of session for standing trial for the offence under Sections 147, 148, 149, 307, 302 I.P.C. All the appellants vere charged for the offence punishable u/s 302 read with Section 149 I.P.C. The accused-appellant Jaswant was separately charged for the offence punishable u/s 302 I.P.C. for killing Anand Pal. The accused-appellants pleaded not guilty and claimed to be tried.

11. The prosecution in order to substantiate the accusations examined first informant Sunder (P.W. 1) and Satyavir (P.W. 2) as witnesses of fact. Dr. R.K. Mittal (P.W. 3) conducted autopsies on the dead bodies. Dr. Qamar Ahmad (P.W. 4) medically examined the injured Ram Veer, then alive. S.I. Arsad Ali Tomar (P.W. 5) and S.I. Ranvir Nagar (P.W. 6) conducted inquest on the dead bodie. C.P. H.C. Kanchan Singh (P.W. 8) and C.P. Geetam Singh (P.W. 9) took the dead bodies to the mortuary. Balbir Singh (P.W. 7) then Station Officer Police Station Barla was the Investigating Officer of this case.

12. The accused-appellants denied the prosecution allegations and stated that Anand Pal was a criminal involved in cases of abduction for ransom and the village people were against him and wanted to kill him. According to them the villagers of Parora and adjoining villages participated in the incident and committed murders of Anand Pal,

Ramveer and Gokul. They attributed their false implication due to enmity and party faction of village, Jai Prakash Shastri (D.W. 1) was examined in defence to prove that accused-appellant Bhura alias Bhudev Singh was a juvenile on the date of incident.

13. The trial court after sifting the evidence of eyewitnesses found their testimony to be truthful and trustworthy and recorded the finding of conviction and sentenced each of the appellants for the offence punishable u/s 302/149 I.P.C.

14. We have heard Shri G.S. Hajela, learned Counsel for the appellant in criminal appeal No. 3005 of 2000. Shri Viresh Mishra, learned: Counsel for the appellants in connecting appeals No. 3006, 3007 and 3436 of 2000 having not appeared, Shri G.S. Hajela Advocate was appointed as amicus curiae to argue these appeals and was heard by us. Shri R.K. Singh, learned A.G.A. appeared on benalf of the State and addressed us. We have perused the summoned original lower court record of sessions trial No. 855 of 1997.

15. The learned Counsel for the appellants argued: first Information Report was ante timed; two eyewitnesses examined by the prosecution are blood relations of deceased and there are material discrepancies staring on the face of their testimony making their presence at the place of offence doubtful and no independent witnesses have been examined; no specific role has been assigned to the appellants except accused-appellant Jaswant Singh; the role of subjecting the deceased to assault with spade assigned to the appellant Prempal in the ocular account narrated before the court; use of spade as a weapon of assault by one of the accused- appellant introduced to bring the ocular account in conformity with medical evidence; deceased Anand Pal being a man of criminal antecedents possibility of his being killed by unknown persons or villagers can not be ruled out.

16. Before examining the contentions raised by learned Counsel it is necessary to briefly refer the evidence adduced by the prosecution at the trial. The prosecution examined Sunder (P.W. 1) first informant. and brother of deceased Gokul Singh and Satyavir (P.W. 2) son of the deceased Anand Pal as witnesses in whose full view the commission of offence took place. Sunder (P.W. 1) corroborated the version given by him in the First Information Report and stated that Ramswaroop alias Nekesy disappeared from the village about a year before (rom the date of ecidence) and his family members namely Jaswant, Bhura alias Bhudev, Anand Pal, Prempal and Ratanpal suspected the hand of deceased Anand Pal in his disappearance. About eleven months before at 10 A.M. deceased Anand Pal, his brother Ramveer and Satyaveer were irrigating their field by drawing water with their tractor from the tubewell. At the same time Ratan Lal, Prempal, Anand Pal and Bhura alias Bhudev reached there and brought Anand Pal and Ramveer to the village and Satyaveer followed them. Appellant-accused Bhura alias Bhudev tied Anand Pal with the ''Neem'' tree situated outside his (Bhura alias Bhudev''s) house, accused Jaswant came with country made pistol and opened fire at Anand Pal and accused Prempal assaulted him by giving spade blow. He further stated that Anand Pal died on the spot and thereafter all the five accused caught hold of Ramveer threw him on

the ground and subjected him to brutal assault with bricks and accused Prempal mounted assault with spade. At the same time Gokul Singh reached there and he too was subjected to assault by giving brick blows. The injured Ramveer and Gokul Singh then alive were sent to. Malkhan Singh Hospital, Aligarh but succumbed to the injuries. He gave out that it was time for taking meal and accused were saying that people were collecting at the house of Neksay so he followed them.

