
(2013) 04 MP CK 0035

Madhya Pradesh High Court (Gwalior Bench)

Case No: Criminal Appeal No. 400/1999

Bijendra and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: April 15, 2013

Hon'ble Judges: S.K. Gangele, J; G.D. Saxena, J

Bench: Division Bench

Judgement

G.D. Saxena, J.

This appeal u/s 374 of the Code of Criminal Procedure 1974 has been preferred by the accused/appellants having being aggrieved by a judgment dated 13th August 1999 of conviction and sentence delivered in Sessions Case No. 61/1995 by the Fourth Additional Sessions Judge, Morena (M.P.) convicting accused Ramendra Singh and Mahendra Singh for causing murder of Ram Naresh for an offence punishable u/s 302 and 302/34 of I.P.C. and sentencing them to suffer imprisonment for life with a fine of Rs. 12,000/- (Rs. Twelve Thousand Only), each, in default of payment of which to serve three years" more rigorous imprisonment. These accused also stood convicted for offence punishable u/s 324 and 324/34 of I.P.C. and sentenced to suffer two years" rigorous imprisonment with a fine of Rs. 1,000/- (Rs. One Thousand Only), each, in default of payment of which to serve three months" rigorous imprisonment on each count. Accused Bijendra Singh was convicted for offence u/s 324 of I.P.C. and sentenced to suffer two years" rigorous imprisonment with a fine Rs. 2,000/- (Rs. Two Thousand Only) and in default to serve six months" rigorous imprisonment. By the same judgment, the learned trial court came to acquit other co-accused Ajab Singh, Surendra Singh, Veer Singh and Preetam Singh of charges levelled for offence under Sections 147, 302/149 307/149, 323/149 and 324/149 of I.P.C. The facts, in short, just for the adjudication of this appeal are that on 7th June 1994 at about 1 p.m., at the polling booth centre of village Bhojpura Barrade under jurisdiction of Police Station Chinnoni, during the process of casting votes in Panchayat Election, when complainant Hargyan Singh as poling agent of contesting candidate Bhanwar Singh was present and participating in election

process by that time accused Bijendra Singh entered inside the booth centre and made quarrel with complainant Hargyan Singh. Thereafter by catching his collar the accused dragged him out of the booth centre where other accused, namely, Preetam Singh having wooden stick (Lathi), Mahendra Singh having country-made pistol, Surendra Singh having spear, Ramendra Singh having 12 bore gun, Ajab Singh, Munshi Singh and Veer Singh having wooden sticks and Farsas, respectively, in their hands were present from before. It is alleged that accused Bijendra Singh caused injury by Farsa on the head of complainant and after receiving injury he fell down on the earth. By that time, Ram Naresh also reached the spot carrying some voters in a tractor. At that juncture, accused Ramendra fired by his 12 bore gun which hit Ram Naresh who was sitting on the driver seat of the tractor causing injury in his body as a result of which he died on the tractor's seat. Other accused also fired 10-12 shots from their firearms injuring Prayag Singh, Amar Singh, Ram Singh, Janved and Jandel Singh. The motive of the incident was shown previous enmity between accused and the complainant. Complainant then went to police station Kelaras in a tractor and lodged the F.I.R. (Ex. P/17) at the police station, which was 30 kms. away from the place of incident. The F.I.R. was transferred for registration of crime to police station Chinnoni having territorial jurisdiction. The injured were medically examined in the Primary Health Centre Kelaras. The memo of dead body (Ex. P/18) was prepared on the spot and dead body was sent for postmortem to the Primary Health Centre Kelaras by inquest memo Ex. P/1 on the day of incident. On request of the Police Station Chinnoni, postmortem on the body of Ram Naresh was done in the Primary Health Centre Kelaras. After F.I.R. was lodged, spot-map (Ex. P/27) was prepared and other articles relating to incident found on the spot were seized by seizure memo Ex. P/28. After recording the case-diary statements on different days, the accused were arrested and on their surrender, the weapon seized during investigation, were sent for chemical examination to the Director Forensic Science Laboratory, Sagar (M.P.). After investigation, the charge-sheet was filed before the criminal court. On committal, the Sessions trial commenced and after recording the evidence, the present accused-appellants were convicted and sentenced for commission of the alleged offence while other accused were acquitted of the alleged charges, hence this appeal.

