
(2014) 08 AHC CK 0077

ALLAHABAD HIGH COURT

Case No: Criminal Appeal No. 1188 of 1993

Tula Ram and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Aug. 29, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 107, 116, 161, 207, 313 - Penal Code, 1860 (IPC) - Section 302, 307, 34

Citation: (2015) 89 ALLCC 35

Hon'ble Judges: Arun Tandon, J; Akhtar Husain Khan, J.

Bench: Division Bench

Advocate: N.I. Jafri, P.N. Gangwar, Virendra Singh, Satish Trivedi, Sheshadri Trivedi and Ajay Kumar Pandey, for the Appellant; Hari Krishna Mishra, for the Respondent

Final Decision: Dismissed

Judgement

Akhtar Husain Khan, J.½Present Appeal has been filed by accused-appellants Tula Ram, Pyare Lal, Kunvarsen and Anokhe Lal under section 374 Cr.P.C. against judgment and order dated 6.7.1993 passed by VIIIth Additional Sessions Judge, Bareilly in S.T. No. 192 of 1989, State v. Tula Ram and others, whereby learned VIIIth Additional Sessions Judge has convicted accused-appellants Tula Ram, Pyare Lal, Kunvarsen and Anokhe Lal for offences punishable under sections 302/34 and 307/34 I.P.C. and sentenced each of them there under to undergo life imprisonment and rigorous imprisonment of 10 years respectively.

We have heard Sri Satish Trivedi, learned Senior Counsel assisted by Sri Sheshadri, learned Counsel for the accused-appellants and Sri M.S. Yadav, learned A.G.A. for State-respondent as well as Sri Hari Krishan Mishra, learned Counsel for the complainant.

We have perused the records also.

2. In brief, according to F.I.R. Exhibit Ka.1 prosecution case is that Mahendra Pal Gaur S/o. Pandit Brahmma Swaroop @ Dori Lal had enmity with accused Tula Ram S/o. Bankey Lal and proceeding under section 107/116 Cr.P.C. was pending between them. On 1.2.1989 at about 07:30 p.m. after having returned from Bareilly, Mahendra Pal Gaur was going to his house from the road. Informant Mahendra Pal and Anees Ahmed S/o. Haneef Ahmed were also going to their houses along with Mahendra Pal Gaur. There was lighting on street pole. Houses of locality had also light of electric bulb. As soon as Mahendra Pal Gaur, informant Mahendra Pal and Anees Ahmed reached in front of informant's house, accused Tula Ram, Pyare Lal, Kunvarsen and Anokhe Lal came fast behind them. All of them were armed with country made pistols (Katta). Accused Kunvarsen and Anokhe Lal stopped Mahendra Pal and exhorted Tula Ram to fire, whereupon accused Tula Ram and Pyare Lal fired at Mahendra Pal Gaur. Informant Mahendra Pal and his father Baldev Raj intervened to rescue Mahendra Pal Gaur. They raised alarm and tried to catch accused Tula Ram and Pyare Lal. In the meantime accused Anokhe Lal and Kunvarsen made fire. Fire made by them caused injury to Baldev Raj, father of informant Mahendra Pal. After having heard the noise of first firing mother of informant Mahendra Pal who had come out of her house, she also suffered injury of fire. After having received injuries of fire Mahendra Pal Gaur ran towards the house of informant Mahendra Pal to save himself while the father of informant Baldev Raj fell down on the door. In the meantime, Vijay Kumar S/o. Lal Chandra and Jeevan S/o. Kastoori Lal came on spot. They saw the occurrence and tried to catch the aforesaid accused but the accused fled away through their house towards jungle making aerial firing.