17. The witness Satyavir (P.W. 2) stated that about eleven months before at about 10 A.M. he himself, Anand Pal and Ramveer were irrigating their field, At 10 A.m. accused Anand Pal, Bhura alias Bhudev, Ratan Lal, Prempal came to the field and catching hold of his father Anand pal and uncle Ramveer brought them to the "Chaupal" of Neksay situated in the village and tied Anand Pal with the "Neem" tree. According to him he as well as Sunder came to the village following them. At the same time accused Jaswant came there and opened fire at Anand pal and accused Prempal subjected him to assault with spade. He further stated that Anand Pal died instantaneously and thereafter all the five accused felled Ramveer on the ground and subjected him to assault with bricks and spade. Cokul Singh reached there at the same time and was subjected to assault by all the five accused persons with bricks blows. It is there in his testimony that eighteen days before the incident Neksay was abducted and accused persons suspected the hand of Anand Pal and for that reason committed the murder of his father, uncle and grand father. He stated that the tractor being old it used to stop whenever load exceeded and for that reason he had to remain present at the tractor.

18. Dr. Qamar Ahmad (P.W. 4) then posted as medical officer in Malkhan Singh District Hospital Aligarh medically examined Ramveer at 1.15 P.M. on 25.3.1997. He stated that infliction of al1 the injuries was possible by blunt object such as bricks and stones.

19. Dr. R.K. Mittal (P.W. 3) the then Senior Medical officer District Hospital Aligarh conducted autopsy on the dead bodies. According to him there was possibility of deceased Gokul Singh sustaining injuries with brick blows. Dr. Mittal gave out that firearm injury No 3 of deceased Anand Pal might have been caused from a distance of about 6 or 7 feet.

20. The learned Counsel in support of his contention that First Information Report was ante-timed invited our attention to the inquest memo of deceased Anand Pal and testimony of S.I. Arsad Ali Tomar (P.W.-5). According to him at page-2 of inquest memo Sections 302/307 I.P.C. were mentioned and Sections 147, 148 149 I.P.C. were added above Section 302/307 I.P.C. and in challanlash (Ext. Ka.7) the date and time of registration of First Information Report at the police station was shown as 25.3.1997 at 10 A.M. He pointed out that there is omission of use of spade as a weapon of assault in the First Information Report but in the inquest memo of Anand Pal (Ext. Ka-V) infliction of injuries with spade and gun shot finds mentioned.

21. The incident took place on 25.3.1997 at 10 A.M. The First Information Report was lodged at 12.30 P.M. the same day The intervening distance between village Parora and police station Barla is 5 Km. The injured Ramveer was sent for medical examination to the District Hospital with "Majrubi Chithi" and was medically examined at 1.15 P.M. The special report of crime was sent to the higher officers the same day. The offences under Sections 147, 148, 149 I.P.C. might have omitted mentioning at page No. 2 of inquest memo (Ext. Ka-6) due to oversight and were added on detection of lapse, The postmortem on the dead body of Anand Pal was conducted at 2.30 P.M. on 26.3.1997. Out of three murdered persons one died at the spot and two critically injured were taken to the police station from where they were sent to the District Hospital for medical examination.

22. Section 174 Cr.P.C. provides that when the officer-inï¿½charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give information to the nearest Executive Magistrate and shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make investigation, and draw up a report of the apparent cause of death describing such wounds, fractures, bruises, and other marks of injury as may be found on the body and stating in what manner, or by what weapon or instrument, if any, such marks appear to have been inflicted. The basic purpose of holding an inquest is to report about the apparent cause of death. On the first page of inquest memo of Anand Pal (Ext. Ka-6) the date, time and name of the maker of First Information Report finds mentioned. The mentioning of infliction of injury by spade by S.I. Arsad Ali Tomer at page-1 of inquest memo (Ext. K.a-6) does not make the First Information Report ante timed. The first informant and other relatives must have taken some time in making arrangement for carrying the critically injured Ram Veer and Gokul Singh to the police station. After the killing of Anand pal and critical injuries to Ramveer and Gokul Singh, Satyaveer (P.W. 2) a boy aged 17 years appears to be the eldest member in the family of Gokul Singh and Anand Pal. The deceased Anand Pal and Ram Veer were sons of deceased Gokul Singh and witness Satyaveer is the son of Anand pal. The First Information Report was made by Sundar, real brother of Gokul Singh. The delay of 2/1/2 hours in lodging the First Information Report and sending the same to the Magistrate is not fatal to the prosecution case. Such delay is a material circumstance to be taken into consideration at the time of appraisal of evidence. The Apex Court in the case of Rabindra Mahto and Anr. v. State of Jharkhand (2006) 3 SCC 592 has held:

