(2012) 09 AHC CK 0218

Allahabad High Court

Case No: Criminal Appeal No. 3126 of 1982

Dhanpal		APPELLANT
	Vs	
State of U.P.		RESPONDENT

Date of Decision: Sept. 26, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 34

Citation: (2013) 1 ACR 537

Hon'ble Judges: Vinod Prasad, J; Surendra Kumar, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Hon''ble Vinod Prasad, J.

Solitary appellant Dhanpal was tried by IVth Additional Sessions Judge, Muzaffarnagar in S.T. No. 272 of 1981, State Vs. Dhanpal and others, along with two other acquitted accused Malkhan and Chohal, for committing murder of Smt. Santa, widow of Bira Singh and mother of informant Anil, PW1 u/s 302 I.P.C. and was convicted and sentenced to life imprisonment, vide impugned judgement and order dated 27.11.1982, and hence this appeal by the appellant challenging his aforesaid conviction and sentence. Narration of entire prosecution case was made by the informant Anil Kumar, P.W. 1, in the Sessions Trial, according to which informant was a resident of Wazirpur, police station Ashok Vihar, Delhi. His great grand-father Guddhi had four sons Sukhkhan, Chandra Bhan, Bhagwan and Har Lal. Veer Singh and Smt. Santo (deceased) were the wife and son of Har Lal and parents of the informant Anil Kumar, P.W. 1, whereas Jaswant (eye-witness) is the son of Chandra Bhan. Veer Singh, informant''s father had purchased an agricultural land in village Ghanshyampura, a hamlet of Samoli, P.S. Khatauli, district Muzaffarnagar ,farming of which was looked after by the informant and his father. Fifteen or sixteen months prior to the present incident, Veer Singh was done to death in Ghanshyampura, by

Dhanpal (appellant), Chohal (acquitted accused) and one Buddhu Gadaria, regarding which investigation was pending with the police. In that investigation widow Santo had given statement against the accused of that crime.

2. On the date of the incident 1.6.1981, Anil Kumar informant, Smt. Santo deceased, Har Lal, his wife Smt. Phullo, grand-father and grand-mother of the informant and in-laws of Smt. Santo (deceased), and Jaswant, uncle of the informant, all were present in village Ghanshayampura. Smt. Santo (deceased) was sitting on a cot in the kitchen in front of living room. At 1 p.m. in the afternoon three accused, Dhanpal armed with a gun, Chohal armed with a danda, and Malkhan empty handed, who all are residents of village Samoli, half a furlong away from village Ghanshyampura, arrived at the informant''s house. They all threatened the deceased to resile from her statement given to the police in the murder case of her husband otherwise it will not be in her interest, because police was chasing them. Deceased did not come in the threat and replied that she cannot amend her statement. At that moment Gyanu, Baljeet, Jaswant Singh, Rampal, Jai Pal and Tej Pal also arrived there. On refusal by Smt. Santo (deceased), appellant Dhanpal shot her dead in front of the present witnesses. Assailants thereafter escaped from the spot.

3. Informant Anil Kumar P.W.1, dictated F.I.R., Exhibit Ka-2, regarding murder of his mother to Bharat Singh, who scribed it and then he carried it to the police station Khatoli, measuring a distance of 13 kilometres, and lodged it.

4. H.M. Ranvir Singh P.W. 9 registered the F.I.R. Ext. Ka-2, as crime no. 185 of 1981, by preparing Chik report, Exhibit Ka-17, vide Rapat No. 25 at 2.45 p.m. and also penned down crime registration GD, Exhibit Ka-18. Subsequently during investigation, this witness, P.W.9, had also prepared other GD entries, viz: Exhibit Ka-19, regarding deposit of S.B.B.L. gun No. 1813, empty cartridge, blood stained and plain earth, GD regarding deposit of another S.B.B.L. gun No. 2024 and GD Exhibit Ka-21, by which he had dispatched CP 317 Valiulrehman and CP 134 Dushyant Kumar, along with the aforesaid guns and cartridges, to ballistic expert, Lucknow, on 28.7.1981.