3. According to F.I.R. Exhibit Ka.1 Mahendra Pal Gaur succumbed to injuries on spot after having reached in the of informant and informant Mahendra Pal arranged to send his father Baldev Raj and mother Usha Rani to hospital. Thereafter, he went to police station Bahedi with F.I.R. Exhibit Ka.01. (sic) presented the same at police station (sic)di on 1.2.1989 at 20:50 p.m. whereupon Crime No. 40 of 1989, under sections 302, 307 I.P.C. was registered in P.S. Bahedi, District Bareilly against Tula Ram, Pyare Lal, Kunvarsen and Anokhe Lal and investigation was started by police.

4. Later on Baldev Raj, father of informant Mahendra Pal also succumbed to injuries in the hospital. Inquest report of deceased Mahendra Pal Gaur and Baldev Raj were prepared and dead body of both deceased were sent for post-mortem in sealed cover after having completed necessary formalities.

5. Investigation was completed by police in accordance with law and after having completed investigation police submitted charge-sheet against accused Tula Ram, Pyare Lal, Kunvarsen and Anokhe Lal under sections 302, 307 I.P.C. Whereupon learned Magistrate took cognizance and after compliance of section 207 Cr.P.C. committed the case to the Court of Sessions for Trial of all accused. Thereafter Sessions Trial No. 192 pi 1989 was registered in the Sessions Court of District Bareilly. Later on said Sessions Trial was transferred to the Court of Additional Sessions Judge (Special Judge), Bareilly who

framed charges against accused Tula Ram and Pyare Lal for offences punishable under sections 302/34 and 307/34 I.P.C. and against accused Kunvarsen and Anokhe Lal for offences punishable under sections 302/34 and 307 I.P.C. All the accused pleaded not guilty and claimed to be tried.

6. Prosecution examined PW1 informant Mahendra Pal, PW2 Vijay Kumar, PW3 Smt. Usha Rani, PW4 Dr. Kripal Singh, PW5 Dr. A.K. Sharma, PW6 G.P. Tripathi and PW7 I.O. Inspector R.K. Sharma.

7. After prosecution evidence statements of all accused were recorded under section 313 Cr.P.C. All accused stated that they have been falsely implicated and the witnesses have given evidence against them due to Village Partibandi. All accused have stated in their statement under section 313 Cr.P.C. that deceased Mahendra Pal Gaur and Baldev Raj had enmity with several other persons in the Village.

8. No evidence was adduced on behalf of accused in defence. "

9. After having heard both the parties, learned VIIIth Additional Session Judge, Bareilly passed impugned judgment and order whereby he has convicted "and sentenced accused-appellants as mentioned above.

10. Learned Counsel for the accused-appellants contended that the judgment and conviction passed by Trial Court is against evidence as well as against law.

11. Learned Counsel for the accused-appellants contended that PW3 Smt. Usha Rani is the mother of PW1 informant Mahendra Pal and PW2 Vijay Kumar is their relative, therefore, all the three witnesses examined by prosecution are interested witnesses and there are material contradiction in their statements. Therefore, these witnesses are not trustworthy witness and reliance cannot be placed upon their statement to convict accused-appellants.

12. Learned A.G.A. contended that PW2 Vijay Kumar is a chance witness also.

13. Learned Counsel for the accused-appellants contended that prosecution has failed to prove the light at the time of occurrence.

14. Learned Counsel for the accused-appellants contended that the deceased Mahendra Pal Gaur and Baldev Raj had enmities with several other persons in the Village and persons other than accused-appellants might have caused this occurrence.

15. Learned Counsel for the accused-appellants prayed that the appeal should be allowed and accused-appellants should be acquitted.

16. Learned A.G.A. contended that PW3 Smt. Usha Rani is injured witness and PW1 informant Mahendra Pal is the son of deceased Baldev Raj, his house is situated

adjacent to the place of occurrence and he was coming along with deceased Mahendra Pal Gaur and Anees Ahmed from road to his house at the time of occurrence, therefore, his presence at the time of occurrence is natural.

17. Learned A.G.A. contended that testimonies of PW1 informant Mahendra Pal and PW3 Smt. Usha Rani may not be discarded merely on the ground of relationship.