There cannot be any manner of doubt that Section 15 of the Criminal Procedure Code requires sending of an FIR to the Magistrate forthwith which reaches promptly and without undue delay. The reason is obvious to avoid any possibility of improvement in the

prosecution story and also to enable the Magistrate to have a watch on the progress of the investigation. At the same time, this lacunae on the part of the prosecution would not be the sole basis for throwing out the entire prosecution case being fabricated if the prosecution had produsedthe reliable evidence to prove the guilt of the accused persons. The provisions of Section 157 Cr.P.C. are for the purpose of having a fair trial without there being any chance of fabrication or introduction of the fact at the subsequent stage of investigation.

23. Coming to the contention regarding interestedness of the witnesses, relationship by itself is not a ground to discard the sworn testimony of a witness. A relation would not hide the real assailants and implicate innocent persons as it will result in screening the real culprits. In the case of Dalip Singh and Others Vs. State of Punjab, it has been laid down by the Apex Court as under:

A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

24. In the case of State of J & K v. S. Mohan Singh and Anr. (2006) 2 SCC 484 it has been held by the Apex Court that in a murder trial, merely because the witness is interested or inimical, his evidence cannot be discarded unless the same is otherwise found to be not trustworthy.

The testimony of witnesses Sundar (P.W. 1) and Satyaveer (P.W. 2) cannot be brushed aside merely on the ground of their close relationship with the deceased persons. The modem trend is that the general public feels reluctant to be a witness for, fear of being targeted by the accused and social obligations and a close relation is the only natural witness.

25. It is time to take into consideration the discrepancies pointed out by the learned Counsel for the appellants in the testimony of eyewitness Sundar (P.W. 1) and Satyavir (P.W. 2). There is omission of mentioning of spade as a weapon of assault used by the accused-appellant Prem Pal in the First Information Report. The first informant in his deposition stated that deceased Anand Pal, and Ram Veer were subjected to assault with spade by accused-appellant Prem Pal. In the inquest memo (Ext. ka-6) of deceased

Anand Pal, use of weapons namely spade and firearm finds mention. The mental disposition of first informant after seeing the dead body of nephew and fatal injuries to brother and another nephew might be one of the reason for omission to mention spade used as a weapon of assault by one of the accused. According to the First Information Report the accused Ratan Pal, Prem Pal, Anand Pal and Bhura after catching hold of Anand Pal and Ramveer proceeded towards the village. In the cross-examination Sunder (P.W. 1) stated that accused had brought Anand Pal from the field without catching hold of him. He was brought without using any force. It is in his testimony that at the time of dictating the written report he was feeling giddiness. According to him his statement that the accused brought Anand Pal to the place of offence without using force and engrossing him in conversation was correct and contents of the First Information Report were also correct. The catching hold must be friendly. Since no dragging marks were found on the dead bodies the catching hold was not forceful. If force had been used by the accused-appellants in bringing the deceased Anand Pal and Ramveer to the place of offence, they would have raised alarm and villagers working in the nearby fields would have reached for their rescue. In these circumstances the taking away of deceased from their field to village seems to be on some pretext showing a friendly gesture. The learned Counsel pointed out that according to the First Information Report appellant Jaswant was present at the spot since before and opened fire at deceased Anand Pal whereas the deposition of Sunder (P.W. 1) was that accused Jaswant came at the spot a minute after he reached there. The appellant Jaswant armed with country made pistol was present since before or he came a few minutes after the victim Anand Pal was tied with the Neem tree has no significance as the fact remains that he opened fire at the victim Anand Pal with country made pistol. The learned Counsel argued that there is omission in the First Information Report and in the previous statement of witness Sunder (P.W. 1) on the point that victim Ramveer was subjected to assault after felling him on the ground. It is true that the witness Sundar (P.W. 1) for the first time in his evidence stated that victim Ram Veer was subjected to assault with bricks by the accused after felling him on the ground. The First Information Report is not supposed to contain a detailed narration of the manner of assault The testimony of a witness in court about the manner of assault is substantive piece of evidence. The victim Ramveer was subjected to brutal assault by the appellants. Whether he was assaulted after felling on the ground or in standing position is immaterial and not a discrepancy.

