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**(2013) 07 AHC CK 0257**

**Allahabad High Court**

**Case No:** Criminal Appeal No. 779 of 1983

Lal Singh and Another

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** July 22, 2013

**Citation:** (2013) 83 ALLCC 66

**Hon'ble Judges:** Surendra Kumar, J; Ravindra Singh, J

**Bench:** Division Bench

**Advocate:** R.K. Shanglo, S.M.A. Abdy, S.S. Rajput, S.K. Srivatava and Prashant K. Lal, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

Surendra Kumar, J.

Heard Sri S.M.A. Abdy, learned Counsel for the appellants and learned AGA for the State of U.P. The appellants Lal Singh and his son Soran have preferred this appeal against their conviction dated 16.3.1983 and sentence dated 24.3.1983 passed by the Additional Sessions Judge/Special Judge, Aligarh, in Session Trial No. 112 of 1982 relating to Case Crime No. 176 of 1981, Police Station Barla, District Aligarh by which they have been convicted u/s 302 read with section 34 IPC and sentenced to imprisonment for life to commit murder of Gainda Lal aged about 50 years in village Mudhail, Police Station Barla, District Aligarh, by making fire shot from Katta/Tamancha at the deceased around midnight of 4/5.10.1981.

2. After filing the appeal before this Court, one appellant Lal Singh died, therefore, his appeal stands abated. Thus the appeal filed on behalf Soran is being heard and decided.

3. According to the prosecution version, the deceased along with his son" Prem Singh PW-1, the step mother of PW-1 and two brothers and three sisters of PW-1 used to reside in a hut by the side of his 11 Bighas Kham agricultural land about 65 paces away from the village Abadi. On the said night, two appellants viz. Lal Singh

and his son Soran each armed with country made pistol are said to have barged in the Gher of the deceased Gaiinda Lal when the deceased was sleeping on the Chabutara in his Gher. On the two sides, the wife of the deceased Smt. Shiamwati CW-1 and her 16 years old daughter Km. Ramwati were sleeping on separate cots. In the verandah, in front whereof, was Chabutara on which these people were sleeping and a lantern was burning. The appellants are said to have dragged the deceased outside the Gher in the filed and both of them fired upon him therein with their respective pistols consequence whereof the deceased fell down on the ground. PW-1 who was sleeping in the Chhappar/thatched structure inside the Gher was roused by cries of his father. He cried at the top of his voice for help but the appellants did not leave before accomplishing their mission. Other witnesses including Nawal Singh PW-2 also arrived at the scene of the occurrence on noise being raised and saw the macabre scene of the deceased being done to death by the two appellants. The widow of the deceased Smt. Shiamwati CW-1 also witnessed the horrible scene of her husband being killed at the hands of the appellants but could do little.

4. On sustaining the injuries, the deceased slumped and he was brought back in the Gher but he again fell down inside the Gher. The deceased was heard saying at that time, two appellants had fired upon him. The deceased was thereafter taken by PW-1 in a Tonga to Police Station Barla which was about 2 Kilometers away, where the First Information Report Ext. Ka-1 which had been got written by PW-1 from his cousin Soran Singh, was registered at 1:15 a.m. u/s 307 IPC. Both the appellants were named in the First Information Report. At the police station, the Investigating Officer PW-7 recorded the statements of Gaiinda Lal (deceased) who was then in a critical condition which has become on his death his dying declaration Ext Ka-13.

5. From the police station, the deceased was sent along with a constable to Primary Health Centre, Barla where necessary medical aid was provided by Dr. B.S. Dhariwal PW-3 who prepared his injury report Ext. Ka-2 and found the following injuries on his person:--

(i) Gunshot wound 4 cm x 3 cm. wound of entry with margins inverted and 6 cm x 3 cm., wound of exit, margins everted. Fresh bleeding. No blackening of skin.

(ii) Multiple gunshot wound on the right side abdomen 23 cm x 25 cm x muscle deep. There was blackening of skin.

The doctor further noted that the condition of the patient was serious, he was pulseless and his respiration was irregular. B.P. 60/50.

The injury report Ext. Ka-2 mentions that "Detail injury was not possible in the interest of the patient's life, referred to M.S. Hospital, Aligarh.

6. Dr. B.S. Dhariwal PW-3 said in his statement that he had forgotten to mention the seat of the injury No. 1. However, from injury No. 1 given in the post-mortem report,

it appears that this injury was on the right upper arm. According to him, the injuries were sufficient in the ordinary course of nature to cause death.

7. The deceased succumbed to his injuries at about 6:30 O" clock in the morning on the same day i.e. 5.10.1981 at Primary Health Centre, Chharrah.

8. Post-mortem on the dead body of the deceased Gaimda Lal was conducted by Dr. V.P. Agrawal PW-6 who found the following ante mortem injuries on the dead body of the deceased vide post-mortem report Ext. Ka-7:--

(i) Gunshot wound of entry 2 1/2 " x 1" x muscle deep over right upper arm outer side and lower part. Margins inverted ecchymosed. No blackening, tattooing or charring present

(ii) Exit wound 4" x 2" x muscle deep on probing corresponds to injury No. 1. Margin everted inner side right upper arm.