2. The contention of the learned counsel appearing for appellants is that the judgment under appeal is against the law and procedure and therefore same is liable to be set aside. It is submitted that to prove the guilt against accused, the prosecution examined chance/eyewitnesses, namely, Bhura injured (PW-1), Munna injured (PW-2), Vishambhar Singh (PW-3), Hargyan Singh injured/complainant (PW-5), Kalla injured (PW-6), Shaitan Singh (PW-8), father of the deceased, Prayag Singh injured (PW-9). On medical side, Dr. M.L. Garg (PW-4), Autopsy Surgeon who examined the injured of incident, Dr. K.L. Bandal (PW-7) X-ray in-charge of the District Hospital Morena and Investigators, namely, Tilak Singh (PW-10), Umesh Garg (PW-11) and R.S. Dangi (PW-12) were examined. It is submitted that the

prosecution witnesses are interested and related witnesses and had political rivalry so there are every chance of false implication of the accused. Apart from it, the evidence of the witnesses contained material contradictions in relation to the occurrence and is belied by the medical evidence. No independent witness though was available to the prosecution was examined for proving the incident. The trial Judge had committed a grave error in discarding the defence plea. On these submissions, it is prayed that by allowing the appeal, judgment under challenge may be set aside and the accused-appellants be acquitted of the charges framed by the trial court.

3. The defence of the accused/appellants is that no incident as appeared from prosecution case happened in front of election polling booth centre in village Bhojpura during casting of votes. It is stated that the deceased Ram Naresh was having pistol at the time of incident in his pocket and due to his negligence, the weapon fired and he got injury accidentally on the lower part of his body causing his death. It is submitted that the accused were not present with firearms but on the basis of previous rivalry were implicated in the crime. Gayaram Kotwal (DW-1) who was in election duty in same booth was examined by the appellants as defence witness.

4. Per contra, the learned Panel Lawyer appearing on behalf of the respondent/State contended that the prosecution succeeded to prove the guilt against the accused by leading evidence of eye-witnesses as well as medical evidence. It is submitted that all witnesses belonged to village and being illiterate and rustic villagers, the contradictions and omissions as appeared are bound to come in their evidence. It is thus said that by adducing evidence the guilt against the accused stands fully established by the prosecution and as such the learned trial Judge has not committed any error in passing the impugned conviction and sentence. Accordingly, it is prayed that by dismissing the appeal, the conviction and sentence of the accused-appellants may be upheld.

5. Heard the learned counsel appearing for the appellants and the learned Panel Lawyer for the respondent/State. Also perused the record of the trial court and the law applicable to the present case.

6. To prove the guilt against the accused, the prosecution examined chance/eye-witnesses, namely, Bhura injured (PW-1), Munna injured (PW-2), Vishambhar Singh (PW-3), Hargyan Singh injured/complainant (PW-5), Kalla injured (PW-6), Shaitan Singh (PW-8) father of the deceased, Prayag Singh injured (PW-9). These witnesses deposed that on the day of incident all were present outside the Panch Bhawan where the votes were casted in the election. The complainant/injured Hargyan Singh (PW-5), deposed that it was near about 12-1 p.m. when he was sitting inside the room of the premises. By that time accused Bijendra Singh having farsa came to polling booth centre where the votes were casted. He asked the witness why he was sitting inside the room and told that his voters will now cast votes. As he

