

(1998) 12 AHC CK 0106

Allahabad High Court

Case No: Criminal Appeal No's. 2200, 2201, 2219 and 2220 of 1997

Bhagirath

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Dec. 15, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 162
- Penal Code, 1860 (IPC) - Section 149, 307, 380, 404

Citation: (1999) 1 ACR 445

Hon'ble Judges: K.D. Shahi, J; G.P. Mathur, J

Bench: Division Bench

Advocate: Pulak Ganguly, for the Appellant; A.G.A., for the Respondent

Judgement

K.D. Shahi, J.

All the four appeals arise out of one judgment and order of conviction and death sentence arising out of one crime and offence, therefore, all these appeals have been taken together for disposal.

2. All the Appellants of four appeals, namely, Bhagirath, Vijai Karan Singh, Lai Singh and Razzaq alias Rajjab, have been convicted for "the murders of Ram Saran Singh, Ram Lakhan Singh, Narpat Singh, Udaiveer Singh and Smt. Ram Dulari on 15.4.1981 at about 6 p.m. in village Bhadva, P.S. Malva district Fatehpur and sentenced to death u/s 302 read with Section 149. I.P.C, one years" R.I. u/s 147, I.P.C, one years" R.I. u/s 404, I.P.C. and three years" R.I. u/s 380, I.P.C. Convict Bhagirath has further been sentenced to five years" R.I. u/s 307, I.P.C. and Vijai Karan Singh, Lal Singh, Razzaq alias Rajjab have been sentenced to five years" R.I. u/s 307/149, I.P.C. by the learned Sessions Judge on 28.11.1997 in a joint sessions trial arising out of S.T. No. 176 of 1982, State v. Lai Singh ; S.T. No. 154 of 1982. State v. Bhagirath ; S.T. No. 170 of 1988. State v. Vijai Karan Singh and S.T. No. 222 of 1988. State v. Razzaq alias Rajjab.

3. In short, the case of the prosecution is that on 15.4.1981 at 21.15 p.m., Mahadeo son of Manbodhan r/o village Bhadwa police station Malwa. district Fatehpur lodged a report at police station Malwa that he is the chaukidar of village Bhadwa. On the date of occurrence at about 6 p.m., the sun had not yet set when he was cutting grass in his khalihan. he heard fire from village side. He left cutting the grass and reached the village and was informed that at the tube-well of Ram Saran which is at a distance of four furlongs from the field of Ram Saran Singh, Ram Lakhan Singh son of Lai Singh and Narpat Singh son of Ram Lakhan Singh have been killed by firing. He was further informed that the assailants have killed Udaiveer Singh alias Munni son of Ram Lakhan Singh by dragging him from his shop and they have also killed widow- Ram Dulari in her house. He was further informed that the assailants have also injured Ram Manohar Singh son of Sheo Pal Singh. He was informed by the villagers and the ladies that the offence have been committed by Vijai Karan Singh, Bhagirath of village Bhadwa and two Mohammadans, who used to visit at the house of Vijai Karan Singh and were residents of village Pachkauri, P.S. Pailani district Banda. They were also accompanied by two unknown persons who used to come at the house of Vijai Karan Singh. He was further informed that the assailants were armed with guns, lathis and karauli. The chaukidar kept the injured at the bullock-cart and went to the police station along with injured Ram Manohar Singh, Ganga Charan while Babu Singh was driving the bullock-cart.

4. The informant, chaukidar of the village, is not an eye-witness, the police party proceeded to investigate on the basis of this F.I.R.

5. Chik report Ex. Ka-9 was prepared by head constable P.W. 7, Ram Saran Singh. A case was registered in the G.D. at Rapat No. 32, copy of the G.D. is Ex. Ka-10. The I.O. Sub-Inspector S.V. Singh-P.W. 8, the then S.O. P.S. Malwa, reached the spot on the same night and in the morning prepared the Inquest Report of the dead bodies of the deceased persons. He took blood-stained and simple earth from different places of occurrence and sealed them in the containers. He also recovered empty cartridges, two pairs of shoes from the spot where Smt. Ram Dulari was murdered. He interrogated the witnesses, inspected the three places of incidents and prepared the site-plan on 31.4.1981. The investigation of the case was entrusted to C.B., C.I.D. under the orders of Assistant Inspector General of Police, Har Govind Singh Chahar P.W. 9, did further investigation of the case.