5. Inspector S.C. Garg, P.S. Khatauli, P.W.8, in whose presence crime was registered, engineered the investigation and accompanying S.I. Kshetra Singh and S.I. Chaman Lal Sharma came to the incident village Ghanshyampura and recorded statement of witness Har Lal. One empty cartridge case, material exhibit-9, was produced by this witness before the I.O., which was seized and a seizure memo, Ext. Ka-9, in that respect was prepared by S.I. Kshetra Singh, PW7. Spot inspection was conducted by the I.O. and site plan along with the noting, Ext. Ka-12, was prepared by the Investigating Officer, P.W.8. Investigating Officer, thereafter deputed, S.I. Chaman Lal Sharma, to apprehend the accused and S.I. Kshetra Singh was deputed to conduct the inquest on the corpse of the deceased. Blood stained and plain earth, material Exhibit 13 and 14, were collected from the spot and recovery memo in that respect is Exhibit Ka-8. Subsequent thereto statements of witnesses Jaswant Singh,

Jai Pal, Tej Pal, Rampal, Baljeet and Shano were recorded. S.I. Chaman Lal Sharma, meanwhile recovered the gun from the house of appellant Dhanpal. Concluding investigation on 6.6.81, P.W.8 had charge-sheeted the accused, vide Exhibit Ka-13. During trial contradictory excerpts of 161Cr.P.C. statements of the witnesses Tej Pal, Exhibit Ka-14, Jai Pal, Exhibit Ka-15 and Baljeet, Exhibit Ka-16, have been proved by P.W.8.

6. Inquest proceedings on the cadaver of the deceased was performed by S.I. Kshetra Singh, P.W.7 under the guidance of I.O., P.W.8, and he had prepared inquest memo Ext. Ka-7 and other relevant documents chalan lash, letters to C.M.O. and R.I. for post mortem examination etc., which are Exts. Ka-4 to Ka-7. Recovery memo of blood stained and plain earth is Ext. ka-8. He has also proved Ext.ka-9. On 2.6.1981, this witness has recovered a gun material Ext.10, from the search of house of accused Malkhan, the recovery memo regarding which is Ext. Ka-10. Sealing cloth of the gun is material Ext. 11. From the search of the house of accused Chohal, a SBBL gun no. 2467, material Ext. 12, was also recovered on 4.6.1981 by P.W.7 and recovery memo of this recovery is Ext. Ka-11. After completion of inquest proceedings dead body was handed over to CP 185 Mahtab Singh, PW10 and CP Lajpat Singh, to be carried to the mortuary and, therefore, the aforesaid constables had brought the cadaver to the mortuary for post mortem examination.

7. Dr. R.K. Tandon, P.W.2, had performed autopsy on the corpse of the deceased on 2.6.1981 at 11.45 A.M. Deceased, Smt. Santo, was 38 years of age and she had demised a day before. Her both the lungs and pleura were punctured and right pleural cavity contained blood. Blood vessels on the right side neck were also punctured and lacerated. Her right mandible was fractured and stomach contained semi digested food. Small intestine contained food matter and gases whereas large intestines had faecal matters and gases. Cause of her death was shock and hemorrhage as a result of sustained injuries. Dr. R.K. Tandon P.W. 2 had noted following ante mortem injuries in her post mortem examination report, Ext. Ka-2:-

(1) Lacerated wound 8 cm x 3 cm x bone deep on the right side mandible region.

(2) Gunshot wound of entry 4 cm x 4 cm x cavity deep right side super clavicle region and base of neck margins lacerated and inverted. Blackening and scorching present around the wound. Wound directing medially and downwards.

26. pellets and 2 cork pieces recovered from - 20 pellets and 2 cork pieces - right lung, plural cavity. 6 pellets from left lung.

8. All the three recovered 12 bore guns 2024/74, 2467-66 and 1813 along with 12 bore KF special cartridge (E.C.-1) were received to the Forensic Science Laboratory, Lucknow on 25.7.1981. These were tested and the report of Forensic Science Laboratory, Lucknow dated 15.9.1981 is Ext. Ka-22, according to which, cartridge E.C.-1 was fired from gun no. 2024-74.

