

(2002) 08 AHC CK 0208

Allahabad High Court

Case No: Criminal Appeal No. 776 with C.A. No. 829 of 1996

Narendra Singh alias Natey
Singh and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Aug. 20, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 300

Citation: (2003) CriLJ 205

Hon'ble Judges: S.K. Agarwal, J; J.C. Gupta, J

Bench: Division Bench

Advocate: G.S. Chaturvedi, V.K. Jaiswal and A.D. Giri, for the Appellant; Virendra Singh, A.G.A., for the Respondent

Final Decision: Allowed

Judgement

S.K. Agarwal, J.

These two criminal appeals, being Criminal Appeal No. 829 of 1996 (filed on behalf of Bansh Bahadur Singh and Jat Pratap Singh alias Ram Pratap Singh) and Criminal Appeal No. 776 of 1996 (filed on behalf of Narendra Singh alias Natey Singh) arise from the judgment and order dated 23-4-1996 passed by the then Sessions Judge, Azamgarh. These three appellants were convicted and sentenced to imprisonment for life under Sections 302/34, I.P.C. for committing murder of Vinod Singh and Pramod Singh, They were, however, acquitted of the charges u/s 307, I.P.C. read with Section 34, I.P.C, and Sections 504/506, I.P.C. for making an attempt on the life of complainant Ram Kesar Singh. The learned Sessions Judge had also acquitted them for the murder of Smt. Usha Devi wife of Ram Kesar Singh, the first murder in the chain. Since the appeals arise from a common judgment we have heard them together and decide them by this common judgment. It may be noteworthy that no Government Appeal was preferred against the acquittal of these appellants for the

charges u/s 307, I.P.C. read with Section 34, I.P.C. and Section 302/34, I.P.C. regarding the murder of Smt. Usha Devi. The findings of the learned Sessions Judge thus in this regard have attained finality and are not open to re-agitation.

2. The prosecution version, in brief, is that in the early hours of the day on 22-6-1994 three persons, viz. Smt. Usha Devi, Vinod Singh and Pramod Singh, were done to death in village Pakardiha within the jurisdiction of P.S. Atraulia, District Azamgarh. According to the prosecution story there was long standing enmity between the informant, P.W. 1 Ram Kesar Singh, and appellant Bansh Bahadur Singh due to litigation in respect of a piece of land, In the past Ram Garib alias Ram Singh, father of appellant Bansh Bahadur Singh, was murdered. In that case Bhagwati Singh and Vednath Singh, father and brother of Ram Kesar Singh, were the accused. Appellant Narendra Singh's father was a prosecution witness in the trial. The case relating to the piece of land according to FIR was decided in favour of P.W. 1 Ram Kesar Singh on 26-2-1993 by this High Court. On that basis his name was mutated in the revenue records. Against the mutation order appellant Bansh Bahadur Singh preferred a revision. 22-6-1994 was the date fixed for hearing in that revision. On that date Ram Kesar Singh along with his wife Smt. Usha Devi, the first deceased, was proceeding to attend Court. Ram Kesar Singh started from his house on a cycle with his wife at about 5.15 or 5.30 a.m. When they reached near the sugarcane field of Jiledar and Subedar Singh. On the outskirts of village Pakardiha, appellant Bansh Bahadur Singh with his licensed gun, his father-in-law appellant Narendra Singh alias Natey Singh, and brother-in-law appellant Jai Pratap Singh alias Ram Pratap Singh armed with country made pistols, came there on a motorcycle. After stopping the motor-cycle on the road they accosted Ram Kesar Singh stating that he and his family will be killed as he is going to attend the Court in the above said revision. P.W. 1 Ram Kesar Singh took to his heels towards east to save his life leaving his cycle and wife on the road. Appellant Bansh Bahadur Singh is said to have opened fire towards P.W. 1 from his gun but without any resultant injury to P.W. 1. His wife ran towards her village. She was chased by all the appellants. When she reached near the house of Jangali and Bangali, she was surrounded by the appellants. She was fired upon a number of times. It caused her instantaneous death. This incident was witnessed by Jangali and Bangali besides P.W. Ram Kesar Singh. The act of retribution does not end here. All these appellants thereafter proceeded towards the house of P.W. 1 Ram Kesar Singh on their motorcycle. They declared there also "let us wipe off whole family of Ram Kesar Singh today". Ram Kesar Singh who followed these appellants raised alarm immediately. These appellants at the house of the informant caused murder of Vinod Singh, son of P.W. 1 Ram Kesar Singh and Pramod Singh, his nephew, using their fire-arms. These boys were sleeping outside his house on different cots under the open sky. This later incident was witnessed by P.W. 2 Km. Ranju Singh, daughter of P.W. 1 Ram Kesar Singh, and P.W. 3 Pradeep Singh, brother of deceased Pramod Singh and one Lal Chand. Apart from them Jat Narain Singh and a large number of other villagers also witnessed the incident. After committing the offence the