refused to go outside the polling booth, he caught hold of his collar of shirt and pulled him out of the room. There outside of Panch Bhawan, accused Preetam Singh having a wooden stick (lathi), accused Mahendra Singh having a Katta, accused Ramendra Singh having 12 bore gun, accused Surendra Singh having a spear, accused Ajab Singh having a farsa, accused Dheer Singh and Munshi Singh with lathis were present. He stated that then accused Bijendra Singh caused him injury on his head by a farsa, which made him unconscious. He and his companions with a view to save their lives fled away from the spot. By that time Ram Naresh was going to his residence by driving a tractor. Accused Ajab Singh and Dheer Singh surrounded the tractor from its front side and gave a farsa blow to front side of the tractor. Then on exhortation of the accused Ajab Singh to finish Ram Naresh, accused Ramendra fired a shot by his gun which caused injury on the lower part of Ram Naresh. At that moment, Ram Naresh died on the driving seat of the tractor. It is alleged that accused Ramendra Singh again fired gunshot towards witnesses Bhura and Kalla sitting in trolley attached in running tractor which caused injuries to the witnesses. It is further alleged that thereafter accused Mahendra caused injury by pistol to Prayag Singh, his uncle, who was at a some distance. Accused Preetam Singh also inflicted blow with a wooden stick (lathi) to Prayag Singh. Accused Surendra also caused injury to Prayag by a spear on his right elbow. Ultimately, Prayag fell down unconscious on the spot. He stated that the injured Prayag Singh and deceased Ram Naresh after incident were shifted by others to their residences. Thereafter all the injured and the complainant went to police outpost Jhundpura. On the way to police station Chinnoni they found coming to them a police van. The injured stopped the vehicle and informed the incident to the police personnel. On their direction, the complainant reached at police station Kelaras where he lodged F.I.R. The complainant and other injured were sent to Primary Health Centre Kelaras, where all injured were medically examined. Police prepared the memo of dead body of Ram Naresh in Primary Health Centre at Kelaras. During cross-examination, the complainant admitted that by the time of incident inside the polling centre, the election staff and other polling election agents of contesting candidates were present and outside the polling centre 50-60 persons, one constable for maintaining law and order and two election staff members were present. He also deposed that accused Ramendra Singh fired first shot with a range of 10-15 feet from right side of tractor towards Ram Naresh. Second gunshot hit Bhura injured. The gunshot by accused Mahendra Singh hit Prayag Singh and Munna. He categorically deposed that on the day of incident, no previous enmity of accused either with him or deceased Ram Naresh existed. He further specifically denied the suggestion that deceased Ram Naresh was having country-made pistol in his pocket which fired accidentally and caused serious injury on lower part of his body resulting his death. He also categorically denied that due to previous enmity all named accused were falsely implicated in the alleged crime.

7. Injured Bhura Singh (PW-1), deposed that one year ago, he went on a tractor for visualizing the panchayat election with another person. At that time, he was sitting in a trolley attached with a tractor driven by Ram Naresh, his cousin, who died by gunshot injury caused by accused Ramendra. He stated that the shots were fired from northern side of the tractor from the distance of near about 15-20 feet away. He saw that accused Bijendra was quarrelling with Hargyan Singh. Accused Ramendra fired another shot which pellets caused injuries in his body. In cross-examination, he deposed that deceased and five ladies of his family went to polling booth for casting votes. He categorically denied the suggestion of accused that accused Ramendra did not shot dead Ram Naresh and injured him on the spot. He also denied that he was not present on the spot and he was not injured in the incident.

8. Another injured witness Prayag Singh (PW-9) deposed that near about two years ago at about 12 p.m., he went to cast vote in panchayat election in Panch Bhawan of village Bhojpura. There, accused Bijendra Singh, Dheer Singh, Ajab Singh and Surendra were quarrelling with Hargyan Singh. As he reached to rescue Hargyan, accused Preetam caught hold of him. Another accused Munshi caught hold of his both hands and then accused Ajab Singh assaulted him by farsa on his head. Accused Surendra assaulted him by spear on his right hand and at last accused Mahendra fired which injured his right ribs. Thereafter he became unconscious. After 8 days, he regained consciousness in the Hospital at Gwalior. In cross-examination, he categorically stated that he did not see injuries on the persons of others.

9. Eye-witness Munna (PW-2) son of Suba Singh deposed that on the day of incident he went to cast vote to village Bhojpura in Panchayat Election at Panch Bhawan. When he was sitting in front of the platform of Hanuman Temple, accused Bijendra, Surendra, Preetam and Munshi came to him. Thereafter accused Bijendra having farsa entered inside the Panch Bhawan and dragged Hargyan out by catching his collar of shirt. He also inflicted injury by farsa on head of Hargyan Singh. After assault, the public started collecting on the spot. Ram Naresh who was driving tractor-trolley on seeing the incident drove it away from the spot towards the field, but accused Deersingh and Ajab Singh surrounded his tractor and on exhortation of accused Ajab Singh, accused Ramendra fired at the tractor driven by Ram Naresh, which pellets hit Ram Naresh causing his death.