6. Ram Manohar Singh was taken to the police station at the time of the F.I.R. He was sent for medical examination, Dr. Hari Krishan Tandon, M.O., District Hospital, Fatehpur examined the injuries of Ram Manohar Singh at 1.40 a.m. on 16.4.1981. He found the following injury on his person:

One gun-shot wound of inlet size 1 cm. x 1/2 cm. cavity deep on right side chest 3 cms. from middle right clavicle. Margins were inverted and lacerated. No blackening and tattooing around the wound was present. Wound was dressed by M.C. paint and bandage.

7. The dead bodies of the victims were sealed and were sent for post-mortem examination. Dr. S.C. Srivastava conducted the post mortem examinations and prepared the report, Ex. Ka-2 to Ex. Ka-6. Needless to emphasize and quote the injuries of each of the victims. It is sufficient to say here that all the victims have suffered gun-shot injuries and have died as a result of gun shot injuries. The doctor has proved the time, of assault weapon of assault, death of the victims, postmortem reports and the injuries of the dead bodies and have stated that all the victims have died at 6 p.m. of 15th April, 1981.

8. After the investigation was complete, the I.O. had submitted the charge-sheet in the Court. It is to be remembered that on 15.4.1981 itself P.W. 3, Sakhi Devi had submitted a list of ornaments at the police station in which she alleged that the assailants have looted her ornaments as well as the ornaments of Smt. Ram Dulari, as mentioned in the list, Ex. Ka-1.

9. On committal of the case to the Court of Session, accused Bhagirath was charged Under Sections 148, 302 and 149, I.P.C. for the murder of Ram Lakhan Singh. Another charge was framed Under Sections 302 and 149, I.P.C. for the murder of Narpal Singh. Again he was charged for the offence punishable u/s 302 read with Section 149, I.P.C. for the murder of Udaiveer Singh and a separate charge was framed Under Sections 302 and 149, I.P.C. for the murder of Ram Dulari. He was also charged for the offence punishable u/s 307 read with Section 149, I.P.C. for the murderous assault over Ram Manohar Singh. He was also charged for the offence punishable u/s 404, I.P.C. for having misappropriated the ornaments and u/s 380 for having committed theft of those articles. Same charges were framed against accused Vijai Karan Singh, Lai Singh and Razzaq alias Rajjab.

10. All the charges were read over and explained to all the accused persons in Hindi who pleaded not guilty and claimed to be tried.

11. In proof of its case, the prosecution examined as many as nine witnesses out of whom P.W. 1, Brij Mohan Singh, P.W. 2, Harnam Singh, P.W. 3, Sakhi Devi and P.W. 4, Ashok Singh are eye-witnesses and their statements are mainly relevant to find out the guilt of the Appellants.

12. Before proceeding with the evidence on record, at the very outset, we want to scan and elucidate that in this case five persons have been killed at different places. The witnesses are also not the witnesses of all the murders. The murders took place at three places ;

(i) Murders of Ram Saran Singh, Ram Lakhan Singh and Narpal Singh took place at the tube-well, at a distance of four furlongs from the village.

(ii) Murder of Udaiveer Singh alias Munni Singh son of Ram Lakhan Singh took place at his shop and, thereafter.

(iii) The assailants dragged Ram Dulari from the way when she was coming to see Udaiveer Singh and took her to her house and there they killed her.

13. P. W. 1, Brij Mohan Singh saw the murders of Ram Saran Singh, Narpat Singh and Ram Lakhan Singh. According to him, Vijai Karan Singh fired at Ram Saran Singh, Bhagirath and Razzak fired at Narpat Singh and Abdul fired at Ram Dulari.

14. P.W. 2, Harnam Singh stated that Vijai Karan Singh and Bhagirath dragged Udaiveer Singh alias Munni Singh from the shop; Razzaq and Abdul fired and killed Udaiveer Singh. He further stated that while they were firing at Udaiveer Singh, Ram Manohar Singh was coming on a bullock-cart and he was accidentally injured.