appellants safely withdraw from the spot. P.W. 1 Ram Kesar Singh, after gathering himself, prepared the report Ext. No. 1 and proceeded for police station Atraulia at 6.30 a.m. on 22-5-1994. On the basis of this written report investigation of this case was entrusted to P.W. 4 Sheo Ganesh Gautam. He recorded statement of the informant P.W. 1 Ram Kesar Singh at the police station and thereafter proceeded to the scene of occurrence along with force. After inspecting dead bodies he appointed panch witnesses and got prepared inquest memos by S. I. M. U. Siddqui. The dead bodies thereafter were sent for post-mortem examination to the mortuary. The spots of both incidents were also inspected and their site plans were prepared by him. Plain and bloodstained earth from these places were collected. Cycle and Chappal of deceased Smt. Usha Devi were also taken into possession and Fard prepared for them. Some spent cartridges and pellets were also recovered from the site where Smt. Usha Devi was murdered. Empty cartridges and Tiklis were also recovered from the place of murder of Pramod Singh and Vinod Singh. After completing the investigation, charge-sheet was submitted by him.

3. Autopsy on the person of Smt. Usha Devi was conducted by P.W. 5 Dr. K.K. Singh on 23-6-1994 at 1.00 p.m. and following ante-mortem injuries were found by him:

1. Gutter shaped firearm wound of entry and exit united with each other 22 cm. x 16 cm. over left side skull x skull cavity deep x face. Wound of entry starts at left ear x temporal region with inverted lacerated margin with blackening, tattoring, scorching present. Size 10 cm. x 6 cm. firearm wound of exit unites at forehead left side nose both eyes mandible left and right area size 12 cm. x 8 cm. margin everted, lacerated, no blackening, tattooing, scorching present, directed anteriorly, inferiorly and downward. Brain matter badly lacerated. All bones are badly crushed into pieces, eyes missing. One wading cork piece and 4 metallic pellets recovered from the injury.

2. Firearm wound of entry 3 cm. x 2 cm. x abdomen cavity deep left side back 8 cm. from iliac crest and 4 cm. from mid-line. Margin lacerated, inverted, no blackening, tattooing, scorching present.

3. Firearm wound of exit 10 cm. x 8 cm. x abdomen cavity deep left side abdomen 16 cm. From umbilicus at one O" clock position. Blackening, tattooing, scorching absent. Margin everted and lacerated. Injury No. 2 connects injury No. 3 directly anteriorly upwards. Loops of intestine coming out.

Cause of death was noted to be coma as a result of ante-mortem injuries. Her postmortem examination report is Ext. Ka-31.

4. On the same day at 1.40 p.m. P.W. 5 Dr. K.K. Singh conducted autopsy on the dead body of Pramod Singh. He noticed following ante-mortem injuries:

1. Firearm wound of entry 2 cm. x 2 cm. x brain cavity deep right side face 2 cm. from right ear. Blackening, tattooing, scorching present. Margin inverted and

lacerated.

2. Firearm wound of exit 4 cm. x 3 cm. x brain cavity deep at medial end of left eye. No blackening, tattooing, scratching. Margin lacerated and everted injury No. 1 connect injury No. 2 directly right to left upward, fracture of mandible, right maxilla, frontal and nasal bone present. One wadding cork recovered in brain matter.

3. Fire arm wound of entry 2 cm. x 2 cm. x chest and abdomen cavity deep right side chest. 13 cm. from right nipple at 7 O" Clock position. Blackening, tattooing, and scorching present. One wadding cork recovered (two pieces) 20 pellets metallic recovered from chest and abdomen cavity.

Cause of death was shock and haemorrhage as a result of ante-mortem injuries. His post-mortem examination report is Ext. Ka-32.

5. On the same day he also conducted autopsy on the dead body of Vinod Singh at 2.30 p.m. He noticed following ante mortem injuries :

1. Firearm wound of entry 2 cm. x 2cm. x Brain deep just below left ear, left side skull. Blackening, tattooing, scorching present. Margin lacerated and inverted.

2. Firearm wound of exit 9 cm. x 5 cm. x brain cavity deep right side forehead just above right eyebrow. Blackening, tottooing, scorching, absent margin lacerated, everted. Injury No. 1 join to injury No. 2 directed upwards anteriorly left to right bones temporal, parietal left and frontal bones fractured into pieces.

3. Firearm wound of entry 2 cm. x 1 cm. x bone cavity deep left side face at angle of mandible. Blackening, tattooing, scorching present, directed right to left inferiorly and anteriorly. Fractured right side mandible and maxilla. 20 metallic pellets recovered.

4. Firearm wound of entry 2 cm. x 2 cm. x bone deep left side back 29 cm. below of caverical spine just laturl to spine vertebral. Blackening, tattooing, scorching present in area of 9 cm. x 4 cm. x 12 metallic pellets and one wadding, cork, 3 pieces recovered in thoracic 10th vertebral region. Margins lacerated, inverted.

