

A.F.R.

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Reserved on 13th May, 2024

Delivered on 31st May, 2024

Court No. - 45

Case :- GOVERNMENT APPEAL No. - 205 of 1984

Appellant :- State Of U.P

Respondent :- Sughar Singh

Counsel for Appellant :- A.G.A., Purushottam Dixit, Ramesh Chandra Yadav

Counsel for Respondent :- Keshav Sahai, A.B.L. Gaur, Ashok Kumar Singh, Keshav Sahai, P.C. Sharma, Prabhat Chandra Sharma, Pratibha Singh, Purushottam Dixit, Rajeev Sharma, P.C. Mishra

Hon'ble Rajiv Gupta, J.

Hon'ble Shiv Shanker Prasad, J.

(Delivered by Hon'ble Shiv Shanker Prasad, J.)

1. We have heard Shri Jitendra Kumar Jaiswal, learned A.G.A. for the State/ appellant, Shri Purshottam Dixit, learned counsel for the first informant, Shri P.C. Sharma, learned counsel for the accused- respondent nos. 2 & 3 Nagendra and Sahdev, Shri Rajiv Sharma, learned counsel for the accused- respondent no. 4 Ashok as well as perused the material available on trial court record.

2. The instant Government Appeal is directed against the judgment and order dated 4th October, 1983 passed in Criminal Sessions Trial No. 80 of 1983 (State Vs. Sughar Singh & 3 Others), arising out of Case Crime No. 183 of 1982, under Section 302/34, 307/34, 302, 307 & 109 of I.P.C., Police Station-Kotwali, District-Etah, whereby the accused-respondents Sughar Singh, Nagendra, Sahdev and Ashok @ Ranjit have been acquitted from all the charges levelled/framed against them.

3. During the pendency of the instant Government Appeal, the accused-respondent no.1 Sughar Singh has already passed away and the same has already been abated qua accused-respondent no.1 by this Court vide order dated 7th May, 2018.

4. The accused-respondent Sughar Singh the father of the other accused, namely, Nagendra and Sahdev, whereas the accused Ashok is their close friend and residents of same village.

The prosecution case as cropped up from the records of above Government Appeal is that on a written report given by the

informant/P.W.-1 Satdeo Singh dated 10th March, 1982 (Exhibit-ka/7), first information report (Exhibit-Ka/3/1) came to be registered on 10th March, 1982 at 05:45 p.m. at Police Station-Kotwali, District-Etah against the accused-Sughar Singh, Sahdeo Singh, Nagendra Singh and Ashok under Sections 302, 307 and 120-B of I.P.C. In the written report, it has been alleged by the informant/P.W.-1 that about 15 days back, there was a fight between his father Gopal Singh and accused Sahdev and Nagendra resident of his village for taking water because they had stopped the water, which was flowing in his gram field. When his father objected, they ran to attack his father and threatened to kill him. On 10th March, 1982 at around 04:00 p.m., when fight was going on between father of the accused Nagendra and Sahdev Singh, namely, Sughar Singh and their uncle, namely, Durveen Singh near the house of Jorawar Singh, the uncle of the first informant, namely, Sangram Singh intervened to stop the said fight, then, the accused Nagendra and Sahdeo, who were along with their father Sughar Singh, started abusing his uncle. When the first informant objected not to abuse his uncle, heated conversation took place between them. Meanwhile, his father Gopal Singh came to the spot and inquired about the matter, then the accused Nagendra Singh exhorted the accused Sahdev to kill them as earlier they stopped the water flowing into their field. On the said exhortation, the accused Sahdev ran and went to the house of accused Ashok, whose house was adjacent to the house of Jorawar and brought his licensed gun and fired upon father of the first informant on his eye, who was standing near the house of Jorawar. Thereafter the accused Sahdeo fired second shot upon the first informant but the said shot did not hit him and his father died on the spot. The first informant, Jaiveer Singh resident of his village and Yatendra Singh, Sangram Singh and Narendra Singh resident of Ghilauwa, Police Station Kotwali, Etah saw the entire incident of shooting. His father was lying dead on the spot. He came to the Police Station to lodge the first information report.

5. After lodging of the same, the Head Moharrir, namely, Laxman Singh Verma (P.W.-6) prepared the chik first information report (exhibit-ka/1) and made G.D. entry on 10th March, 1982 at 05:45 p.m. The investigation of the case was handed over to P.W.-4 Sri Brahma Singh, the then Sub-Inspector of Police Station Kotwali Etah, in whose presence the case was registered at the Police Station. He proceeded with the investigation after registration of the case and recorded the statements of P.W.-6 Laxman Singh Verma, first informant/P.W.-1 Satdeo Singh and witness Sangram Singh at the Police Station. Thereafter P.W.-4 went to the place of occurrence along with Sub-Inspector Prahlad Singh (P.W.-7) and Sub Inspector Yogendra Singh. P.W.-4 conducted the inquest of the dead-body of the deceased Gopal Singh. On the instruction of P.W.-4, P.W.-7 Sub-Inspector Prahlad Singh prepared the inquest report (Ext. Ka-5), the diagrams of the dead-body (Ext. Ka-6), the challan report Ext. Ka-7), the letter for post-mortem examination of the body of the deceased to Chief Medical Officer (Ext. Ka-8), letter to Reserved Inspector (Ext. Ka-9) and the sample of seal (Ext. Ka-10) on the instruction and supervision of the Investigating Officer (P.W.-4). The dead-body of the deceased was sealed in presence of the witnesses on the spot and it was then sent for postmortem examination through Constables Udaivir Singh and Hari Ram with necessary document.

6. Dr. A.K. Malpani (P.W.-3), the then Acting Superintendent of District Hospital, Etah, conducted an autopsy of the body of the deceased Gopal Singh on 11th March, 1982 at 11:00 a.m. He opined that the cause of death of the deceased Gopal Singh is coma, haemorrhage and shock as result of following ante-mortem injuries:

“1. Abrasion 1 cm. x 3/4 cm. over the middle of right eye brow.