(iii) Multiple gunshot wounds of entry in an area of 8" x 5 1/2 " in front of chest, just below right nipple and upper part of abdomen. Each of the size of 2/10" x 2/10" x chest and abdomen deep. No blackening, tattooing and charring around.

9. According to the doctor, injuries were sufficient in the ordinary course of nature to cause death.

10. The investigation of the case was conducted by Sub Inspector Sri Kanchhi Singh PW-7, who was then posted as IInd Officer at Police Station Barla. He proceeded to the spot and recorded statements of the witnesses. He prepared the site plan Ext. Ka-8, collected blood stained and plain earth from the place where he found blood vide memo Ext. Ka-9 and prepared inquest report Ext. Ka-10 and other papers Ext. Ka-11 and Ext. Ka-12 relating to the dead body. Thereafter, the investigation was taken up by the Station House Officer Sri Mahavir Singh PW-5 who after completion thereof, submitted charge-sheet Ext. Ka-6 against the appellants on 19.12.1981 under sections 307 and 302 IPC.

11. The surviving appellant and another were charged u/s 302 read with section 34 IPC by the Trial Court to which they pleaded not guilty and claimed to be tried on the said charge.

12. In order to prove the prosecution case, the prosecution examined Prem Singh, the first informant PW-1, Pradhan Nawal Singh PW-2 and Smt. Shiamwati, wife of the deceased CW-1 in the eye-witnesses account.

13. In the formal evidence, the prosecution examined Dr. V.S. Dhariwal PW-3 who proved inquiry report of Gaimda Lal Ext. Ka-2, Constable Lala Ram PW-4 who proved taking of the dead body along with other Constable Ramvir Singh in a sealed condition along with papers relating to the inquest etc. for post-mortem and handed over the dead body to the doctor. According to him, the seal of the dead body was not allowed to be touched or tampered with by any person when the dead

body was in his custody. He also proved G.D. entry Ext. Ka-3, Ext. Ka-4 and Ext Ka-5 which were prepared in the handwriting and signature of the then H.C. Murari Lal Sharma. Ext. Ka-3 is G.D. of registration of Crime and Ext. Ka-4 is G.D. of conversion of the case from section 307 IPC to section 302 IPC. These G.Ds. were also proved by this PW-4.

14. The prosecution has also examined Sri Mahavir Singh PW-5 the then S.H.O. who took over the investigation of the case on 18.10.1981 from S.I. Kanchhi Singh, who was the first Investigating Officer PW-7 on the basis that investigation of the heinous crime should preferably be conducted by S.H.O. This witness recorded statements of the prosecution witnesses and he on finding sufficient evidence against the accused persons regarding the said murder submitted charge-sheet Ext. Ka-6 on 19.12.1981. All the facts were proved by both the Investigating Officers in their evidence in the Trial Court.

15. The prosecution also examined Dr. V.P. Agrawal PW-6 who conducted post-mortem of the dead body of the deceased Gaimda Lal and prepared post mortem report Ext Ka-7. This witness was cross-examined by the defence side in the Trial Court regarding the period during which Gaimda Lal would have died after receiving the aforesaid firearm injuries. This witness stated in his evidence that the deceased would survive for less than one hour, but no firm indication can be given as to how long a man survive after sustaining a particular kind of injury.

16. The prosecution also examined Sub Inspector Kanchhi Lal who was First Investigating Officer as PW-7. According to evidence of this PW-7, the First Information Report of the incident was lodged on 4/5.10.1981 at 1:15 O" clock in his presence and immediately thereafter the witness started investigation and just then he recorded the statement of Gaimda Lal at Police Station. The condition of the injured Gaimda Lal was critical hence he was immediately sent to Primary Health Centre, Chharrah through the Constable Radha Charan for treatment. The witness, just after lodging of the First Information Report at the Police Station, recorded statement of the first informant Prem Singh PW-1 u/s 161 Cr.P.C. and proceeded to the place of the occurrence. Thus at the said night, the witness tried to search out the accused persons but could not locate them. The witness just in the morning made spot inspection at the pointing out of the witnesses and prepared site plan Ext Ka-8, took blood stained and plain earth from the place of the occurrence and sealed them in separate pots preparing the memo Ext. Ka-9 thereof. On the death of the injured Gaimda Lal the case was converted to section 302 IPC by making G.D. entry. Thereafter, this Investigating Officer reached Primary Health Centre, Chharrah, District Aligarh on 5.10.1981 at 9:45 a.m. conducted inquest on the dead body, prepared inquest report Ext. Ka-10 and also prepared other papers Photonash (sketch map) and Chalannash Ext. Ka-11 and Ext Ka-12. After the inquest, the dead body was sealed in a piece of cloth and men handed over to the Constable Lala Ram PW-4 along with papers for postmortem. According to evidence of this PW-7

Investigating Officer, he recorded statement of the injured Gainda Lal at Police Station and condition of the injured was very critical but he was easily speaking and at the time of taking his evidence, none else was present there. This witness filed and proved the statement/dying declaration of the injured Gainda Lal as Ext. Ka-13 in the Trial Court.

