



HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 7543 of 2006

AFR

Reserved

Santosh and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Amit Kumar Gaur, Lav Srivastava
Counsel for Respondent(s)	: G.P.Dixit, Govt. Advocate, Nikhil Pratap Singh, Ramesh Kumar, Sanjay Kumar, Sharad Chand Rai, Tripurari Pal

Along with :

Criminal Appeal No. 7713 of 2006:

1. Sukhvir and another
Versus
State of U.P.

Criminal Appeal No. 7712 of 2006:

2. Satyavir and others
Versus
State of U.P.

Court No. - 47

HON'BLE J.J. MUNIR, J.
HON'BLE SANJIV KUMAR, J.

(Delivered by Hon'ble Sanjiv Kumar J.)

1. All the above three Criminal Appeals have been filed under Section 374 (2) Cr.P.C. against the judgment and order dated 29.11.2006 passed by Sri Shyam Sundar, Additional Sessions Judge, Court No. 6,

Mainpuri, in Session Trial No. 128 of 2002 (State Vs. Santosh and Others). As all the above three Criminal Appeals have been filed against the common judgment and order dated 29.11.2006, and therefore, all of them are being decided by a common judgment.

2. The Criminal Appeal No. 7543 of 2006 has been filed by appellants, to wit, Santosh son of Charan Singh, Kamlesh son of Sua Ram, Ram Naresh son of Sonelal and Ram Pal son of Kanaujiya Lal; Criminal Appeal No. 7712 of 2006 has been filed by appellants- Satyvir Singh, Shiv Vir Singh and Ram Avtar all sons of Sonelal and Criminal Appeal No. 7713 of 2006 has been filed by the appellants- Sukhvir son of Charan Singh and Arvind Singh son of Ram Naresh, all residents of Village- Nagla Bandh, Police Station- Kisni, District- Mainpuri, against the judgment and order dated 29.11.2006 passed by the Additional Sessions Judge, Court No. 6 Mainpuri, in Sessions Trial No. 128 of 2002, as aforesaid.

3. By the impugned judgment and order, all the appellants, to wit, Santosh, Kamlesh, Ram Naresh, Ram Pal, Satyavir Singh, Shiv Vir Singh, Ram Avtar, Sukhvir, Arvind Singh have been found guilty and convicted and sentenced to undergo imprisonment for a term of one year's for offence punishable under Section 147 Indian Penal Code (in short' IPC'); one year's imprisonment for offence punishable under Section 148 IPC; appellants Kamlesh and Ram Naresh were further convicted and sentenced to undergo rigorous imprisonment for a term of five years and a fine of Rs. 2,000/- for offence punishable under Section 307 IPC and in default of payment of fine they were directed to undergo further imprisonment of four months; all the appellants were also convicted and sentenced to undergo imprisonment of life for offence punishable under Section 302 IPC and a fine of Rs. 5,000/- each and in default of payment of fine they were further directed to undergo imprisonment for a term of four months and lastly, all the appellants were convicted and sentenced to undergo imprisonment for a term of three years under Section 452 IPC and to pay a fine of Rs. 2,000/- and in default of payment of fine they were further directed to undergo

imprisonment for a term of four months, and it was directed that all the sentences shall run concurrently.

4. Brief facts of the prosecution case are that the informant Om Prakash son of Sri Sarman Singh Yadav, Resident of Village- Nagla Bandh, H/o Maudasi, Police Station- Kisni, District- Mainpuri, filed a written information (*tehrir*) dated 19.08.2001 before Incharge Police Outpost -Mogaon, Police Station- Kisni, District Mainpuri, stating therein that he is serving in the Army and had come to his village on leave. There was enmity over *abadi* land between Om Prakash and Santosh, Sukhvair Yadav and Kamlesh natives of his village. About one month ago he had come on leave to his house, then the reputed persons of the area had got the matter of disputed land settled in a panchayat, but the accused kept grudge against him and his family. His brother-in-law (*saala*) Mohar Singh son of late Pahelwan Singh Yadav, his nephew Sunil @ Baba son of Sobran Singh, both residents of village Nagla Sukhi, Police Station- Kurra had came to meet him because today he was going back to attend his duties after availing leave. Today, i.e. 19.08.2001 in the morning he and his younger brother Ganga Singh had gone to their field and his father was sitting to the North of his house, cleaning garlic and his wife was brooming in verandah. Her brother-in-law's (*saala*) son Sunil @ Baba had also gone to the field and his elder son Dharmendra alongwith his maternal uncle (*mama*) Mohar Singh had gone to see electric wires towards the transformer and his younger children Satendra and Jitendra were studying over the roof of the house. At about 07:30 a.m. the informant and his younger brother Ganga Singh returned home from the field and were talking to his father then Santosh, Sukhvair both sons of late Charan Singh, Kamlesh son of late Sua Ram, Naresh, Satyavir, Shivir and Ramadhar all sons of Sonelal Yadav. Arvind son of Ram Naresh and Shyam Pal son of Kanauji Lal resident of Village- Awazpur, Police Station- Kisni, armed with illegal weapons entered in his courtyard from the side of tubewell hurling abusive languages. As soon as he and his brother Ganga Ram looked towards the courtyard and objected then Santosh and Sukhvair shot at his

wife Savitri Devi with intention to kill, she cried and his both sons sitting over the roof of the house also cried, then Kamlesh and Ram Naresh shot at their sons with intention to kill. All the accused rushed towards him, his brother Ganga Singh and his father. He himself and his brother took shelter behind the heap of straw (*bhoose ka coop*). Then, Kamlesh and Ram Naresh shot multiple fires at his father and upon the hue and cry of the informant and his brother, they ran towards tubewell. There his brother-in-laws' nephew (Sunil @ Baba) was coming from the field. Satyavir and Shivvir, shot at him and thereafter all the accused ran towards the southern road of the village. Upon hearing the noise of fire his son Dharmendra and brother-in-law, Mohar Singh and Santosh were coming, when they were surrounded by the accused near Lala Ram's field where Ramadhar, Arvind, Shyam Pal shot at his son Dharmendra with intention to kill. He himself, Mohar Singh and Santosh somehow managed to save their lives after hiding themselves and all the accused after shooting ran towards Paharpur. His father, son Dharmendra and brother-in-law's son Sunil @ Baba had died at the spot and their dead bodies are lying there. The informant, his brother Ganga Singh and brother-in-law Mohar Singh have somehow managed to bring his injured wife Savitri Devi, injured son Jitendra to the police station. Due to the indiscriminate firing by the appellants there is terror in and around the village and due to the fear of the appellants, none of the villager is ready to come with him.

5. Upon this information *chik* FIR under Case Crime No. 248 of 2001, Sections 147, 148, 149, 452, 307 and 302 IPC, was registered at Police Outpost- Kushmura, Police Station- Kisni, District- Mainpuri on 19.08.2001 at 10.00 a.m. and the investigation commenced. The Investigation Officer reached at the place of occurrence and collected blood-stained and plain earth from the places of occurrence where the dead bodies were lying and prepared their *fard baramadagi* marked as Ext. Ka-28 to Ext. Ka- 32. He also collected empty cartridges from the places of occurrence and prepared its *fard baramadagi* which he proved as Ext. Ka- 33 to Ext. Ka- 36. The informant's wife Savitri Devi

succumbed to her injuries and the inquest of all the four deceased were prepared alongwith related papers. The dead bodies were sent for *postmortem* and the *postmortem* was conducted. The Investigating Officer recorded statements of informant, injured and other witnesses. The injured Jitendra was medically examined. The I.O. in the course of investigation arrested accused and recovered country made pistol at the pointing out of accused Sukhvir and prepared its *fard baramadagi* and separate case under Section 25 of Arms Act was lodged against him, which was separately investigated. The Investigation Officer sent the cartridges, recovered from the places of occurrences and recovered pistol, for forensic examination. The Investigating Officer after completion of investigation submitted charge-sheet before the Chief Judicial Magistrate, Mainpuri.

6. The concerned court took cognizance of the offence and summoned the accused, they appeared before the court and they were furnished copies of relevant prosecution papers under Section 207 Cr.P.C. and thereafter, the case was committed for trial to the Court of Sessions on 18.04.2002.

7. The accused appeared before the Sessions Court and charge under Sections- 147, 148, 302 read with 149, 307 read with 149 and 452 IPC was framed against them to which they pleaded not guilty and claimed to be trite.

8. The prosecution has examined nine witnesses to prove its case , to wit, P.W. 1 informant- Om Prakash; P.W. 2 injured Jitendra Singh; P.W. 3 Dr. U.C. Chaturvedi, (the doctor who examined injured Jitendra Singh and prepared its injury report); P.W. 4 Ganga Singh; P.W. 5 Dr. R.D. Yadav, (who conducted postmortem of all the four deceased); P.W. 6 S.I. Asht Muni, (who prepared inquest of deceased Dharmendra Singh, Sunil @ Baba and Sarman Singh along with related papers); P.W. 7 S.I. Anuj Kumar Tyagi; P.W. 8 Constable Clerk Ram Kumar Singh, who scribed *chik* FIR and G.D. No. 12; P.W. 9 S.I. Satya Pal Singh (who prepared inquest of deceased Savitri Devi alongwith related papers).