26. With regard to the inconsistency pointed out in the testimony of Satyaveer (P.W. 2) as to how he reached at the spot, his deposition was that he did not follow the accused persons and went to the village from another way which was shorter. His previous statement u/s 161 Cr.P.C. was that he as well as Sundar reached the village following the accused and victim. The testimony of witness Satyaveer (P.W. 2) was that he went to his residence from the tubewell and then went to call his grand father Gokul Singh who was not at his residence but met him on the way near the houses of people of Dhemmar community and from there he hurriedly reached at the place of incident and his grand father Gokul Singh came at a slow pace The witness left the fields along with Sunder and

both of them followed the victims and appellants but on the way he thought it proper to inform his grand-father and took a shorter route to reach his residence. This conduct of the witness was not unusual. Another contradiction pointed, out by the learned Counsel was that the witness Satyaveer for the first time stated before the court that accused Jaswant was in his thatched hut and came at the spot from there carrying country made pistol. The previous statement of the witness was that Jaswant came all of a sudden from the side of his house and opened fire at his father. It is not a discrepancy as thatched hut is a dwelling place. Regarding the discrepancy on the point as to who accompanied the first informant to the police station, the testimony of first informant Sunder (P.W. 1) was that new and old village pradhan and five and seven other persons accompanied him to the police station where is according to witness Satyaveer (P.W. 2) no other villager except Sundar (P.W. 1) was present at the police station. The G.D. entry relating to the registration of crime (Ext. Ka-29) indicates the presence of Sri Ram, Kanhaiya Lal injured Gokul Singh and Ramveer along with first informant Sundar Singh at the police station. The Investigating Officer Balwant Singh (P.W. 7) denied the presence of Satyaveer son of Anand Pal at the police station along with first informant and others. The witness Satyaveer being aged about 16 17 years at the time of occurrence his, presence may not have been noticed by the Investigating Officer and Plead Moharrir. Moreover it was not necessary to record the name of each and every person who accompanied the injured and first informant, in the entry made in he general diary. Assuming that the witness did not accompany the first informant to the police station his ocular testimony cannot be discredited on this score. The contradictions pointed out by he learned Counsel for the appellants arc not material discrepancies touching the very core of the testimony of the eye witnesses and do not affect the credibility of their evidence. The discrepancies are minor in nature and do not create any infirmity in the prosecution case. The ocular account narrated by the prosecution witnesses does not run counter to the medical evidence. Having critically exammed the evidence of Sundar Singh (P.W. 1) and Satyaveer (P.W. 2) we and their testimony unimpeachable and trustworthy.

27. Another clinching evidence against the appellants to fasten the criminal liability is that the dead body of Anand Pal was found lying near the Neem tree in the Sahan of appellant Bhoora alias Bhoodev. The injured Gokul Singh and Ramveer were found lying nearby the dead body and were taken to the police station from there. The inquest on the dead body of Anand Pal was conducted in the Sahan of the house of Neksey father of appellant Bhura alias Bhudev. The blood stained earth was collected by the Investigating Officer from the said place. The place of offence has not been challenged by the accused-appellants.

28. The motive for commission of offence was recent and strong. Ram Swaroop alias Neksey in whose Sahan the incident took place was missing for 15-20 days before the incident and accused-appellants suspected the involvement of victim Anand Pal in his abduction.

29. The learned Amicus Curie argued that accused-appellant Bhura alias Bhudev was a ''child'' within the meaning of definition under Sub-section (4) of Section 2 of the Uttar Pradesh Children Act, 1951 and the sentence awarded against him was illegal. Sub-section (2) of Section 2 of Uttar Pradesh Children. Act defines a child to mean a person under the age of sixteen years.

