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**(1992) 07 AHC CK 0080**

**Allahabad High Court**

**Case No:** Government Appeal No. 154 of 1979

State of U.P.

APPELLANT

Vs

Hari Shanker alias Hari

RESPONDENT

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**Date of Decision:** July 23, 1992

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 227, 423
- Penal Code, 1860 (IPC) - Section 302, 34

**Citation:** (1992) 34 ACR 454

**Hon'ble Judges:** Palok Basu, J; B.P. Singh, J

**Bench:** Division Bench

**Advocate:** Dileep Kumar, for the Appellant; G.P. Dixit, for the Respondent

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**Judgement**

B.P. Singh, J.

The State of U.P. has filed this appeal against the judgment and order dated 4-10-1978 passed in Sessions Trial No. A-135 of 1977 by the Sessions Judge, Etawah. Respondent Hari Shanker alias Hart was prosecuted in the court of Sessions Judge, Etawah for having committed the offence punishable u/s 302 IPC.

2. The case of the prosecution, as was unfolded in the evidence of Ram Sewak PW-1 and other witnesses, may briefly be stated as follows.

3. Satya Prakash the deceased, and the accused Hari Shanker alias Hari were residents of the village, Nagla Tor P.S. Jaswantnagar Etawah. There is a Neem tree in the Sahan of the deceased Satya Prakash. Towards north of this Neem tree is the public well which is used by the inhabitants of the locality. There was dispute about this Neem tree between the families of the accused Hari Shanker and the deceased Satya Prakash.

4. On 9th February, 1977, it was about 7.00 A.M. when Satya Prakash was drawing water from the aforesaid well. His younger sister Km. Suman Lata, PW-3 was

carrying the water in pitcher to her house. Accused Hari Shanker alias Hari armed with a gun and carrying bandolier upon his shoulder came out of his Gonda and challenged Satya Prakash. Satya Prakash, who was in the act of pouring water in the pitcher, turned towards the accused Hari Shanker alias Hari and at that very moment accused fired upon Satya Prakash from a distance of about 7 paces. Satya Prakash was hit by the bullet and fell down upon the Man (Jagat) of the well. Besides Km. Suman Lata, the occurrence was witnessed by Ram Sewak PW-1, Balak Ram PW-2, Daya Shanker and others. When the witnesses challenged the accused and moved towards him. Hari Shanker alias Hari loaded another cartridge in his gun and threatened the witnesses. Thereafter, the accused went away and on reaching near Satya Prakash the witnesses found him to be dead.

5. Ram Sewak PW-1 got a written report Ext. Ka-1 scribed by Hari Nath in the village. Thereafter, this report Ext. Ka-1 was handed over by Ram Sewak PW-1 in P. S. Jaswanthnagar at 9.05 A.M. Head Constable Sharfuddin PW-4, who was posted in P.S. Jaswanthnagar during the months February to April, 1977, had received the written report Ext. Ka-1 from Ram Sewak had prepared the formal FIR Ext. Ka-9 on its basis and had also made G.D. entry Ext. Ka-10 about the commission of the crime.

6. Inspector Shiv Das Ram, who was posted as Inspector P.S. Jaswanthnagar during the months February-March, 1977, was present at the time the writted report was handed over by Ram Sewak PW-1 at the Police Station. He started investigation as soon as the case was registered. He examined H. C. Sharfuddin PW-4 and Ram Sewak PW-1 u/s 161 Code of Criminal Procedure at the Police Station and thereafter left for the scene of occurrence alongwith other members of the police force. On the scene of occurrence, the I. O. deputed SI. S. N. Shukla alongwith constables Ram Pratap Bhadoria and Ranvir in search of the accused. Routine investigation followed. The I. O. carried out the inquest proceeding and prepared Panchayatnama Ext. Ka 17-A, Naksha Lash Ext. Ka-18, Challan Lash Ext. Ka-19, specimen seal Ext. Ka-20, letter for postmortem examination Ext. Ka-21 and letters for return of papers Ext. Ka-22 and Ext Ka-23. Thereafter, the I.O. sealed the dead body of Satya Prakash and handed over the same to Constables Kalyan Singh and Kamlesh Kumar alongwith the papers with the direction that they were to take the body of Etawah for postmortem examination.