9. The prosecution has produced following documentary evidence to prove its case, namely, ballistic expert report Paper No.13a/2; written application (*tehrir*) Ext. Ka-1; injury report of injury Jitendra Ext. Ka-2; *Postmortem* report of deceased Smt. Savitri Devi Ext. Ka-3; *Postmortem* report of deceased Dharmendra Singh Ext. Ka-4; *Postmortem* report of deceased Sunil @ Baba Ext. Ka-5; *Postmortem* report of deceased Sarman Singh Ext. Ka-6; inquest report of deceased Dharmendra Singh Ext. Ka-7; a copy of *chik* FIR Ext. Ka-8; a copy of G.D. Ext. Ka-9; the letter to CMO Ext. Ka-10; Challan nash Ext. Ka-11; Photo nash Ext. Ka-12, the letter to R.I. Ext. Ka-13, inquest of deceased Sunil @ Baba Ext. Ka-14 and related papers for conducting *postmortem* such as copy of *chik* FIR, copy of GD, the letter to CMO, sample seal, challan nash, photo nash as Ext. Ka-15 to Ext. Ka-20, respectively; inquest of deceased Sarman Singh Ext. Ka-21, along with related documents; copy of *chik* FIR, copy of GD, the letter to CMO as Ext. Ka-22 to Ext. Ka-27 respectively; *fard baramadagi* of taking into possession plain concrete and blood-stained concrete from the roof of the house of the informant Ext. 19-28; blood stained earth from the place where Savitri Devi was shot Ext. Ka-29; blood-stained earth from the place where the dead body of deceased Sarman Singh was found Ext. Ka-30; *fard baramadagi* of taking sample of blood-stained earth from near the dead body of Sunil @ Baba Ext. Ka-31; *fard baramadagi* of taking sample of blood-stained earth near the dead body of Dharmendra Singh as well as plain earth Ext. Ka-32; three empty cartridges 315 bore from near the body of Dharmendra as Ext. Ka-33; two empty cartridges 315 bore and one empty cartridge 12 bore recovered from near the place of dead body of Sunil @ Baba as Ext. Ka-34; *fard baramadagi* of three empty cartridges 315 bore from near the dead body of Sarman Singh as Ext. Ka-35; *fard baramadagi* of two cartridges 315 bore and one empty cartridge from the house of informant as Ext. Ka-36; *fard baramadagi* of empty cartridges 12 bore and empty cartridges 315 bore as material as Ext. 1 to 7; site plan of the place of occurrence as Ext. Ka-37; the charge-sheet as Ext. Ka-38; the

chik FIR as Ext. Ka-39, a copy of G.D. as Ext. Ka-40; inquest of deceased Savitri Devi and related papers necessary for *postmortem* of deceased Savitri Devi as Ext. Ka-41 to Ext. Ka-45, respectively; *Postmortem* report of Savitri Devi prepared by Dr. U.C. Chaturvedi as Ext. Ka-46.

10. P.W. 1- Om Prakash is the informant and also eye witness of the incident. He has stated that the incident occurred on 19.08.2001 at about 07.00 a.m. His father was cleaning garlic in front of northern door of his house, his wife was sweeping the verandah, his brother-in-law's son Sunil @ Baba had gone for nature's call in field. His elder son Dharmendra alongwith his maternal uncle (*mama*) had gone to see electric wires near transformer; his two sons, Satendra and Jitendra were studying over the roof of the house. His younger brother Ganga Singh and he himself were talking to his father, after returning from field. Then Santosh, Ram Naresh, Ramadhar, Satyavir, Dharmpal, Kamlesh, Shivvir, Arvind and Shyampal came there. Santosh and Sukhvir were having *tamancha* 315 bore, Shivvir and Ram Naresh were having *tamancha* 12 bore and rest of the accused were having *tamancha* 315 bore. They entered in his courtyard from towards the tubewell hurling abuses, as soon as he and his brother Ganga Singh saw and objected them, Santosh and Sukhvir fired at his wife Savitri Devi with intention to kill as a result she got injured and cried and his both children stepped down from the roof and also cried and while her children were peeping from the roof then Kamlesh and Ram Naresh fired at them with intention to kill. Upon hue and cry of the informant and his brother Ganga Singh all the accused pounced upon them and his father. The informant and his brother Ganga Singh hid themselves behind the heap of straw (*bhoose ka coop*) and saw that Ram Naresh and Kamlesh shot at his father killing his father. He and his brother raised alarm to save themselves, then the accused ran towards tubewell. There Sunil @ Baba was returning home, the appellants Satyavir and Shivvir fired at him with intention to kill, as a result he died on the spot. The appellants ran towards the southern road of the village, and the informant saw Sunil @

Baba being killed from the north-western edge of his house and chased the accused, because his son had gone in that direction from where his son Dharmendra and his maternal uncle (*mama*) Mohar Singh and Santosh were returning home. They were surrounded near Lalaram's field and appellants Shyam Pal, Ramadhar and Arvind fired at his son as a result he died at the spot. Mohar Singh and Santosh saved their lives by hiding themselves. All the accused ran towards Paharpur thereafter. As a result of these firings his father Sarman Singh, Dharmendra Singh and his brother Sunil @ Baba have died at the spot and his wife Savitri Devi and son Jitendra were injured. The informant was serving in Army and had come to his home on leave. There was enmity between him and accused Santosh, Sukhvair and Kamlesh over an *abadi* land. One month prior to this incident, they had entered into compromise due to intervention of some reputed persons but the accused were not satisfied with this compromise and they were keeping enmity against them. His brother-in-law Mohar Singh and nephew Sunil @ Baba had come to meet him because his leave was over and he had to join the next day. The accused Shyam Pal is resident of Awazpur and he is relative of accused Santosh and Sukhvair. The informant, his brother Ganga Singh and Mohar Singh brought his wife Savitri Devi and injured son Jitendra to the police Outpost- Kushmara, District- Mainpuri with a written application. The witness has proved application (*tehrir*) as Ext. Ka-1 and has stated that he brought his injured wife soon to Maharaj Tejsingh, Hospital Mainpuri, but she died on way in between Bhogaon and Mainpuri. He admitted his son Jitendra in the Hospital and kept his wife's dead body in front of the Hospital's gate. The condition of Jitendra was serious so he was referred to Agra. This witness has been cross-examined to a considerable length and time by different advocates of all the appellants and his cross-examination continued for more than one and a half years. It is submitted on behalf of the appellants that there are material contradictions in his statement which will be discussed in later part of this judgment.

11. P.W. 2 Jitendra is the injured witness and son of the informant, he has also supported the prosecution case and has stated that on 19.08.2001 at about 07:30 a.m. he was reading over the roof along with his brother Santosh. His mother was sweeping in the courtyard, his grand-father Sarman Singh was cleaning garlic in front of the door of his house. His father Om Prakash and uncle Ganga Singh had returned from the field and were talking to his grand-father. About one day prior to this incident his maternal uncle (*mama*) Mohar Singh and his nephew Sunil @ Baba had come to his house. During the time of this incident his father was on ten days leave and on the next day of this incident, he had to go to join his duties. His maternal uncle and Sunil @ Baba had come to meet his father. His maternal uncle Mohar Singh and brother Dharmendra Singh had gone to see the electric wires of the transformer and his maternal uncle's son Sunil @ Baba had gone towards the field, then all the nine accused carrying *tamanchas* came. Accused Shyam Pal resides in village Awazpur and the rest are residents of his own village. All the accused came abusing from western side of his house and entered inside the courtyard. His father and uncle objected to them, then accused Santosh and Sukhvir fired at his mother with intention to kill causing her serious injuries. Upon hearing the sound of fire and the cry of his mother, he and his brother Satendra raised alarm and peeped from the roof and saw, then Ram Naresh and Kamlesh fired at him with intention to kill as a result he himself sustained grievous injuries. Thereafter accused rushed towards his father and uncle, who hid themselves behind the heap of straw and saved themselves. Ram Naresh and Kamlesh fired at his grand-father, as a result he died at the spot. His father and uncle raised alarm to call villagers then the appellants ran towards western side, there his maternal uncle's son Sunil @ Baba was coming then appellants Satyavir and Shivvir fired at Sunil @ Baba with intention to kill and he died on the spot. Then the appellants ran towards southern side shooting fire, from that direction his brother Dharmendra and maternal uncle Mohar Singh were coming. Appellant Ramadhar, Arvind and Shyam Pal fired at him with intention to kill as a result he

died on the spot. Dharmendra was shot near Lalaram's field and his maternal uncle Mohar Singh and Santosh saved themselves after hiding themselves behind the bushes. Thereafter, all the accused shot 30-35 rounds of fire to create terror and panic. The villagers were frightened and did not chase them. His mother was alive and was taken to police outpost- Kushmara alongwith him. There, he and his mother kept sitting inside the jeep and his father lodged the report at the police outpost- Kushmara. Thereafter, the Inspector came near his jeep and inquired about the incident from him and his mother. The condition of his mother was serious, thereafter, she was brought to Mainpuri but she succumbed to injuries before reaching the railway crossing between Boghaon and Mainpuri. His father brought them to hospital. His condition was serious so he was referred to S.N. Medical College, Agra. There his X-Ray was conducted, given treatment and was operated. He remained admitted for about one month in the hospital. There was a land dispute regarding *abadi* land between his father and the appellants and a civil case is pending in the court. Due to the above, the appellants had committed the murder. This witness was also cross-examined at length for a considerable period. It is submitted on behalf of the appellants that there are material contradictions in his statement which will be discussed in later part of this judgment.