10. Vishambhar (PW-3) who is another eye-witness to the incident, in his deposition, has fully supported the prosecution version. He also deposed that on the day of incident he went to cast vote in Panchayat Election and at the time of incident, he was on the platform of Pipal tree where an idol of Lord Hanuman was installed. By sitting on the platform, the witness was visualizing the entire incident. He saw that accused Bijendra Singh entered into the booth centre and dragged Hargyan Singh out of the Panch Bhawan by beating him where the accused again caused injury by

farsa on the head of Hargyan Singh and co-accused Preetam Singh dealt a blow by a wooden stick on the head and shoulder of Bhanwar Singh. Thereafter, Ram Naresh by driving away the tractor from the spot crossed the distance of 300 feet. Rest of the accused Dheersingh, Ramendra, Mahendra and others surrounded the tractor driven by Ram Naresh and on exhortation of Ajab Singh, other accused Ramendra Singh fired by his 12 bore gun which hit the abdomen of Ram Naresh who at that time was sitting on the driving seat of the tractor. Accused Mahendra also caused gunshot injury by country-made Pistol which hit Prayag Singh. Second day of incident police reached on the spot and seized the tractor of deceased Ram Naresh and also inquired into the crime. He and injured Ram Naresh, Prayag Singh, Bhanwar Singh, Ram Singh and Munna thereafter were carried in the village. This witness categorically stated that prior to the incident Hargyan and accused Bijendra Singh had no inimical relations and incident happened suddenly.

11. Kalla, son of Deewan (PW-6) deposed that on the day of incident he with Shaitan Singh, Anoop Singh and Bhura went to see the election process held in Panch Bhawan in village Bhojpura in a trolley attached with tractor driven by Ram Naresh. On seeing the quarrel, Ram Naresh carried the tractor away from the spot of incident. As the tractor driven by Ram Niwas reached at another field away from the spot, accused Ajab Singh and Dheer Singh surrounded the tractor and caused farsa blow from front side of the tractor. On exhortation of Ajab Singh, accused Ramendra Singh caused gunshot injury on the abdomen of Ram Naresh who was on driving seat. As a result of gunshot injury, Ram Naresh fell down from driving seat. Thereafter, accused Ramendra fired second gunshot at Bhura who was sitting in the trolley. Same hit his hand. He also got injuries on cheek and shoulder by pellets of gunshot injury. After incident, Shaitan Singh, Anoop Singh and Gariba carried Ram Naresh and injured Prayag Singh to his village in a Jeep of Baba. Thereafter injured and others went to the Police outpost Jhandupura, where one police constable was present. On advice, they reached at Police Station Kelaras. From Police Station Kelaras they were shifted to the Hospital for treatment.

12. Shaitan Singh (PW-8), father of deceased Ram Naresh was also said to be present at Panch Bhawan for casting votes while reaching by a tractor driven by his son. He saw the entire incident. In his deposition, he well supported the prosecution version.

13. Dr. M.L. Garg (PW-4) deposed that at the relevant time he was posted as Medical Officer in the Primary Health Centre Kelaras, district Morena. On 7th June 1994 at about 3-40 p.m., on receiving requisition memo (Ex. P/1) from Police Station Kelaras, he performed postmortem on the dead body of Ram Naresh, aged 20 years, son of Shaitan Singh, resident of village Prarwatpura, which was brought by a Constable Balveer Singh of Police Station Kelaras and identified by Shaitan Singh, father of deceased, Jandel Singh and Deewan Singh, residents of Parwatpura Police Station Chinnoni District Morena. On examination, he found the following injuries on dead body:-

- (i) Small irregular gunshot lacerated wound having blacking edges on the middle of the chest deep up to 1/8.
- (ii) Small irregular gunshot lacerated wound having blacking edges on right upper abdomen deep up to 1/8.
- (iii) Multiple small irregular gunshot lacerated wound with blacked edged over the right forearm deep up to 1/4.
- (iv) Multiple small irregular gunshot lacerated wound with blacked edged over the right side of lumber region deep up to 1/2.
- (v) One huge irregular lacerated gunshot wound with blacked edges over the right in genital. Femoral and scrotal region deep up to the 1 1/2" right in genital and femoral blood vessels and nerves. Lacerated and severally damaged right scrotum and testicles lacerated and damaged. Bleeding with dark reddish) coming out.
- (vi) Multiple small lacerated gunshot wound over the upper and lateral part of right thigh with blacked edges deep up to 1/2.
- (vii) Multiple small lacerated gunshot wound over right leg deep up to 1/2.
- (viii) Multiple small lacerated gunshot wound over left thigh deep up to 1/2.