7. The I.O. had then taken the samples of blood stained and plain earth and had sealed them in two separate tins Exts. 13 and 14 under recovery memo Ext. Ka-3. The I.O. had also found the blood near the dead body and samples of blood stained and plain earth were also taken and were sealed in the tins Exts. 15 and 16 under recovery memo Ext. Ka-4. The clothes and one key, which were taken by the I.O. from the dead body, were sealed under recovery memo Ext. Ka-6. The place of occurrence was also inspected by the I.O. and the site plan Ext Ka-24 was duly prepared. During the course of local inspection a used cartridge Ext. 1 was found near the place of occurrence and was sealed under the recovery memo Ext. Ka.-2.

One pellet Ext 22 was also recovered from the scene of occurrence and was sealed under the recovery memo Ext. Ka-5. Thereafter, the I.O. recorded the statements of some other witnesses and after completing the investigation, he submitted a charge sheet u/s 302/34 IPC against accused Hari Shanker alias Hari and Jagdish. Accused Hari Shanker alias Hari had surrendered on 12-2-1977 in the court.

8. Co-accused Jagdish was discharged by the learned Sessions Judge u/s 227 Code of Criminal Procedure and the trial proceeded against Hari Shanker alias Hari alone. At the trial, the accused pleaded not guilty and claimed to be tried.

9. In all, the prosecution examined nine witnesses viz., Ram Sewak PW 1, Balak Ram PW-2, Smt. Suman Lata PW-3, H. C. Sharfuddin PW-4, S. I Dharampal Singh PW-5, B. Rai, PW-6. S.I. Sidhnath Shukla PW-7, Dr. R. B. Singh PW-8 and Inspector Shiv Das Ram PW-9 in the case. Affidavits of Constables Vinod Prakash, Madan Ram, Kamlesh Kumar and Gurbux Singh were also filed by the prosecution. Shri Brij Behari Lal was examined as CW I by the court while the accused did not lead any evidence in his defence.

10. The learned Sessions Judge did not accept the evidence of the witnesses of fact regarding the involvement of Hari Shanker alias Hari in the crime in question and consequently Hari Shanker alias Hari was acquitted of the charge with which he was charged.

11. Aggrieved by the judgment and order of the trial court, the State of U.P. came in appeal. The leave to appeal was allowed and notice was issued to the Respondent Hari Shanker alias Hari.

12. We have heard the learned Counsel for the parties we have also recalled Shri B. Rat. Ballistic Expert before us. He was examined by us and was cross-examined by the Respondent as well as by the State counsel.

13. The law relating to the approach of the appellate court while hearing an appeal against acquittal is now well settled. The case of Harbans Singh v. The State of Punjab 1962(1) OLJ 479. is the leading case on the subject. In the above case the Supreme Court has observed as follows:-

The question as regards the correct principles to be applied by a Court hearing an appeal against acquittal of a person has engaged the attention of this Court from the very beginning. In many cases, especially the earlier ones, the Court has in laying down such principles emphasised no necessity of interference with an order of acquittal being based only on "compelling and substantial reasons" and has expressed the view that unless such reasons are present an Appeal Court should not interfere with an order of acquittal. Vide [Surajpal Singh and Others Vs. The State](#), [Ajmer Singh Vs. The State of Punjab](#), [Puran Vs. The State of Punjab \(I\)](#). The use of the words "compelling reasons" embarrass some of the High Courts in exercising their jurisdiction in appeals against acquittals and difficulties occasionally arose as

to what this Court had meant by the words "compelling reasons". In later years the Court has often avoided emphasis on "compelling reasons" but nonetheless adhered to the view expressed earlier that before interfering in appeal with an order of acquittal a Court must examine not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which Impelled the lower courts to acquit the accused and should interfere only if satisfied, after such examination that the conclusion reached by the lower court that the guilt of the person has not been proved is unreasonable. (Vide Chinta v. State of Madhya Pradesh, Criminal Appeal No. 178 of 1959; Ashrafkha Haibatkhya Pathan v. State of Bombay, Criminal Appeal No, 38 of 1960).