12. P.W. 3- Dr. U.C. Chaturvedi, is the formal witness, who has medically examined injured Jitendra Kumar, aged about 12 years, on 19.08.2021 at about 11:10 a.m. at District Hospital, Mainpuri. He found following injuries on Jitendra Kumar:-

1. *Lacerated wound of 1cm X 0.5 cm X muscle deep over right side of abdomen 10 cm away from umbilicus. Fresh clotted blood present. No burning or tattooing or blackening seen. This injury was kept under observation and X-ray advised,*
2. *Fire-Arm wound of entry, size 0.3 cm. X 0.3cm, X skin deep over front of left arm 15 cm. below the tip of right shoulder.*

fresh clotted blood clot present. X-ray was advised and this injury was kept under observation.

3. Injury no, 3 (which is shown to be injury no. 2 in the medical report), is fire-arm wound of entry, size 0.3 cm. X 0.3 cm, over right side of upper part of chest 1.5 cm. below the mid 1/3 of right collar bone, soft blood clot present. This injury was kept under observation and X-ray was advised.

4. (This injury shown to be injury no. 3 in the medical report), is fire-arm wound of entry, size 0.3 cm. X 0.3 cm. X muscle deep over back of right hand, between base of III and IV fingers. This injury was kept under observation and X-ray was advised.

5. (This injury shown to be injury no. 4 in the medical report), is fire-arm wound of entry, size 0.4 cm. X 0.4 cm, over outer part and front side of leg 3.5 cm below the knee. Soft clotted blood present. This injury was kept under observation and X-ray was advised.

6. (This injury shown to be injury no.5 in the medical report), is fire-arm wound of entry, size 0.4 cm X 0.4 cm. X over inner side of right leg 9 cm, below the ankle. Soft blood clot present. This injury was kept under observation and X-Ray was advised.

13. P.W. 4 Ganga Singh, is also an eye witness of the incident, he has also stated the same version of the incident as was stated by P.W. 1- Om Prakash and P.W. 2 Jitendra Singh, and has stated that all the accused were armed with deadly weapons i.e. *tamanchas*, came at his brother's (Om Prakash) house and shot fire at his bhabhi Savitri Devi, his father, Sarman Singh, causing their death. They also shot at Jitendra and Satendra who were sitting at the roof of the house causing injuries to Jitendra. The accused also shot at Sunil @ Baba who was coming from field to the western side of the house. The appellants ran towards tubewell where they shot at Dharmendra near Lalaram's field causing his death. He has stated that his brother Om Prakash and Mohar Singh

brought the injured Savitri Devi and Jitendra to police outpost Kushmara and Om Prakash lodged the FIR and from there they took both the injured to Mainpuri, but Savitri Devi died on the way due to the injuries and Jitendra was admitted in District Hospital Mainpuri, where his condition was found serious, so he was referred to S.N. Medical College, Agra.

14. P.W. 5- Dr. R.D. Yadav, has conducted autopsy of deceased Savitri Devi on 20.08.2001 at about 11:05 a.m. in District Hospital, Mainpuri. He found following *ante mortem* injuries over the body:

1. wound measuring 6 cm. X 4 cm, on anterior aspect left for arm; skin, muscles are missing, wound was exposed, just above the wrist joint. Abrasion and burning present on the margins of the wound.

2. firearm wound of entry present on the lateral 1/3 of clavicles measuring 3.5 cm. X 3 cm. Abrasion and tattooing present around the injuries and also the margins are everted.

3. firearm wound of exit measuring 0.5 cm x 1 cm, on the middle of left scapular region. Margins are everted. Muscles are coming out from the wound.

4. firearm wound of exit measuring 2 cm. x 5 cm on the left scapular region; 2 cm, above the injury no.3. Margins are everted and muscles and tissues coming out from the wound.

5. Left clavicle fractured at its lateral 1/3rd and part missing.

6. Left I,II,III ribs were fractured.

7. Left scapula fractured at 2 places at wounds of exit.

He has also conducted *postmortem* of deceased Dharmendra Singh and found following *ante-mortem* injuries:-

1. fire arm wound of entry 4.2 cm X 2.5.cm, on the left part of nose, upper lip and left ramous of mandible. Tattooing and burning present on the margins of wound and also on the tongue.

2. *Maxilla fractured and missing alongwith upper four incisor, teeth hard palate and nasal bones are fractured. Part of hard palate missing.*

3. *firearm wound of exit 12 cm. X 4.5 cm, on the left Parietal region. Durameter and brain material coming out.*

4. *fire arm wound of exit 5 cm X 3 cm, on the left posterior-supirio part of right parietal region. Right parietal and occipital bones are fractured. Dura and brain material coming out.*

5. *firearm wound of exit measuring 3cm X 3 cm on the top of head. Both occipital and parietal bones are fractured. Dura and brain material coming out.*

6. *firearm wound of entry measuring 0,4 cm, X 0.4 cm (diagram of the wound in the injury around which tattooing and abrasion are mentioned) on the left hypochondriac region. Margins inverted and burning present.*

7. *firearm wound of entry 0.5 cm X 0.5 cm, on the right lateral border of abdomen just above illiac crushed. Margins inverted.*

He has also conducted *postmortem* of deceased Sunil @ Baba and found following *ante-mortem* injuries:

1. *fire arm wound of entry measuring 1 cm x 1 cm on the right temporal region (diagram of injury made in which around the wound tattooing and abrasions were shown lacerated.*

2. *fire arm wound of entry 4 cm X 3 cm, on the root of nose, forehead between both eye brow and between bony socket of left ball. The nasals bones, parietal bones and bones of both bony socket of eye balls fractured.*

3. *wound exit measuring 2.5 cm x 1 cm extending from the left eye brow alongwith the left parietal region to the posterior-superior part of the right parietal region. Membranes and brain material missing.*

4. Both frontal, both pallets and occipital, right temporal bone fractured in pieces.

5. fire arm wound of entry measuring 1,5 cm x 1 cm, on the chest medial to the anterior field of axilla of right side. Margins are inverted and tattooing present on the margins.

6. Multiple firearm wounds of entry, measuring 0.3 cm. X 0.3 cm, distributed in an area of 20 cm x 14 cm, on the back right region; right lateral border of abdomen just above the right illiac crushed. Margins are everted,.

He has also conducted *postmortem* of deceased Sarman Singh and found following *ante-mortem* injuries:-

1. Cruciform wound of entry measuring 3.4 cm. X 2.1 cm, on the left temporal region (some part of P.M. torn) margins are inverted; tattooing Present around the margins of wound, just in front of root of the left ear.

2. Left temporal muscle (P.M. torn) eye socket and right Parietal bone were fractured.

3. fire arm wound of exit, measuring 8.5 cm X 7 cm, on the right temporal region extending from outer angle of right eye to the root of right ear and below up to right angle of mandible including lower part of right ear. Membrane and brain material coming out.

4. Right temporal, right maxilla, right mandible, bony socket of right ball fractured.

5. fire arm wound of entry 9 cm X 4 cm, on the left hypo-humdrum present. Margins are inverted and tattooing present.

6. wound of exit measuring 15 cm X 7 cm, on the back ravel region present. Abdominal Viscera are coming out.

7. Left 10,11,12 ribs are fractured at its posterior part.

15. The defence did not cross-examine the above witness despite being given an opportunity.

16. P.W. 6 Asht Muni, is the formal witness, who being posted as Head Constable at Police Station- Kisni on 19.08.2001, prepared inquest of deceased Dharmendra Singh, Sunil @ Baba and Sarman Singh along with related papers, at the direction of Station House Incharge A.K. Tyagi and also proved his signature over the *fard baramadagi* of taking into the possession the sample of plain concrete and blood-stained concrete from roof of house of the informant and plain-earth and blood-stained earth from places where Savitri Devi was shot and where dead body of deceased Sarman Singh, Sunil @ Baba and Dharmendra Singh was found. He has also proved the recovery memo of empty cartridges found at the place of occurrence, despite being given opportunity this witness is also not been examined by the defence.

17. P.W. 7- S.I. Anuj Kumar Tyagi has investigated the case and has stated that injured Savitri Devi met him at Police Outpost- Kushmura and recorded her statement there. The other injured Jitendra was also there and his statement was also recorded, their condition was serious so after preparing *chitti majrubi*, they were sent to Hospital. Thereafter, he reached at the place of occurrence(s) and the dead body of deceased Dharmendra was found to the south of village where at his direction inquest was prepared by Asht Muni. Three empty cartridges 315 bore were found from near the place where the dead body was found and its *fard baramadagi* was prepared. Thereafter, the inquest of deceased Sunil @ Baba and Sarman Singh were prepared at his direction and *fard baramadagi* of empty cartridges, plain earth and blood-stained earth found near the dead bodies, was prepared. Sample of plain earth and blood-stained earth was taken from the courtyard of the house alongwith two empty cartridges 315 bore and one empty cartridge 12 bore. Its *fard baramadagi* was also prepared. The sample of concrete and blood-stained concrete was taken from the roof of the informant's house and its *fard baramadagi* was prepared. The three dead bodies were sent to District Hospital, Mainpuri for *post-mortem*. The same day, Om Prakash met and told him that Savitri Devi had died before reaching the Hospital. He recorded statement of informant Om Prakash and at his

pointing out prepared site-plan of the place(s) of occurrence. He arrested accused and recorded their statements. Appellant Sukhvir was arrested carrying a *tamancha* 315 bore alongwith two live cartridges regarding which a separate Case No. 259 of 2001 was registered. He recorded statements of witnesses and filed charge-sheet (Ext. Ka-13) in the Magistrate's Court. The defence did not cross-examine this witness.