Cause of death, according to the Doctor, was coma as a result of ante-mortem injuries. His post mortem examination report is Ext. Ka-33.

6. These accused persons were interrogated on 27-6-1994 in jail, after they had surrendered and were sent to jail. A 12 bore S.B.B.L. gun of appellant Bansh Bahadur Singh was taken into possession from Kanpur Gun House, Rikabganj, Faizabad by Investigating Officer (PW 4). It was sent for forensic examination by him later on.

7. In the trial the prosecution produced seven witnesses. PW 1 Ram Kesar Singh, PW 2 Km. Ranju Singh and PW 3 Pradeep Singh are eyewitnesses. PW 4 Sheo Ganesh Gautam is the I.O. PW 5 Dr. K.K. Singh is the autopsy surgeon. PW 6 Head Constable

Badri Prasad Patel and PW 7 Constable Prabhu Nath are other formal witnesses. Ram Kesar Singh was the only eyewitness produced for the murder of Smt. Usha Devi. PW 2 Km. Ranju Singh and PW 3 Pradeep Singh were the eye witnesses of the murder of Vinod Singh and Pramod Singh apart from P.W. 1 Ram Kesar.

8. The appellants in their statements u/s 313, Cr.P.C. denied the prosecution allegations and stated about their false implication due to enmity with P.W. 1 Ram Kesar Singh and his family. They did not examine any witness in their defence.

9. Learned Sessions Judge, on an evaluation of the eye witness evidence, came to the conclusion that so far as murder of Smt. Usha Devi is concerned it was not safe to hold the appellants guilty for this murder on the sole testimony of P.W. 1 Ram Kesar Singh. For the charge of murder of Vinod Singh and Pramod Singh he found these appellants guilty and accordingly convicted and sentenced them to life imprisonment, as stated above. He acquitted the appellants under the minor offences including Section 307, I.P.C. for making an attempt to kill P.W. 1 Ram Kesar Singh.

10. We have heard Sri A.D. Giri, Senior Advocate, assisted by Sri V.K. Jaiswal, for the appellants, learned A.G.A. for the State and Sri Virendra Singh for the complainant. None of the murders have been challenged or disputed. These murders are proved from the medical evidence on record. All the victims had suffered firearm injuries. These injuries were sufficient in the ordinary course of nature to cause their death. It is submitted by Sri A.D. Giri, Senior Advocate, on behalf of the appellants that so far as the charge of murder of Smt. Usha Devi is concerned, the learned Sessions Judge had himself doubted the presence of P.W. 1 Ram Kesar Singh at the time of this occurrence and that finding of the learned Sessions Judge finds support from evidence on record, moreover, it was not challenged by the State, thus, it holds its ground. It is further stressed by him that reasons, given by learned Sessions Judge in discarding evidence of P.W. 1 Ram Kesar Singh are cogent and valid since no other witness of locality was produced despite allegations in the F.I.R. and his statement u/s 161, Cr.P.C. that Jangali and Bangali were witnesses of that incident, hence acquittal of the appellants for the charge of murder of Smt. Usha Devi is final. It adversely affects the second limb of this incident as well.

11. Regarding the murder of Vinod Singh and Pramod Singh, the submission of Sri Giri is that as per the own case of the prosecution this incident was not witnessed by P.W. 1 Ram Kesar Singh. The two witnesses produced at the trial who claimed themselves to be the eye witnesses of this incident, viz. P.W. 2 Km. Ranju Singh and P.W. 3 Pradeep Singh were closely related to P.W. 1 Ram Kesar Singh, the relation between the two parties were highly inimical and, thus, they were interested witnesses. Moreover they were asleep inside the house. He further submitted that since both these witnesses did not know accused appellants Jai Pratap Singh alias Ram Pratap Singh and Narendra Singh alias Natey Singh from before the incident identification was claimed by these two appellants from them. It was claimed during