2. Gunshot wound of entry 1 cm x 1 cm. x brain deep over the middle of the right upper eye lid. No blackening and no charring seen. On dissection, right eye-ball found grossly lacerated. On further dissection, the orbital cavity having commuted fracture. Muscles of eye-ball lacerated. On further dissection the membrane of brain and brain matter found lacerated and

clotted blood present. A big pellet recovered from the posterior fossa on right side. No wound of exit seen.

3. One gunshot wound of entry 1 cm. x 1 cm. over the right side of face, 3.5 Cm. lateral to outer angle of right eye. No blackening and no charring seen. On dissection the wound is brain deep. The muscles membrane and, brain matter grossly lacerated and a big pellet recovered from the left cravical cavity, middle part of the brain. Direction right to left and backward. No wound of exit seen.

4. Lacerated wound 1.5 cm. x 0.5 cm. x scalp deep on the superior occipital protuberance.”

7. P.W.-4/Investigating Officer inspected the place of occurrence and prepared the site plan (Exhibit-ka/11) on the same day i.e. 10.3.1982. He also collected from the place of occurrence a blank cartridge and chad (Tikli) (Exhibit-ka-4) and also blood stained earth and plain earth (Ext.-Ka- 5) and prepared their recovery memos (Ext. Ka-12 and Ka-13) respectively. He also recorded the statement of eye-witnesses like Jaivir Singh etc. on the same day at the place of occurrence.

8. On 11.3.1982, the Investigating Officer (P.W.-4) also inspected the place where the scuffle took place between deceased Gopal Singh and accused Nagendra and Sahdev about 15 days prior to the present occurrence. He prepared another site-plan (Ext. Ka-14) of that place also. He found the mends of the drain broken and filled with fresh earth. Thereafter the investigation was handed over to P.W.-5 Sub Inspector Yogendra Singh on 12th March, 1982 by the then Station House Officer. On 18th March, 1982 P.W.-5 Yogendra Singh reached the jail and recorded the statements of the accused Ashok @ Ranjit, who surrendered before the court concerned and was sent to jail. On the disclosure of accused Ashok, his relative (Behnoi) Om Prakash gave the licensed gun to P.W.-5 of which recovery memo (Exhibit-Ka-15) was prepared by him.

9. After conclusions of the statutory investigation under Chapter XII Cr.P.C. P.W.-5 Yogendra Singh has submitted the charge-sheet (Exhibit-Ka/16) against the accused persons, namely, Sughar Singh, Nagendra Singh, Sahdeo Singh and Ashok @ Ranjit before the court concerned.

10. On submission of charge-sheet, the concerned Magistrate took cognizance in the matter and committed the case to the Court of Sessions by whom the case was to be tried. First, on 19th July, 1982, the concerned Court framed following charges against the accused Sahdev:

“CHARGES

I, S. K. Gupta, III Addl. Sessions Judge, Etah hereby charge you Sahdev as follows:-

FIRST- that you, on 10.3.1982, at about 4.00 p. m., near the house of Zorawar Singh, in village Ghilaua, Police Station Kotwali, district Etah, did commit murder by intentionally or knowingly causing the death of Gopal Singh, and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of this Court.

SECONDLY- that you, on the aforesaid date, time and place, did an act, to wit, fired at Satya Dev Singh with a gun, with such intention or knowledge and under such circumstances that if by that act you had caused the death of said Satya Dev Singh, you would have been guilty of murder, and thereby committed an offence punishable under section 307 of the Indian Penal Code, and within the cognizance of this Court.

And I hereby direct that you be tried on the said charge by this court.”

11. On the same day i.e. 19th July, 1983, following charges were framed against the accused Sughar Singh, Nagendra and Ashok:

“CHARGE

I, S.K. Gupta, III Addl. Sessions Judge, Etah hereby charge you (1) Sughar Singh, (2) Nagendra and (3) Ashok as follows:

FIRST- that, on 10.3.1982, at about 4.00 p.m., near the house of Jorawer Singh, in village Ghilaua, Police Station Kotwali, district Etah, shaped and common intention with co-accused Sahdeo to commit murder of Gopal Singh in furtherance of such common intention, co-accused Sahdev did commit murder by intentionally or knowingly causing the death of Gopal Singh, and you thereby committed an offence punishable under section 302 read with section 34 of the Indian Penal Code, and within the cognizance of this Court.

SECONDLY; that, on the aforesaid date, time and place, in furtherance of common intention of all co-accused, Sahdev did an act, to wit, fired at Satya Dev Singh with a gun, with such intention or knowledge and under such circumstances that if by that act he had caused the death of said Satya Dev Singh, he would have been guilty of murder, and you thereby

committed an offence punishable under section 307 read with section 34 of the Indian Penal Code, and within the cognizance of this court.

Alternatively I also charge you as follows:

FIRST- that you, on the aforesaid date, time and place, abetted the commission of the offence of murder of Gopal Singh by co-accused Sahdev, which was committed in consequence of your abetment, and thereby committed an offence punishable under section 109 & 302 of the Indian Penal Code, and within the cognizance of this Court.

SECONDLY that you, on the aforesaid date, time and place, abetted the commission of the offence of attempt to murder Satya Dev Singh by co-accused Sahdev, which was committed in consequence of your abetment and thereby committed an offence punishable under section 109 & 307 of the Indian Penal Code, and within the cognizance of this Court.

And I hereby direct that you be tried on the said charge by this court.”