18. P.W. 8- Constable Ram Kumar Singh is the formal witness who has proved the *chik* FIR and copy of G.D. as Ext. Ka-39 and Ext. Ka-40, respectively, scribed on the basis of (*tehrir*) given by the informant Om Prakash.

19. In his cross-examination, he has said that the entry of SO Anuj Kumar Tyagi is not mentioned in G.D. No. 12 dated 19.08.2001. He does not remember whether on 19.08.2001, the I.O. had reached at Police Outpost- Kushmura. According to G.D. No. 12, the presence of I.O. at Police Outpost- Kushmura on 19.08.2001, is not there. It is correct that both the injured were brought to the Police Outpost- Kushmura. A special report of the crime was sent through constable Krishna Swaroop by G.D. No. 17 dated 19.08.2001 at 11.30 a.m. to headquarter. His return is not mentioned in G.D. dated 19.08.2001. The injured were soon sent to hospital after the FIR was lodged. The injured kept sitting in jeep so there was no blood dropped at the Police Outpost.

20. P.W. 9- S.I. Satyapal Singh, is the person who prepared inquest of deceased Savitri Devi at District Hospital, Mainpuri on 19.08.2001 at 02.:10 p.m. alongwith its related papers which the eye-witness has proved as Ext. Ka- 41 to 45.

21. In his cross-examination, he has said that as per the memo from the doctor, Savitri Devi had died during treatment in the hospital. In memo Ext. Ka-46, it is written that the deceased was brought by her husband in dead condition in hospital. He had heard about the murder of Savitri Devi in Kotwali but did not try to note the crime number and section of the crime. It is true that the crime number is not mentioned in

the inquest and other related papers. He had completed inquest on 19.08.2001 at 03.30 p.m.

22. After closure of prosecution evidence, the statement of appellants under Section 313 Cr.P.C. were taken in which they denied the prosecution case and have stated that false case has been lodged against them, due to enmity and *partybandi*. Witnesses have deposed against them due to enmity. Except for appellant Shyam Pal rest of the appellants have stated that Ganga Singh had earlier falsely implicated the absconded accused Rajveer in many cases and he has committed these murders alongwith his companions. Due to fear, the informant instead of lodging the FIR against Rajveer, has lodged false case against them. Accused Shyam Pal has stated that he is resident of the same village and has been falsely implicated in this case due to *partybandi*. He has no concern with other co-accused and does not even know them.

23. The defence has filed *chik* FIR of Case Crime No. 34 of 2006 under Sections- 147, 148, 149, 307, 302 IPC as Ext. Kha-1. The defence also summoned the ballistic expert to controvert the prosecution case, but at the time of examination-in-chief, D.W. 1 Shri Ram Asrey Pandey, requested for pellets recovered from near the dead body of deceased Dharmendra Singh to give a concrete opinion, but the prosecution failed to produce them as they were not available in *Malkhana* of Police Station or in Sadar Malkhana of the district. Thereupon, the defence endorsed on record that now it will not produce ballistic expert as defence witness. The defence has not examined any other witness in support of their contention.

24. After hearing argument of learned Counsel for the parties and perusal of record, the learned Trial Court observed that the prosecution has proved its case beyond reasonable doubt. The FIR was lodged promptly and there is no delay in lodging the FIR. The FIR was not ante-timed. The statements of witnesses were consistent and reliable. There were no contradictions between the ocular and medical evidence and accordingly, the learned Trial Court found the appellants guilty of

the offence and convicted and sentenced them to the term as indicated above.

25. Heard the rival submissions of learned Counsel for the parties and learned A.G.A for the State and perused the record.

26. It is submitted on behalf of the appellants that prosecution has failed to prove its case beyond reasonable doubt. The first argument, on technical point, is raised on behalf of the appellants that as per the prosecution, four persons were murdered in the incident and for charge framed against the appellants for the offence punishable under Section 302 read with 149 IPC. name of one of the deceased Sunil @ Baba is not mentioned in it, thus, the charge was defective, which cost prejudice to the appellants and thus, this omission or error has occasioned failure of justice. So on this ground, the impugned judgment and order is not sustainable, and in its support the appellants have relied upon case in **Criminal Appeal No. 122 of 2021 (Kali Charan and Others Vs. State of U.P.) decided on 14.12.2022, of Supreme Court**, which will be discussed in later part of this judgment. It is also submitted that there was no motive on the part of the appellants to commit the said crime, the prosecution has failed to prove motives and thus, the prosecution has not been able to prove its case beyond reasonable doubt. It is also submitted that the presence of P.W. 1 Om Prakash, P.W. 2 Jitendra Singh and P.W. 4 Ganga Singh at the place of occurrence(s) is highly doubtful and particularly those of P.W. 1 Om Prakash and P.W. 4 Ganga Singh, because if they were also present at the place of occurrence then there was no reason why the appellants would have spared them unhurt. It is further submitted that as per prosecution the alleged incident occurred at three different places and it is highly unlikely and also there is no evidence that P.W. 1, Om Prakash, P.W. 2 Jitendra Singh and P.W. 4 Ganga Singh were present at all these three places, therefore, their testimony with regard to the entire incident(s) is not believable. It is also submitted that the statement of P.W. 4 Ganga Singh under Section 161 Cr.P.C. was recorded at belated stage by the Investigating Officer, which raises doubt over his testimony. It is also submitted that the ocular

testimony is not supported by medical evidence and there are major contradictions in it which raises serious doubt over the prosecution case. It is further submitted that the prosecution has failed to examine material witnesses of fact namely Mohar Singh and Santosh Singh, whom the prosecution says that they witnessed the murder of Dharmendra Singh @ Ballu. Therefore, non-production of these witnesses raises serious doubt over the prosecution case. It is also submitted that witness Ganga Singh, had lodged several reports against Gangster Rajvir and Kalua was on visiting terms with the informant, due to this he would have committed the aforesaid murders and the appellants have been falsely implicated in this case. It is also submitted that it is highly unlikely that each of the murder would be committed by the other members or other persons of the group rather than by the persons who allegedly shot the earlier deceased. The appellants have relied upon case law (**State of U.P. and Another Vs. Jaggo @ Jagdish and Others**) 1971 (2) Supreme Court cases 42, (**Shahid Khan and Others Vs. State of Rajasthan**) 2016 (4) SCC 1996, which shall be discussed in later part of this judgment.

27. On the other hand, learned A.G.A and learned Counsel for the informant submitted that the prosecution case is proved beyond reasonable doubt, the FIR was prompt and contains the original and true version of the incident. It was registered in a state of panic, shock and urgency. All the nine appellants are named in the FIR and their names, roles and weapons are mentioned in it. It is further submitted that minor contradictions are natural, and happen if the witness is cross-examined at length. The core prosecution story remains consistent in all essential particulars, therefore, minor contradictions have no bearing over the testimony of witnesses of fact. It is next submitted that the three material eye-witnesses namely informant Om Prakash, Ganga Singh and injured Jitendra Singh have supported the prosecution story, and, their presence at the spot is natural and well explained. So far as the, eye witness Mohar Singh is concerned, he has died therefore, he could not be examined before the court. There was motive for the appellants to

commit this gruesome murder, because there was a land dispute between the informant and the appellants and due to this the appellants had developed enmity against the informants. The medical evidence fully corroborates the ocular testimony of the three eye-witnesses. The weapon recovered at the instance of appellant Sukhvair matches the cartridges, bullet recovered from the spot in the ballistic examination report which corroborates the prosecution case. It is also submitted that all the nine accused were armed with deadly weapons and all of them have actively participated in the crime, therefore, the crime was committed, in furtherance of common intention, as such, every member of the unlawful assembly is liable for the acts committed by the other. It is also submitted that before 2005, witness Ganga Singh had no criminal history and had no motive to falsely implicate the appellants. It is also submitted that the alleged incident occurred in the day light and the witnesses had seen the occurrence and there was no reason why they would implicate the innocent and spare the real culprits. The manner in which the murders were committed show that the appellants were in state of intense rage, it was a massacre, indiscriminate killings of children and elderly persons and woman which shows that the appellants had deep rooted motive and pre-meditation.

28. Prosecution has drawn the attention of the Court on different case laws such as **2005 (5) SCC 554 (State of Madhya Pradesh Vs. Saleem @ Chamaru and Another); (2011) 1 SCC (Criminal) 381 (State of U.P. Vs. Krishna Master and Others); AIR 2016 SC (Criminal) 1461 Bhagwan Jagannath Markad and Others Vs. State of Maharashtra; Criminal Appeal No. 1423 of 2007 Abdul Sayeed Vs. State of Madhya Pradesh, Supreme Court decided on 14.09.2010; Criminal Appeal No. 297 of 1992 Leela Ram(D) through Duli Chand VS. State of Haryana and Another, Supreme Court decided on 06.10.1999**, which shall be discussed in later part of this judgment. So far as Saleem @ chamaru (supra) is concerned that case law relates to imposing adequate sentence and as in this case

prosecution has not challenged the adequacy of sentence imposed, so this ruling has no application in this case.