It is clear that in emphasising in many cases the necessity of "compelling reasons" to justify an interference with an order of acquittal the Court did not in any way try to curtail the power bestowed on appellate courts u/s 423 of the Code of Criminal Procedure when hearing appeals against acquittal ; but conscious of the intense dislike in our jurisprudence of the conviction of innocent persons and of the fact that in many systems of jurisprudence the law does not provide at all for any appeal against an order of acquittal the Court was anxious to impress on the appellate courts the importance of bestowing special care in the sifting of evidence in appeal against acquittals. As has already been pointed out less emphasis is being given in the more recent pronouncements of this Court on "compelling reasons". But, on close analysis, it is clear that the principles laid down by the Court in this matter have remained the same. What may be called the golden thread running through all these decisions is the rule that in deciding appeals against acquittal the Court of Appeal must examine the evidence with particular care, must examine also the reasons on which the order of acquittal was based and should interfere with the order only when satisfied that the view taken by the acquitting Judge is clearly unreasonable. Once the appellate court comes to the conclusion that the view taken by the lower court is clearly an unreasonable one that itself is a "compelling reason" for interference. For, it is a court's duty to convict a guilty person when the guilt is established beyond reasonable doubt, no less than it is its duty to acquit the accused when such guilt is not established.

14. In the recent case of [Ashok Kumar Vs. State of Rajasthan](#), , the Supreme Court has observed as follows:-

Law is well settled. While caution is the watchword, in appeal against acquittal as the trial Judge has occasions to watch demeanour of witnesses and interference should not be made merely because a different conclusion could have been arrived, the provision does not inhibit any restriction or limitation. Prudence demands restraint on mere probability or possibility but in perversity or misreading interference is imperative otherwise existence of power shall be rendered meaningless.

15. Thus, it is quite clear that in an appeal against acquittal the appellate court will interfere where the trial court's judgment is based upon misreading of evidence or

ignoring the evidence which was legally produced or the conclusion is irresistible that the judgment of the trial court was perverse. In such a case, the appellate court will re-appraise the entire evidence afresh as if an appeal against conviction was being heard and there are no fetters upon the appellate court in this regard. However, where the trial court has discussed the evidence adduced by the prosecution regarding the main occurrence involving the Appellant in the crime in question and has held by giving cogent reasons (keeping in mind the judicial principles relating to the appreciation of evidence in a criminal trial) that the so-called witnesses of fact were not reliable and that their evidence was not only unsatisfactory but was also incapable of inspiring confidence regarding the truthfulness of their version of the occurrence, the appellate court is not expected to interfere with the finding of acquittal recorded by the trial court.

16. In the present case before taking up the evidence of the witnesses of fact, we may deal with the evidence, which is more or less of a formal nature.

17. Head Constable Sharfuddin PW-4 has proved the FIR Ext. Ka-9 and the G.D. entry Ext. Ka-14. S. I. Dharampal Singh PW-5 had brought 10 buncles relating to this case on 9-2-1977 from the scene of occurrence and had deposited the same in P. S. Malkhana at 9 PM. on the same day. B. Rai, Ballistic Expert, PW-6, has stated that the used cartridge Ext. 1 was fired from the gun which was sent to him for comparison. He has also stated in this Court that the injuries to the deceased were possible if the shot was fired from the right side and the deceased was in the act of bending forward in a leaning posture. S. I. Sidhnath Shukla PW-7 has claimed to have recovered the gun and five cartridges from Lalta Prasad, father of the accused Hari Shanker alias Hari along with cartridge belt under the recovery memo Ext. Ka-16. He has also claimed that he had gone in search of the accused Hari Shanker alias Hari, but did not succeed in apprehending him. He has claimed to have recovered the gun at about 11.30 A.M. He has also stated that he returned to the village Nagla Tor and had arrested accused Jagdish from his house. He has also stated that the gun in question along with cartridge belt was handed over by him to the L. O. upon the scene of occurrence.

18. Dr. R. B. Singh. PW-8, who was posted in Civil Hospital, Etawah in February, 1977 had conducted the post-mortem examination upon the dead body of Satya Prakash on 30-2-1977 at 1.15 P.M. The dead body was produced before him in a sealed cover along with the relevant papers and was identified by Constable Kalryan Singh and constable Kamlesh Kumar. The result of the postmortem examination was as follows:-

The deceased appeared to be about 32 years of age and he had died 1 1/4 day prior to the post mortem examination. He found the following ante-mortem injuries on the dead body:-

1. Gunshot wound of entrance in an area 2 1/2" x 2 1/4" on right side chest, 8/10" below the inner end of the collar bone and 3" above and inner to right nipple. Entrance wounds were seven in number, six of shots and one of wadding which was seen impacted in the wound, Size of the six wounds 4/10" x 4/10" x cavity deep while 7th one was 1/10" x 7/10" x muscle deep, margins lacerated and inverted. On exploration sternum was found fractured under the injury. Right 2nd and 3rd ribs were found fractured anteriorly. Heart and big vessels were lacerated on its apex Both lungs were lacerated. Wounds were directing towards the wound of exit given below from forward to backward and right to left with downward inclination.