17. It is evident from cross-examination of Sri Kanchhi Singh PW-7 that the First Information Report was registered u/s 307 IPC at Crime No. 176 of 1981 and he himself prepared Chitthi Majroobi Ka-1 which was on the back of Ext. Ka-2. The witness explained in his statement that since the incident was of night, Police Station Barla was about 20 kilometers away from Tehsil Atrauli hence he did not try to call the Magistrate from Tehsil Atrauli for the purpose of recording statement of the injured Gainda Lal. According to the evidence of this witness, he himself recorded statement of the injured Gainda Lal as condition of the injured was critical and injured was immediately sent to the hospital for treatment. Thus, it is evident from evidence of this PW-7 that there was no sufficient time to call the Magistrate for recording the dying declaration of the injured and this fact had satisfactorily been explained by the witness. This PW-7 clearly deposed in his evidence that he prepared site plan of the place of the occurrence in the presence of the first informant Prem Singh. This Investigating Officer did not indicate the place in the site plan from where he had taken blood stained earth. He was not shown any lantern or torch by the first informant Prem Singh or any other witness.

18. Surviving appellant Soran was examined u/s 313 Cr.P.C. who denied the prosecution story and stated that there was no ill will between him and the deceased prior to the occurrence. He further stated that at the time of the incident in the night, he was at his house and heard noise emanating from Gher of Gainda Lal around mid night and then he along with other persons reached there. The appellant came to know there that some dacoits had attacked the house of Gainda Lal and had shot Gainda Lal dead. He had seen Gainda Lal in critical and serious condition in the field of Gainda Lal and at that time Gainda Lal was still alive. In respect of recording statement of the injured Gainda Lal u/s 161 Cr.P.C. proved as dying declaration on the death of Gainda Lal, this appellant replied that he had gone upto Police Station with the injured Gainda Lal and no such statement of the injured was recorded because of serious condition and he was not in a position to give statement. According to the appellant, the prosecution witnesses deposed falsely in the Trial Court. The appellant adopted the same statement as made by his father co-appellant Lal Singh u/s 313 Cr.P.C., according to which Nawal Singh was unhappy with Damodar son of the appellant Lal Singh who filed a report Ext. Kha-2 against his brother Bhoj Raj. No defence evidence was adduced by the appellants in the Trial Court.

19. As stated above, the prosecution examined three eye-witnesses namely Prem Singh PW-1 first informant, son of the deceased, Nawal Singh PW-2 and Smt.

Shiamwati CW-1 wife of the deceased. It is very necessary to go through the evidence of these eyewitnesses.

20. According to the evidence of Prem Singh PW-1, the deceased Gainda Lal was his father, and the deceased Gainda Lal had 11 Bighas Kham agricultural land which he used to cultivate. The Gher of the deceased was adjoining to the agricultural land of the deceased which was situated towards the east. The witness was residing in his Gher along with step mother Shiamwati, father Gainda Lal, brothers and sisters since his childhood. Ten years ago, his father got the house constructed in Abadi of the village since that house did not have any doors, none used to reside there. All the family members of the witness used to reside in the aforesaid Gher, which had also no doors. At the time of the occurrence, this Gher was 65 steps away from village Abadi. There was pathway towards the west to the Gher of the witness and there was primary school which was lying deserted/closed for about five years, just behind the school, there was house of Nawal Singh PW-2 and this Nawal Singh was Ex-Pradhan of the village who was defeated in the election held four months back.

21. It emerges from cross-examination of this PW-1 that both the appellants are resident of the same village as that of PW-1 having their own agricultural plots. About three months prior to the occurrence in hand, Bhoosaburji/enclosure for storing Bhoosa/straw of the deceased was being erected. Ram Prakash younger brother of PW-1 who was then 10 years old went to call some persons from the village for the said purpose. During this period, some children threw stone in the house of the accused persons. The accused persons suspected that stone had been thrown by Ram Prakash, therefore, Ram Prakash was given beating. Ram Prakash returned weeping to his house and then the deceased as well as mother of Ram Prakash went to the house of the accused to enquire as to why they whacked their son. On this, there was altercation between them and the accused Soran told the deceased that he would kill him, since then there had been uninterrupted hostility between the deceased and the accused persons. Thus, this PW-1 narrated about motive and previous enmity between two sides existing prior to this incident of murder in his evidence.