29. The first submission on behalf of the appellants is that charge against them was defective and in charge No. 3 dated 27.08.2002 the name of deceased Sunil @ Baba is missing which is framed for offence punishable under Section 302 read with 149 IPC. In view of the above omission of the name of deceased Sunil @ Baba, the appellants have been misled and it has resulted in failure of justice and this error and omission has caused prejudice to the appellants. Learned counsel for the appellants has relied upon a judgment of the Hon'ble Supreme Court in **Criminal Appeal No.122 of 2021 (Kali Charan and Others Vs. State of U.P.) dated 14.12.2022**, in which it was held that the object of the provisions in Chapter XVII in Cr.P.C., regarding framing of charge is obviously to make the accused aware of the accusations against him on the basis of which prosecution is seeking to convict him. The object of the provisions regarding framing of charge is that, accused should be in a position to effectively defend himself and the accused can properly defend himself provided he should be clearly informed about the nature of the allegations against him before the actual trial starts. The relevant part of the judgment is extracted here in below:-

“19. Section 215 lays down when errors in the particulars required to be stated in the charge can be treated as material. It lays down that the error cannot be said to be material unless the accused was misled by such error or omission and that such error or omission has caused a failure of justice. Section 464 deals with effect of error or omission made while framing charges on the finding and sentence of the competent Court. The Section provides that the finding and sentence of the Court cannot be invalid merely on the ground of error in framing charge or omission in framing charge. The finding and sentence will be invalid only if in the opinion of the Court of appeal, the error or omission has occasioned a failure of justice.

20. When the Court of appeal is called upon to decide whether any failure of justice has been occasioned due to omission to frame a charge or error in the charge, the Court is duty bound to examine the entire record of the trial including all exhibited

documents, depositions and the statements of the accused recorded under Section 313.”

30. In the above said case the Hon’ble Supreme Court observed that no questions were asked under Section 313 Cr.P.C. in statement of accused about post-mortem of the body of Harpal Singh, it was not put to the witness that cause of death of Harpal Singh was due to hemorrhage and shock as a result of injuries caused by sharp weapons. In view of the above it was held that if the accused is not explained the important circumstances appearing against him in the evidence, of which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him and he will not be able to properly defend himself.

31. Section 215 and 464 of the Code of Criminal Procedure, 1973, deal with such matters. Section 215 reads that ‘no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice’.

32. Section 464 reads that ‘no finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby’.

33. A combined reading of the above provisions shows that the object of these sections is to prevent failure of justice and the irregularity in framing of the charge, is not fatal unless there is prejudice caused to the accused. The mere omission to frame the charge or a mere defect in the charge is no ground for setting aside a conviction. **In Kahan Singh Vs. State of Haryana (1971) 3 SCC 216**, it has been laid down that procedural laws are designed to subserve the ends of justice and not to frustrate them by mere technicalities. The object of the charge is to give

the appellants notice of the matter he is charged with. If the necessary information is conveyed to him and ends of justice is caused to him because of the charges, the appellants succeeds merely showing that the charges framed were defective nor could conviction recorded on charges under wrong provisions be reversed, if the accused were informed of the details of the offences committed, and thus no prejudice was caused to him. In **Gurpreet Singh v. State of Punjab, (2005) 12 SCC 615**, it was held that unless there is a failure of justice and thereby the cause of the accused has been prejudiced, no interference is required if the conviction can be upheld on the evidence led against the accused. The Court should not interfere unless it is established that the accused was in any way prejudiced due to the errors and omissions in framing the charges against him.

34. The other section relevant for our purpose is Section 465 of the Cr.P.C., which lays down that no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation of revision on account of any error, omission or irregularity in the proceedings, unless in the opinion of that Court, a failure of justice has in fact been occasioned. It further provides, *inter alia*, in determining whether any error, omission or irregularity in any proceeding under this Code, has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. In judging the question of prejudice as of guilt, the Court must look to the substance of the matter and not to technicalities, and its main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him, fairly and clearly and whether he was given a full and fair chance to defend himself.

35. In view of the above legal position, if we look into the present case then the prosecution case is that all the nine appellants came to the house of the informant, armed with deadly weapons, and in the incident committed murder of Dharmendra Singh, Sarman Singh, Savitri Devi

and Sunil @ Baba. The charge was framed by the trial court on 27.08.2022 and with regard to offence punishable under Section 302 read with 149 IPC, inadvertently, omitted the name of deceased Sunil @ Baba as one of the deceased. Charge No.3 as framed by the learned trial court is reproduced here in below:-

“Thirdly, that on the aforesaid date time and place you with common object intentionally committed murder of Dharmendra Singh, Sarman Singh and Savitri Devi and thereby you committed an offence punishable u/s 302 read with section 149 I.P.C. and within the cognizance of this Court.”

It shows the names of three deceased as mentioned in it, except Sunil @ Baba. The evidence led on behalf of the prosecution is with regard to all the four deceased.

36. More importantly, the witnesses of fact have given details of murder of deceased Sunil @ Baba also, committed by the appellants and on this point they were cross-examined at length by the defence and after closure of prosecution evidence, statements of accused were recorded under Section 313 Cr.P.C. As per prosecution case Sunil @ Baba was shot by appellants Satyavir and Shivvir, and it would be proper to quote Question No. 9, asked from the accused, in their statement recorded under Section 313 Cr.P.C., which reads as follows ...

"प्रश्न नं०- अभियोजन साक्ष्य है कि उक्त दिनांक समय व स्थान पर आप सत्यवीर व शिववीर ने वादी के साले के लड़के सुनील उर्फ (बाबा) की गोली प्रहार कर हत्या कर दी, जिस सम्बन्ध में आपको क्या कहना है?

उत्तर- गलत है।"

37. The above question reads that as per prosecution evidence appellants Satyvir and Shivvir had shot dead Sunil @ Baba, the son of informant's brother-in-law, to which they answered 'गलत है' (it is incorrect). Thereafter, the appellants were given opportunity to lead evidence in their defence, In view of the above, the appellants knew from the beginning that they are charged for murder of deceased Sunil

@ Baba also, therefore, the error/ omission in charge with regard to the name of Sunil @ Baba in charge no. 3, has not misled the appellants which would have occasioned the failure of justice and no prejudice has been caused to the appellants due to such omission of name in the charge. In view of the above discussion, we are of the considered opinion that such omission in the charge has no adverse bearing over the prosecution case.

38. As we know, in a criminal case the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. In the present case, the incident occurred on 29.08.2001 at 07:30 a.m. The FIR was lodged the same date at 10:00 a.m., i.e., after two and a half hours of the incident. The incident occurred in Village- Nagla Bandh, Hamlet of Village Madausi under Police Outpost Kushmura, Police Station- Kisni District- Mainpuri. As per chik FIR the distance from the place of occurrence to the Police Outpost- Kushmura is 8 kilometers. The FIR was lodged by informant Om Prakash, who has said that after the incident, he took his injured wife Savitri Devi and injured son Jitendra to the Police Outpost- Kushmura in Jeep, it took 30-45 minutes to arrange the jeep and about one and half hour to reach at the Police Outpost- Kushmura. He wrote down the written application (*tehrir*) at round about Kushmura and submitted it at the reporting Police Outpost- Kushmura. It has come in evidence informant's brother Ganga Singh and Mohar Singh accompanied him to the Police Outpost along with the injured.

39. P.W. 8 Constable Ram Kumar Singh, is the scribe of the chik FIR. The inquest of all the deceased was prepared the same day. Therefore, the FIR was lodged promptly and it has not been specifically challenged by the defence.

40. So far as the place of occurrence is concerned, according to the prosecution the incident took place at three different places, the first incident occurred at the house of the informant where his wife Savitri Devi was shot causing her serious injuries and informant's father

Sarman Singh was shot dead. The second incident occurred near the tubewell in village Nagla Bandh where Sunil @ Baba was shot dead. As per prosecution Sarman Singh was shot dead at the door of the house and Savitri Devi was shot and injured in Verandah. Informant's son Jitendra was also shot and injured while he was at roof of the house. Deceased Sunil @ Baba was returning home from the side of transformer when he was shot and Dharmendra Singh was shot near Lala Ram's field. The Investigating Officer reached at the place of occurrences and found dead bodies of Sarman Singh, Dharmendra Singh, Sunil @ Baba at the places alleged by the prosecution. He also collected blood-stained earth and empty cartridges from near the dead bodies. He prepared site-plan at the instance of informant in which he has shown all the relevant things. The defence has not put any suggestion or gave any other alternative place of occurrence. Thus, in fact the defence has not challenged the place of occurrence. P.W. 1 Om Prakash, P.W. 2 Jitendra and P.W. 4 Ganga Singh, the three eye witnesses of the incident have stated on oath that the incident occurred at these three places. In view of the above, the place of occurrence is fully established.