14. On opening the body, right femoral blood vessels were injured and lacerated. Right scrotal region was lacerated. Small irregular gunshot wound over the penis having blackening of the edges of the wound was found. All above injuries were caused by 12 bore gun and within about 2 to 4 hrs. duration. Ten pellets were removed from the body which were sealed and sent to police station for their further chemical examination.

15. As per the opinion of the doctor, death was caused due to excessive bleeding and as a result of coma on account of gunshot injury by 12 bore arm. Mode of death was to be determined by the ocular evidence collected in the case. Nature of death was homicidal. Postmortem report is Ex. P/2 written and signed by the doctor. In cross-examination, Dr. M.L. Garg (PW-4) admitted that the gunshot injuries as mentioned above may be caused if the injured was keeping country-made pistol inside the pent and if it fired by chance on coming into contact of the part of the body then certainly firearm injury as mentioned above on the body may come.

16. He again deposed that on that day he examined injured Munna Singh, son of Suba Singh and found one lacerated wound having irregular edges and blackening of the edges and surrounding area behind the lower part of the right leg. This injury as per the doctor was caused by gunshot. The X-ray was advised to confirm the suspected fracture of the underneath bone and to confirm any pellets inside the wound by the doctor. Injury report is Ex. P/4 written and signed by him.

17. On that day on request of the concerning Police, he further examined Pryag Singh, son of Jhandu Singh, aged 62 years, resident of Parwatpura and found following injuries on his body:-

(i) Incised wound having regular edges of size 1" x 1/4" x 1/4" over right parieto occipital region of scalp, dark reddish blood clots present.

(ii) Incised wound having regular edges of size 3/4" x 1/4" x 1/4" over upper part of the right forearm, dark reddish blood clots present.

(iii) Multiple small lacerated wound having blackening of the edges and surrounding area, small irregular near the right elbow, caused by firearm.

(iv) A lacerated small wound with blackening of the edges, small irregular over right side of the chest.

(v) A lacerated small wound with blackening of the edges, small irregular on right side of the abdomen.

(vi) Lacerated wound with blackening of the edges, irregular over middle of the right thigh.

18. As per the report (Ex. P/6), the patient was unconscious. He was referred to J.A. Group of Hospitals at Gwalior for treatment and X-ray. The doctor opined that the cumulative effects of above injuries may be dangerous to life. Duration of the injuries was within 2 to 4 hrs.

19. On that day, the doctor examined Rajesh Singh son of Deevan Singh, aged 13 years and found four irregular sized lacerated wounds with backing edges on left cheek, left thigh, left knee and upper part of the left hip region. The doctor advised X-ray to confirm any pellets inside the wound and to confirm the suspected fracture of the underneath bone. Injury report is Ex. P/8, written and signed by him.

20. On that day, the doctor further examined injured Bhanwar Singh, son of Suba Singh, aged 45 years, resident of Parwatpura and found one lacerated wound having irregular edges with reddish blood clots of size 1/2" x 1/4" x 1/4" over left frontal region of the scalp. Said injury was caused by hard and blunt object within 4 to 6 hours and was simple in nature. Injury report is Ex. P/10 written and signed by the doctor.

21. On that day Dr. M.L. Garg (PW-4) examined injured Ram Singh son of Babu Singh, aged 28 years and found two incised wounds having regular edges with reddish blood clots present on right cheek ad-measuring 1/2" x 1/4" x 1/4" and the middle of the nose ad-measuring 1/2" x 1/4" x 1/4". The doctor advised the patient for X-ray to confirm the suspected fracture, dislocation of the underneath bone to decide the nature of the injury. The above injuries were caused by hard and blunt object in 4 to 6 hours. The injury report is Ex. P/12 written and signed by the doctor.

22. The doctor examined on the same day injured Hargyan Singh, son of Kok Singh, aged 31 years and found one incised wound having regular edges with reddish blood clots present of size 1" x 1/4" X 1/4" over right fronto parietal region of scalp, caused by sharp weapon with one slight swelling and tenderness irregular on right index finger, which was caused by hard and blunt object and were simple in nature. Injury report is Ex. P/14, written and signed by the doctor.