12. The charges were read out and explained in Hindi to the accused, who pleaded not guilty and claim to be tried.

13. The trial started and the prosecution has examined six witnesses, who are as follows:-

1	Satdeo (complainant) (son of the deceased Gopal Singh)/eye witness as per the prosecution	P.W.-1
2	Jaiveer Singh (resident of village Chhilauwa, Police Station-Kotwali)/independent eye witness as per the prosecution	P.W.-2
3	Dr. A.K. Maalpani, Superintendent District Hospital, Etah, who conducted the autopsy of the person of the deceased	P.W.-3
4	Sub-Inspector Braham Singh, who initially conducted the investigation i.e. the first Investigating Officer	P.W.-4
5	Sub-Inspector Yogendra Singh, who conducted the investigation after P.W.-4 and submitted the charge-sheet	P.W.-5
6	Laxman Singh Verma, Head Moharrir, who prepared	P.W.-6

	the chik first information report	
7	Sub-Inspector Prahlad Singh, who prepared the inquest report of the deceased, photo lash, letter to R.I. etc. on the direction of P.W.-4	P.W.-7
8	Constable Udai Veer Singh, who took the sealed dead body of the deceased to the mortuary	P.W.-8

14. The defence has also produced following witnesses in support of its case:

1	Girraj Prasad, the then Judicial Assistant Collector, Etah	D.W.-1
2	Constable Balak Ram who has proved the G.D. No.9 dated 11 th March, 1982 of Police Lines, Etah which shows that the papers for post-mortem examination were submitted to the R.I.	D.W.-2

15. The prosecution in order to establish the charges levelled against the accused-appellant has relied upon following documentary evidence, which were duly proved and consequently marked as Exhibits:

1	Written report dated 10 th March, 1982	Ex.Ka.-1
2	First Information Report dated 10 th March, 1982	Ex.Ka.-3 & Ex.Kha-1
3	Recovery memo of empty cartridge & Tikli dated 10 th March, 1982	Ex. Ka.-12
4	Recovery memo of blood stained and plain earth dated 10 th March, 1982	Ex. Ka/13

5	Inquest report	Ex.Ka.-5
6	Diagram of the dead body of the deceased	Ex.Ka.-6
7	Chalan of the dead body of the deceased	Ex.Ka.-7
8	Letter to the Chief Medical Officer for post-mortem examination	Ex.Ka.-8
9	Letter to the R.I.	Ex.Ka.-9
10	Sample of seal	Ex.Ka.-10
11	Post-mortem examination report of the deceased dated 11 th March, 1982	Ex.Ka-2
12	Site plan with index dated 10 th March, 1982	Ex.Ka-11
13	Site plan with index dated 11 th March, 1982	Ex.Ka-14

16. The defence has also produced following documentary evidence in support of its case:

1	Charge-sheet dated 27 th February, 1977 submitted in Crime No.22, under Sections 147, 148, 149 and 307 I.P.C.	Ex.Kha-3
2	Copy of the F.I.R. dated 14 th November, 1978 as Crime No. 1068 under Sections 147, 148 and 307 I.P.C.	Ex.Kha-4
3	Copy of the application filed by the Additional Public Prosecutor for summoning the accused Sughar Singh as witness	Ex.Kha-5
4	Copy of the order passed by the Magistrate dated	Ex.Kha-6

	28th August, 1982 summoning the witnesses including Sughar Singh	
5	Copy of the Khatauni of Consolidation Settlement in order to show that the Gopal Singh (deceased herein) and witnesses Sangram Singh, Jagdish Singh, Ranvir Singh and Ramesh Chndra were co-tenants.	Ex.Kha-7
6	Two copies of Khewats 1347 Fasli and 1901 Fasli filed to prove that the witnesses and deceased Gopal Singh belonged to the same family	Exts.Kha -8 and 9

17. After completion of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. The accused persons, while giving their statements in the Court, denied all the allegations made by the prosecution and also traversed their complicity in the alleged crime. They alleged that they have been falsely implicated on account of harbouring grudges as there were enmity between the complainant and the witnesses. For establishing the same, the defence have two oral as well as seven documentary evidences referred to above.

18. On the basis of above evidence oral as well as documentary adduced during the course of trial, the trial court, while referring various infirmities in the prosecution evidence led during the course of trial has opined that the prosecution has not succeeded in bringing home any of the charges framed against the accused persons beyond all reasonable doubts and they deserves to be acquitted. Accordingly, the trial court while passing the impugned judgment, has hold that the accused Sughar Singh, Sahdev, Nagendra and Ashok @ Ranjit are not guilty of any of the charges levelled against them and they are hereby acquitted.

19. Being aggrieved with the impugned judgment and order of acquittal of the accused persons, namely, Sughar Singh, Sahdev, Nagendra and Ashok @ Ranjit, the State of U.P. has preferred the present Government Appeal.

20. Assailing the impugned judgment and order of acquittal of the accused-respondents, namely, Sughar Singh, Sahdev Singh, Nagendra Singh and Ashok @ Ranjit, the learned A.G.A. for the State in the instant Government Appeal has advanced following submissions:

i) . As per prosecution case as unfolded in the first information report, specific role of exhortation has been assigned to the accused Nagendra Singh and role of causing fire arm injuries to the deceased Gopal Singh has been attributed to the accused Sahdev Singh on the exhortation of Nagendra Singh. The said prosecution version has also been supported by the prosecution witnesses, namely, P.W.-1, Satyadeo and P.W.-2, Jaiveer Singh in their respective testimonies.

ii). P.W.-1 and 2 are the eyewitnesses, who have proved the prosecution case beyond reasonable doubt but trial Court erred in passing the impugned judgment and order of the acquittal.

iii). Injuries on the person of deceased- Gopal Singh have been caused by fire arm which is fully corroborated by medical evidence i.e. post mortem examination report of the deceased. Dr. A.K. Malpani P.W.-3/Autopsy Surgeon has found four gun shot injuries on the person of deceased- Gopal Singh, which also support the prosecution case.

iv). Motive alleged in the F.I.R. has also been proved by P.W.-1 and P.W.-2 in their respective testimonies, who are alleged to be the eye-witnesses of the incident.

(v). There are no inconsistencies or contradictions in the testimonies of the prosecution witnesses.

(vi). Since the incident took place at 04:00 p.m. i.e. broad day light and the members of prosecution as well as defence were of the same village, the accused could be identified very well by the prosecution witnesses and there was no occasion to doubt the identification of the accused persons by prosecution witnesses.

(vii). Though there were recovery of gun i.e. crime weapon and pellets were also recovered from the body of the deceased but that were not sent to the Forensic Science Laboratory concerned for their ballistic reports. It is no doubt true that there are no ballistic reports with regard to pellets and the recovered gun but there is ocular evidence to prove the prosecution case. P.W.-1 and P.W.-2 are the eyewitness account, who have supported the prosecution story. Non production of F.S.L. report is not fatal to the prosecution case. Since P.W.-2 is an independent eye witness, therefore, his evidence is more creditworthy.