9. Charge sheeting of the accused resulted in registration of criminal case no. 2021/9 of 1981 in the Court of C.J.M., Muzaffarnagar, titled as State Vs. Dhanpal and others and since, the committal court found the offences triable by session''s court, it committed accused case to the court of session''s on 13.7.1981 where it was received the same day and was registered as S.T. No. 272 of 1981, State Vs. Dhanpal and others.

10. Vth Additional Session''s Judge, Muzaffarnagar, to whom the trial was transferred, charged the accused Chohal and Malkhan u/s 302 /34 I.P.C. and present appellant Dhanpal u/s 302 I.P.C. on 14.9.1981. All the accused denied those charges and claimed to be tried after being read over and explained to them and resultantly, the trial of the aforesaid accused, by observing session''s trial procedure, commenced, to establish their guilt and bring home the charges against them.

11. Twelve witnesses were examined by the prosecution for proving accused guilt, which included four fact witnesses Anil Kumar informant P.W. 1, Tej Pal P.W. 3, Jai Pal P.W. 4 and Baljeet P.W.5. Post mortem Dr. R.K. Tandon was examined as P.W.2, S.I. Chaman Lal Sharma, who had recovered gun and cartridges, P.W.6, S.I. Kshetra Singh who had conducted inquest P.W.7, Investigating Officer S.O. S.C. Garg P.W.8, head moharir Ranvir Singh, who had registered the crime and prepared various GDs P.W.9, constable Mehtab Singh, who had carried the body to the mortuary P.W.10, firearm forensic science expert O.P.M. Tripathi P.W.11 and constable Valiulrehman, who had taken the weapons to Forensic Science Laboratory, Lucknow P.W. 12, were the formal witnesses. Accused in their examination by the court, u/s 313 Cr.P.C., took a common defence of false implication due to enmity and factionalism. Present appellant Dhanpal further stated that he was Director of Kisan Sewa Sahkari Samiti, Ward, Sikandarpur and one Munna Singh, relative of the informant Anil Kumar, is his opponent in the cooperative politics and, therefore, all of them connived with each other and falsely implicated him. Two other accused stated other defence pleas, but since they have been acquitted, which opinion has attained finality and is not questioned before us, therefore, we eschew recording their defences. To establish their version, accused had examined scribe of the FIR, Bharat Singh as D.W.1, who had deposed that the report regarding murder of the deceased was dictated to him by the I.O. in front of the house of the informant under a margosa (neem) tree at 5 P.M. and thus, he had tried to bring on record the evidence that the FIR, Ext. Ka-2, was not dictated by the informant and the same was anti timed and thereby he had tried to bolster up defence plea that the entire prosecution case is cooked up and fabricated and was registered ante timed. No other defence witness was examined by the accused to lend credence their defence version.

12. As has already been mentioned herein above the learned trial Judge, after critically appreciating oral and documentary evidences, concluded that prosecution has failed to substantiate it''s allegations against other two accused, Malkhan and Chohal, except the appellant, and therefore, acquitted them vide impugned

judgement and order, but in the same judgment, it found guilt of the present appellant anointed to the hilt without any ambiguity and resultantly had convicted him for offence u/s 302 I.P.C. and had sentenced him to imprisonment for life, which conviction and sentence is under challenged in the instant appeal.

13. In the backdrop of preceding facts, we have heard Sri G.S. Hajela, learned counsel for the appellant and Sri Sangam Lal Kesharwani, learned AGA for the respondent State.

14. Assailing the impugned judgment, appellant''s counsel contended that the appellant has been falsely implicated because of earlier enmity, FIR was fabricated by the I.O. and was registered ante timed. Informant could not have proved it''s contents, because he had not dictated it and consequently entire prosecution story is prevaricated to implicate the appellant, who had no motive to commit the crime. On the same evidence, two other accused were acquitted by the learned trial Judge and consequently there was no occasion for the trial court to rely upon evidences of fact witnesses to convict the appellant. Medical report is inconsistent and repugnant to the ocular testimonies of fact witnesses in as much as lacerated wound remains unexplained in the FIR. Said lacerated wound, on the right side mandible region, sustained by the deceased, was neither insignificant nor eschewable, and hence it contradicts eye witness account about the manner in which incident had occurred. It was further submitted that prosecution witnesses are wholly unreliable and it is puerile to cogitate that three persons will form a group to annihilate the deceased but out of them, one will go at the murder scene empty handed and the other will carry only a danda. Learned counsel submitted, that at the worst, the entire prosecution evidences, taken in it''s entirety, projects that the crime was committed by a single accused and therefore, prosecution allegation of participation of three accused in the incident is a cooked up story which does not inspire any confidence. Accused defence is more credible and has been supported by D.W.1, regarding concocting a story to frame-in the appellant, because of earlier murder. It has been further argued that in the murder case of Veer Singh, even the informant was a witness but no endeavour was made to assault or annihilate him and therefore, the motive alleged for committing the crime is false. On the basis of the aforesaid submissions it was urged that appellant appeal be allowed and he be acquitted of the charge and be set at liberty.