15. P.W. 3, Sakhi Devi stated that she was at her chabutra along with Phool Dulari, Ram Dulari and Ram Pyari when a body came and informed that Munni Singh has been killed near the shop. Ram Dulari and Ram Pyari proceeded to see Munni Singh. Soon thereafter Vijai Karan Singh brought Ram Dulari holding her at her house accompanied with Bhagirath, Abdul, Razzaq, Lai Singh and two unknown persons. Vijai Karan Singh and Abdul fired at Ram Dulari. It is said that Vijai Karan Singh had also fired at Raju but he ran away and was saved. Ashok Singh is also a witness of murder of Ram Dulari.

16. The following pedigree is also necessary to appreciate the facts of the case.

Lai Singh I I Sons Daughters Ram Saran Singh Ram Lakhan Deceased No. 1
Deceased No. 2 (Bachelor) W/o Pholwa Narpat Singh Udaiveer Singh Deceased No. 3
alias Munni Singh = wife Sakhi (Deceased No. 4) Devi (P.W. 3) Raju aged 9 years ~ i r
Bhoori Devi Ram Pyari Ram Dulari Deceased No. 5 Brij Mohan Singh Harnam Singh
P.W. 1 P.W. 2

17. To come up to the statements of the witnesses ; P.W. 1, Brij Mohan Singh is the bhanja of deceased Ram Saran Singh and Ram Lakhan Singh and also son of the sister of the deceased Ram Dulari. He is resident of village Bindor of the same police station Malwa, at a distance of 12 miles from the place of occurrence. But he has specifically stated that for the last 25 years he is residing in village Bhadwa. This fact has not seriously been challenged by the accused side as well because, in para 13 of his cross-examination, it has been suggested that he is residing in village Bhadwa for the last 25 years but the accused persons did not bear enmity with him. He stated that accused Bhagirath and Vijai Karan are bhanjas of Lal Singh accused and accused Lal Singh is cousin brother of accused Ram Saran Singh and Ram Lakhan Singh. Razzaq and Abdul accused used to come to the house of Lai Singh. He recognised all of them very well. Regarding motive, he stated that one Raghuraj Singh alias Chunkai Singh was the uncle of accused Lai Singh and deceased Ram Saran Singh and Ram Lakhan Singh. After the death of Raghuraj Singh, Lai Singh did not want to give share to Ram Saran Singh and Ram Lakhan Singh. On this, Ram Saran Singh and Ram Lakhan Singh filed a case in the Court of S.D.M. The case was filed in the year 1965 and continued for three years. The case was decided in favour

of Ram Saran Singh and Ram Lakhan Singh. Since then enmity was going on. Regarding immediate motive, he stated that Vijai Karan Singh, Bhagirath and his brother Sbatrugan got a fictitious sale deed showing that it has been executed by Ram Saran Singh and Ram Lakhan Singh. The land was about 30 bighas. The widow of Narpat Singh filed a case in the Court of the District Judge. Certified copy of the plaint is Ex. Ka-45. Suit No. 23 of 1982 was for cancellation of sale deed dated 25.3.1981, allegedly executed by Ram Saran Singh and Ram Lakhan Singh. Ex. Ka-46 shows that the said suit was decreed by the 2nd Addl. District Judge on 26.3.1985. Although the suit and the decree are subsequent to it, but the fictitious sale deed is dated 25.3.1981 and the present murder took place only on 15.4.1981. These papers had been produced to show that there was immediate motive for committing the murder of Ram Saran Singh, Ram Lakhan Singh and others so that they may not challenge the sale deed and the accused persons could easily grab their 30 bighas of land.