2. Six gunshot wounds of exit on left side back in an area of 3/4" x 3 1/2" (size 4/10" x 4/10" 1 1/2 below the lower angle of scapula and 2 3/4 from the middle line. 5th rib found fractured posteriorly margins lacerated and everted.

On internal examination the doctor found the following things:-

The 2nd and 3rd ribs on the right side were fractured anteriorly and the 5th left rib was fractured posteriorly. The plura was punctured and lacerated on both sides. The bronchi was lacerated on right side. The left lung was lacerated and punctured in its lower half. The pericardium was punctured and lacerated. The heart was lacerated on its apex including left ventricle. The stomach was empty and normal. Both the intestines contained faecal matter. The bladder was empty.

19. Inspector Shiv Das Ram PW 9, has deposed about the various steps which were taken during the course of investigation and has proved the relevant papers relating to this case which were prepared by him.

20. The fact that Satya Prakash was killed on 9-2-1977 at about 7 00 A.M. upon the well near the house was not disputed. The evidence of these witnesses is more or less of a formal nature and does not connect the accused Hari Shanker alias Hari directly with the crime in question. We find no reason to disbelieve the same.

21. The case of the prosecution regarding the main occurrence rests upon the evidence of Ram Sewak PW 1, fialak Ram PW 2 and Smt. Suman Lata PW 3. It may be mentioned here that Km. Suman Lata was unmarried at the time of the occurrence, but got married by the time she was examined in the court as PW 3. We have gone through the evidence of these witnesses of fact in the light of the argument advanced at the Bar.

22. First of all, we may deal with the case of notice. The evidence of Ram Sewak PW 1 is to the effect that there was dispute between the families of the deceased Satya Prakash and the accused Hari Shanker alias Hari regarding Neem tree which stood towards north of the house of Satya Prakash and towards south of the well in question. Learned Counsel for the Respondent has disputed the existence of alleged dispute. Even if it be assumed for the sake of argument that there was some dispute between the two families regarding ownership of the Neem tree, we are of the view

that it was very insignificant factor and would not have prompted Hari Shanker alias Hari to commit the heinous crime of murder especially when there was no evidence on the record to show that there was any immediate provocation to do so. Of course motive is not very relevant when there is testimony of an eye witness regarding an occurrence to which a man is killed but when the prosecution comes out with a motive and the said motive appears Insufficient especially in the absence of any immediate provocation, it becomes necessary to scrutinise the evidence of eye witnesses with great deal of care and caution.

23. The presence of Ram Sewak PW 1 and Balak Ram PW 2 upon the scene of occurrence was not natural. Ram Sewak PW 1 has claimed that his house is situated in the same Mohalla and near the house of the deceased. He has insisted that towards west of the house of Shanti Swaroop is the house of Guddu Kumhar and towards the west of the house of Guddu Kumhar is the house of Maya Prakash, but in the site plan Ext. Ka 24 the houses of Satya Prakash deceased, Guddu Kumhar, Maya Prakash have been shown. the house of Ram Sewak PW 1 has not been shown therein, In case the house of Ram Sewak PW 1 was near the house of the deceased or the place of occurrence, the I.O. must have shown the same in his site-plan. Admittedly, the house of Balak Ram PW 2 is not near the place of occurrence. He has admitted that the place of occurrence was not visible from his house and that people of his Mohalla have a separate well from which they draw water. He has claimed that he had come to demand wages from Satya Prakash. It was easy for him to coin this pretext for his presence upon the scene of occurrence when Satya Prakash was killed. Thus, it is obvious that the presence of Ram Sewak PW 1 and Balak Ram PW 2 was not natural upon the scene of occurrence. Of course, the presence of Smt. Suman Lata PW 3 was natural and if she had seen the occurrence, there was nothing unnatural about the same, but the question arises whether she was outside her house at that time and was able to see the occurrence as was claimed by her. The evidence of these three witnesses is contrary to the medical evidence on the record and this fact has thrown doubt regarding the question whether Smt, Suman Lata had seen the occurrence.