investigation itself. It was opposed by the Investigating Officer. The Magistrate directed, despite opposition, the investigating agency to hold the identification of these two appellants from the abovesaid witnesses. Despite above judicial order no identification was arranged from these witnesses by the investigating agency of these two accused. It is to be read adversely. He further stressed that the cross examination of the aforesaid witnesses created a reasonable doubt in the claim of the prosecution that these witnesses knew the aforesaid two appellants from before the incident, therefore, refusal to hold the test-identification parade of these appellants from these witnesses was fatal to the prosecution case. It is further submitted by Sri Giri that in any view of the matter the evidence of P.W. 2 Km. Ranju Singh and P.W. 3 Pradeep Singh is not trustworthy and reliable. Pradeep Singh's presence in the circumstances was a chance event and the possibility that these witnesses hardly had any opportunity to see the incident and identify the assailants is completely negated by the facts and circumstances of the case. These witnesses were sleeping inside the house. The incident occurred in front of the house under open sky where both the deceased were sleeping. He further asserted that the circumstances occurring on the record indicate that there was a greater probability of subsequent incident occurring while it was till dark. No proper light was available to the witnesses to identify the culprits. It is further fortified from the fact that pasty material was found in small intestine and large intestine was found loaded with faecal matter in the case of both these deceased persons. P.W. 1 stated that his wife was to go to her parents who live in another village. Therefore, she accompanied him while he was going to Court at Azamgarh in connection with his revision. She was to alight at Kaptanganj from where she was to go to her mother's house on her own and P.W. 1 would have proceeded to the court. Had it been so the position of large intestine could not have been such as was found during post mortem examination. The possibility that before leaving her village for her parent's house, in the normal circumstances, she must have evacuated herself. Presence of pasty material in small intestine and faecal matter in large intestine suggests that the defence suggestion that the incident had occurred much earlier than the alleged time of incident is probable. It is also submitted that presence of independent witnesses was admitted to the prosecution witnesses yet none of them were produced in corroboration of the evidence of two interested and inimical witnesses (P.Ws. 2 & 3), an adverse inference hence follows. It is further pointed out that both these witnesses were interrogated for the first time on 25-6-1994. No plausible explanation was offered by the I.O. for not interrogating them for three days, i.e. 22nd to 24th June, 1994. It gives strength to the defence suggestion that most likely P.W. 3 Pradeep Singh was not present in the village and PW 2, Km. Ranju Singh did not see the occurrence. In the nutshell the submission of Sri Giri, learned senior counsel for the defence is that on the basis of evidence on record, conviction of the appellants is not sustainable.

12. In response to the above said submissions, learned A.G.A. and learned counsel for the complainant submitted before us that the learned Sessions Judge erred on holding that the appellants could not be held guilty for the murder of Smt. Usha Devi on the basis of the sole testimony of P.W. 1 Ram Kesar Singh in the absence of any corroboration by any independent source. The reasons advanced for discarding him are far from being convincing. They further submitted that not holding the test identification parade has no adverse bearing on the testimonies of P.Ws. 2 and 3. Appellant Bansh Bahadur Singh, according to them, had long standing enmity with the informant and his family and the two appellants, Narendra Singh alias Nately Singh and Jai Pratap Singh alias Ram Pratap Singh, being closely related to him there is likelihood that all these appellants were well known to the witnesses from before the incident. They must be visiting appellant Bansh Bahadur Singh quite frequently. It is further submitted by learned A.G.A. that this incident had occurred after the sun rise and, therefore, it could not be difficult for the witnesses to identify the assailants. In short, learned A.G.A. and learned counsel for the complainant in their submissions supported the findings of the trial Court recorded against the appellants vis-a-vis the double murder.

13. We will first deal with the incident relating to the murder of Smt. Usha Devi. As per the statement of P.W. 1 Ram Kesar Singh, 22-6-1994 was the date fixed in the revision filed by accused Bansh Bahadur Singh against the mutation order. P.W. 1 Ram Keshar Singh was going to attend the court on the date on his cycle. His wife too "accompanied him. As they reached near the fields of Zildar and Subedar they were accosted by all the three appellants. They were on motorcycle which was driven by appellant Bansh Bahadur Singh. Appellants Jai Pratap Singh and Narendra Singh were pillion rider. All the three were armed with gun and pistols. They challenged P.W. 1 Ram Kesar Singh and alighted from their motorcycle. Bansh Bahadur Singh opened fire upon Ram Kesar Singh from his gun. Ram Kesar Singh ran to safety abandoning his cycle and leaving his wife on the road to be a prey to the appellants. The deceased Smt. Usha Devi in the meantime ran towards the village. She was chased and fired upon. When she fell down, she was again fired upon by all the three. Thereafter all the three accused proceeded towards her house to wipe off the entire family of P.W. 1 Ram Kesar Singh. This incident of murder of Smt. Usha Devi was witnessed by Jangali and Bangali and several others belonging to Bhar community. The house of these two witnesses were close to the site of occurrence. Yet none of them were produced by the prosecution in support of the evidence given by P.W. 1 Rarn Kesar Singh for reasons best known to it. The motive behind this incident, admittedly, was long standing enmity between the two rival families, appellant Bansh Bahadur Singh and P.W. 1 Ram Kesar Singh.