18. Regarding occurrence, Brij Mohan Singh P.W. 1 stated that on 15.4.1981 at about 6 p.m. he was at the roof of tube-well of Ram Saran Singh. Ram Saran Singh was sitting at the chabutra. Ram Lakhan Singh and Narpat Singh were standing near the charhi. Bhoora and Parmeshwar were cleaning the wheat on the thrasher. All of a sudden Bhagirath and Vijai Karan Singh came armed with guns from towards south and from towards north Lai Singh came with lathi. Razzaq and Abdul came armed, with gun and they were also accompanied with two unknown persons out of whom one was wielding lathi and the other was wielding karauli. Vijai Karan Singh fired at Ram Saran Singh. Bhagirath and Razzaq fired at Narpat Singh and Abdul fired at Ram Lakhan Singh. All the three fell down. He jumped on the earth and went in the bageecha and when accused persons went from towards tube-well to the village, he came where all the three persons were lying dead. There from he came to the village and saw that Munni Singh was lying in the galiyara. There Harnam Singh P.W. 2 met him and informed that Vijai Karan and Bhagirath caught hold of Munni Singh and brought him to galiyara and Razzaq and Abdul fired at him and Munni Singh died. He further informed that Ram Manohar Singh was injured. Soon after Ram Pyari came and informed that hearing the death of Munni Singh she was coming along with Ram Dulari. The accused persons caught hold of Ram Dulari and went towards her house. Immediately, she was informed that Ram Dulari had also been killed. He went near the dead body of Ram Dulari and had been informed that she had been killed by Bhagirath, Vijai Karan, Razzaq and two others. He further stated that ornaments of Ram Dulari were missing; box and kothi etc. was found open. The chaukidar came and he was informed. He took Ram Manohar Singh on a bullock-cart and lodged the F.I.R.

19. Regarding non-lodging of the F.I.R. by himself Brij Mohan Singh stated that out of fear and it being dark, he did not dare to go to the police station as also he was informed that the chaukidar had already lodged the F.I.R. He stated that the I.O. came to the village and investigated the case. Bhoora Lodh and Parmeshwar are the

witnesses of the murders of Ram Saran Singh, Ram Lakhan Singh and Narpat Singh. Regarding them, the witness stated that they have now gone hostile. Out of fear of the accused persons. He further stated that although Ram A. Cr.R. 29 Manohar Singh was injured but he also turned hostile. In the cross-examination, he has stated that Ram Dulari was residing along with her brother for the last 40 years because she was a widow. Harnam Singh is an eye-witness of the murder of Udaiveer Singh alias Munni Singh. Brij Mohan Singh was cross-examined regarding the presence of Harnam Singh. He stated that although Harnam Singh was a student at Kanpur but he used to come to the village Bhadwa. He had come to village Bhadwa before two days of the occurrence. He did not know whether the school was closed or Harnam Singh had come after taking leave. This cross-examination was made with a purpose to show that there was no occasion for Harnam Singh to be present in the village but, surprisingly enough, when Harnam Singh was cross-examined, he was not at all cross-examined whether the school was closed or open and why he was there in the village at the time of occurrence. The best witness to have disclosed this fact was Harnam Singh but he was casually asked and replied that he was not attending the class those days and as such was in the village from before two days. Nothing about his class, leave, holidays and residence at Kanpur was asked from Harnam Singh.

20. Regarding murder, Brij Mohan Singh was suggested that Ram Saran Singh was without any issue and in order to take his property, it is he who had got all the deceased persons murdered. This suggestion is meaningless in view of the fact that in the presence of the sons of Narpat Singh, nobody was going to get the properties of Ram Saran Singh and Ram Lakhan Singh. It was further suggested that he had got illicit connection with the wife of Narpat Singh. This fact will reveal that Brij Mohan Singh must be residing in village Bhadwa. He was suggested that if he had been there, he would also have been killed. There is nothing on record to suggest that the accused persons had actually any motive to kill Brij Mohan and Harnam Singh as well. It is not necessary that the assailants should kill each and every person of the village who may be related to Ram Saran Singh and Ram Lakhan Singh or who may have seen the occurrence but that depends upon the particular assailant and the animosity or intensity of his motive. Besides these casual cross-examinations, the witness was not at all cross-examined regarding the place of occurrence, weapon of assault, time of occurrence, injuries of the victims, mode and manner of assault.

21. P.W. 2, Harnam Singh, as stated above, is the witness of murder of Udaiveer Singh alias Munni Singh. He stated that from the side of the Khambha of the wall he saw that Abdul and Razzaq had fired at Udaiveer Singh. He has corroborated the other material facts of the case as well and the only suggestion was that he was not present at the spot and did not see the occurrence. His presence anywhere else is not proved. He has also stated about taking of ornaments of both the ladies, namely, Sakhi Devi and Ram Dulari.