21. On the basis of above submissions, learned A.G.A. submits that the prosecution has fully established its case beyond reasonable doubt against the accused-respondents by oral as well as documentary evidence but the trial court has not examined the same and passed the impugned judgment of acquittal of accused-respondents, namely, Sughar Singh, Sahdev, Nagendra Singh and Ashok @ Ranjit and therefore, the same is per-se illegal and is liable to be quashed. The learned A.G.A. and learned counsel for the first informant further submit that in support of the above argument, learned counsel for the accused-respondent has failed to produce any documentary as well as oral evidence before this Court as well as trial court. There exist direct evidence against the accused-respondents. As such, the Government Appeal filed by the State is liable to be allowed by reversing the impugned judgment of the trial court and convicting and sentencing the accused-respondents for the

offence under Section 302 I.P.C. The learned A.G.A. also submits that since the Government Appeal qua the accused-respondent Sughar Singh has already been dismissed as abated, nothing is required to be said in his case.

22. Supporting the impugned judgment and order passed by the trial court acquitting the accused-respondents, the learned counsel for the accused-respondents submits as under:

(a) Motive as alleged in the F.I.R. has not been established and proved by the prosecution evidence adduced during the course of trial.

(b). P.W.1/first informant- Satyadeo has admitted in his cross-examination that prior to this incident, one cross case under Section 307 I.P.C. was lodged between the accused- Ashok and accused Nagendra. Although, it is alleged that after some time both the accused compromised and the cases instituted against each other culminated into their acquittal. Even though both the accused entered into compromise, but there were no cordial relations between the Ashok and the accused Nagendra nor they were friend. As such, in these circumstances, it is impossible to believe that the accused-Ashok exhorted, associated or helped the accused Sahdeo and Nagendra in commissioning of murdering of the deceased Gopal Singh in any manner.

c). P.W.-1 has also stated in para-34 of his cross-examination that accused- Ashok was not present on the spot. Similarly P.W.-2, Jaiveer Singh also stated that accused- Ashok was not present on the place of occurrence. He then also stated that he has not heard that Ashok asked the accused Sahdev to bring his gun kept in his sitting place (Baithaka) and kill the deceased Gopal Singh from it, whereas, P.W.-4 investigating officer, Sri Brahm Singh stated in paragraph-29 that P.W.-2 Jaiveer stated in his statement that “ Ashok asked Sahdeo to bring his gun which was kept in sitting place (Baithaka) and kill him (Gopal Singh).

d). As per F.I.R., accused- Ashok was also in the company of the accused persons, Sughar Singh, Sahdeo Singh and Nagendra Singh at the time of occurrence but P.W.-1 and P.W.-2 have denied the presence of Ashok on the place of occurrence at the time of incident. From the above contradiction in the prosecution evidence, it is apparent that the genesis of crime is wholly untrustworthy as the same creates a major dent in the prosecution story.

e). There is also no F.S.L. report with regard to recovered cartridges and tikli. In these circumstances prosecution has not been able to established its case beyond reasonable doubt, hence, judgment of acquittal passed by Trial Judge is well reasoned and sound.

On the cumulative strength of the aforesaid submissions, learned counsel for the accused-respondents submits that as this is a case of weak type of evidence, the impugned judgment and order of acquittal of any of the charges framed against the accused-respondent does not suffer from any illegality and infirmity so as to warrant any interference by this Court. As such the present Government Appeal filed by the State is liable to be dismissed.

23. We have examined the respective contentions urged by the learned counsel for the parties and have perused the records of the present appeal including the trial court records.

24. The only question requires to be addressed and determined in this appeal is whether the conclusion of guilt arrived at by the learned trial court and the sentence awarded is legal and sustainable in law or it suffers from infirmity and perversity.

25. Before entering into the merits of the case set up by the learned counsel for the accused-appellant in criminal appeal, learned counsel for the accused-respondent in government appeal and the learned A.G.A. as also the learned counsel for the

first informant in both the appeals qua impugned judgment and order of conviction passed by the trial court, it is desirable for us to briefly refer to the statements of the prosecution witnesses as well as the defence witnesses.

26. The first informant Satyadeo Singh son of the deceased Gopal Singh has been examined as P.W.-1. He stated in his examination-in-chief that the deceased Gopal Singh was his father, whereas the accused persons, namely, Sughar Singh, Nagendra, Sahdev, Ashok @ Ranjit were residents of his village. Accused Sahdev Singh and Nagendra Singh were the son of accused Sughar Singh. The present murder incident took place on Holi (festival of colours) one year and five months back. About 15 days before the incident, accused Nagendra and Sahdev had cut off the drain water flowing in his gram field due to which his crops got damaged. Because of the same, there was an altercation between his father Gopal Singh and accused Nagendra and Sahdev and the aforesaid accused threatened his father to face evil consequences.

27. This witness further stated that it was around 4 o'clock in the evening, there was an altercation, which was going on between the accused Sughar Singh and his brother Durbin Singh regarding some land and the accused Nagendra and Sahadev were also involved in it. During the same fight, this witness and his uncle Sangram Singh also reached there. When his uncle Sangram Singh tried to intervene, accused Nagendra and Sahdev started abusing his uncle. Further when this witness objected not to abuse him, they also abused him, on which he also started abusing them, as he became very angry with him. At the same time, father of this witness came there from the east of Prem Shankar's house and was standing between the vacant land of Prem Shankar's house and Zoravar's house, he asked as to why they were fighting. When the said altercation was going on between the first informant/this witness and the accused, then the witnesses Jaiveer Singh, Yatendra Singh, Narendra Singh were

also present on the spot. Seeing the father of P.W.-1, the accused Nagendra exhorted the accused Sahdeo to kill him as he was one of the enemy, who had stopped their water on other day. On the said exhortation, the accused Sahdev ran and brought Ashok's licensed gun and fired at his father, which hit his father directly on his eyes and face. When his father fell down, the accused Sahdev fired another shot at P.W.-1, which narrowly missed him because he sat down. The witness raised an alarm and seeing the crowd gathering, the accused ran away towards the south-west of the well. The deceased died on the spot due to bullet injury. He himself (P.W.-1) had written a report regarding the incident and took it to the police station for registration of the case.