18. Learned A.G.A. contended that PW2 Vijay Kumar is an independent witness and there is no ground to disbelieve him.

19. Learned A.G.A. contended that the evidence on record is sufficient to hold accused-appellants guilty for offences punishable under sections 302/34 and 307/34 I.P.C. Therefore, learned Trial Court has rightly convicted accused-appellants for the said offences.

20. Learned A.G.A. contended that sentence awarded by Trial Court is not excessive.

21. Learned A.G.A. prayed that appeal should be dismissed.

22. We have considered the submissions made by the parties.

23. Gnat of 7 witnesses examined by prosecution PW1 informant Mahendra Pal, PW2 Vijay Kumar and PW3 Smt. Usha Rani are the witnesses of fact and occurrence. All have supported the version of prosecution in their statements on oath. PW1 informant Mahendra Pal has also proved F.I.R. Exhibit Ka.1 in his statement.

24. PW4 Dr. Kripal Singh has stated in his statement on oath that on 1.2.1989 he was posted as E.M.O. in District Hospital Bareilly. On that date at 10:00 p.m. he examined Baldev Raj aged about 50 years S/o. Deshraj, resident of Mandanpur, Thana Bahedi who was dead at the time of examination. PW4 Dr. Kripal Singh has stated that he arranged keeping of dead body in mortuary and informed the police. He has proved the information sent to police in this respect as Exhibit Ka.2.

25. PW5 Dr. A.K. Sharma has stated on oath that on 2.2.1981 he was posted as E.M.O.H. in District Hospital, Bareilly, on that date he conducted postmortem of deceased Mahendra Pal Gaur at 02:30 p.m., the dead body was brought by C.P. 1257 Tayyat Khan and C.P. 912 Drig Pal Singh, P.S. Bahedi.

26. PW5 Dr. A.K. Sharma further stated that on the same day at 3:00 p.m. he conducted post-mortem of deceased Baldev Raj whose dead body was brought by C.P. 442 Naresh Singh and C.P. 1382 Hari Ram, P.S. Kotwali, District Bareilly.

27. PW5 Dr. A.K. Sharma has proved post mortem reports of deceased Mahendra Pal Gaur and Baldev Raj as Exhibit Ka.3 and Ka.4 respectively.

28. PW6 Dr. G.P. Tripathi has stated on oath that on 1.2.1989 he was Medical Superintendent Bahedi Hospital. On that day at 08:15 p.m. he conducted medical examination of Baldev Raj aged about 50 years S/o. Desh Raj, resident of Mandanpur who had been brought by his wife. PW6 Dr. G.P. Tripathi has proved injuries as well as injury report of Baldev Raj Exhibit Ka.5 in accordance with law. PW6 Dr. G.P. Tripathi has proved reference letter of Baldev Raj Exhibit Ka.6 also.

29. PW6 Dr. G.P. Tripathi has further stated in his statement that on the same day at 11:30 p.m. he conducted medical examination of PW3 Smt. Usha Rani also, he has proved injury of PW3 Smt. Usha Rani as well as her injury report Exhibit Ka.7 in his statement in accordance with law.

30. PW7 Inspector R.K. Sharma is the Investigating Officer he has stated in his statement that in February, 1989 and March, 1989 he was posted as inspector incharge of P.S. Bahedi. He has proved chik F.I.R. Exhibit Ka.8 as secondary witness and has stated that on 1.2.1989 he went to place of occurrence and prepared site plan Exhibit Ka.9.

31. PW7 Inspector R.K. Sharma has stated that four fired cartridges were found on the spot. He took said cartridges into possession and kept them in sealed cover and prepared memo Exhibit Ka.10.

32. PW7 Inspector R.K. Sharma has stated that he took into possession the shoes of deceased Mahendra Pal Gaur and prepared fard Exhibit Ka.11, he also took blood stained and plain earth and prepared memo Exhibit Ka.12.

33. PW7 Inspector R.K. Sharma has stated that he took blood stained and plain earth from the place of occurrence where deceased Baldev Raj fell down and prepared memo Exhibit Ka.13.