22. P.W. 3, Sakhi Devi is a witness of the fact that after hearing the murder of Munni Singh, Ram Pyari and Ram Dulari went to see him. She stayed at the house. Soon after Vijai Karan Singh brought Ram Dulari dragging her in the house. He was accompanied with Bhagirath, Abdul, Razzak, Lai Singh and two others. She stated that Vijai Karan Singh fired at Ram Dulari and she was killed. Abdul also fired at her. In the cross-examination, she corroborated the presence of Brij Mohan Singh and Harnam Singh in the village. She stated that Raju was also fired but the fire did not hit him.

23. P.W. 4, Ashok Singh is an independent witness of the village. He is the witness of the murder of Ram Dulari. He stated that all the accused persons came. They dragged Ram Dulari inside the house and killed her there.

24. The learned Sessions Judge has given each and every detail of the medical evidence as well. It is not necessary to repeat the same but the main argument of the learned Counsel for the accused persons was that Brij Mohan Singh and Harnam Singh were outsiders. They could not have identified Abdul and Razzaq. Sakhi Devi is a lady and she has got no reason to identify Abdul and Razzaq and Ashok Singh is an inimical witness. No enmity from Ashok Singh could be suggested but the simple reply to the argument of the learned Counsel for the Appellants that they had got no occasion to identify Abdul and Razzaq, is that there is specific statement of witnesses that Abdul and Razzaq were very close to Lai Singh, Bhagirath and Vijai Karan Singh and they used to come to the village. Nothing could be gained in their cross-examinations but the total controversy is resolved from the statement of the accused persons wherein when Razzaq was examined u/s 313, Code of Criminal Procedure and was asked if it is correct that Ram Saran Singh and Ram Lakhan Singh are the mama of Brij Mohan Singh, Narpal Singh and Udaiveer Singh were sons of Ram Lakhan Singh, Ram Dulari was the real sister of Ram Saran Singh, the witness stated; "this is correct". Had he not known these persons, how he could have stated that this is correct. This shows that he fully knew all these persons including Ram Dulari and the ladies of the house. If he knew them, a presumption can be raised that other party also. Knew him. When question No. 5 was asked that Bhagirath and Vijai Karan Singh were bhanjas of Lai Singh and accused Lai Singh was cousin brother of Ram Saran Singh and Ram Lakhan Singh, accused Razzaq stated that "it is correct". This shows that he knew even the inter se relationship between the accused persons and the complainant. This will show that he was very close to all of them. Vide Question No. 32, he was asked why he was prosecuted; he stated that due to enmity. If he was not known to the witnesses and the deceased, what was the question of enmity? He was further asked why the witnesses were giving statement against him, he stated that due to enmity. These replies ipso facto show that Razzaq was well known to the deceased, accused persons and the witnesses and merely because he is resident of different village, this argument is meaningless that he was not known to the witnesses and the witnesses have named him because they were tutored. Abdul did not attend the proceedings and he is

absconding. It is needless to discuss him.

25. We do not find that any of the witnesses are unbelievable or they had not stood the rest of cross-examination. They are natural witnesses. They have proved each of the incidents effectively and there is nothing to disbelieve them.

26. Now coming to the specific argument of the learned Counsel for the Appellants, it was argued that there was no immediate motive. We have already discussed that only before twenty days of the occurrence, accused persons had got a sale deed in their favor and the sale deed was not executed by Ram Saran Singh and Ram Lakhan Singh. The land which they were to gain was more than 30 bighas. The safest way to grab that land was to kill them so that they may not remain alive to say that they have not executed the sale deed. Motive to kill Narpat Singh and Udaiveer Singh was that they were sons of Ram Lakhan Singh. It appears that their motive was to kill the entire family and in that process, they even killed Ram Dulari who was residing in the village along with the above said deceased persons.