15. Arguing conversely, Sri Sangam Lal Kesharwani, learned AGA canvassed that present is a day light incident with prompt FIR and an eye witness account, therefore, prosecution version is un-embellished, credible and truthful and cannot be castigated at all. Specific role of shooting down the deceased has been assigned to the present appellant. It will be imprudent and bereft of common man''s parlance, to cogitate that a son will spare real assailants and feign a story to falsely implicate innocent persons in the murder offence of his own mother, canvassed learned AGA. Motive to commit the crime was very much in existence and to avoid

going to gallows one may adopt any course of action howsoever unreasonable it may be. The appeal therefore, lacks merit and deserves to be dismissed in toto, urged learned AGA while concluding his counter submissions.

16. We have considered rival arguments and have critically examined entire trial Court record ourselves.

17. What is discernible from witness''s testimonies and various exhibits are that husband of the deceased, who was father of the informant, namely Veer Singh, was murdered by the present appellant with his other socio criminises Chohal and Buddhu Gadaria. Investigation into that murder crime was going on and the present deceased, Santo, widow of Veer Singh, during course of that investigation had charged present appellant and his associates as murderers of her husband. Because of said evidence police was in the look out to arrest them and consequently, present appellant had enough and compelling reasons to threaten the deceased to refrain her from proceeding further against them and resile from her investigatory statements and perusing her allegations. In the FIR of present murder, there is clear and categorically assertions in that respect, as it records with clarity that the appellant had hurled threats to the deceased to withdraw her statement given to the police, otherwise, face the consequences. This is a natural and un-concocted deposition, which inspires confidence. It can thus be held, without hesitation, that the appellant had compelling reasons and a very strong motive to orchestrate the murder to save himself from being booked in penitentiary.

18. Coming to the presence of the appellant during the incident armed with a gun, it has been deposed without any ambiguity by all the fact witnesses and there is no reason to mistrust them. This is another significant attending circumstance to prove that appellant was one amongst three assailants. His role during the incident is specific and at no point of time prosecution witnesses stated any fact incongruent to it. It was he who had shot dead the deceased. Inspite of lengthy and tiring cross examination defence had not been able to dislodge any of the fact witnesses on the said score. Now turning towards actual incident, consistent case of the prosecution from the FIR itself is that it was the appellant who had shot at the deceased after she refused to resile from her statement given to the police in the murder investigation of her husband. At no point of time prosecution has embellished or altered such a version. Specific role of shooting at the deceased, thus, has been pointedly assigned to the appellant. The injury sustained by the deceased was fatal and is corroborated by the autopsy report. Albeit, informant and other witness have been searchingly cross examined by the defence but it failed to cull out any damaging evidence from them. None of the witnesses have budged at all on such an allegation and have repeated the same whenever they were questioned on the said aspect. Consistency with which fact witnesses have testified this version makes it credible and confidence inspiring and we don''t find any reason to negate truthfulness of it. Murder had taken place inside informant''s house is also

established without any ambiguity. In the site plan, Ext. Ka-12, (*A) is the place where the deceased was shot at, which is right in front of kitchen and living room. Blood had also been collected from the said spot from beneath the cot, on which deceased was sitting at the time of the incident. Gun of appellant acquitted accused, was used by the appellant to shoot down the deceased, which fact is proved by the expert report, as the empty cartridge found on the spot tallied with the said gun. Thus in respect of actual incident prosecution has successfully demonstrated that it was the appellant who had executed the murder of the deceased. Recapitulating incriminating evidences, it becomes evident that medical consistency with fair investigation, recovery of gun and cartridges and tallying of gun and the cartridge found on the spot, all are attending circumstances, which unambiguously without any doubt establishes prosecution charge against the appellant.