34. PW7 Inspector R.K. Sharma has stated in his statement that he searched the house of accused but accused were not found there. He has proved memo of search of house of accused Exhibits Ka.14 and Ka.15.

35. PW7 Inspector R.K. Sharma has stated in his statement that he inspected the bulb which was lighting on the house of informant at the time of occurrence and gave it in the supurdigi of informant and prepared memo of it Exhibit Ka.16. He has stated that he also inspected the bulb which was lighting on outer part of house of Anees Ahmed and prepared memo of it Exhibit Ka.17.

36. PW7 Inspector R.K. Sharma has stated that on his direction S.I. Dhaniram Mishra prepared inquest report of deceased Mahendra Pal Gaur Exhibit Ka.18. He has proved photonash Exhibit Ka.19, challan nash Exhibit Ka.20 and specimen seal Exhibit Ka.21. He has stated in his statement that dead body of Mahendra Pal Gaur was sent to post-mortem.

37. PW7 Inspector R.K. Sharma has stated in his statement that inquest report of deceased Baldev Raj was prepared on 2.2.1989 by S.I. Bhagwan Singh. He has proved inquest report of Baldev Raj Exhibit Ka.22, photonash Exhibit Ka.23 and challan nash Exhibit Ka.24 also. He has stated that after having completed investigation he submitted charge-sheet Exhibit Ka. 25 in Court.

38. PW7 Inspector R.K. Sharma has identified four fired cartridges recovered from the place of occurrence material Exhibit 3 to 6 and he has also identified the shoes of deceased Mahendra Pal Gaur recovered from the place of occurrence material Exhibit 8 and 9.

39. In the Case of [Brahm Swaroop and Another Vs. State of U.P.](#), Hon"ble Apex Court held that "merely because the witnesses were closed relatives to the deceased that cannot be ground to discard their evidence."

40. In the case of [Vithal Pundalik Zendge Vs. State of Maharashtra](#), Hon"ble Apex Court held that "testimony of mother of deceased should not be discarded on the ground that she is an interested witness."

41. In the case of [Ranjit Singh and Others Vs. State of Madhya Pradesh](#), Hon"ble Apex Court held that "undoubtedly, all the eye-witnesses including injured witnesses are closely related to the deceased. Thus, in such a fact situation, the law requires the Court to examine their evidence with care and caution. Such close relatives and injured witnesses would definitely not shield the real culprits of the crime and name somebody else because of enmity."

42. In view of above pronouncement of Hon"ble Apex Court, it is apparent that testimonies of witnesses may not be discarded only on the ground of relationship or enmity with accused.

43. Perusal of chik F.I.R. Exhibit Ka.08 shows that Crime No. 40 of 1989, under sections 302 and 307 I.P.C. has been registered in P.S. Bahedi, District Bareilly on the basis of F.I.R. Exhibit Ka.1 presented by informant Mahendra Pal on 1.2.1989 at 20:50 p.m. Inquest report of deceased Mahendra Pal Gaur Exhibit Ka.18 shows that it has been prepared on 1.2.1989 at 23:55 p.m. In inquest report Exhibit Ka.18 Crime No. 40 of 1989, under sections 302 and 307 I.P.C. has been mentioned. In photonash Exhibit Ka.19, challannash Exhibit Ka.20 and specimen seal Exhibit Ka.21 also above Crime Number and sections have been mentioned. Thus, there is no ground to disbelieve that F.I.R. was not in existence at the time of inquest report. Therefore, considering the whole evidence and facts as well as circumstances of the case it is proved that F.I.R. has been lodged in Police Station Bahedi at 20:50 p.m. on 01.02.1989. Time of occurrence is 07:30 p.m. Thus, it is apparent that F.I.R. has been lodged promptly within 1:20 hour of occurrence. Promptness of F.I.R. keeps it free from doubt on concoction and deliberation.