27. It was next argued that why chaukidar of the village lodged the F.I.R.; why Brij Mohan Singh and Hamam Singh did not go to the police station to lodge the F.I.R. One can only estimate the mental and physical condition of the persons whose entire family has been killed. They shall not be in a position even to move for some time what to speak and dictate the F.I.R. In the way in which these murders were committed, moving from tube-well to the village, tube-well to the shop and then to the village dragging a lady from road inside the house and then killed her, at three different places within an area of 4-5 furlongs, nobody can dare even to peep out of the house, what to talk of going outside the village and to lodge the F.I.R. Who knew where the assailants have gone after murdering five persons, they may be in the way of the police station as well. One can only imagine that he shall not be left if he is known by the accused persons to be going to the police station to lodge the F.I.R. Naturally, in these circumstances, nobody of the family or even of the village will dare to go to the police station to lodge the F.I.R. It was then argued that why the chaukidar had gone. The simple reply is "that he is the chaukidar of the village, he is of the police department, he is being paid for and his duty is to inform at the police station what is happening in the village. Therefore, the chaukidar had got no option but to go to the police station and to inform about the incident. That is why he had gone. Brij Mohan Singh, in para 9 of his statement, had also specifically stated that the chaukidar came and inquired about the fact, took Ram Manohar Singh on the bullock-cart and went to the police station along with Babu Singh and Ganga Charan Singh. In the last line of his cross-examination, he stated that it has gone dark and he was under fear and as such he personally did not go to the police station. Hamam Singh was also cross-examined on this point. He also stated that he, out of fear and it becoming a dark night, did not go to the police station and the most natural and plausible reply which he gave was that he was informed that the chaukidar had already proceeded to the police station along with Ram Manohar

Singh. Therefore, he thought that it was not necessary to go to the police station to lodge the F.I.R.

28. It was argued that the F.I.R. is ante-timed and the mere suggestion is that Ram Manohar Singh was brought at the police station and he was examined at 1.40 a.m. in the hospital, therefore, the occurrence took place late or the F.I.R. itself was lodged soon before 1.40 a.m. and it was shown to have been lodged at 9.15 p.m. This argument is only imaginary. Five persons have been killed in the village. Immediately after the occurrence, the police will try to visit the place of occurrence so that further murder may not be committed, dead bodies may not be removed and the evidence may not be tampered with. Witness Brij Mohan Singh also stated that the police had come in the village at about 10 or 11 in the night (para 11 of P.W. 1). This shows that the police thought that firstly they should visit the village after the F.I.R. It was not necessary to have sent Ram Manohar Singh immediately for medical examination because Ram Manohar Singh did not appear to be serious. His medical report does not show that he was in serious condition. Nothing about his physical condition has been written in his medical examination report, Ex. Ka-8.

29. Harnam Singh, P. W. 2, also stated in para 1 of his statement that Ram Manohar Singh has been injured by pellets and he was seating at the bullock-cart. Not only this, P.W. 6, Hari Krishan Tandon, the doctor who examined him, stated that the injured Ram Manohar Singh himself walked to the hospital. His general condition has not been written in the injury report. Had he been serious, it could definitely have been written. Although, the I.O. had stated that Ram Manohar Singh was not conscious there, his statement could not be recorded immediately. But the evidence on record clearly shows that the physical condition of Ram Manohar Singh was not such that the police should immediately prepare chitthi mcy"boori and send him. Secondly also, there may be hundreds of reasons for not sending the victim to the hospital immediately on which the witnesses have not been cross-examined. Only because Ram Manohar Singh had been examined at 1.40 a.m., it cannot be said that the F.I.R. is ante-timed. In a case like this, naturally two or three hours will take in going to the police station and lodging the F.I.R. The F.I.R. is neither too prompt, nor late and nor ante-timed.

30. Our attention was drawn that the time of occurrence may be of the night but the F.I.R. itself shows that chaukidar Mahadeo, who had lodged the F.I.R., has clearly mentioned in the F.I.R. that it was about 6 p.m. and the sun had not yet set. It was the month of April and he was cutting the grass. Naturally, nobody will cut the grass after sunset or in the night. This is a very natural fact and nobody will unnecessarily introduce this fact for nothing if he was not cutting the grass. Secondly, all the witnesses have stated that the occurrence took place at about sunset. They were not specifically cross-examined that the occurrence took place in the night. The doctor has also proved that the death may have been caused at or about 6 p.m. All these facts conclusively proved that the occurrence took place at about 6 p.m. It was