22. Prem Singh PW-1 further deposed that around 12:00 O'clock in the intervening night of 4/5.10.1981, witness was sleeping under matched structure situated inside his Gher and his father (deceased) was sleeping on Chabutara just in front of verandah. Smt. Shiamwati mother and Ramwati sister aged about 16 years were sleeping on the separate cots on the sides of the cot of the deceased at the time of the incident. One lantern hanging from ceiling of the verandah by a hook was throwing light in the nearby area and then around 12:00 O'clock in this night, this witness heard the alarm and cries of his father. The witness holding Lathi immediately reached on the Chabutara where he saw both the accused persons armed with Kattas were present. It was one of the accused Lal Singh who exhorted his son co-accused Soran to murder Gainda Lal, just then both the accused persons

caught hands of the deceased and dragged him to the nearby field of the deceased to a distance of about 28 steps from his Gher. The deceased and the accused persons were closely followed by this witness who was raising alarm and cries to save his father. In the field, each of the accused persons fired one shot from their respective Kattas at the deceased and then they ran away from the field, just at the time of the incident, other witnesses Kishan Lal and Nawal Singh PW-2 and other villagers immediately reached there and witnessed the whole incident. The witness tried to lift the deceased Gaimda Lal from that place but Gaimda Lal in spite of being in critical condition himself walked upto his Chabutara. He was telling that the accused persons Lal Singh and Soran had fired shots at him. Gaimda Lal in critical condition was taken in Tonga to Police Station. The distance of Police Station Barla from the house of the witness was about 2 kilometers which was covered by Tonga where the witness reached about 1:00 a.m. and handed over the written report Ext Ka-1. The Investigating Officer interrogated Gaimda Lal just outside Police Station when he was in Tonga and at the same time PW-1 was also interrogated by the Investigating Officer. From Police Station, Gaimda Lal was sent through some constable to the hospital Chharrah where his medical examination was conducted and during treatment, Gaimda Lal breathed his last around 6:30 a.m.

23. PW-1 Prem Singh was cross examined at length by the defence side. It emerges from cross-examination of this PW-1 that night of the incident was dark, light of the lantern was available at the time of the incident at that place. The witness had shown the place to the Investigating Officer where lantern was hanging and burning at the relevant time. It is also evident from cross-examination of this PW-1 that his father Gaimda Lal was a witness of the accused persons in some criminal case of the year 1977 which was registered u/s 324 IPC against Mange Ram who was brother of Nawal Singh PW-2. This fact shows that at one point of time, Gaimda Lal was in favour of the accused persons and till year 1977, there was no enmity between the deceased and the accused persons. This PW-1 was suggested by the defence side that the witness was not pleased with his father (deceased) because his father was not willing to give any land to the witness and the deceased wanted to execute some deed of Will in favour of the son of his second wife and due to this fact, the witness got his father Gaimda Lal murdered. This suggestion was emphatically denied by PW-1. This PW-1 sincerely accepted in his cross-examination that PW-2 Nawal Singh had a licensed gun but when PW-2 came to the place of the occurrence at the relevant time, he was holding Lathi in his hand. PW-2 reached the place of the occurrence without his licenced gun. PW-1 was further crossed examined about the fact that when his father Gaimda Lal was fired upon by the accused persons, he did not try to save his father. The witness replied that since he was alone and the accused persons were holding Kattas in their hands, he could not do anything to save his father. It is further evident from cross-examination of PW-1 that when fire shot hit his father, electric pole was 4-5 steps away from the place where the deceased sustained fire shot and at the relevant time of incident, no bulb was giving

out light.

24. It emerges from cross-examination of PW-1 Prem Singh that one fire was made by each of the accused persons and after being hit by fire shots, his father fell at the place where he was hit by the fire shots. The blood fell upon that place and trail of the blood continued upto the place where his father fell down. The witness could not show trail of blood to the Investigating Officer, as he had gone with his father to the hospital. It further emerges that his father Gainda Lal was interrogated by the Investigating Officer at Police Station and just then this witness was also interrogated. His father in critically injured condition was taken from Police Station to Hospital at Chharrah. The witness could not clearly tell as to which of the two accused persons fired first shot. When first fire shot was made by one of the accused persons, another accused was holding his father. The witness could not exactly tell whether the first fire shot was made from front side or back side. It was suggested to this PW-1 by the defence side that some miscreants came at the house of the deceased in the night and when the deceased hotly chased the miscreants, they fired at the deceased causing injuries to the deceased and by that time, the witness arrived at the spot, those miscreants had already fled. It was also suggested to this PW-1 that he did not witness the said incident. All these suggestions were categorically denied by this PW-1.

25. Now we come to the evidence of Nawal Singh PW-2 who was Ex Pradhan of the village. This PW-2 had been Pradhan of the village for about 20 years. His house was 4-5 paces away from the house of PW-1. According to the testimony of PW-2 Nawal Singh, family of the deceased as well as accused persons were known to the witness previously. The witness was sleeping in the house when he heard noise around mid night, he proceeded to the place of the occurrence with Lathi and torch in his hands. He saw that both the accused persons were dragging the deceased Gainda Lal outside Gher and both of them fired with their respective country made pistols upon Gainda Lal and then they ran away, The deceased Gainda Lal after being hit by the fire shots loudly cried that he had been shot at by the accused persons Soran and Lal Singh. Gainda Lal in critically injured condition was able to come upto Chabutara of his Gher with slight support of his son Prem Singh. PW-2 clearly deposed that since the accused persons were armed with country made pistols, the witness and others could not dare to challenge or intervene or hotly chase the accused persons.