44. PW1 Mahendra Pal is informant and son of deceased Baldev Raj, his house is situated near place of occurrence, I.O. PW7 R.K. Sharma has sown his house in site plan Exhibit Ka.9. PW1 informant Mahendra Pal has stated that on the day of occurrence his cloth shop was in Town Bahedi on that day after closing his shop he came to bus-station Bahedi and sat in private bus at about 7 or 7:15 p.m. He has stated that it was Wednesday on the day of occurrence and Wednesday was closing day of shops in Town Bahedi. He has stated that on that date he has closed shop at about 7 or 7:15 p.m. PW1 informant Mahendra Pal has stated that Mahendra Pal Gaur (now deceased) and Anees Ahmed also sat in the bus. Bus reached near his Village at 7:00 p.m. again said two or three minutes before 7:30 p.m. He has stated that after dropping bus Mahendra Pal Gaur, Anees and he were going to their houses.

45. PW1 informant Mahendra Pal has stated that houses of Mahendra Pal Gaur and Anees are situated in same locality and way to their houses is same. After closing shop return of PW1 informant Mahendra Pal to his house in evening is natural. There is nothing on record to show that Wednesday is not weekly holiday of shops in Town Bahedi. According to chick F.I.R. Exhibit Ka.8 distance of P.S. Bahedi from the place of occurrence is 3 kilometre. Thus it is apparent that Town Bahedi is 3 kilometre away from place of occurrence. Therefore, arrival of PW1 informant Mahendra Pal at the time of occurrence is highly probable. As concluded above F.I.R. is prompt and there is no chance of concoction or deliberation. Therefore, considering the whole facts and circumstances of the case, presence of PW1 informant Mahendra Pal at the time of occurrence may not be seen with doubt.

46. In the case of [State of Punjab Vs. Wassan Singh and Others](#), Hon"ble Apex Court held that "the fact that some of witnesses escaped unheart is no ground for holding they were not besides the deceased during attack on him."

47. In view of this pronouncement of Hon"ble Apex Court it is apparent that presence of PW1 informant Mahendra Pal cannot be denied at the time of occurrence on the ground that he did not suffer injuries in the occurrence.

48. PW2 Vijay Kumar has stated that he was residing in Village Bhaunpur, at the time of occurrence, he was in the way for going to Bahedi. He has stated in his statement that I.O. has recorded his statement on the day of occurrence at 10 or 11:00 p.m. in night. PW7 Inspector R.K. Sharma has also stated that he has recorded statement of PW2 Vijay Kumar on the same night.

49. PW2 Vijay Kumar is a witness named in F.I.R. and F.I.R. is very prompt. His statement under section 161 Cr.P.C. was also recorded on the same night. Therefore, we find no justification to discard his testimony on the ground of chance witness.

50. From the perusal of F.I.R. as well as statements of PW1 informant Mahendra Pal, PW2 Vijay Kumar and PW3 Smt. Usha Rani, it is apparent that Smt. Usha Rani suffered

fire arm injury at the time of occurrence. Perusal of statement of PW6 Dr. G.P. Tripathi as well as injury report of PW3 Smt. Usha Rani Exhibit Ka.7 shows that on 1.2.1989 at 11:30 p.m. Medical examination of PW3 Smt. Usha Rani was conducted by PW6 Dr. G.P. Tripathi in Bahedi Hospital and gunshot injury was found on her right leg.

51. Perusal of statement of PW6 Dr. G.P. Tripathi as well as injury of deceased Baldev Raj Exhibit Ka.6 shows that Baldev Raj was also examined by Dr. G.P. Tripathi on 1.2.1989 at 08:15 p.m. and gunshot injuries were found on his body. It is also apparent from the statement of PW6 Dr. G.P. Tripathi as well as injury reports of Baldev Raj and Smt. Usha Rani Exhibit Ka.6 and Ka.7 that the injuries found on their bodies were fresh and the condition of Baldev Raj was critical, therefore, Baldev Raj was referred to District Hospital, Bareilly.