argued that Brij Mohan Singh, Harnam Singh and Sakhi Devi, being partisan witnesses, are interested one and no independent witness has been examined in this case. Ashok Singh is independent witness. He has been examined in this case. It is not clear whether the statement of Ram Manohar Singh u/s 161, Cr. P.C. was recorded or not but Ram Manohar Singh definitely will not give evidence because no person will like to die for nothing. Fire was also not aimed at him. Accidentally when fire was made at Udaiveer Singh alias Munni Singh, Ram Manohar Singh was hurt. He might have been persuaded that there was no attempt on him. It is only his bad luck that he got the injury. He should not come in the way otherwise he may be eliminated. Naturally, a person who had witnessed such ghastly murders would be under fear that he shall be killed if he gives statement. Therefore, in all probability, it appears that Ram Manohar Singh escaped after receiving injury, what to give statement in the Court, he was not even interrogated by the police. No outsider will give statement in such a case. The witnesses, who have been examined in this case, had got no reason to falsely implicate innocent persons. There was also no other enemy of the victims who could have done such brutal murders of as many as five persons in the village. The occurrence took place as a naked dance in the village. It cannot be said that nobody had seen the occurrence. In these circumstances, the witnesses examined in the case are natural witnesses. Sakhi Devi is a lady. She must reside in the house in the evening. If she saw the murder of Ram Dulari, it is very natural. Threshing was going on at the tube-well when Ram Saran Singh and Ram Lakhan Singh were there, they were killed there. No other place of occurrence has been suggested. Therefore, if they were, there was probability of Brij Mohan Singh and Hamam Singh also to be there at the time of threshing. It was not improbable, rather it was most natural. Witnesses examined in this case are most natural and probable witnesses and they cannot be disbelieved merely because they are of the family of the victims.

31. The occurrence took place in three parts ; first at the tube-well, second at the shop and the third at the residence. All the accused persons went to each and every place and were of the common object. They were armed with deadly weapons. Therefore, even if one murder is proved by them individually, that is sufficient for their conviction. It is not the case of the accused side that some of the persons have been murdered by them and the other by others. If they murdered one, they murdered all of them. In the circumstances, the witnesses are wholly believable and reliable and they have proved all the material aspects of the case. As stated above, factor of death of the victims, identity of victims, place of occurrence and weapons of assault etc. have not been challenged. The accused persons have only challenged their implication.

32. It was again argued that the F.I.R. has not been proved because the informant has not been examined. The informant Mahadeo was already dead before he could be examined. This has specifically come in the statement of Harnam Singh in the last line of his examination-in-chief that chaukidar Mahadeo Is dead. F.I.R. has got no

relevancy except it has brought the machinery of law into motion. Scribe of the F.I.R. has been examined. The I.O. has also been examined. It has been proved that it was lodged at the police station. Even if Mahadeo could not be examined that is not fatal for the prosecution also. He was not an eye-witness, he could have only stated that he had informed the factum at the police station what he was told by the witnesses in the village.

33. It was also argued that Raju could not be examined. One can imagine the mental status of a boy of nine years in whose family, the entire family members have been killed. P.W. 4, Ashok Singh has stated that at the time of occurrence, the age of Raju might have been nine years. We have to blame none. There are allegations and counter-allegations which delayed the trial of the case but still this is a hard fact that the occurrence took place in 1980, charges could be framed in 1988 and P.W. 1, Brij Mohan Singh was examined on 15.10.1990, P.W. 2, Harnam Singh was examined on 23.9.1991. Sakhi Devi and Ashok Singh were examined on 25.11.1991. Evidence was concluded on 6.6.1995 and then the judgment could be delivered on 28.11.1997. Judicial notice of the fact can be taken that the memory of the child is very weak. Raju may not have any memory of the occurrence. Therefore, if the prosecution did not examine him, it cannot be said to be fatal had he been examined, the accused persons could have argued that look here, he was a boy of nine years when the occurrence took place. He has grown up of an age of 25 years when he is being examined, what memory he may have of his tender childhood? Both ways the Appellants could have tried to gain but it is clear that non-examination of Raju is not at all fatal to the prosecution.