24. The case of the prosecution is that accused Hari Shanker alias Hari had fired from his gun upon Satya Prakash from a distance of about 7 paces i.e. about 17 feet. The question arises whether the ante-mortem injuries of Satya Prakash could have been caused from a gun-shot if the man, who had fired the shot, was at a distance of 17 feet from him.

25. In Modi's Medical Jurisprudence and Toxicology, nineteenth Edition, page 227, we find the following observations:-

At a distance of twelve feet the charge of shot spreads widely and enters the body as individual pellets producing separate openings in an area of five to eight inches in diameter depending on the choke, but without causing blackening, scorching or tattooing of the surrounding skin. At a distance of about 50 feet a pattern

measuring about 14 inches from a fully choked barrel and about 28 inches from an unchoked barrel are produced and at about 100 feet the spread pattern on the target is about 30 inches from a fully choked barrel and 50 inches from an unchoked one. The scattering of shot depends upon the size of the gun, the charge of the powder and the distance of the gun from the body, the dispersion of pellets should however be studied with the gun and armunition in question-country made hand guns with short barrels give unusually high dispersion-date from For SC Lab Bombay.

If over shot cardwad is found in the wound it indicates that the shot was fired from less tbaa two yards while its absence suggests more than two yard

In Taylor's principles and Practice of Medical Jurisprudence, Eleventh Edition, Volume No. 1, the following observations are found: at page 384:

Speaking generally the diameter of dispersion in inches will be found to be about one and a half times the distance in yards. With choked barrels the dispersion is of course considerably less, With pistols loaded with shot the dispersion is very much greater owing to the short length of the barrel. These figures are given as a working basis, but it must be remembered that the dispersion varies with different weapons, with the natura and quality of the powder, the ignition and the method of filling or loading.

In Medical Jurisprudence by Dr. R. M. Jhala, at page 172 it is pointed out:

The extent of dispersion offers a valuable guide in assessing the distance. According to Taylor, the dirpersion of pellets in inches equal about 1 1/2 times distance in yards. According to him the dispersion is less if the barrel is not choked. Glaister on the other hand has a simplified formula-Furthermore, the formula is effective irrespective of the choke. If X is the range in the yards then the diameter of wound-(X plus 1; inches.

26. The size of the wound of entry in the present case was 2 1/2 x 2 1/2. The wad was found inside the body by the Doctor, who had conducted the postmortem examination. The fatal shot in all probability was fired from a distance beyond four feet but within six feet. If such was the case, then the evidence of Smt. Suman Lata and the other two witnesses becomes doubtful, as their evidence is not in tune with the medical evidence on the record. This is not all. Even the direction of the exit injury indicates that the shot was not fired from the alleged place. It is admitted to Balak Ram PW 2 that the Man (Jagat) of the well was upto a man's chest height from the level of the land lying towards east of the well. Thus, it is obvious that the level of the land on the eas tof the well is about four feet lower than the Man (Jagat) of the well. Now the deceased was upon the Man (Jagat) of the well and was pouring water while leaning forward. If the assailant had fired upon Satya Prakash while standing at a distance of seven steps towards east of the well, the direction of the wound would have been either straight or from lower to higher. The exit wound



should have been either at the same level or at a slightly higher level, but Doctor R. B. Singh PW 8 has categorically stated that the exit wound was 6" lower to the wound of entry. Here again there is incompatibility between the statements of the witnesses of fact and the medical evidence on the record.

27. Of course, if the evidence of the witnesses of fact is wholly reliable and there is inconsistency between their evidence and the medical evidence, the medical evidence may be ignored. But, in the present case it cannot be said that the evidence of the witnesses of fact was, as we shall presently state, wholly reliable.

28. Much emphasis has been laid by the learned Counsel for the State regarding the recovery of the gun from the house of Hari Shakner alias Hari, the recovery of a used cartridge Ext. 1 from the place of occurrence and the report of the Ballistic Expert which is to the effect that the used cartridge Ext. 1 was fired from the gun which was recovered from the house of Hari Shanker alias Hari. The gun in question is a licensed gun of Hari Shanker's father. On the other hand, learned Counsel for the Respondent has vehemently argued that the cartridge Ext. 1 was a plant and in fact no such cartridge was recovered by the I. O. from the place of occurrence as was alleged by the prosecution.