23. Dr. M.L. Garg (PW-4) also examined injured Bhura Singh, son of Jandel Singh, aged 13 years and found lacerated wound having irregular edges and blackening of the edges and surrounding area with dark reddish blood clots present over the right hand near the index finger, caused by gunshot within 4 to 6 hours. For ascertaining the presence of pellets and the possibility of fracture in bone, the doctor advised for X-ray. Injury report Ex. P/16 is written and signed the doctor.

24. Dr. K.L. Bandil (PW-7) was posted as Medical Officer-cum-In-charge Radiologist in the District Hospital Shivpuri. On 14th June 1994 he on examining the X-ray plate (Ex. P/20) of injured Bhura Singh found two radio-opaque shadows of metallic density on the base of the index finger of right hand vide his report Ex. P/19. On the same day, he examined the X-ray plates (Ex. P/23 to Ex. P/26) of injured Rajesh son of Deewan Singh and found vide report Ex. P/22 as following:-

(i) One radio opaque shadow of metallic density on left side of face;

(ii) One rounded radio opaque shadow of metallic density on left hip region;

(iii) One rounded radio opaque shadow on upper and one rounded radio opaque shadow on lower part of the left thigh.

25. Tilak Singh (PW-10) In-charge Sub Inspector of the Police station Kelaras, district Morena, deposed that on 7th June 1994, he recorded the F.I.R. (Ex. P/17) on lodging oral report by Hargyan Singh (PW-3) at Crime No. 0/94 against named persons for commission of offence u/s 302, 307, 147, 148, 149 of I.P.C. read with sections 25/27 of the Arms Act. Thereafter he shifted injured Munna Singh, Prayag Singh, Rajesh, Bhanwar Singh, Ram Singh, Hargyan Singh and Bhura Singh for their medical examination and treatment vide request letters Ex. P/3, P/5, P/7, P/9, P/11, P/13 and P/15. He in Police Station Kelaras called witnesses by issuing Safina Form (Ex. P/42) and made the memorandum of dead body of Ram Naresh vide Ex. P/18 in the presence of the witnesses.

26. Umesh Garg (PW-11) deposed that during the period from 14th January, 1994 to 20th July, 1994, he was posted as SHO in police station Chinnoni district Morena. On 8th June 1994 after receiving information regarding Crime No. 52/1994, he proceeded to the spot in village Bhojpura and on information given by the complainant Hargyan Singh and in presence of witnesses Vishambhar Singh and Akshya Kumar, he prepared spot-map (Ex. P/27). He seized the tractor with trolley kept in agricultural field of Akhhe Singh by seizure memo (Ex. P/28). On the same

day he seized the simple and blood stained soil from the spot together with blood stained driving seat of the tractor by seizure memo Ex. P/29. He also seized one empty cartridge of make Shaktiman Express from the spot by seizure memo Ex. P/30. On 8th, 9th June and 1st July 1994 he recorded case diary statements of the witnesses. On 11th June 1996 he arrested accused Ajab Singh vide memo Ex. P/31. After receiving F.I.R. (Ex. P/17) from Police Station Kelaras written by Tilak Singh, on 8th June 1994 he wrote the report Ex. P/32 and registered the Crime No. 52/94 against the accused.

27. R.S. Dangi (PW-12), the Investigating Officer who conducted partly investigation in this case, deposed that in July 1994 he assumed charge of In-charge of the Police Station Chinnoni. During investigation of Crime No. 52/1994, on 30th July 1994 he arrested accused Bijendra Singh by arrest memo Ex. P/33 and accused Surendra Singh by arrest memo Ex. P/34. On 3rd August, 1994 accused Ramhet was arrested vide Ex. P/35 and on 22nd August 1994 arrested accused Ramhet vide memo Ex. P/36. He again deposed that on 30th July he seized the Farsa with a wooden stick by seizure memo Ex. P/37 from accused Brijendra, a wooden stick having fixed with spear called as Ballam by seizure memo Ex. P/38 from accused Surendra. After arrest of accused Ramendra on 3rd August, 1994, he informed about the weapon (country-made pistol) and thereafter at his instance same was recovered with one live cartridge. However, this recovery was effected in relating to another Crime No. 63/94 for offence under Sections 25/27 of the Arms Act. After arrest of accused Mahendra on 29th August 1994, though the accused Mahendra informed vide Ex. P/39 about the country-made pistol kept in his residence but no recovery of such weapon at his instance was made at the time of making search of the house vide Ex. P/40. Similarly, on 4th August 1994 accused Ramendra informed vide memorandum Ex. P/41 about the weapon (12 bore gun) but no such weapon was recovered at his instance. On 14th August 1994, the I.O. also recorded the case diary statements of other witnesses.