30. The copy of Scholar''s Register & Transfer Certificate Form (Ext. Kha-1) issued by the Principal of Gyanodar Purva Madhyamik Vidhyalaya Parora was filed to establish that the date of birth of appellant Bhura alias Bhudev Singh was 23.12.1982. The incident had taken place on 25.3.1997. Jai Prakash Shastri (D.W. 1) officiating Principal was examined to prove the Scholar''s Register (Ext. Kha-1). In his cross-examination he Mated that copies of Scholar''s Register entry at page 419 relating to the appellant were issued on 12.4. 1997 and 16.5.1997 to Devraj Singh, brother of appellant. He gave out that the reason for issuing second copy of Scholar''s Register was not mentioned by him. According to him the school- leaving certificate of former institution is produced by the student seeking admission and school- leaving certificate of previous school must have been filed by the appellant at the time of admission in class VI. He admitted that pages No. 412, 413, 414, 415, 416, 417 of original Scholar''s Register do not bear the signatures of principal, teacher or officiating principal.

31. The witness Jai Prakash Shasthri (D.W. 1) not being the principal or officiating principal of the institution at the time of admission of appellant he had no personal knowledge on what basis his date of birth was mentioned in the Scholar''s Register The appellant was a student of Shikcha Prasar Primary Pathshala Parora and passed class V from she said institution but school-leaving certificate of the said school which was earlier in point of time was not produced by the appellant in proof of his date of birth. The primary evidence for proving the date of birth was admission form and school leaving certificate of earlier institution. Section 35 of the Indian Evidence Act provides that a register maintained in he ordinary course of business by a public servant in the discharge of lis official duty, or by any other person in performance of a (sic) specially enjoined by the law of the country in which, inter alia, such register is kept would be a relevant fact.

32. The school-leaving certificate in this case was not issued in the ordinary course of business. There is no evidence to show that the date of birth of appellant Bhura alias Bhudev was recorded in the register maintained by the school in accordance with the requirement of law envisaged in Section 35 of the Evidence Act. The school-leaving certificate was not issued by a person who was in school at the time the appellant took admission. The admission form and school-leaving certificate of earlier institution were deliberately withheld. We find that the school-leaving certificate (Ext. Kha. 1) is not an authentic document and it cannot be relied on for proof of age of appellant Bhura alias Bhudev and the learned Sessions Judge rightly disbelieved the evidence of the witness Jai Prakash Shashtri (D.W. 1). No other evidence having been produced about the proof of age, we find that appellant Bhura alias Bhudev was not a child on the date of incident.

33. Section 149 of the Indian Penal Code provides for vicarious liability. The occurrence resulted in the death of three persons. The accused-appellants had a grudge or suspicion against the victim Anand Pal but they did not spare his father and brother. All the appellants actively participated in the killings clearly stands proved by the evidence of prosecution witnesses. The death of three persons having been caused in prosecution of the common object of an unlawful assembly, Section 149 of the Indian Penal Code is attracted.

34. The prosecution has established its case beyond reasonable doubt and finding of conviction of the appellants having been rightly recorded by the Additional Sessions Judge, we concur with the some.

35. In view of the forgoing discussions the above mentioned appeals are decided as under:

Criminal Appeal No. 3005 of 2000 (Anand Pal v. State) is dismissed. The conviction and sentence awarded by the trial court to the appellant Anand Pal is affirmed. He is in jail. He shall be kept there to serve out the sentence awarded by the trial court and affirmed by us.

Criminal Appeal No. 3006 of 2000 (Bhoora alias Bhoodev v. State) is dismissed. The conviction and sentence awarded by the tonal court to the appellant Bhoora alias Bhoodev is affirmed. He is in jail. He shall be kept there to serve out the sentence awarded by the trial court and affirmed by us.

Criminal Appeal No. 3436 of 2000 (Jaswant Singh v. State) is dismissed. The conviction and sentence awarded by the trial court to the appellant Jaswant Singh is affirmed. He is in jail. He shall be kept there to serve out the sentence awarded by the trial court and affirmed by us.

Criminal Appeal No. 3447 of 2000 (Ratan Lal and Prem Pal v. State) is dismissed. The conviction and sentence awarded by the trial court to the appellants Ratan Lal and Prem Pal is affirmed. They are in jail. They shall be kept there to serve out the sentence awarded by the trial court and affirmed by us.

36. Office is directed to communicate this order to the court concerned within two weeks for compliance.