14. In connection with the presence of P.W. 1 Ram Kesar Singh and his seeing the incident, it is to be pointed out that his entry into sugarcane field and his lying on the ground is not mentioned in the F.I.R. He claimed that he came out from the sugarcane field after the accused had moved towards his house. Then he examined

his wife and found her dead. According to him Bansh Bahadur Singh opened fire on him immediately on stoppage of his motorcycle. He jumped from his cycle, ran into the sugarcane field and remained lay there. He was again fired upon. His wife was then chased and fired upon by all the accused. If he really laid himself in the sugarcane field at some distance, it will be difficult for him to see that his wife was chased and fired upon by all the accused. She fell down and was caught and fired upon by these accused. Therefore, now according to him, his wife was fired upon six times, three times while running away and thrice later on her fall. There are only two entry wounds upon her person. It is wholly incompatible with medical evidence. According to him, this incident was witnessed by Jangali, Bangali and many others belonging to Bhar community. Non-examination of Jangali and Bangali, whose houses are close to the vicinity by the prosecution, further adds input to the injury. After examining his wife and finding her dead, he ran towards his house just to caution his children. On his reaching near his house, he heard gun shot reports and when he reached at his door, he found his children lying dead on their cots. His daughter, nephew Pradeep, father of his daughter-in-law Lal Chand and Jai Narain met him there. According to his F.I.R. these witnesses, Lal Chand and Jai Narain, were returning after evacuation from the jungle and they met him on the way. So, according to F.I.R. he along with these two witnesses came to the spot together meaning thereby that Lal Chand and Jai Narain were not the eye witnesses and in all probability they had not seen the culprits at all. Now he stated that they had witnessed the occurrence and were present at his residence at the time of incident. Why this modulation in the evidence was made regarding these witnesses in his statement made in Court and why the story of their going to ease is abandoned are not far to seek. In all probability they were not ready to depose falsely in a murder case of this magnitude. Initially they might have agreed to or he might have the hopes that they will support him, so he came out with the above version in the F.I.R. and modulated it in Court because subsequently he could not produce any one of them. They were closed relations of his. He told Pradeep about the earlier incident and thereafter dictated the report to him. It was further case of this witness that all the accused persons came in the sugarcane field also. They noticed him there but left him without causing any damage to his person believing him to be dead already. This does not fit in properly in the sequence of the events. The assailants had proclaimed to wipe off the entire family. It sounds highly strange that after tracing him out they would not ensure his death. If we scrutinise his version regarding assault of his wife, it shows that the miscreants had ensured her death by opening fire in two rounds, yet they spared this witness despite discovering him in the sugarcane field does not stand the test of probability for even a second. It is not easy for him to hide himself in the sugarcane which was only two feet in height. According to him, shots were fired on him from a distance of 15-20 steps yet he did not suffer a single scratch or injury, therefore, his statement to these facts is far from truth. According to him, he was informed by the witnesses that three appellants killed Vinod his son and nephew Pramod while they were asleep. Even

the villagers who came to the spot on hearing the gunshot report also told him the names of the assailants. This gives a clear indication that this witness himself has not seen the assault on his son and nephew. He only learnt about it from witnesses. Some of these villagers were named by him as Haribansh, Paramhans, Rajbhan and Indal Yadav, but complete failure of the prosecution to examine any one of them in trial Court leaves hardly any room for doubt that the story as brought forth by this witness is not a truthful narration of the events. He produced a coloured version in order to rope in the appellants. Suspicion played a major part in it.

15. The incident was not witnessed by any one is also clear from other facts and circumstances. The above facts were neither in the F.I.R. nor in his statement recorded by the Investigating Officer (hereinafter referred to as "I.O.") at the spot at 7.45 a.m. He did not state in 161, Cr.P.C. statement that he was told the names of the assailants by the local witnesses. This further nails this witness down to the earth. He further stated in paragraph No. 13 that two fires were made on him while he was lying in the sugarcane field and Bansh Bahadur on seeing him proclaimed him dead. No pellets were recovered from this field to corroborate him. He thereafter declared that he killed his wife. This is yet another modulation in his evidence. This is not there in his 161, Cr.P.C. statement even. He claimed that he had seen fires being made on his wife while he was lying in the sugarcane field. As earlier discussed, in our opinion, it is not possible for him to do so while lying on the ground. The distance will obscure his view. He admitted that he had not seen any shot being fired on Vinod and Pramod from his own eyes. This clinches against his evidence regarding his version on the second leg of the incident. It is clear from this piece of his evidence that he was dwelling upon his imagination though had not seen anything himself. He was not present with his wife and came to the scene of occurrence sometime afterwards when the assailants already left the spot. Possibility of the first incident occurring in darkness cannot be ruled out. He was unable to identify the killers of his wife cannot be ruled out in these circumstances even if he was present. He gave out precise distance between accused inter se and the deceased. According to him when the deceased Smt. Usha was first fired, she was running. After her fall 2/3 more shots were fired on her from close range. This piece of his evidence is not supported by the medical evidence. Only two gunshot injuries are there on her person. He did not give any specific reason for Smt. Usha accompanying him on the cycle either in the F.I.R. or in his 161, Cr.P.C. statement. For the first time he spelled it in the trial Court. In the trial Court he introduced the story of his being chased by the miscreants for a distance of 1/2 Lathas before first shot was fired on him and the second shot was fired when he was lying in the sugarcane field. This is available to us from his statement made in paragraph No. 24. At this time assailants were about 2/3 Lathas away from him. This clearly is indicative of the fact that this man ran away seeing from some distance three persons on a motorcycle suspecting danger to himself leaving his wife hapless, who fell a prey to the miscreants' shot. He might be apprehending danger from before.