41. The perusal of post-mortem reports of all the four deceased and injury report of injured Jitendra shows that all of them sustained indiscriminate gunshot wounds resulting to injuries over their body. The cause of death of all the four deceased was hemorrhage and shock as a result of gun shot injuries which means that all of them were shot dead. The prosecution case is that it were the appellants who committed such offence in furtherance of their common object. To prove its case, the prosecution has examined P.W.1 Om Prakash, P.W. 2 Jitendra and P.W. 4 Ganga Singh as eye-witness of the incident. P.W. 1 Om Prakash is the informant and his father Sarman Singh, wife Savitri Devi and son Dharmendra Singh were murdered in this incident. His brother-in-laws son Sunil @ Baba was also killed. A perusal of his statement shows that he was cross-examined for about one and half years by different sets of advocates from the side of accused. There is a very lengthy cross-

examination and if we look into the entire testimony then it shows that the witness is consistent, reliable and trustworthy, with regard to the prosecution case. He has deposed that all the nine appellants came to his house armed with country-made pistol by giving a detail who carried which firearm and has said that it were appellants Santosh and Sukhvir who shot at his wife Savitri Devi; appellants Kamlesh and Ram Naresh shot at his son Jitendra and other son Satendra; appellants Ram Naresh and Kamlesh also shot at his father Sarman Singh, appellants Sayavir Singh and Shivivr Singh shot at his brother-in-laws son Sunil @ Baba and appellant Ram Pal, Ramadhar and Arvind shot at his son Dharmendra Singh. He has also said that appellant Ram Naresh, Ramadhar, Satyavir and Shivivr are real brothers and are sons of Kamlesh's maternal uncle (mama). Appellant Arvind is Ram Naresh's son and appellant Shyam Pal resides in Azadpur and he is acquainted with Santoh and Sukhvir.

42. P.W. 2 Jitendra, is the injured witness, he has also supported the prosecution case. He has also been cross-examined at length but no material contradiction has come in his statement. P.W. 4 Ganga Singh is the younger brother of the informant, he has also supported the prosecution case and has described the manner in which the incident took place and in what manner the appellants took participation in the crime. If we take into account their entire deposition then it comes out that they are consistent, reliable and trustworthy. It is submitted on behalf of appellants that there are major contradictions in their statements therefore their testimony is not reliable. We do not agree with this submission. If a witness is cross-examined for days and months then some contradictions are bound to happen in their statement and if that contradiction does not shake the root of the prosecution case then such minor contradictions would have no bearing over the prosecution case.

*42. In the case **Krishna Master and Others (Supra)**, the Supreme Court observed that the material witness was cross-examined for days together on the point as to where and in*

which direction houses of Kailash, Rajaram Subedar, Darbari, etc. were situated.

It was held that “such an attempt by the defence lawyer can hardly be approved. On re-appreciation of evidence of Jhabbulal, this Court finds that he has not made major improvements in his testimony before the Court and the so-called discrepancies which are blown out of proportion by the High Court are minor in nature and do not relate to the substratum of the prosecution story.”

43. With regard to evidence of a child witness it was further held that “This Court fails to understand as to on what principle and on which experience in real life, the High Court made a sweeping observation that it is inconceivable that a child of Madan Lal's understanding would be able to recapitulate facts in his memory witnessed by him long ago. There is no principle of law known to this Court that it is inconceivable that a child of tender age would not be able to recapitulate facts in his memory witnessed by him long ago. This witness has claimed on oath before the Court that he had seen five members of his family being ruthlessly killed by the respondents by firing gunshots. When a child of tender age witnesses gruesome murder of his father; mother; brothers, etc. he is not likely to forget the incident for his whole life and would certainly recapitulate facts in his memory when asked about the same at any point of time, notwithstanding the gap of about ten years between the incident and recording of his evidence. This Court is of the firm opinion that it would be doing injustice to a child witness possessing a sharp memory to say that it is inconceivable for him to recapitulate facts in his memory witnessed by him long ago. A child of tender age is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child would be able to recapitulate correctly and exactly when asked about the same in future.”

43. In the case *Bhagwan Jagannath Markad and Others (Supra)*, the Supreme Court has held that:-

“While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of

the version of a witness, the court may reject the evidence. It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted. Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a "partisan" or "interested" witness may lead to failure of justice." It was also held that "As already observed, the discrepancies of trivial nature could not be the basis of rejecting the evidence of injured eyewitnesses nor non-examination of some of the witnesses be a ground to reject the prosecution case when injured eyewitnesses were examined."

44. "In Bhag Singh & Ors. v. State of Punjab (1997) 7 SCC 712, while dealing with a similar contention, the Supreme Court observed:

"It is a general handicap attached to all eyewitnesses, if they fail to speak with precision their evidence would be assailed as vague and evasive, on the contrary if they speak to all the events very well and correctly their evidence becomes vulnerable to be attacked as tutored. Both approaches are dogmatic and fraught with lack of pragmatism. The testimony of a witness should be viewed from broad angles. It should not be weighed in golden scales, but with cogent standards. In a particular case an eyewitness may be able to narrate the incident with all details without mistake if the occurrence had made an imprint on the canvas of his mind in the sequence in which it occurred. He may be a person whose capacity for absorption and retention of events is stronger than another person. It should be remembered that what he witnessed was not something that happens usually but a very exceptional one so far as he is concerned. If he reproduces it in the same sequence as it registered in his mind the testimony cannot be dubbed as artificial on that score alone."

46. *In the instant case P.W.2 Jitendra is injured witness and his presence at the place of occurrence can not be doubted. With regard to testimony of injured witness, in the case of Abdul Sayeed (Supra), the Supreme Court has held that:-*

“26. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness.

.....

28. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

45. The appellants have submitted that the presence of P.W. 1, Om Prakash and P.W 4 Ganga Singh at the place of occurrence is highly doubtful and had they been present there the appellants would also have attacked and killed them but they have not sustained any injuries. Further, it has also argued that if such an incident is occurred in their presence then should have reacted and attacked the appellants, the first informant was a soldier in army having rifle and he should have used the rifle to protect his family. Secondly, P.W. 4 Ganga Singh who should also have reacted in the same manner, thus, their presence at the spot is doubtful. We do not agree with this submission, once an offence like this takes place then each person who witnesses the incident reacts in his own way.

46. In **Rana Pratap v/s State of Haryana AIR 1983 SC 680, (1983) 3 SCC 327** at page 330, the Supreme Court observed:

“Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. The others rush to the rescue

of the victim, even going to the extent of counter attacking the assailants. Every one reacts in his own special way. There is no such rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

47. It has come in evidence that it was cold-blooded murder, the nine appellants were armed with firearms, the incident took place suddenly giving no chance to the informant to collect his rifle from the house and fire in self defence, beside this in such a horrible incident, the first reaction of the first informant and Ganga Singh would have been to save themselves and they have stated that they hid themselves behind a heap of straw (*bhoose ka coop*), thus, by not reacting in the manner as alleged by the appellants is not a ground to reject testimony of both these witnesses.

48. It is further submitted on behalf of the appellants that there are major contradictions, in the testimony of P.W. 1 and P.W. 4 as well as P.W. 2 Jitendra, which raises doubt over their statements. The appellants have drawn attention of this Court to the following statements of P.W. 1, P.W.2 and P.W.4 :-

P.W.1 Om Prakash :-

" पंचायत में पंचों ने मेरे मकान से जुड़ी हुई जगह मुझे दिलाई थी।..... पंचायत में यह भी तय हुआ था कि जगह के बदले दूसरी जगह दे दी जाय, मेरे मकान के उत्तर दूसरी साइड में जगह दिया जाना तय हुआ था।..... पंचायत के बाद घटना होने तक विवादित जमीन पर मुल्जमान ने कब्जा करने का प्रयास नहीं किया।"

P.W.4 Ganga Singh :-

"पंचायत ओम प्रकाश की मौजूदगी में हुई। पंचायत होने के बाद अभियुक्तगण ने विवादित जमीन को कब्जा करने का प्रयास नहीं किया।"

P.W.1-Om Prakash :-

"ये लोग ट्रयब्वेल की तरफ गाली गलौज देते हुए मेरे आंगन में घुस आये जैसे ही मैंने व मेरे भाई गंगा सिंह ने देखा व टोका.....

मेरे व मेरे गंगा सिंह के चिल्लाने पर सभी मुल्जिमान मेरे पिताजी, व मेरे भाई पर झपटे।.....

मुल्जिमान फायर कर रहे थे मुझ पर व मेरे भाई पर हवाई हमले किये थे।.....

जब मेरे ऊपर झपटे थे तब मुल्जिमान ने मुझे देख लिया था।

जब अभियुक्तगण अंदर आ रहे थे तब मैंने उन्हें टोका था।"

P.W.2- Jitendra :-

"दरवाजे पर मेरे पिताजी व गंगा सिंह ने मुल्जिमानों को टोका था टोकने पर मुल्जिमान ने मेरे पिता पर फायर नहीं किया था, मेरी माँ के ऊपर फायर किया था।"

P.W.4- Ganga Singh:-

"मैंने व मेरे भाई ओम प्रकाश ने जब मुल्जिमान हमारे घर में घुस रहे थे मैं तभी उनको टोका था। जब मैंने टोका तब उन लोगों ने हम दोनों पर फायर नहीं किया था।.....

मैंने व मेरे भाई ने मुल्जिमान को टोका था तथा ललकारा था एवं पीछा किया था।.....