28. The report received from the Senior Scientific Officer reveals that the empty cartridge recovered from spot was fired through 12 bore weapon. The ten lead pellets removed from the dead body of Ram Naresh during postmortem were the part of cartridge like empty cartridge recovered from the spot and was said to be fired through the said weapon. The holes in underwear of the deceased which was sealed at the time of postmortem were caused by the pellets of cartridge fired through the alleged weapon.

29. To sum up the prosecution evidence as discussed above, it clearly postulates that the entire incident happened in two span; in first phase of incident on the date of occurrence the complainant Hargyan Singh (PW-5) being the polling agent of contesting candidate Bhanwar Singh and with permission of the Presiding Officer was present in polling booth centre situated in Panch Bhawan at village Bhojpura. In the very begging of the incident, the accused Bijendra Singh, the person of opposite

candidate alongwith farsa entered inside polling booth who told the complainant to go outside the room of booth because his voters will have to cast their votes in favour of the opposite candidate. As the complainant refused to go outside the polling booth, the accused pushed him by force outside the polling booth. When he came out of the polling booth, other named accused were there from before with deadly weapons. Accused Bijendra Singh then dealt a blow on his head by means of farsa. As per medical opinion of Dr. M.L. Garg (PW-4) incised wound on right fronto parietal region was caused by sharp edged weapon, however, same was simple in nature. So, it is proved that only accused Bijendra Singh on rivalry of election by two contesting candidates caused injury which was simple in nature by means of Farsa, the deadly weapon. On perusal of the evidence of Hargyan Singh (PW-5), no other motive, knowledge or intention on the part of the accused Bijendra Singh to cause death of Hargyan Singh appears. Thus, the learned trial Judge rightly convicted accused Bijendra Singh for commission of offence punishable u/s 324 of I.P.C. As such no interference is warranted in his conviction and sentence so recorded.

30. Further on perusal of the ocular evidence as discussed in detail, it is clear that on the same day, after first part of the incident which took place inside and outside of the polling booth in Panch Bhawan by accused Bijendra Singh in which injury was inflicted by farsa on the head of complainant Hargyan Singh, Ram Naresh (deceased) also arrived there by driving the tractor-trolley, carrying the voters, namely, Shaitan Singh, Kalla, Anoop Singh and Gariba with their wives and on seeing the incident of violence outside the Panch Bhawan, Ram Naresh drove away the tractor-trolley from the spot of incident and after crossing one agricultural field as the tractor-trolley reached at the agricultural field of Akhhe Singh, after crossing near about 47 meters towards north side, accused Ajab Singh and Dheer Singh having Farsi and wooden stick chased and surrounded the tractor. At that moment, accused Ramendra Singh fired by his 12 bore weapon and caused a dangerous injury on the lower part of abdomen of Ram Naresh and caused him dead. It is alleged that accused Ramendra also fired another shot thereby causing simple injuries on the persons of Kalla (PW-6) and Bhura (PW-1) who were sitting in trolley attached with tractor, driven by deceased Ram Naresh. In this manner, the learned trial Judge has not committed any mistake in convicting and sentencing accused Ramendra Singh for causing murder of Ram Naresh for offence u/s 302 of I.P.C. and also for a causing simple injuries by deadly weapon on the persons of Bhura (PW-1) and Kalla (PW-6), which is an offence punishable u/s 324 of I.P.C.

31. As regards accused Mahendra, it has come in the evidence on record that at time of causing death of Ram Naresh, he was not present near the place of the tractor where accused Ramendra was alleged to have fired shot causing his death nor he participated in the incident, therefore, the conclusion arrived at in convicting accused Mahendra Singh for the act committed in furtherance of common intention of causing murder of Ram Naresh u/s 302/34 of I.P.C. appears to be based on wrong assessment of the evidence.