26. PW-2 Nawal Singh was extensively cross-examined by the defence side. It transpires from cross-examination that the appellant Soran is married having one son and he is poor daily wager. This witness had 12 bore licenced gun prior to the incident. On hearing alarm and noise, he could not take his gun as he preferred to proceed to the place to find out the matter with Lathi and torch in his hands. Since this PW-2 at the time of hearing noise was not having his gun with him, he had to rush to the place of the incident without gun. This PW-2 clearly deposed that he does not keep his gun with him while sleeping.



27. It is further evident from cross-examination of this PW-2 that there is no difference in pulling and dragging and the place from where Gaimda Lal was dragged at the relevant time was ploughed one. The witness saw dragging of the deceased Gaimda Lal in the light of the torch. At the time of the said dragging of Gaimda Lal by the accused persons, this PW-2 was about 30 steps away from place of dragging and both the accused persons had Kattas in their hands. Gaimda Lal fell on the ground after being hit by fire shots. When witness reached to Gaimda Lal just then Gaimda Lal told the witness that Soran and Lal Singh had shot him. Gaimda Lal remained conscious throughout the incident and even after being hit by the fire shots, he continued to be conscious till he reached near Chabutara after the incident. This witness accompanied Gaimda Lal and Prem Singh upto the Police Station only. As per evidence of this PW-2, Prem Singh supposed his father Gaimda Lal by holding his arms upto Chabutara, hence no blood from injuries of Gaimda Lal touched the hands of Prem Singh. It is further evident from cross-examination of PW-2 that statement of Gaimda Lal u/s 161 Cr.P.C. was recorded by the Investigating Officer at Police Station just after arrival of Gaimda Lal at Police Station, thereafter he was immediately sent to the Hospital. This PW-2 denied the defence suggestion that he had falsely deposed at the instance of Prem Singh due to old enmity and litigation.

28. Now we describe the evidence of Shiamwati CW-1, wife of the deceased Gaimda Lal. She was examined as Court Witness. After narrating the prosecution version as deposed by PW-1 and FW-2, she unhesitatingly named both the accused persons as murderers of her husband. She said that she was steeping at the said night on separate cot by side of her husband on Chabutara. Both the accused persons came and dragged her husband outside Gher and fired upon her husband from country made pistols/Kattas held by them, which caused death of her husband. Each of the accused persons fired one shot Injuries caused by fire shots resulted into the death of her husband.

29. Shiamwati CW-1 was also cross examined by the defence side. Why would she falsely implicate the accused persons in the murder of her husband, is the question which remains unanswered in the cross-examination made by the learned Counsel for the accused persons. The only suggestion given to her in the cross-examination was that she was implicating the accused persons at the behest of Pradhan Nawal Singh PW-2 but she firmly denied the same. Another suggestion given to her was that there was dacoity at the house of the deceased in which Gaimda Lal was killed, she also categorically denied the suggestion. Her cross-examination fails to provide any ground to infer that she is falsely implicating the accused persons in the murder of her husband. There is no such reason to disbelieve her testimony.

30. Apart from these three eyewitnesses, there is evidence of dying declaration Exhibit Ka-13 made by the deceased against the accused persons in his statement recorded u/s 161 Cr.P.C. by the Investigating Officer Kanchhi Singh PW-7. Gaimda Lal

was interrogated soon after at Police Station by this PW-7 while Gainda Lal was in the Tonga just at Police Station.

31. Now we deal with the contentions raised by the learned Counsel for the appellant during course of the arguments. First contention is that the presence of the eye-witnesses on the place of the occurrence at the time of incident is doubtful. Three eyewitnesses of occurrence PW-1, PW-2 and CW-1 stridently supported the prosecution case without an iota of ambiguity that they were able to see and identify the accused persons/appellants. All these eye-witnesses furnished truthful account of the incident and there is nothing in their evidence which may create any doubt to disbelieve their testimony. The accused persons were fully known to the witnesses and known persons can be easily identified even in the darkness of the night.

32. It has come in the evidence of PW-1 that at the night of the occurrence, sky was clear as such even if we proceed on the assumption that the light of lantern and torch was not available, it would not be possible to reject the evidence of eye-witnesses on the ground of non-availability of the light. In this connection, we should not lose sight of the fact that power of vision in a person of the town accustomed to brilliant electric light and in a person of village, accustomed to darkness is not on the same level. The light of kerosene oil lantern or torch may be sufficient for villagers but of very little help to dwellers of the town.

33. Shiamwati CW-1 was fully able to see the accused persons at a very close proximity because she was sleeping by side of the deceased. Similarly, PW-1 came rushing to the scene of the occurrence on the cries of his father deceased and he was fully able to see the accused persons at a very close proximity. Nawal Singh PW-2 is said to have seen the accused persons from a distance of 30 paces and he was fully able to see figure and outline of the accused persons clearly, if not their faces. All these three eye-witnesses must have been able to see the incident.