ओम प्रकाश ही मुल्जिमानों के मुख्य लक्ष्य थे।"

49. If we look into the entire testimonies of P.W. 1 Om Prakash, P.W. 2 Jitendra and P.W. 4 Ganga Singh then the above quoted statements did not come within the category of major contradictions to shake the prosecution case. When the witness is cross-examined at length for so many months and even years (as is the case with P.W.1), then such contradictions are normal to happen.

50. When an incident like this happens in quick succession within minutes, the assailant(s), the victim(s) and the witness(es) are not expected to keep stand still but they keep moving, either to attack or protect themselves, as the case may be, so the observation of such an incident by one person may vary from the other. It has come in evidence that informant Om Prakash serving in Army, had come on leave to his house. His brother Ganga Singh was also there. His injured son Jitendra was reading at the roof of the house so their presence at the place of occurrence is quite natural and normal. No one can see into the mind of the criminal, if the appellants did not fire at the informant or Ganga Singh as they hid behind the heap of straw or for some other reason then mainly on this ground it cannot be said that these witnesses were not present at the spot.

51. In **Bharwanda Bhoginbhai Hirjibhai v State of Gujarat (1983) 3 SCR 280 at page 280 : (AIR 1983 SC 753 at page 756)** the Supreme court has held:

“ Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all important “ probabilities - factor ” echoes in favour of the version narrated by the witnesses. ”

52. Therefore, these discrepancies in the statements of witnesses are minor which do not go to the root of the case and would have no adverse bearing over the prosecution case.

53. It is also submitted on behalf of the appellants that P.W. 2 Jitendra was on the roof so he had no occasion to see what was happening in the courtyard and thus, he could not have witnessed the murder of Smt. Savitri Devi and Sarman Singh. It is also submitted that Dharmendra was shot when he was coming from the side of Lala Ram's field and after Jitendra sustained injuries he stepped down from roof and sat in the courtyard till he was taken to the Police Outpost from the courtyard. Therefore, P.W. 2 Jitendra has no occasion to see the murder of Dharmendra also.

54. We do not agree with this submission as it has come in evidence that when Savitri Devi was being shot the P.W. 2 Jitendra, who was sitting on the roof, peeped from the roof with his brother Satendra and upon that Kamlesh and Ram Naresh shot at them from the courtyard due to which Jitendra sustained injuries, therefore, it proves that Jitendra saw his mother Savitri Devi and grand-father Sarman Singh being shot by the appellants. So far as the murder of Dharmendra is concerned, it has come in the statement of P.W. 2 Jitendra that he saw it from the roof and on being asked P.W. 2 Jitendra has said that Dharmendra was shot at a distance of 200-225 steps from the roof where he was sitting. He has also said that in between both these places there are no trees but there are some small bushes. In view of the above, P.W.2 Jitendra Singh had occasion to witness the murder of Dharmendra Singh also from his roof. It has come in his statement that after he sustained firearm injuries, he stepped down from the roof in 20-25 minutes, therefore, the submission of the appellants has no force that soon after Jitendra sustained injury, he stepped down from the roof. If P.W. remained at the roof during the entire incident then he had occasion to witness the murder of Dharmendra Singh which was caused near Lala Ram's field. P.W. 2 Jitendra is the injured witness so his presence at the spot cannot be doubted and being an injured witness, his testimony assumes greater significance.

55. It is further submitted on behalf of appellants that according to P.W. 1 Om Prakash and P.W. 4 Ganga Singh, when the appellants shot at Savitri Devi and Sarman Singh, they hid themselves behind the "**Ladoria**" i.e. heap of straw (*bhoose ka coop*), so they had no chance to witness murders of Sunil @ Baba and Dharmendra, which had taken place at other places. It is further submitted that the I.O. has not shown **Ladoria**, i.e. heap of straw (*bhoose ka coop*) in the site plan, it is material omission on his part raising suspicion over the prosecution case. We do not agree with this submission because the I.O. has shown "**Ladoria**" i.e. heap of straw (*bhoose ka coop*) by two circles to the north of the open spot of the informant's house, in his site plan Ext. Ka-

37, and in index at Serial No. 8 has mentioned that from this place the informant and Ganga Singh witnessed the incident after hiding themselves behind (*bhoose ka coop*), therefore, this submission on behalf of appellants has no force that the I.O. has not shown the heap of straw (*bhoose ka coop*) from where the witnesses have seen the incident. P.W. 1 Om Prakash, P.W. 4 Ganga Singh have said that they hid themselves behind heap of straw (*bhoose ka coop*) and it has come in their statement that after remaining there for a few minutes they followed the appellants. It has also come in statement of P.W. 1 Om Prakash that from behind the heap of straw (*bhoose ka coop*) the place was visible, where Dharmendra was shot. The I.O. has marked it as 'X', the place where Dharmendra was shot and in between heap of straw and the above place there is open land and *raasta*, so the witnesses could have seen this incident from behind the heap of straw. It has come in evidence of P.W. 1 Om Prakash, that when the appellants, after shooting Savitri Devi and Sarman Singh, fled from the house of the informant, they also followed the appellants and saw appellants Satyavir and Shiv Vir fire at Sunil @ Baba. The place where Sunil @ Baba was found was shown by the Investigating Officer in the site-plan as letter 'B'. Therefore, P.W. 1 Om Prakash was in a position to witness this incident also after following the appellants.

56. It has been submitted on behalf of appellants that the prosecution has not examined Mohar Singh and Santosh who were allegedly accompanying Dharmendra while he was near Lala Ram's field and thus by withholding these relevant witnesses, adverse inference would be drawn against the prosecution. The appellants have relied upon case law **Jaggo @ Jagdish and Others (supra)**, wherein the Supreme Court has held that "*it is true that all the witnesses of the prosecution need not be called but it is important to notice that the witness whose evidence is essential to the "unfolding of the narrative" should be called whether the effect of his testimony is for or against the case for the prosecution. Failure to examine such a witness might affect a fair trial. Presentation of an application to the effect that a witness had been won over was not*

conclusive to the question that the witness has been won over. In such a case the witness could have been produced for cross-examination by the accused which would have elicited the correct facts.”

57. The learned counsel for the appellants have also relied upon case law *State of U.P. and Another Vs. Cheeku @ Jagdish and others 1971 (2) SCC 42*, wherein it has been held that it is the duty of the prosecution to examine necessary witnesses and material contradiction between the eye witness account and medical evidence would render the prosecution unreliable.

58. We do not agree with this submission and the above case laws do not apply in the present case. It has been brought to the notice of this Court, by the prosecution, that one of the witness Mohar Singh had died before his statement could be recorded in the trial court. Further, in a criminal case, it is not the quantity but the quality of evidence, which matters. The prosecution has examined other eye-witnesses who have supported the prosecution case and their testimony is consistent and reliable, therefore, non examination of other eye witnesses would have no adverse effect over the prosecution case.

59. It has earlier come in the discussion that P.W. 1 Om Prakash, P.W. 2 Jitendra and P.W. 4 Ganga Singh are reliable witnesses and their testimony with regard to the incident is consistent and trustworthy, therefore, non examination of other witnesses of fact would have no adverse effect over the prosecution case. It has been further submitted on behalf of appellants that the statement of P.W. 4 Ganga Singh was recorded by the I.O. under Section 161 Cr.P.C. after a gap of three months and no explanation of delay is shown by the prosecution thus, he is a planted witness whose testimony before the court cannot be relied upon.

60. The defence has not asked from the I.O. the reason of delay in recording the statement of Ganga Singh, under Section 161 Cr.P.C. In absence of any such question put to the IO, it cannot be assumed that his statement was recorded belatedly without any sufficient explanation

because if the I.O. had been asked about this delay, he could have explained the delay and only then the court could have examined whether the delay was sufficient or not. By not putting such question to the I.O. and merely arguing over this would have no adverse effect over the prosecution case. Beside this, it has been stated in the FIR that P.W. 4 Ganga Singh was present there alongwith informant when this incident occurred so the name of Ganga Singh was there from the beginning as eye-witness of this case. Therefore, it is not that his name has subsequently been added as witness to this case, therefore, on this ground the submission on behalf of appellants have no force.

61. It is also submitted on behalf of appellants that the investigation is defective and the first Investigating Officer was not present at the Police Outpost- Kushmura of Police Station- Kisni on the date when FIR was lodged, in view of statement given by P.W. 8 Constable Ram Kumar Singh that according to G.D dated 19.08.2001, there is no entry that the Investigating Officer was present at the Police Outpost. In view of the above, the statement of the I.O. that he recorded the statements of injured Jitendra and Savitri Devi at Police Outpost- Kushmura is false raising suspicion over the prosecution case and that false evidence has been prepared to implicate the appellants in this case. We do not agree with this submission, as it has come in evidence that the first informant Om Prakash reached at Police Outpost- Kushmura alongwith injured Jitendra and Savitri Devi who remained sitting inside the Jeep and the concerned police Inspector inquired from both the above injured, about the incident, while they were seated inside the Jeep. In view of the above, if the Investigating Officer inquired from the injured outside the premises of the Police Outpost Kushmura then if his presence in the G.D. of Police Outpost- Kushmura is not entered then it has no adverse bearing over the prosecution case.