52. Statement of PW4 Dr. Kripal Singh as well as his report Exhibit Ka.2 shows that he examined Baldev Raj at 10:00 p.m. on 1.2.1989 and at that time he was dead. Thus, it is apparent that medical examination of Baldev Raj and PW3 Smt. Usha Rani has been done very promptly soon after occurrence alleged by prosecution. Therefore, there is no chance of fabrication of injuries of PW3 Smt. Usha Rani. Thus, considering the whole evidence on record we are of the view that it is proved beyond doubt that PW3 Smt. Usha Rani has suffered fire arm injury at the time of occurrence, therefore, her presence at the time of occurrence may not be denied.

53. In cross-examination at Page 12 (Page 35 of Paper Book) PW1 informant Mahendra Pal has stated that he carries shop of cloths. This shop is not his own. He is servant at this shop.

54. Learned Counsel for the accused-appellants contended that the statement of PW1 informant Mahendra Pal is full of contradiction because in his examination-in-chief he has stated that on the day of occurrence he had cloth shop in Town Bahedi, while in cross-examination he has stated that he was servant in the cloth shop.

55. We have considered the submission made by learned Counsel for the accused-appellants. We are of the view that the above contradiction has no relevance and it is apparent from the statement of PW1 informant Mahendra Pal that he had returned back from his shop of cloth at the time of occurrence.

56. We have perused the whole statements of PW1 informant Mahendra pal, PW2 Vijay Kumar and PW3 Smt. Usha Rani, we are unable to find any material contradiction in their statements regarding occurrence to disbelieve their testimonies about occurrence.

57. In the case of [Sampath Kumar Vs. Inspector of Police, Krishnagiri](#), Hon"ble Apex Court held that "minor contradictions are bound to appear in the statement of truthful witnesses as memory sometimes plays false, sense of observation differs from person to person."

58. In the case of [State of U.P. Vs. M.K. Anthony](#), Hon"ble Apex Court has held that "every honest and truthful witness may differ in some details unrelated to main incident because power of observation, retention and reproduction differ with individuals."

59. In the case of [Faquira Vs. State of U.P.](#), Hon"ble Apex Court has held that "minor discrepancy guarantees that witnesses are not tutored."

60. In the case of [State of U.P. Vs. Krishna Master and Others](#), Hon"ble Apex Court has held that "prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof."

61. In the case of State of U.P. v. Krishna Master (supra), Hon"ble Apex Court has held that "the basic principle of appreciation of evidence of a rustic witness who is not educated and comes from a poor strata of society is that the evidence of such a witness should be appreciated as a whole."

62. In view of above pronouncements of Hon"ble Apex Court, we are of the view that testimonies of witnesses may not be discarded on the ground of minor contradiction or discrepancy.

63. PW1 informant Mahendra Pal has stated in his statement that Mahendra Pal Gaur, Anees and he reached to the door of his house it was 7:30 p.m. and at that time his father Baldev Raj was standing in front of his door. In the meantime, accused Tula Ram, Pyare Lal, Kunvarsen and Anokhe Lal, all armed with Tamanchas came there fastly and surrounded Mahendra Pal Gaur. Accused Kunvarsen and Anokhe Lal exhorted accused Tula Ram to fire at Mahendra Pal Gaur, whereupon accused Tula Ram and Pyare Lal fired with their Tamanchas at Mahendra Pal Gaur. After having received injuries Mahendra Pal Gaur ran towards house of PW1 informant Mahendra Pal and fell down in the house of informant Mahendra Pal and died there.

64. PW1 informant Mahendra Pal has stated that having heard the noise of first fire his mother Smt. Usha Rani came out of her house. At that time, he (informant) and his father Baldev Raj tried to catch accused Pyare Lal and Tula Ram, whereupon accused Kunvarsen and Anokhe Lal fired at his father and mother. PW1 informant Mahendra Pal has stated that fire made by accused Anokhe Lal caused injuries to his mother and fire made by accused Kunvarsen caused injuries to his father.