34. The case has to be decided on the merits of the statement of the witnesses already examined and all the four eye-witnesses are fully believable and natural witnesses and if they are able to prove any of the incidents, the entire incident stands proved.

35. We have gone through the judgment recorded by the learned Sessions Judge. He has very well discussed the entire material on record and we fully agree with his findings. There is nothing to differ from his findings.

36. It is thus established that the Appellants have killed the victims and have rightly been convicted by the learned Sessions Judge for the offence punishable Under Sections 148 and 302, I.P.C. read with Section 149, I.P.C. and their conviction in these sections is upheld.

37. As regards the conviction of the Appellants Under Sections 380 and 404, I.P.C, we want to give the Appellants benefit of doubt, not for the reasons that the offence is not proved but merely for the reasons that the main assailants had motive to kill only. They had not gone to loot. It appears that there were two unknown hired persons also with them and during the course of murder, these unknown persons might have developed a greed to take the ornaments and that may be their

individual act. They could not be even apprehended. It is also not clear who removed these articles. In these circumstances, it shall not be safe to convict the Appellants of the offence punishable Under Sections 404 and 380, I.P.C, although on facts it is proved that the golden ornaments of Sakhi Devi and Ram Dulari were removed and taken away by the assailants. There is yet an other reason to give benefit of doubt. Application was given by Sakhi Devi later on and may be hit by Sections 161 and 162, Code of Criminal Procedure Therefore, we are inclined to give the Appellants benefit of doubt Under Sections 404 and 380, I.P.C.

38. As regards conviction of the Appellants u/s 307 read with Section 149, I.P.C. for assaulting Ram Manohar Singh ; Ram Manohar Singh has also not been examined. The prosecution itself has argued that his injuries were not serious. There also no intention to attack Ram Manohar Singh. All of a sudden, he came in the way and received injuries. Where fire hit him is not clear and as there was no Intention of the other accused persons to assault Ram Manohar Singh nor there was any common object to attack over him, the others cannot be fastened with the liability of fire over Ram Manohar Singh. In these circumstances, It is safe and proper to give the accused persons benefit of doubt of the charge Under Sections 307 and 149, I.P.C. although it is fully proved that Ram Manohar Singh was also injured in the said incident. In the circumstances, conviction of the accused persons and consequential sentence u/s 307 read with Section 149, I.P.C. and Sections 404 and 380, I.P.C. is to be set aside.

39. The learned Sessions Judge has given death punishment to the Appellants for the murders of Ram Lakhan Singh, Ram Saran Singh, Narpat Singh, Udaiveer Singh alias Munni Singh and Ram Dulari. Ordinarily, in the manner in which the offence has been committed, they deserve this punishment but the fact remains that the offence is of 1981, conviction has been recorded in 1997, after 16 years and now two more years have passed. After 18 or 20 years of the offence, when young man has grown old and they have suffered the agony of the trial for about eighteen years, it is not just and proper to sentence them to death. Their life imprisonment, in the circumstances discussed hereinbefore, shall be just and proper punishment for them. The sentence of death punishment is now altered into life imprisonment.

40. All the appeals (Crl.) Appeal Nos. 2200, 2201, 2219 and 2220 of 1997) are hereby partly allowed and partly dismissed.

41. Conviction and sentence of the Appellants u/s 307 read with Sections 149, 404 and 380, I.P.C. is hereby set aside. They are acquitted of these charges. As regards the conviction and sentence of the Appellants u/s 148, I.P.C, it is hereby confirmed.

42. As regards the conviction of the Appellants for the murders of Ram Lakhan Singh, Ram Saran Singh, Udaiveer Singh alias Munni Singh, Narpat Singh and Ram Dulari, they have been charged separately but they have been given cumulative sentence of death for all these murders. Their death sentence is hereby modified

and altered to life imprisonment. The Appellants shall undergo life imprisonment on each charges of murder but their sentences shall run concurrently.

43. The reference for the confirmation of death sentence is hereby rejected.

44. Accused persons appear to be in jail in connection with their death sentence. They shall remain in custody to serve out the sentence of life imprisonment.

45. Let a copy of this judgment be placed on the record of Crl. Appeal Nos. 2201 of 1997, 2219 of 1997 and Crl. Appeal No. 2220 of 1997.