28. In the cross-examination, this witness stated that there was a cross case under Section 307 of I.P.C. between the accused Ashok and accused Nagendra. This witness further stated that there was gram crops in his 8 bighas of land and some of which lost. 15 days before the incident, the accused had cut off the chak nali water flowing in his field due to which huge damage was caused.

29. This witness further stated that accused Nagendra was cashier in the District Cooperative Bank, Nidhauri and he lived there. He used to visit the village once or twice in a week. He had been informed by his father about the fight between his father and the accused Nagendra and Sahdeo due to flow of water but his father has not disclosed the date and time of such fight.

30. This witness further stated that at the time of the incident, Durbin Singh, with whom quarrel was taking place initially, left the place of occurrence and heated conversations were exchanged between them. It took about 10 minutes in exchange of hot conversations between them and firing of gun shot upon his father i.e. deceased. He further stated that at the time of incident, he was going towards chaupal and he stopped there after seeing the fight between Durbeen Singh and the accused.

When he reached the place of occurrence, his uncle Sangram Singh also accompanied him.

31. This witness again stated that he did not witness accused Ashok at the spot. He did not give any statement to the Investigating Officer that Ashok asked accused Sahdeo to bring his gun from his sitting place and kill him, consequent to which the accused Sahdev immediately ran away. However, he cannot explain as to how the Investigating Officer has recorded his such statement.

32. This witness further stated that the Sahdev brought the gun from the accused Ashok's sitting place of which he had no idea when Sahdev ran to get the gun and fired it in the presence of so many people. When he was running to get the gun, 15-20 people were gathered at the spot.

33. P.W.-2 Jaiveer Singh, who is alleged to be an independent eye witness stated that at around 4 o'clock in the evening, he was standing near the well situated south-west of house of one Zorawar. Many witnesses like Yatendra Singh, Sangram Singh, Narendra Singh etc. were also standing there. At the relevant time, there was an altercation between Durveen Singh and the accused Sughar Singh, Nagendra Singh and Sahdev Singh on some issue. Meanwhile Sangram Singh intervened, then the accused Nagendra abused him, on which the first informant/P.W.-1 Satyadev objected not to abuse his uncle i.e. Sangram Singh due to which heated conversations were exchanged between them. Meanwhile, father of first informant, namely, Gopal Singh came from the east side of Prem Shankar's house and asked as to why they were fighting on which the accused Nagendra exhorted the accused Sahdev to kill him as he was his enemy. On such exhortation, the accused Sahdev ran and brought the gun of accused Ashok from his sitting place and standing near the Bachan Singh's platform, fired a shot upon the deceased Gopal Singh due to which he sustained fire arm injuries and fell down.

Face of the deceased was hit by fire. Whereafter the accused Sahadev fired upon the first informant/P.W.-1 Satyadev but it did not hit him as he moved a little away. When the crowd gathered, the accused left the spot towards the west side. Gopal Singh died on the spot.

34. In his cross-examination, this witness stated that accused Nagendra exhorted to shoot. At the relevant time, none of the accused were having any weapon. The accused Ashok was not present at the spot. He did not overheard the accused Ashok saying the accused Sahdev to bring the gun from his sitting place and kill them. Regarding the aforesaid fact, he did not give any statement to the Investigating Officer.

35. This witness further stated that he saw the accused Sahadev running to bring the gun but it did not occur to him that he would bring the gun and fire it. The sitting place of the accused Ashok was visible from where they stood but the same was not visible from where the deceased Gopal Singh was standing. Till the first shot was fired by the accused Sahdeo, he could not see that the accused Sahdev had brought the gun because his attention was towards the accused Nagendra and others abusing each other. This witness further stated that his attention was drawn towards that when the first fire was made. The second cartridge was fired by accused Sahdev in front of him. The first cartridge turned out to be empty which fell on the spot and then Sahadev loaded the second cartridge in front of him. By the time he shouted as to what he was doing, the accused Sahdev fired another shot.

36. This witness denied the fact that the incident took place in the dark night in which the deceased Gopal Singh was killed and no one was present at the time of the incident. He also denied that he has not seen any incident and was deposing falsely because of his relationship.

37. P.W.-3 Dr. A.K. Malpani, Superintendent District Hospital Etah, District Etah, in his examination-in-chief stated that he found as many as four ante mortem injuries on the body of the deceased. He took out two big pellets from the body of the deceased and after getting the said pellets sealed, the same were handed over to the Police Constable. While conducting an autopsy on the corpse of the deceased, he opined that the cause of death of the deceased was shock and excessive bleeding due to ante-mortem injuries. These injuries in ordinary course of nature were usually sufficient to cause death. He further opined that there could be a difference of 6 hours in the duration of injuries on either side. In his opinion, injury no. 4 could be caused due to fall over some hard object. He then opined that the injuries were possible only when the killer and the deceased were standing at almost the same level.

38. P.W.-4 Sub-Inspector Brahm Singh initially conducted the investigation, who in his examination-in-chief stated that the investigation of the case was first handed over to him. Whereafter he recorded the statements of first informant/P.W.-1, witness Sangram Singh. He further stated that on 11th March, 1982, he inspected the field and a fight was alleged to have taken place between the deceased Gopal Singh and the accused about 15 days prior to the incident. After examining the evidence of first informant Satyadev, he prepared the site plan which has been proved by him in the Court. On such inspection, he found the bund (Medh) of the chak nali was broken at two places, which seemed to be clogged with fresh soil. He next stated that on 12th March, 1982, the investigation was entrusted to Sub Inspector Yogendra Singh as per the order of the then Station House Officer. In his cross-examination, this witness further stated that the first informant/P.W.-1 Satyadev had given his statement under Section 161 Cr.P.C. that the accused Ashok exhorted the accused Sahdeo to bring his gun from his sitting place (Baithaka) and kill them. On such exhortation, the accused Sahadev immediately ran away.