65. PW2 Vijay Kumar has also stated in his statement that accused Pyare Lal and Tula Ram fired at Mahendra Pal Gaur. He has also stated that Baldev Raj and his son informant Mahendra Pal tried to catch accused Tula Ram and Pyare Lal. In the meantime, accused Kunvarsen and Anokhe Lal fired. PW2 Vijay Kumar has stated that fire made by Kunvarsen caused injuries to Baldev Raj and fire made by Anokhe Lal caused injuries to the mother of informant Mahendra Pal.

66. PW2 Smt. Usha Rani has also stated in her statement that after having heard noise she came out to her house, she saw Mahendra Pal Gaur was entering in her house and he fell down in her court-yard. She has further stated that she saw, his son informant Mahendra Pal and husband Baldev Raj as well as Anees Ahmed were standing at her door and all of them were crying. At that time on her door accused Pyare Lal, Tula Ram, Kunvarsen and Anokhe Lal were also standing. She has stated that her husband were saying pakdo pakdo, in the meantime, accused Kunvarsen made a fire which caused injuries to her husband Baldev Raj and accused Anokhe Lal made fire which caused injuries to her.

67. The description of occurrence given by PW1 informant Mahendra Pal, PW2 Vijay Kumar and PW3 Smt. Usha Rani shows that all accused were armed with Tamanchas and they have made fire with Tamancha.

68. Perusal of statement of PW5 Dr. A.K. Sharma as well as post-mortem reports of deceased Baldev Raj and Mahendra Pal Gaur Exhibit Ka.3 and Ka.4 respectively shows that ante mortem gunshot injuries have been found on the dead body of both deceased. Statement of PW6 Dr. G.P. Tripathi as well as injury report of Baldev Raj Exhibit Ka.5 shows that injuries found on the body of Baldev Raj were gun-shot injuries. Statement of PW6 Dr. G.P. Tripathi as well as injury report of Smt. Usha Rani shows that injury found on her body was found gunshot injury. Thus, it is apparent that version of F.I.R. as well as statements of PW1 Mahendra Pal, PW2 Vijay Kumar and PW3 Smt. Usha Rani are fully corroborated by medical evidence. Version of F.I.R. as well as statement of PW1 informant Mahendra Pal, PW2 Vijay Kumar and PW3 Smt. Usha Rani are also corroborated by site plan Exhibit Ka.9 as well as statement of PW7 Inspector R.K. Sharma.

69. PW2 Vijay Kumar has admitted in cross-examination at Page 6 (Page 62 of the Paper Book) that he given evidence against father of accused in case relating to land of Gaon Samaj but we are of the view merely on this ground testimony of PW2 Vijay Kumar may not be disbelieved.

70. After having gone through whole facts and circumstances of the case as well as evidence on record, we are of the view that PW1 informant Mahendra Pal, PW2 Vijay Kumar and PW3 Smt. Usha Rani are trustworthy witnesses and there is no sufficient ground to disbelieve them.

71. In the case of [Nirpal Singh and Others Vs. State of Haryana](#), Hon"ble Apex Court has held that "if the witnesses examined are believed, the question of inference for non-examination does not arise."

72. In the case of [Mahesh Gonnade Vs. State of Maharashtra](#), Hon"ble Apex Court has held that "an eye-witness, who received injuries in the occurrence, if found to be trustworthy of belief, cannot be discarded merely for non-examination of the independent

witnesses."

73. In view of above pronouncements of Hon"ble Apex Court the testimonies of PW1 informant Mahendra Pal, PW2 Vijay Kumar and PW3 Smt. Usha Rani may not be disbelieved merely on the ground that other witnesses named in the F.I.R. or charge-sheet have not been examined.