34. It is proved from eye-witnesses account that light of torch or lantern was available at the relevant time on the place of the occurrence. It is not justifiable to eliminate possibilities of both these sources merely because the Investigating Officer had not prepared memos of torch and lantern or did not see them.

35. PW-2 Nawal Singh is also independent and reliable witness and there is no reason to disbelieve that he deposed falsely that he went to the spot with torch in his hand. The torch in the village is commonly used and it was quite natural for the witness to have gone to the place of the occurrence with torch in his hand. It is also mentioned in the First Information Report about other witnesses including PW-2 that they had brought torches with them while rushing to the place of the incident. PW-2 was a close neighbour and it was quite natural for PW-2 to have aroused on cries emanating from house of PW-1 and to have proceeded there immediately with Lathi and torch in his hand. Shiamwati CW-1 was asked in cross-examination

whether witnesses who arrived at the scene had brought Lathis or torches with them or not. She replied in affirmative.

36. As regards PW-1 and PW-2, there was light of lantern available which was burning in verandah and they could see the accused persons in the light. It is established from testimony of PW-1 that lantern was burning in the verandah at that time. It is available in the evidence of CW-1. The availability of light became implicit in the evidence of CW-1 when she said that she was able to see and identify the accused persons.

37. So far as the contention of the learned Counsel for the appellant that eye sight of PW-2 was weak and he could not have been able to see the accused persons in the dark night is concerned, the same is not acceptable to us. This argument is based on the statement of PW-2 who developed cataract in his right eye since last two months and his left eye was operated three years earlier. It cannot be inferred from this part of evidence of PW-2 that his eye sight was so weak that he could not properly visualise the objects before him. PW-2 was suggested that he suffered with night blindness, the witness denied the suggestion. PW-2 seems to be respectable and independent witness and there is nothing in his evidence which would indicate that he was interested in false implication of the accused persons in this crime. There is no sufficient reason to reject or discard evidence of PW-2.

38. Now we discuss the material contradictions and discrepancies pointed out in evidence of these three eye-witnesses in this case of murder. PW-1 at one place deposed that his father after being hit with fire shots fell on the ground and his father came to Chabutara oh his own without any support of any witness. PW-2 in his cross-examination at one place deposed that Gaimda Lal after being hit by fire shots came with support of a person in the verandah. CW-1 in her cross-examination stated that it was her son PW-1 who had brought her husband from field and during that process of bringing, clothes of Prem Singh PW-1 also got stained with blood of the deceased Gaimda Lal and those clothes were shown to the Investigating Officer.

39. Shiamwati CW-1 mentioned no lantern in her evidence whereas she claims to have seen the incident from Chabutara. As per evidence of PW-1, he did not show blood stains to the Investigating Officer as he had taken his father to Hospital and when his father reached Hospital, his father was in conscious state and was coherently speaking. It means that Gaimda Lal was able to speak till he reached Hospital with his son PW-1.

40. After considering all these facts, we find that these are very minor and immaterial contradictions or discrepancies, which do not go to the root of the matter and do not create any doubt in our mind regarding complicity of the accused persons in this murder. If some omissions or mistakes are inadvertently due to lack of knowledge committed by any Investigating Officer, evidence of those eye-witnesses, who are found truthful, credit worthy, reliable and natural, cannot be

discarded or thrown away.

41. From above discussions of evidence of eye-witnesses, their evidence appears to be natural, truthful and fully reliable. In the facts and circumstances of the case, there is no ground to suspect their presence at the place of the incident.

42. On the point of interested witnesses, the Hon"ble Supreme Court in [State of U.P. Vs. Jagdeo and Others](#), observed that only on the ground of interested or related witnesses, their evidence cannot be discarded. Most of the times eyewitnesses happen to be family members or close associates because unless a crime is committed near a public place, strangers are not likely to be present at the time of occurrence.

43. In [Mst. Dalbir Kaur and Others Vs. State of Punjab](#), following observations were made:--

(i) Interested witness:--Relatives who are natural witnesses are not interested witnesses and their testimony can be relied upon.

The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused is somehow or the other is convicted either because he had some animus with the accused or for some other reason. In the reported case the incident took place at mid night inside the house, the only natural witnesses who could be present to see the assault were the persons present in the house at that time. No outsider can be expected to have come at that time because the attack was sudden. Moreover a close relative who is a very natural witness cannot be regarded as an interested witness.

(ii) Witness gained over by accused not examined by the prosecution--Held withholding or keeping back of witnesses is not unfair and adverse inference cannot be drawn. There is no duty on the prosecution to examine witnesses who might have been gained over by accused and even if those witnesses are not produced by the prosecution, there is nothing to stop accused from applying to the Court for examining such witnesses.

(iii) witness who gives details with absolute accuracy is trustworthy.