39. Further this witness stated that he also recorded the statement of witness Durveen Singh in which he stated that the accused Ashok exhorted the accused Sahdeo to bring the gun, which was kept in his sitting place (Baithaka) and kill them.

40. P.W.-5 Sub-Inspector Yogendra Singh stated in his examination-in-chief that he took over the investigation of the case from P.W.-4 Sub-Inspector Brahma Singh on 12th March, 1982. On 18th March, 1982 he went to the district court and recorded the statement of accused Ashok, where he surrendered and on his asking, his brother-in-law (Behnoi), namely, Om Prakash deposited his gun in the Police Station where its recovery memo has been prepared by this witness.

41. This witness further stated that he did not send the gun of the accused Ashok to the ballistic expert for its matching because a long time had elapsed since the incident and the gun was still in the possession of the accused. This witness further stated that he wanted to take the accused Ashok on police remand only for recovery of his gun because he was informed that firing was done by the gun of the accused Ashok.

42. P.W.-6 Laxman Singh Verma, Head Muharrir, Police Station-Patiani, Etah has been produced by the prosecution. This witness stated that he prepared the chik report and made entry in General Diary in that regard. He denied that the special report was not sent on 10th March, 1982 and the chik report was prepared much later. He also denied that the general diary was kept withheld and relevant entries were subsequently made.

43. P.W.-7 Sub-Inspector Prahlad Singh stated in his examination-in-chief that he prepared all the documents qua inquest of the body of the deceased and for sending the body for post-mortem examination, on the spot under the direction of the Investigating Officer P.W.-4 in his presence.

44. P.W.-8 Constable Udayveer Singh took the dead body of the deceased to the Mortuary along with necessary documents.

45. Shri Girraj Prasad, Judicial Assistant, Collectorate, Etah has been produced as D.W.-1 by the defence. He proved the order of the District Magistrate, Etah dated 12th March, 1982 for receiving the special report at his office.

46. The defence has also produced Constable Balak Ram as D.W.-2, who proved the G.D. No.9 dated 11th March, 1982 of Police Lines, Etah which mentions that the papers for post-mortem examination of the deceased were submitted to the R.I. on 11th March, 1982 at 0720 hours.

47. On the deeper scrutiny of the above evidence led during the course of trial, we find that there is major contradictions in the testimonies of the prosecution star eye witnesses. There is also faulty investigation. Such contradictions and faulty investigation cast a serious dent in the entire prosecution case.

48. Now it is important for us to refer to such contradictions in the testimony of first informant/P.W.-1 Satya Deo son of the deceased i.e. the first eye witness.

49. In the written report (Exhibit-Ka/1) of the first informant/P.W.-1 on the basis of which the first information report has been lodged (Exhibit-ka/3), it has been stated as under:

"मेरे पिता जी गोपाल सिंह से आज से करीब 15 दिन पहले मेरे गांव के सहदेव व नागेन्द्र पुत्र सुगड़ सिंह से पानी ले जाने के सम्बन्ध में झगड़ा हो गया था क्योंकि इन लोगों ने मेरे चने के खेत में पानी काट दिया था मेरे पिता ने उनसे कहा तो ये लोग मेरे पिता जी पर मारने दौड़े और जान से मारने की धमकी और कहा कि साले कभी तुझको देखेंगे आज दि० 10.3.82 को करीब 4 बजे नागेन्द्र व सहदेव सिंह के पिता सुगड़ सिंह और उनके चाचा दुर्बीन सिंह में जोरावर सिंह के मकान के पास झगड़ा हो रहा था मेरे चाचा संग्राम सिंह ने बीच बचाव किया कि उपरोक्त नागेन्द्र वा सहदेव सिंह भी अपने पिता के साथ थे नागेन्द्र व सहदेव ने मेरे चाचा को गालियों दी मैंने इन लोगों से गाली देने से मना किया कि मेरे चाचा को गाली क्यों दे रहे हो इस बात पर मुझसे तू तू मैं मैं हो गयी इतने में मेरे पिता जी गोपाल सिंह मौके पर आ गये उन्होंने कहा कि क्या बात है इतने में ही नागेन्द्र सिंह ने अपने भाई सहदेव से कहा कि अब क्या देख रहा है। दुश्मन सामने आ गया मार दो सालों को इसी ने उस दिन हमारा पानी रोका

था तभी भागकर सहदेव गया और अशोक पुत्र स्वरूप सिंह जिसका मकान जोरावर के मकान में मिला हुआ है। अशोक की लाइसेंसी बंदूक ले आया और जोरावर सिंह के मकान के पास खड़े मेरे पिता जी को सहदेव ने गोली मार दी जिससे मेरे पिता जी के आंख पर गोली लगी है। तथा सहदेव ने दूसरा फायर मेरे ऊपर किया जिससे मैं बाल बाल बचा हूँ मेरे पिता जी को घटनास्थल पर ही मृत्यु हो गयी है। यह सारा बाका तथा गोली मारते मैंने व मेरे गांव के जैवीर सिंह पुत्र वावू सिंह, यतेन्द्र सिंह पुत्र रनवीर सिंह व संग्राम सिंह पुत्र आलम सिंह व नरेन्द्र सिंह पुत्र रमेश चन्द्र निवासीगण धिलौआ थाना कोतवाली एटा तथा गांव के बहुत से लोगों ने सारा वाका देखा है।"

50. From perusal of the aforesaid version of first informant/P.W.-1 it is apparently clear that only role assigned to cause fire arm injuries to the deceased Gopal Singh is upon the accused Sahdeo, whereas the role of exhortation has been assigned to accused Nagendra Singh. The accused Sughar Singh has been assigned to accompany the aforesaid accused, whereas the accused Ashok has been implicated in the present case because his gun was used in causing such fire arm injuries. From the aforesaid version it is also not clear as to whether the accused Ashok was present on the spot at the time of incident or not. It is also clear that 15 days prior to the said incident, there was altercation between the deceased Gopal Singh and the accused Nagendra and Sahdeo over watering of the gram crops of the deceased.