74. In F.I.R. Exhibit Ka.1 specific mention has been made that there was lighting at electric pole as well as on the houses of locality at the time of occurrence PW1 informant Mahendra Pal has supported this version of F.I.R. regarding lighting of bulbs. PW3 Smt. Usha Rani has stated in her statement that she saw the accused in the light of bulb. She has stated that bulb was lighting on her door and at other places. PW7 Inspector R.K. Sharma has stated in his statement that he had seen the bulb which was lighting at the house of informant Mahendra Pal. He has further stated that he has seen the bulb which was lighting outside the house of Anees Ahmed. He has proved the memos of said bulbs Exhibit Ka.16 and Ka.17 also. Perusal of this memo Exhibit Ka.16 and Ka.17 shows that I.O. R.K. Sharma has seen the bulbs of the houses of informant and Anees Ahmed and gave them in supurdigi of informant and Anees Ahmed respectively. In site plan Exhibit Ka.9 also I.O. has shown electric poles and place of bulb also which was lighting at the time of occurrence.

75. Thus, after having gone through the evidence on record, we are of the view that prosecution has proved light at the time of occurrence. There was no evidence on record to show that electric supply was not being done at the time of occurrence.

76. Trial Court has also considered the source of light in his impugned judgment and has concluded that the light is proved at the time of occurrence. In view of discussion made above conclusion drawn by Trial Court regarding light is justified and based on evidence.

77. It is relevant to mention that even in darkness known person may be identified by movement, voice and contact. All witnesses namely PW1 informant Mahendra Pal, PW2 Vijay Kumar and PW3 Smt. Usha Rani and all accused are resident of same Village and same locality, therefore, witnesses may easily identify accused by movement, voice and contact in darkness also.

78. Defence has tried to show that the deceased Mahendra Pal Gaur was a criminal man and he had enmity with other persons, also therefore, his murder has been committed by other persons.

79. We have considered this contention also. PW1 informant Mahendra Pal is the son of deceased Baldev Raj and PW3 Smt. Usha Rani is the wife of deceased Baldev Raj. It is quite unnatural to believe that they shall shield real culprits and Implicate innocent persons. Trial Court has also considered this aspect in its impugned judgement, Trial Court has observed that informant has no enmity with accused and there is no reason of false implication by him. The observation made by Trial Court appears just. Evidence on

record does not show any enmity of informant Mahendra Pal and his father Baldev Raj with accused, therefore. There is no chance of false implication of accused-appellants.

80. In the case of Brahm Swaroop and other v. State of U.P. (supra), Hon"ble Apex Court held that "if the evidence of the eye-witnesses is trustworthy and believed by the Court, the question of motive becomes totally irrelevant."

81. In view of above pronouncement of Hon"ble Apex Court, the motive is irrelevant for the determination of this case, however, F.I.R. Exhibit Ka.1 as well as statement of PW1 informant Mahendra Pal shows that there was enmity between Mahendra Pal Gaur (deceased) and accused Tula Ram and proceeding under section 107/116 Cr.P.C. was pending between them. Thus, cause of occurrence has also been proved.

82. After having gone through whole facts and circumstances of the case as well as evidence on record, we are of the view that evidence on record is sufficient to hold accused-appellants guilty for offences punishable under sections 302/34 and 307/34 I.P.C. Therefore, we are of the view that the Trial Court has rightly convicted accused-appellants for offences punishable under sections 302/34 and 307/34 I.P.C.

83. The sentences awarded by Trial Court does not appear excessive and no appeal has been filed by State for enhancement of sentence.

84. In view of conclusion drawn above, we are of the view that there is no justification for interference in the impugned judgment and order of Trial Court. Appeal has no merit and is liable to be dismissed.

85. The appeal is dismissed accordingly.

86. Accused-appellants are on bail. They shall surrender before the Trial Court within 30 days from the date of this judgment for serving sentence, failing which, Trial Court shall ensure their arrest and shall send them jail for serving sentence awarded to them. Office is directed to send copy of this judgment and order to Trial Court for compliance.

Send back records of Trial Court immediately.