19. FIR of the incident was registered without any delay, as the distance of the police station from the place of occurrence was 13 kms and the FIR was lodged after 4 hours and 45 minutes and therefore, in our opinion, there was no delay in lodging of the same. Furthermore there was paucity of time for the prosecution to fabricate a story. Testimony of defence witness DW1, Bhrat Singh, who is the scribe of the FIR is prevaricated and is a fib. At no earlier point of time he had made any complaint regarding fabrication of FIR by the I.O. as was deposed by him. It was for the first time in the court that he had stated such a story, ostensibly to shield the culprits of two murders. It may be because of threats or his own perilous situation that he had tried to help the accused and Endeavored to make FIR a concocted piece of corroborative evidence, but from his cross examination it becomes evident that whatever he had deposed is all an afterthought and untrue narration. Accused never ventured to suggest such a defence version to the prosecution witnesses to dislodge the prosecution story and countenance their defence plea. DW1 was a witness of inquest also and even at that time he had not made any complaint regarding manipulation done by the I.O. In view of our analysis we are not impressed by the evidence of DW1 and hence reject it out right and hold that the claim of DW1, that he had scribed the FIR at the instance of the I.O. at 5 p.m. is a mendacious testimony. He seems to have made a conscious and deliberate attempt to create a false story to save the accused persons. Eikly, DW1, is also a witness of recovery of blood stained and plain earth and therefore, it will be unwise to give credence to his testimonies, because both, inquest and recoveries succeeded registration of FIR. Evidence of DW1 is paradoxical and does not satiate inquisitive inquiry to separate the grain from the chaff and hence we discard his entire defence version.

20. Yet another contention on behalf of appellant that since two other accused have been acquitted and therefore, appellant be also given the same treatment and no reliance should be placed on the same fact witnesses to convict the appellant, we are of the view that the said submission is bereft of well settled trite law that maxim falsus in uno falsus in omnibus does not apply to our criminal jurisprudence. Merely

because other accused have been acquitted, because prosecution had failed to establish their participation in the incident by leading cogent and reliable evidences is no reason to absolve even that accused also whose guilt has been convincingly established by trustworthy, reliable and creditworthy evidences. Entire prosecution case cannot be discarded on such a facetious view. On the contrary, Apex Court, as well as, this Court, in innumerable decisions, have held unanimously that if the prosecution case is acceptable and truthful in respect of some of the accused, they cannot be absolved of their crime while acquitting others against whom evidence is deficient, incredible and shaky. We do not want to loath this judgment by citing such innumerable decisions but are unable to resist the temptation of referring some of those decisions which are referred to herein below:-

In Gunnana Pentayya @ Pentadu and Ors. v. State of A. P. : AIR 2009 SC (Suppl) 940 it has been held by the apex court as under:-

15. The next plea as noted above related to the acquittal of number of persons. Stress was laid by the accused-appellants oh the non-acceptance of evidence tendered by PW1 to a large extent to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of falsus in uno falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, his conviction can be maintained. It is the duty of Court to separate grain from 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, or to be not wholly credible. Falsity of material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witness or witnesses cannot be branded as liar (s). The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of 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 Vs. The State of Uttar Pradesh, . In a given case, it is always open to a Court to differentiate accused who had been acquitted from those who were convicted where there are a number of accused persons. (See Gurcharan Singh and Another Vs. State of Punjab, . The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because 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 respect 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.

21. In Triloki Nath and Others Vs. State of U.P., it has been observed by the apex court as under:-

30. ''Falsus in uno, Falsus in omnibus'' is not a rule of evidence in criminal trial and it is the duty of the court to disengage the truth from falsehood, to sift the grain from the chaff.