32. Injured Prayag Singh (PW-9) deposed that in the incident of quarrelling between accused Brijendra, Dheer Singh, Ajab Singh and Surendra with complainant Hargyan Singh, when he tried to intervene then accused Preetam and Munshi caught hold of him and accused Ajab Singh caused injuries on his head by Farsa and thereafter accused Surendra caused injury by spear on right hand and lastly accused Mahendra caused injuries by gunshot injuring right side of his ribs. He became unconscious on the spot and therefore could not see as to which of the accused had caused injuries to which of the persons. He got senses after 8 days while admitted in J.A. Hospital Gwalior. The injuries caused on the person of injured Prayag Singh get support from statement of Dr. M.L. Garg (PW-4) who examined him immediately in the Primary Health Centre Kalaras. The other injured persons namely, Rajesh Singh, son of Deewan Singh, Bhamar Singh, son of Suba Singh and Ram Singh, son of Babu Singh who received injuries in the incident were not examined by the prosecution nor the examined eyewitnesses ever mentioned about their injuries attributing to the accused in their court statements. In view of the above, the trial Judge was right in convicting accused Mahendra Singh for causing injuries on the body of Prayag Singh by deadly weapon u/s 324 of I.P.C.

33. Having thus considered the evidence in this appeal we have come to a definite conclusion that the learned Additional Sessions Judge did not fell in error in relying upon the eye-witnesses" evidence against accused-appellant Ramendra. The effect will only be to confirm the conviction of the appellant Ramendra before us on the footing that it was he who fired the shot causing fatal injuries with requisite intention and knowledge as he committed a clear case of murder falling u/s 302 of I.P.C. The Medical Officer Dr. M.L. Garg who was examined as PW-4 has deposed in Court that the injuries which caused the death of the deceased were the result of the use of the weapon and this testimony of the doctor corroborates and supports the testimony of eyewitnesses. We have carefully examined the cross-examination of all the material witnesses and we hold that the learned counsel appearing for the appellants did not succeed in the least to bring out anything during cross-examination which would affect the credibility of any of the material witnesses who deposed in support of the prosecution case. When the statement of witnesses, who are relatives, or are parties known to the affected party, is credible, reliable, trustworthy, admissible in accordance with the law and corroborated by other witnesses or documentary evidence of the prosecution, there would hardly be any reason for the court to reject such evidence merely on the ground that the witness was a family member or an interested witness or a person known to the affected party. It is further clear from the evidence that the presence of above ocular witnesses at the scene of occurrence was natural and their statements do not suffer from the vice of suspicion or uncertainty. The court therefore in such matters has to give credence to their statements. (See: [State of Haryana Vs. Shakuntla and Others,](#)).

34. Consequently, the appeal stands allowed in part. The findings of the trial court in holding appellant Ramendra Singh guilty of offence of murder punishable u/s 302 of I.P.C. are hereby confirmed with sentence of life imprisonment and fine. However, the conviction and sentence of accused Mahendra Singh for causing murder of Ram Naresh u/s 302/34 of I.P.C. are hereby set aside and so he is acquitted of the alleged offence of murder. As regards conviction of accused Bijendra Singh for causing simple injury by deadly weapon on the body of Hargyan Singh (PW-5) and of accused Mahendra Singh for causing simple injury by deadly weapon on the body of Prayag Singh including appellant Ramendra Singh for causing simple injury by deadly weapon on the body of Bhura is held proper which stands confirmed with sentence of two years" rigorous imprisonment and amount of fines awarded against these accused for the alleged offence. In default of payment of fines, appellants shall suffer imprisonment as directed by the trial court. It is further made clear that the fine amounts so imposed above on the accused, if not deposited within a period of three months from the date of pronouncement of the judgment, same shall be realized from the movable/immovable properties of the convicted accused named above u/s 421(1) of Cr.P.C. We further direct that on recovery of fine amounts, same by way of compensation shall be awarded by the trial court to the legal heirs of the deceased during the course of two months from the date of realization of fine amount. Appellants Bijendra and Mahendra are on bail. If they have completed the sentence of imprisonment imposed against them after setting off the period of detention, if any undergone by the accused during investigation, inquiry or trial of the case and before the date of such conviction against the term of sentence of present imprisonment, they shall be released forthwith, if not wanted in any other criminal case, after getting deposited the fine amount.