44. In [Yakub Ismailbhai Patel Vs. State of Gujarat](#), and also [State of Uttar Pradesh Vs. Devendra Singh](#), , it was observed by the Hon"ble Supreme Court that human behaviour or conduct of a witness depends upon facts and circumstances of each given case and there is no set rule of natural reaction. The evidence of any eyewitness cannot be discarded merely on the ground that he did not react in any particular manner in a particular situation. In Yakub Ismail Bhai Patel's case, the accused inflicted injuries on vital organs of the deceased, eye-witnesses, friends of the deceased present on the spot did not go forward to help deceased at the time of incident and did not stop the accused. The Hon"ble Supreme Court observed that these cannot be the circumstances to disbelieve testimony of the said witnesses,

particularly when rest of testimony of the witnesses is tested with cross-examination.

45. In [State of Rajasthan Vs. Smt. Kalki and Another](#), it was held that in the depositions of witnesses, there are always normal discrepancies however, honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory, due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence and the like material discrepancies are those which are not normal and not expected of a normal person.

46. In [State of U.P. Vs. Anil Singh](#), it was held that a witness figured as an eye-witness in the F.I.R. cannot be categorised as chance witness if his evidence is also corroborated by other eyewitness.

47. Regarding conduct of prosecution witness, the Hon"ble Supreme Court in [Rana Partap and Others Vs. State of Haryana](#), observed that to doubt the presence of witnesses because they did not go to rescue the deceased was unnatural because no set rule of natural reaction is made. Every witness reacts in his own special way.

48. In [Chand Khan and another Vs. State of Uttar Pradesh](#), it was observed that minor discrepancies in evidence of eye-witnesses who have given convincing and reliable evidence with regard to details and manner of assault will not affect their evidentiary value. Absence or insufficiency of motive is immaterial if the incident is proved by evidence of eye-witnesses.

49. The Hon"ble Apex Court in [State of Rajasthan Vs. Arjun Singh and Others etc.](#), has recently observed that non recovery of pistol or cartridge namely crime in-criminating material or other articles does not detract the case of the prosecution where clinching and direct evidence is acceptable. Likewise, absence of evidence regarding recovery of used pellets, bloodstained clothes etc. cannot be taken or construed as no such occurrence had taken place. In this case law, regarding motive, it has been observed that motive for doing a criminal act is generally a difficult area for the prosecution to prove since one cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Even in the absence of specific evidence as to motive, in view of the fact that in the case on hand, two persons have been killed and one sustained injuries due to firearms, the case of the prosecution cannot be thrown out on this ground. It has further been observed in this case that the testimony of interested witnesses should not be rejected merely because witnesses are related to the deceased. Their testimonies have to be carefully analysed because of their relationship and if the same are cogent and if there is no discrepancy, the same are acceptable.

50. In the [State of U.P. Vs. Nawab Singh](#), it was observed that in a murder case when there is direct evidence, motive loses its importance. Some omissions in the statement u/s 161 Cr.P.C. are not sufficient to discard the truthful and creditworthy

evidence of the witness and also failure of the witness to give direction from which side the accused came caused due to illiteracy or lack of knowledge of the witness.

51. In [Brij Lal Vs. State of Haryana](#), the Hon"ble Apex Court observed that it is difficult to state the exact location where the bullet hit when firing takes place all of sudden. Such a discrepancy/contradiction or exaggeration or embellishments on the other hand only lends assurance to credibility of evidence.

52. In [Gyasuddin Khan @ Md. Gyasuddin Khan Vs. The State of Bihar](#), it was observed by the Hon"ble Apex Court that when accused caused death by firing gun shots, it is not reasonable to expect from the eye witnesses that the scared eye-witnesses would be able to give a meticulous and precise account of details of shots that landed on the deceased.

53. A Division Bench of this Court in [Naurangi Lal \(in Jail\) Vs. State of U.P.](#), while dealing with murder case observed that the prosecution story cannot be said to be doubtful merely because no blood was found on the clothes of the witnesses or because the bloodstained earth recovered from the spot was not sent for chemical examination.

54. In State of Punjab v. Hakim Singh 2005 (53) ACC 470 (SC) : 2005 (34) AIC 929 it was observed that when testimony of eye witnesses is found truthful and reliable then seizure of firearm, recovering empties and sending them for examination by ballistic expert would have only corroborated the prosecution case but not sending them to ballistic expert is not fatal.

55. Regarding evidentiary value of testimony of the interested or relatives witnesses, Hon"ble Supreme Court in [Mano Dutt and Another Vs. State of U.P.](#), has observed in paragraph No. 19 referring to the case of [Namdeo Vs. State of Maharashtra](#), that this Court drew a clear distinction between a chance witness and a natural witness. Both these witnesses have to be relied upon subject to their evidence being trustworthy and admissible in accordance with law.

56. Hon"ble Supreme Court in [Takdir Samsuddin Sheikh Vs. State of Gujarat and Another](#), has recently observed on the point of appreciation of evidence in paragraph No. 9 which reads as follows:--

We are of the view that all omissions/contradictions pointed out by the appellants' Counsel had been trivial in nature, which do not go to the root of the cause.