22. Another snipping of prosecution case for the reason that the lacerated wound sustained by the deceased remains unexplained in as much as FIR does not record a mention of it, we find said submission untenable. In a broad day light, mother was murdered in the witnessing of her son, after 14 or 15 months of the annihilation of the father, by the same culprits. Perilous situation and agonizing circumstances in which informant was pushed in, suddenly and unexpectedly, inside his house, screens the terror of the accused and traumatized mental faculty of the informant, who had lost both of his parents by annihilation in his witnessing. No prudent person in such a situation can maintain calmness and compose himself to register each and every minute detail regarding execution of the murder. FIR is neither an epic nor an encyclopedia. It is meant only to set the ball of investigation rolling into an offence. In the present appeal it was dictated without losing much of a time and was lodged with promptness. In such a situation, it will be totally indiscreet and imprudent to expect that FIR will contain each and every minute detail. When informant PW1 was cross examined on this aspect he replied that lacerated wound was caused by Chohal with danda. Although we disagree with learned trial court in it''s reasoning regarding acquittal of Chohal, as is recorded in impugned judgment, but since, his acquittal has not been challenged, we do not take this matter any further and consign it at this stage, but, none the less, we are of the opinion that lacerated wound sustained by the deceased has been sufficiently explained by the informant during trial and omission on his part to pen it down in the FIR does not dent the prosecution story at all and resultantly repel appellants criticism.

23. Another castigation by the appellant''s counsel that three of the eye witnesses Tej Pal P.W. 3, Jai Pal P.W. 4 and Baljeet P.W. 5 had turned hostile and therefore, on the basis of a single testimony of an inimical, partisan, interested and related witness, appellant should not be convicted, when two others have been acquitted, we find said contention sans any merit and contrary to the actual evidences. So far as, evidence of Tej Pal, P.W. 3 is concerned, he in no un-certain terms had deposed in his examination-in-chief that at the time of the incident he was selling ice in the midst of the village, when he heard a gunshot fire sound followed by commotion and when he paddled his cycle in that direction he saw Jaswant standing at his door uttering that appellant had shot dead the deceased. When P.W. 3 inquired from him,

Jaswant informed him that appellant had shot dead Santo. From such a deposition, which remains unquestioned, it is but natural to conclude that it was the appellant who had committed the murder. In our view this witness lends credence to prosecution story as a witness of res gestie and we failed to perceive any viable reason to treat him as a hostile witness. Contrary to it, he had lend assurance to the incident as the appellant being perpetrator of the crime. His evidence is a strong circumstance against the appellant.

24. Jai Pal P.W.4 further has countenanced prosecution story when he had testifies that he had seen the three accused coming from the north. Dhanpal was armed with a gun whereas Chohal was carrying a danda. Malkhan was empty handed. Malkhan and Dhanpal entered into Veer Singh''s house and immediately a gun fire sound emanated from inside the room and no sooner there after all the three accused barged out of Veer Singh''s house and sprinted away towards South. He had endeavored to chase them but desisted from his such unthought of attempt. He came to the informant''s house where he found deceased with sustained gunshot injury on her neck because of which she had demised. At that moment informant too was present inside his house. How can this witness be treated to be hostile witness is beyond comprehension. His evidence by itself is good enough to nail in the accused for the charge of murder and we don''t see it reasonable to discard his evidence. He has established presence of the accused as well as that of the informant at the scene of the incident and hence are of the opinion that he too had eiked additional incriminating evidence against the accused cementing his participation in the crime.

25. Adverting to the evidence of last witness Baljeet P.W. 5, he has corroborated and supported other witnesses in all the material particulars of the incident. His evidence is akin to the evidence of PW4. In such a view, declaring of these witnesses P.W. 4 to P.W. 6 as hostile by the public prosecutor is of no consequence. Their depositions also prove prosecution case regarding date, time and place of the incident, presence of appellant in the house of the deceased and his escaping from there handling a gun soon after deceased was murdered in the presence of the informant.

26. On the aforesaid discussions we find present appeal meritless which stands dismissed. Appellant''s conviction and sentence, as is recorded in the impugned judgment and order, is hereby confirmed. Appellant is on bail, his personal and surety bonds are discharged and he is directed to be taken into custody and lodge in jail to serve out his remaining sentence. Let a copy of this judgment be certified to the trial court for further action at it''s end.