In the dazzling light of a motorcycle none can identify its rider who comes close to him. The first leg of the incident had occurred at a distance of 3/4 Kms. from his village. It cannot be doubted that his wife was with him, but there is great deal of doubt that Smt. Usha was attacked at that time and in the manner alleged by prosecution and it is more probable that it was still dark. He might have chosen darkness to show his enemies. In the circumstances it is difficult to accept the sole testimony of this witness about assault on Smt. Usha. A close scrutiny of his evidence shows that this witness has no sanctity for truth. He introduced many changes in the story brought forth in his F.I.R. It was subsequently modulated in 161, Cr.P.C. statement regarding firing on him and his wife. The fact that he was treated dead by the culprits is also a subsequent introduction in his statement. The story of firing a second shot to ensure his death is also an import improvement in order to make himself a witness of the incident. Thus, the learned Sessions Judge was justified in discarding evidence of this witness. The nomination of these accused persons in the incident by him is based apparently on his belief due to pre-existing enmity. It appears that the first leg of the incident took place when it was still sufficiently dark and, therefore, he could not identify his wife's assailants before he ran away. The appellants were his sole enemies and they came with a determination to eliminate the entire family including him. In the circumstances, if they had successfully located him in the sugarcane field, they would not have left him without firing repeated shots to fully ensure that he is dead. It does not stand to our reason that they spared him by only making an exclamation that he was dead on finding him in the field. They had not behaved in the same manner with his wife, therefore, we are not prepared to accept his testimony on these abovesaid reasons.

16. Admittedly, he did not witness second leg of the incident in which his son and nephew were killed. By the time he could cover a distance of 3/4 Kms. from the first site, the assailants would be miles away from him after killing his nephew and son. Once spared of his life, finding his wife murdered and the culprits proceeding to his house, he would not care to proceed to his house in the follow up. Lal Chand and Jai Narain could also not be the eye witnesses of the incident. Because, according to him, they had already left for evacuation. According to his 161, Cr.P.C. statement, they reached the house along with him or little thereafter. He now introduced a change in the trial court and claimed their presence at the spot. This part of his statement is wholly unacceptable to us. Therefore, we are not prepared to accept the testimony of this witness even on second incident. His testimony is rejected outright.

17. Now we will take up the second leg of the incident which was witnessed by P.W. 2 Km. Ranju Singh and P.W. 3 Pradeep Singh. So far as P.W. 2 is concerned, we do not find anything in her statement that she opened her door and came out in the verandah to witness the incident, or she witnessed the incident by peeping through the door leaves, or from any other position from inside the house from where it was possible for her to see the things happening in the verandah. Murder of Vinod and

Pramod took place in the verandah outside the house. This verandah adjoins the road. We do not find anything in her statement to show as to how did she witness the incident and how did she recognise the assailants. What was the source of light was also not told by her. It is her statement in paragraph 10 that she was informed of the names of these appellants by her father on his arrival and also the fact that these very accused committed murder of her mother. This leads us to infer that in all probability they were suggested these names by her father and they themselves did not identify the assailants. Now, she is claiming that she heard gun shot reports of 4/5 fires some 5/10 minutes after the departure of her parents. It is an admitted fact that the first incident of murder of Smt. Usha and firing upon the informant Raj Kesar occurred at a distance of 3/4 Kms. It will be difficult for her to hear any gun shot report which had emanated from such a distance. According to her the sound was coming from the locality of Bhars. It is also strange that even after hearing the gunshot report from such a long distance she did not think it better to arouse her brother she was sleeping on another cot there. She did not even bother to arouse her brothers who were sleeping outside. Her 161, Cr.P.C. statement was recorded after three days despite repeated visits by the I.O. to the spot. It renders her statement highly doubtful especially when the I.O. did not offer any credible explanation for this delayed recording of her statement. It is her case that 8/9 fires were made on her brothers. This is not corroborated by post mortem reports. Her statement that she had a torch on the night of occurrence further clearly establish that there was no electric connection in the house. It is not their case that light was not available at this hour in the village. The occurrence had taken place during the dark hours of the night, say 4.00 or 4.15 a.m. She did not allege any use of torch in the incident because as a matter of fact she had not: opened her main door for fear to herself. According to her the barrels of the guns were 2/3 steps from the two deceased. She did not disclose to the I.O. that her mother was also going along with her father to her mother's place. This is an admitted fact. Her evidence clearly shows that it will not be possible for her to identify Narendra and Jai Prakash. In these facts and circumstances and total omission of the fact as to how she witnessed the incident in her testimony we are not prepared to accept her evidence with regard to this incident and identification of the assailants.