It is settled legal proposition that while appreciating the evidence, the Court has to take into consideration whether the contradictions/omissions/improvements/embellishments etc. had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, omissions or improvements on trivial matters without affecting the case of the prosecution should not be made the Court to reject the evidence in its entirety. The Court after going through the entire evidence must form an opinion

about the credibility of the witnesses and the appellate Court in natural course would not be justified in reviewing the same again without justifiable reasons.

57. It has been further held in *Takdir Samsuddin Sheikh (supra)*, that while appreciating the evidence of witness considering him as the interested witness, the Court must bear in mind that the term "interested" postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some other reason.

58. Hon"ble Supreme Court in [Waman and Others Vs. State of Maharashtra](#), has observed in paragraph No. 9 which reads as follows:

In [Balraje @ Trimbak Vs. State of Maharashtra](#), this Court held that mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence. It was further held that when the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically and the Court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed toward the accused. After saying so, this Court held that if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same.

59. It has been further observed in *Waman (supra)*, that relationship cannot be a factor to affect the credibility of a witness. The evidence of a witness cannot be discarded solely on the ground of his relationship with the victim of the offence. The plea relating to relatives" evidence remains without any substance in case the evidence has credence and it can be relied upon. In such a case the defence has to lay foundation if plea of false implication is made and the Court has to analyse evidence of related witnesses carefully to find out whether it is cogent and credible. The same view has been reiterated in [State of U.P. Vs. Naresh and Others](#), .

60. Hon"ble Supreme Court in the case of *Waman (supra)*, has reiterated that if evidence of eye-witnesses found to be trustworthy and corroborated, certain contradictions minor in nature and not related to major overt act attributed to each accused would not discard their testimony more so when all prosecution witnesses hailing from agricultural family and are villagers, cannot be expected to state minute details in their earlier statements and before Court.

61. Hon"ble Supreme Court in [Gosu Jairami Reddy and Another Vs. State of A.P.](#), has observed that it is not always easy for an eye-witness to a ghastly murder to register precise number of injuries that were inflicted by assailants and part of the body on which the same were inflicted. A murderous assault is often a heart-rending spectacle in which even a witness wholly unconnected to the assailant or the victim may also get a feeling of revulsion at the gory sight involving merciless killing of a

human being in cold blood. To expect from a witness who has gone through such a nightmarish experience, meticulous narration of who hit whom at what precise part of the body causing what kind of injury and leading to what kind of fractures or flow of how much blood, is to expect too much. Courts need to be realistic in their expectation from witnesses and go by what would be reasonable based on ordinary human conduct with ordinary human frailties of memory and power to register events and their details. A witness who is terrorised by the brutality of the attack can not be disbelieved only because in his description of who hit the deceased on what part of the body there is some mix up or confusion. It is the totality of the evidence on record and its credibility that would eventually determine whether the prosecution has proved the charge against the accused.

62. After a close and careful analysis of the above evidence, we find that all the three eye-witnesses have given truthful version of the prosecution story and their evidence is further strengthened by the dying declaration of the deceased. There was sufficient light on the spot at the time of the occurrence which enabled the eye-witnesses to see the incident. The statements of the eyewitnesses conform to each other, suffer from no major or minor contradictions. The presence of the eye-witnesses on the date, time and place of the incident is established beyond doubt and being natural witnesses, they were fully able to see the incident. Their testimony cannot be disbelieved just on the ground that the Investigating Officer did not prepare memo of the said lantern or torch. The investigation in this case of murder was started promptly and statements of the witnesses u/s 161 Cr.P.C. were also recorded promptly. The First Information Report of the incident was lodged within one hour and fifteen minutes in which the name of the murderers and the arms used by them were mentioned and the distance of Police Station from the place of the occurrence was about 2 miles i.e. 3 kilometers which was covered by Tonga in which Gaimda Lal in critical condition was taken first to Police Station. Thus the First Information Report in this case was lodged without any consultation or deliberation and there is no chance of any false implication of the surviving appellant Soran.

63. We had been taken through the entire record by the learned Counsel for the parties. In view of the above meticulous analysis of the whole evidence available on record, we do not find any ground, on the basis of which we may reach conclusion that any of the findings recorded by the Trial Court is improbable or does not require affirmation. We do not see any cogent reason to interfere with the judgment of conviction dated 16.3.1983 and order of sentence dated 24.3.1983 passed by the Additional Sessions Judge/Special Judge, Aligarh. Consequently, the impugned judgment of conviction and order of sentence of the appellant Soran is hereby affirmed. The appeal filed by Soran lacks merit and is, accordingly dismissed.

64. Since the appeal is dismissed, the bail bonds and surety bonds of the appellant are cancelled. The appellant Soran is directed to surrender before the Trial Court



immediately to serve out the remaining part of the sentence awarded to him. If he fails to surrender, the Trial Court is directed to get the appellant Soran arrested and send him to jail for serving out the remaining part of the sentence awarded by the Trial Court by means of the judgment of conviction dated 16.3.1983 and order of sentence dated 24.3.1983. Let a copy of this order be sent to the Trial Court forthwith for compliance.