29. The contention of the learned counsel for the Respondent has force. Ram Sewak PW-1 has stated that the used cartridge Ext. 1 was lying at a distance of about 8-10 paces from the well when he left for the Police Station to lodge the report. It follows that Ram Sewak PW-1 was alive to the position that a used cartridge, which had come out of the barrel of the gun of the assailant, was lying upon the place of occurrence at a distance of 8-10 paces from the well. But it is significant to note that he did not mention this fact of a used cartridge lying near the place of occurrence in his report Ext. Ka-1. He has given explanation that he had forgotten to mention the same in his written report Ext. Ka-1, but the matter does not rest here. The I. O. had examined Ram Sewak PW-1 at the Police Station on the same day u/s 161 Code of Criminal Procedure and even at that stage Ram Sewak made no mention about this used cartridge. Similarly, Balak Ram PW-2 has stated in cross-examination that he had said before the I. O. that the used cartridge had fallen down from the gun of Hari Shanker alias Hari upon the place of occurrence, but no such statement is found in his statement which was recorded by the I. O. u/s 161 Code of Criminal Procedure. If the used cartridge had fallen down from the gun of the assailant, this fact must have found a place in the FIR or at least in the statements of Ram Sewak and Balak Ram when they were Interrogated by the I.O. u/s 161 Code of Criminal Procedure. The matter does not rest here. Even the time when the used cartridge Ext. 1 was taken by the I.O. in his possession is not certain. Balak Ram PW-2 has stated that he had remained upon the scene of occurrence through out the day, but during the day there were occasions when he had gone to his house for a while. He has categorically stated that he had returned to the place of occurrence at about 1.30 P.M. and had found that the used cartridge was not lying at the place where he

had seen the same earlier in the day. Ram Sewak PW-1 has insisted in his evidence that the used cartridge was taken by the I.O. in his possession at about 11.30 A.M. but the I. O. Shiv Das Ram, PW-9 is quite emphatic when he states that he had taken the used cartridge in his possession at 6.01 P.M. in the evening.

30. There is yet another circumstance which throws doubt whether a used cartridge had in fact fallen down from the barrel of the gun of the assailant as was alleged by these witnesses. If S.I. Sidhnath Shukla PW-7 is to be believed that he had taken the gun of Lalta Prasad in his possession at 11,30 A.M. but he did not hand over the gun and the cartridges to the I.O. upto 8.30 P.M. in the night. He has offered an explanation that he had gone in search of the accused and had taken the bundle of cartridge and the gun with him. It is significant to note that the house of Lalta Prasad was at a short distance from the place of occurrence and before moving out of the village in search of Hari Shanker alias Hari, S.I. Sidhnath Shukia PW-7 could very well have handed over the gun in question to the I. O The contention of the learned Counsel for the Respondent that the cartridge Ext. 1 was fired some time in the day from the gun and was a plant was not without force.

31. There is another circumstance which shows that the occurrence in question was not witnessed by any one. It is admitted to Ram Sewak PW-1 that Brij Behari Lal, CW-1 had arrived upon the scene of occurrence within 2-4-minutes of the occurrence. When cross-examined. Ram Sewak PW-1 blurted out that he had not informed Brij Behari Lal as to who had fired the fatal shot upon Satya Prakash, but in the very next breath he stated that he had done so. Brij Behari Lal was the Principal of the Inter College and he had categorically stated when examined in court that he had reached the scene of occurrence as soon as he had heard about the same and at that time Ram Sewak did not state before him as to who had fired upon Satya Prakash He is quite emphatic when he states that Ram Sewak never informed him that it was accused Hari Shanker alias Hari who had fired the shot upon Satya Prakash. There is no reason to disbelives the evidence of Brij Behari Lal CW-1, who appears to be an independent and impartial witness.

32. Another circumstance which lends support to the arguments of the learned Counsel for the Respondent that no one had witnessed the occurrence is the admission of Smt. Suman Lata PW-3 which is to the effect that within 4-5 minutes of the occurrence she along with other women folk had removed the dead body of Satya Prakash from the well and placed the same on the ground. In case there had been some male members present at the place of occurrence then the work of shifting the dead body would not have been done by Smt Suman Lata and other females.

33. Under these circumstances and in view of the above discussions, we are of the view that the evidence of the witnesses of fact was not reliable it is not a case where any interference in the conclusion arrived at and findings recorded by the trial court is called for.

34. The appeal is hereby dismissed.