18. Coming to the statement of P.W. 3 Pradeep Singh it also reveals that he was awakened by the gunshot report. He immediately sat on his cot and thereafter heard 4/5 more gunshot reports and soon thereafter he found the three appellants at his house, meaning thereby that he is also corroborating P.W. 2 regarding the fires made on her mother though it was not so stated by her statement in trial.

19. We have already discussed that the medical evidence does not corroborate this part of the story. It is not possible to hear gun shot reports from a distance of 3 Kms. He too like P.W. 2 did not disclose how he saw the incident. He had also not stated that they opened the doors to see or that they came out in the open and witnessed the incident or saw the incident in any other manner while staying inside.

This is a most crucial omission in their statements. They both are stating about the presence of Lal Chand and Jai Narain at the spot of second occurrence, as modulated during trial by her father P.W. 1 Ram Keshar Singh in his statement. Thus, they are supporting a statement which we have found prima facie false. In cross examination he admitted that these two persons reached the spot after the occurrence was over and accused persons departed from the spot. Thus, this attempt on their part to introduce two close relations as eye witnesses of occurrence leaves hardly any room to doubt for us that they were tutored very well and were adhering to the same improvements introduced in his testimony by P.W. 1. They are children and are impressionable. Why the prosecution initially decided to introduce them as eye witnesses of the second occurrence and what hesitation shook the prosecution that made them abandon these witnesses remain wholly unexplained. Now their presence at the spot was denied. The reason, as earlier discussed, apparently is that they were not agreeable to give false evidence. In the circumstances, an adverse inference can be drawn against the prosecution witnesses that they are not telling the truth. None of them as a matter of fact witnessed the incident. This also creates a serious doubt in the prosecution story with regard to the participation of these appellants in the incident and also the manner of assault, as disclosed by these witnesses. It further renders doubtful the alleged time of occurrence. Some more reference is needed regarding P.W. 3 Pradeep. He is a permanent resident of Lucknow. He was living there with his parents. He was a student of Herald Montessori School. His statement u/s 161, Cr.P.C. was also recorded after three days. No credible explanation for this delay in recording his statement was offered by the investigating agency. This witness had brought down the shots to 5/6 as compared 8/9 by P.W. 2. According to him fires on both the deceased were made simultaneously by three accused. This runs clearly in contrast to the statement of P.W. 2. He did not disclose about the incident to any one before he told it to I.O., whereas P.W. 1 stated that his daughter and nephew both informed him about the second incident before preparation of his written report. He admitted that while the accused were fleeing some 40/50 people of the village collected there. They made enquiries from them, but they did not disclose anything to these witnesses. None of these witnesses were examined by the prosecution as witnesses of fact or witnesses of resjesta evidence. This is a very material discrepancy in the prosecution case, non-examination of the independent witnesses of both the incidents makes it clear to us that the story as set forth by the first informant (PW 1) is not a truthful version of the incident. The presence of this witness is highly doubtful from his statement. Why was his statement was not recorded despite his availability to I.O. is another feature which leaves enough room for us to doubt his credibility. He admitted that he did not reside here permanently. He visits this place only on holidays. His knowing Raj Narain and Jai Pratap Singh appellant is in the above circumstances a highly doubtful factor.

20. These appellants claimed identification from these witnesses but the prosecution shirked from holding their identification from these witnesses which further created a serious dent in the authenticity of their evidence. We find that even trial Judge has not tested their memory by asking them to pick out these two from amongst the three appellants. Their statement that all the accused are present in Court is too generic in nature and exhibits lack of due attention by the trial Judge. Had he taken this prosecution the discrepancy would have been resolved to some extent. P.W. 3 had not even stated that all the accused are present in Court when his evidence was recorded. Thus, so far as the testimony of these three witnesses is concerned, we are not prepared to accept their statements as truthful and reliable.

21. Coming to the testimony of P.W. 4 Shiv Ganesh Gautam, I.O., we find that he had not conducted any investigative proceedings himself. All the papers including inquest memo, memos of recoveries, site map etc. were got prepared by him from S.I. M.U. Siddiqui and S.I. Bhupendra Singh. He only initialled these papers. He did not record even the statements of witnesses in the case diary. He made no mention in the case diary that he did not do so on account of any injury in his writing hand. For the first time in the trial Court he stated such a fact. It does not stand our scrutiny. He admitted that he never got his injury checked up by any doctor. Admittedly, he took no treatment for any such injury. This leaves no room for doubt that he did not investigate the case himself but had only initialled the papers made by S.I. M.U. Siddiqui and S.I. Bhupendra Singh. It clearly shows that he had joined the investigation in this case probably on 25-6-1994 and thereafter the investigation was picked upon the changed line which we have sufficiently discussed earlier. In order to cover up his absence on the first day he subsequently got prepared the case diary and other papers from another S.I. Bhupendra Singh. In these circumstances non production of S.Is. M.U. Siddiqui and Bhupendra Singh assumes significant relevance. Except recovery memo of the gun he did nothing in this case himself. Jai Narain and Lal Chand are resident of a distant village, which is 55 Kms. from the village of occurrence. The I.O. had admitted existence of some 20 houses in the locality of the informant. This is contrary to the statements of P.Ws. 2 and 3.