62. It is also submitted on behalf of the appellants that there are contradictions that injured Savitri Devi died on way to the hospital or after reaching at the hospital, which raises suspicion over the prosecution case. We do not agree with this submission also, all the

witnesses of fact have stated that Savitri Devi died on the way to the hospital, they are not experts who can give a certain opinion when a person dies. Therefore, if there is any such discrepancy then it would have no adverse effect over the prosecution case.

63. It is further submitted on behalf of appellants that there is contradiction in ocular and medical evidence and according to the site plan, deceased Savitri Devi sustained injuries from a distance of about 10 steps which comes out to 15 feet, whereas as per her post-mortem report there is scorching and blackening over the firearm wounds of entry. It is not possible that blackening and scorching would occur from a fire shot from a distance of 15 feet, therefore, these are major contradictions raising doubt over the prosecution case. We do not agree with this submission. The site plan prepared by the IO bears two kinds of evidence, the first kind of evidence is that which he observes and finds at the place and the second kind of evidence is hearsay, which is told to him by the informant and other witnesses at the time of inspecting the place of occurrence. Showing distance of Savitri Devi being shot from a place is hearsay account in site plan.

64. The defence should have inquired about it from the witnesses of fact. The witnesses of fact have supported the prosecution case, in such a brutal murder when everybody was there to save his life, it was not usual on their part to keep into account every minute details of the incident and then mathematically narrate that in the court. Therefore, in our view, there are no major contradictions in ocular and medical evidence. Witnesses have said that the deceased and injured were shot and injury reports and post-mortem reports confirm that they sustained firearm gunshot injuries. Further, during the investigation a firearm was recovered from appellant Sukhvir and was sent to Forensic Science Laboratory alongwith the cartridges found at the place of occurrence for expert opinion. As per ballistic expert the cartridges found at the place of occurrence matched with the firearm recovered at the pointing of appellant Sukhvir. It also substantiates the prosecution case regarding the involvement of the appellants in the commission of this offence.

65. It is submitted on behalf of appellants that according to P.W. 1 Om Prakash appellant Shyam Pal did not fire at any of the deceased or injured, therefore, his role in the commission of the offence is doubtful. We do not agree with this submission, as it has come in evidence that all the appellants including Shyam Pal reached at the house of the informant and thereafter the incident occurred. All the appellants remained together carrying firearms including appellant Shyam Pal and after committing the murder all of them fled from the spot which shows that they had formed unlawful assembly to commit a criminal act armed with firearms, which are deadly weapons and in furtherance of the common object, the above offence was committed by the members of that unlawful assembly, therefore, being member of the unlawful assembly, appellant Shyam Pal would also be liable for the offence committed by the other member of the unlawful assembly.

66. It is also submitted that the motive assigned to the appellants to commit this offence is not proved. As per prosecution there was a dispute with regard to a land between Om Prakash and Santosh regarding which a *panchayat* was also convened and it was resolved in the *panchayat* that some land would be given to the informant Om Prakash and the other part would be given to appellant Santosh. It has come in the statement of P.W. 1 Om Prakash and P.W. 4 Ganga Singh that after this *panchayat* no *overt act* was committed by the appellants, so there was no reason for them to commit such offence. The learned counsel for the appellants has drawn the attention of this Court over the statement of **P.W. 1 Om Prakash:-**

"पंचायत में पंचों ने मेरे मकान से जुड़ी हुई जगह मुझे दिलवा दी थी।

पंचायत में यह भी तय हुआ था कि जगह के बदले दूसरी जगह दे दी जाय, मेरे मकान के उत्तर दूसरी साइड में जगह दिया जाना तय हुआ था।.....

पंचायत के बाद घटना होने तक विवादित जमीन पर मुल्जमान ने कब्जा करने का प्रयास नहीं किया। "

And the statement of **P.W. 4 Ganga Singh** :-

"पंचायत ओम प्रकाश की मौजूदगी में हुई। पंचायत होने के बाद अभियुक्तगण ने विवादित जमीन को कब्जा करने का प्रयास नहीं किया।"

67. On the basis of above statements, learned counsel for the appellants wants to show that there was no reason for the appellants to commit such murder due to the above dispute. We do not agree with this submission also. It is settled law that in a case based on direct evidence motive to commit the crime loses its significance, so a direct motive is not at all relevant. Beside that, it is established from evidence that there was a land dispute between the first informant and the appellants. It is also not in dispute that *panchayat* was held with regard to said land and a civil suit was pending before the court. Motive is a state of mind of a person which cannot be seen from inside.

68. In the case of **Thaman Kumar vs. State of Union Territory of Chandigarh, reported in (2003) 6 SCC 380: (AIR 2003 SC 3975)**, the Supreme Court has observed as under:-

"There is no such principle or rule of law that where the prosecution fails to prove the motive for commission of the crime, it must necessarily result in acquittal of the accused. Where the ocular evidence is found to be trustworthy and reliable and finds corroboration from the medical evidence, a finding of guilt can safely be recorded even if the motive for the commission of the crime has not been proved."

69. The observation of Supreme Court in the case of **Nathuni Yadav and others v. State of Bihar and another, 1997 (34) ACC 576** are also worth mentioning:-

"Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impells a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Chabell struck a

note of caution in 'Reg v. Palmer' thus: "but if there be any motive which can be assigned I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of Criminal Courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties."

70. In the case of ***State of H.P. Vs. Jeet Singh, (1999) 4 SCC 370 : (AIR 1999 SC 1293)***, the Supreme Court has made the following observations:-

"No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offendoffender towards the person whom he offended."

71. Regarding the motive for commission of a crime, the Supreme Court has observed as under in the case of ***Suresh Chandra Bahri v. State of Bihar, AIR 1994 SC 2420*** (in para 21 of the report at page 2429):-

"Sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the Court that the accused was guilty for the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to

what circumstances prompted him to a certain course of action leading to the commission of the crime."

72. Therefore, even if, for the sake of argument it is admitted that the prosecution has failed to prove motive for the appellants to commit the said crime, it would not have any adverse effect over the prosecution case. It is also submitted on behalf of the appellants that there are two groups one headed by Kalua @ Rajbeer and the other was headed by Rajvir. P.W. 1 informant, Om Prakash had admitted that Kalua has a licensed revolver and he sometimes comes with him, which means that Om Prakash and Kalua were acquainted with Ganga Singh. It is submitted that all the appellants in their statements under Section 313 Cr.P.C. have said that P.W. 4 Ganga Singh had lodged several reports against the gang of other Rajvir. Since Kalua and Rajvir were on visiting terms with the complainant and his family so Ganga Singh and other Rajvir were annoyed with the appellants and it is that Rajvir Singh which had committed such murders and the appellants have been falsely implicated in this case.

73. We do not agree with this submission as well, there is no such evidence led by the defence to show that there are two different Rajbeers'. Consequently, if P.W. 4 Ganga Singh had lodged some criminal cases against the other Rajbeer, prior to the said incident, then the other Rajbeer would have developed grudge against the Ganga Singh and not at the first informant and his family members. If this was the case then he would not have spared Ganga Singh during the said incident and most importantly if Ganga Singh had lodged several reports against Rajbeer prior to the said incident then he would have been the last person to be spared by Rajbeer. Therefore, the defence version has no force that the other Rajbeer and his gang were involved in this incident and appellants have been falsely implicated in this case. If Ganga Singh had courage to lodge other criminal reports against the said Rajbeer prior to the alleged incident then he would have certainly named that Rajbeer if the incident was caused by him and his gang. A

family member would be the last person who will spare the real culprit and implicate an innocent person, if he knows the assailants.

74. In view of the above discussion, we come to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt. It was gruesome murder in which informant Om Prakash's wife Savitri Devi, son and father were murdered. His brother-in-laws son was also murdered. His son Jitendra was also seriously injured and there was an attempt to life on his person. The testimony of P.W. 1 Om Prakash, P.W. 2 Jitendra, P.W. 4 Ganga Singh is consistent and reliable with regard to entire case of the prosecution. The ocular testimony is supported by medical evidence. FIR was lodged promptly and all the appellants were named from the very beginning. The argument on behalf of appellants with regard to their false implication has no force. The motive is also proved and even if it is argued that the prosecution has failed to prove motive then it is a case of direct evidence in which motive does not have much consequence.

75. In view of the above, the learned trial court has rightly appreciated the evidence on record and has rightly reached at the conclusion of the guilt of the appellants. The appellants have been rightly convicted and sentenced for the offence, therefore, appeal has no force and is liable to the dismissed.

76. Thus, all the appellants are guilty of the offence punishable under Sections- 302, 307, 452 read with 34 IPC. The Trial Court has appreciated the evidence on record properly and rightly reached at the conclusion of guilt of all the appellants.

77. Thus, the present three appeals Nos. 7543 of 2006, 7713 of 2006 and 7712 of 2006 lacks merit and are, accordingly, **dismissed**. All appellants **Santosh, Sukhvir, Kamlesh, Ram Naresh, Satyavir, Shiv Vir, Ramadhar, Arvind and Shyam Pal**, are on bail. Their personal bonds and bail bonds are cancelled and sureties are discharged. They are directed to surrender before the learned Trial Court to undergo the

remaining part of their sentence, failing which, the Trial Court is directed to adopt coercive measures for securing their presence.

78. Let a copy of this order be forwarded to the Trial Court concerned alongwith the lower court record for information and necessary compliance.

(Sanjiv Kumar,J.) (J.J. Munir,J.)

May 11, 2026
AdityaG