22. So far as the statement of P.W. 5 Dr. K.K. Singh is concerned, it is of not much consequence.

23. So far as the statement of P.W. 6 H.C. Badri Prasad Patel it is apparent that the F.I.R. was transcribed sometime late on 22-6-1994. The parchas of 22-6-1994 and 23-6-1994 were received at the C.O.'s office on 24-6-1994. The defence suggestion is that it was prepared late in the night of 22-6-1994. Parchas pertaining to 22nd and 23rd June, 1994 were prepared sometime on 23-6-1994 cannot be ignored by us and that special report does not bear any date of its receipt leads us to no other inference. No other offence was registered on 22nd and 23rd June, 1994 which further corroborates the above inference. It is further corroborated by the failure of the I.O. to prepare anything of his own hand on 22nd to 24th June, 1994.

24. Coming to the statement of P.W. 7 Constable Prabhu Nath, who escorted the dead bodies and recovered articles etc. to Lucknow. We find that he reached the police lines at about 7.15 p.m. He started with the dead bodies from the spot at about 11.00 a.m. on 22-6-1994. The papers were handed over to the doctor on the next day. No attempt was made by him to contact C.M.O. or Dy. C.M.O. to inform them of the arrival of three dead bodies this day. No papers were given to the doctors, who were assigned, with the post mortem duty that day despite meeting the doctor at his house. Dead bodies were taken by him, admittedly on a tractor. The distance of district Azamgarh from the place of occurrence is only 44 Kms. yet it took P.W. 7 8-1/2 hours to reach the headquarters. He claimed that he returned to the police station after the bodies were cremated after post mortem. He started from Azamgarh at 8.00 pm. and reached the mortuary within 2 hours. This explains that the F.I.R. was prepared much later than alleged and this is why the papers were not brought to the mortuary on 22-6-1994 and handed over to the medical officers on this date. Giving of these papers to the medical officers concerned, who conducted the autopsy on three dead bodies on 23-6-1994 leads to no other inference than the one that we have earlier drawn. Even the sending of recovered articles for examination to Forensic Laboratory, Lucknow, and it being returned due to an improper sealing with a direction to seal them in separate sets also creates serious doubt in the authenticity of the recoveries of the spent cartridges. From the facts and circumstances available extra ordinary promptness in lodging the F.I.R. also creates serious doubt in our mind. Three persons including the wife, son and nephew were done to death in such a situation it is very difficult for a person to regain his composure with such smart promptness and prepare the written report in such detailed manner. In our opinion it is most improbable. The F.I.R. was lodged after covering a distance of 7 Kms. The culprits were at large. Their fear would haunt his mind. He will not dare to cover this distance of 7 Kms. himself all alone. It appears more probable in the circumstances that some oral message was sent to the police station through some one may be village Chaukidar and all these exercises possibly were undertaken after the arrival of the police to the spot in consultation with it.

25. In the light of the above discussions, we find ourselves unable to accept the testimonies of P.Ws. 1, 2 and 3 convening and reliable. P.Ws. 2 and 3 are young kids. Their minds are highly impressionable. They can be easily induced to believe what P.W. 1 desired them to believe. Deep rooted enmity between the parties was a factor which in all likelihood make P.W. 1 to believe that the incident must have been the handy work of the appellants and none else. It may have been but the crucial test is whether any one had witnessed the incident. On scrutiny of the evidence our conclusion is that no one had actually witnessed the incident. Non production of some of the witnesses, named either in the F.I.R. or in 161, Cr.P.C. statements of these witnesses, further worsens the case for the prosecution. These two witnesses, if they were eye witnesses (Lal Chand and Jai Narain), their evidence would have

been furnished material corroboration to the statements of these witnesses. They were claimed to be witnesses of the second incident, but complete failure of the prosecution to examine them or witnesses of the first incident (Jangli and Mangli etc.) further inserts negative nail, so far as veracity of the prosecution evidence is concerned. Delayed reaching of the dead bodies to the mortuary and handing over of the paper on 23-6-1994 is yet another important circumstance that casts serious aspersion on the truthfulness of the prosecution case. In the above said circumstances, we are unable to subscribe to the view taken by learned Sessions Judge that the evidence of these two witnesses (P.Ws. 2 and 3) is sufficient to warrant the conviction of these appellants of the murder of Pradeep and Pramod.

26. In the result these appellants are acquitted of all the charges for which they were tried and convicted by the trial. Their appeals are allowed. Their conviction and sentence are set aside. They are in jail. They shall be released from custody forthwith, if not wanted in any other case.