51. In the statement recorded under Section 161 Cr.P.C. by the Investigating Officer, the first informant/P.W.-1 Satyadeo has stated as under:

"आज होली रंग का दिन है गांव में जगह जगह आदमी इकट्ठे हो रहे हैं करीब 4 बजे शाम के हमारे गांव के जोरावर सिंह के मकान के पास सुघड़ सिंह और दुर्वीन सिंह में झगड़ा हो रहा था जिस का बीच बिचाव मेरे चाचा संग्राम सिंह ने कराया था वही पर सुघड़ सिंह के लड़के नागेन्द्र व सहदेव भी थे बीच बिचाव कराते वक्त नागेन्द्र व सहदेव ने मेरे चाचा को गालियां दे कर कहा कि तुम साले हमारे बीच बिचाव कराने वाले कौन होते हो मैंने गालियां देने को मना किया इस पर मुझसे तू-तू मैं-मैं हो गई इसी बीच मेरे पिता जी गोपाल सिंह आ गये उन्होंने पूछा कि क्या बात है इतने में ही नागेन्द्र सिंह ने अपने भाई सहदेव से कहा कि अब क्या देख रहा है दुश्मन सामने आ गया है साले को गोली मार दो इसी ने उस दिन हमारा पानी रोका था तभी अशोक पुत्र सरूप सिंह जिस का मकान बैठक जोरावर के मकान से मिली है ने कहा कि बैठक से मेरी बन्दूक उठा ला और मार दो कि एक दम से सहदेव भाग कर गया और अशोक वाली बन्दूक और कारतूस ले आया और जोरावर के मकान के पास खड़े हुए मेरे पिता जी को गोली मार दी जो मेरे पिता जी की आंखों पर लगी तथा एक फायर और सहदेव ने मेरे ऊपर जान से मारने की नियत से किया जिससे मैं बाल बाल बचा, मेरे पिता जी गोली लगते ही खतम हो गये, मेरे पिता जी को गोली लगवाने में नागेन्द्र व सहदेव के पिता सुघड़ सिंह का भी हाथ रहा जो मौके पर गोली लगते समय मौजूद थे मुलजिमान को गोली

मारते वहीं मौके पर खड़े हुए मैंने व मेरे चचा संग्राम सिंह व गांव के जयवीर सिंह पुत्र बाबू सिंह व यतेन्द्र सिंह पुत्र रनवीर सिंह व नरेन्द्र सिंह पुत्र रमेश चन्द तथा गांव के बहुत से लोगों ने देखा है दुरवीन सिंह हमारी तू-तू मैं-मैं होते ही मौके स चला गया था मेरे पिता जी की लाश मौके पर पड़ी है इस घटना की तहरीर मैंने स्वयं लिखी और अपने चचा संग्राम सिंह को साथ लेकर थाना आया तहरीर देकर मैंने अपना मुकदमा दर्ज कराया। ”

52. The statement of Sangram Singh, brother of the deceased Gopal Singh, who has not been produced during the course of trial, recorded by the Investigating Officer under Section 161 Cr.P.C. is extracted hereunder:

“आज होली में रंग का दिन था गांव में जगह जगह लोग इकट्ठे होकर त्यौहार मना रहे थे करीब शाम के 4 बजे नागेन्द्र व सहदेव सिंह के पिता सुघड़ सिंह और इनके चाचा दुर्वीन सिंह में हमारे ही गांव के जोरावर सिंह के मकान के पास रास्ते में आपस में जमीन के ऊपर गाली गलौज व झगड़ा हो रहा था दुर्वीन सिंह कह रहा था कि मुझे जमीन कम दी है यह झगड़ा देखकर कि त्यौहार का दिन है और बात न बढ़े मैंने उनमें बीच बिचाव कराया कि नागेन्द्र व सहदेव ने मुझे गालियां दी कि तुम बीच में हमारा फैसला करने वाले कौन होते हो और मुझे गालियां देते हुवे देखकर सत्यदेव से न रहा गया जिस पर सत्यदेव से भी उन की तू-तू मैं-मैं हो गई इसी बीच दुर्वीन सिंह वहां से चला गया और मेरे भाई गोपाल सिंह भी वहीं मौके पर आ गये और हम लोगों के बीच तू-तू मैं-मैं व गाली गलौज होते देख कहा कि क्या बात है मेरे भाई गोपाल सिंह के यह कहते ही नागेन्द्र सिंह ने अपने भाई सहदेव से कहा कि अब क्या देख रहा है दुश्मन सामने आ गया है साले को गोली मार दो इसी ने उस दिन हमारा पानी रोका था तभी अशोक पुत्र सरूप सिंह ने कहा कि बैठक से मेरी बन्दूक उठा ला और मार दो यह सुनते ही सहदेव भाग कर गया और अशोक की बैठक से कारतूस व बन्दूक उठा लाया और जोरावर के मकान के पास रास्ते पर खड़े हुए मेरे भाई गोपाल सिंह को गोली मार दी नागेन्द्र, सहदेव व अशोक के पास ही सुघड़ सिंह भी खड़े थे कि सहदेव ने तुरन्त ही दूसरा फायर सत्यदेव के ऊपर जान से मारने के लिये किया जो बाल बाल लगने से बचा यह घटना मुलजिमान द्वारा गोली मारते हुए वहीं मौके पर खड़े हुए मैंने व सत्यदेव व गांव के जैवीर सिंह पुत्र बाबू सिंह, यतेन्द्र सिंह पुत्र रनवीर सिंह व नरेन्द्र सिंह पुत्र रमेश चन्द्र तथा गांव के बहुत से लोगों ने देखी है। ”

53. In the aforesaid two statements of P.W.-1/first informant and Sangram Singh, son and brother of the deceased, it is for the first time, the allegation of exhortation has been assigned to accused Ashok and also upon the accused Sughar Singh that he was also involved in commissioning of the alleged offence. Similarly, the other witness Sahveer Singh son of Babu Singh, P.W.-2 Jai Veer Singh son of Babu Singh, Yatendra Singh son of Ranveer Singh, Narendra Singh son of Ramesh Chandra has reiterated the same statements under Section 161 Cr.P.C. as stated by P.W.-1/first informant Satyadeo and Sangram Singh as quoted above. Except P.W.-2 Jai Veer Singh, no other witnesses above have been

produced by the prosecution during the course of trial. The relevant portion of their statements under Section 161 Cr.P.C. about the involvement of the accused Ashok in commissioning of the alleged incident is quoted herein below:

"अशोक उर्फ रंजीत सिंह जो वहीं पर खड़ा था ने सहदेव से कहा कि मेरी बन्दूक मेरी बैठक में रखी है भाग कर उठा ला और मार दे साले को कि सहदेव तुरन्त भाग कर गया और अशोक की बन्दूक व कारतूस उठा लाया और गोपाल सिंह जो जोरावर सिंह के मकान के पास रास्ते पर खड़े थे को सहदेव ने गोली मार दी।"

54. During the course of trial, P.W.-4 i.e. first Investigating Officer has also proved aforesaid statements of P.W.-1 and P.W.-2 recorded under Section 161 Cr.P.C. in his cross-examination during the course of trial.

55. For ready reference, the same is reproduced hereunder:

"वादी सत्यदेव ने यह व्यान दिया था कि अशोक ने कहा कि बैठक से मेरी बंदूक उठा ला और जान से मार दो। इस पर सहदेव एकदम भागकर गया- ऐसा कहना सही नहीं है कि मैंने यह बयान अपनी तरफ से लिख लिया हो।"

सत्यदेव ने यह बयान नहीं दिया था कि "- सुघड़ सिंह ने कहा कि भीड़ इकट्ठी हो गई है भाग चलो।"

जयवीर गवाह ने यह बयान नहीं दिया था कि "मैं और यतेन्द्र सिंह नगला ? में चौपाई सुनने जा रहे थे और कुंआ के पास झगड़ा होता हुआ देखकर रुक गये।" अजरखुद कहा कि इस गवाह ने यह बताया था कि यह भी घटना के समय मौजूद था। जयवीर गवाह ने यह बयान दिया था कि "आज होली का रंग का दिन था गांव के लोग जगह-जगह त्योहार मनाने में इकट्ठा थे। मैं, यतेन्द्र सिंह व नरेन्द्र सिंह के मकान के पास है, घर पर मौजूद थे और सत्यदेव, संग्राम सिंह, बचान सिंह के मकान के चबूतरे के नीचे मौजूद थे। कि यही पर 4 बजे शाम को सुघड़ सिंह और उसके भाई दुर्बिन सिंह में जमीन के बटवारे के मामले में गाली गलौज और झगड़ा होने लगा।"

उसने यह भी बयान दिया था कि "अशोक ने सहदेव से कहा कि मेरी बंदूक मेरी बैठका में रखी है भागकर उठा ला और मार दो साले को।"

56. However, during the course of trial, in his examination-in-chief, the first informant/P.W.-1 has reiterated the same version as given in his written report (Exhibit-ka/1), which is quoted herein above. In his cross-examination, this witness has given a different statement by stating that the accused Ashok was not present on the spot at the time of incident. For ready reference, the same is extracted hereunder:

"मैंने अशोक मुलजिम को मौके पर नहीं देखा। दरोगा जी ने मेरा बयान घटनास्थल पर लिया था फिर मुझे ध्यान नहीं कि किस किस का बयान और लिया। मैंने दरोगा जी को"

यह बयान नहीं दिया था कि "अशोक ने कहा कि मेरी बन्दूक बैठक से उठा लाओ और मार दो कि एकदम सहदेव भाग कर गया।" अगर दरोगा जी ने ऐसा मेरे बयान में लिख दिया है तो मैं इसकी कोई वजह नहीं बता सकता हूँ।

मैंने रिपोर्ट में यह लिखा था व दरोगा जी को बताया कि सुघड़ सिंह ने कहा कि भीड़ इकट्ठी हो गई है भाग चली। अगर नहीं लिखा है तो मैं इसकी कोई वजह नहीं बतला सकता हूँ। सहदेव मुलजिम अशोक की बैठक से बन्दूक दौड़कर लाया था। जब सहदेव बन्दूक लेने दौड़ा था तब मुझे यह अंदाज नहीं हो पाया था कि इतने आदमियों में बंदूक लाकर चला देगा।"

57. Like wise, during the course of trial in his examination-in-chief P.W.-2 has reiterated the version of P.W.-1 as given his written report as well as in his examination-in-chief. In his cross-examination, P.W.-2 has also reiterated the same version as stated by PW.-1 in his cross-examination about the presence of accused Ashok at the time of incident. The statements of P.W.-2 given in his examination-in-chief as well as in his cross-examination reads as follows:

In examination-in-chief

"पिछली होली से एक होली पहले की बात है करीब एक साल 5 महीने पहले यह घटना घटी थी। करीब 4 बजे शाम में जोराबर के मकान के दक्षिण-पच्छिम कुँआ के पास खड़ा था। वहीं पर गवाहान यतेन्द्र सिंह, संग्राम सिंह, नरेन्द्र सिंह वगैरह कई आदमी खड़े थे। उस समय दुर्वीन सिंह और मुलजिमान सुघड़ सिंह नागेन्द्र सिंह व सहदेव सिंह में किसी बात पर कहा सुनी हो रही थी। संग्राम सिंह ने बीच विचाव किया। तब मुलजिम नागेन्द्र ने गाली गलौज किया जिस पर सत्यदेव ने कहा कि मेरे चाचा को क्यों गाली देते हो इस पर मुलजिमान मे और सत्यदेव में आपस में कहा सुनी हुई।

इसी बीच सत्यदेव के पिता गोपाल सिंह पूरब ओर से प्रेम शंकर के मकान की तरफ से आए और कहने लगे कि क्यों झगड़ रहे हो। इस पर नागेन्द्र ने सहदेव से कहा कि अब क्या देख रहे हो दुश्मन सामने खड़ा है मार दो। इस पर सहदेव दौड़कर अशोक की चौपाल से बंदूक अशोक की ले आया और बचान सिंह के चबूतरे के पास खड़े होकर गोपाल सिंहके उपर फायर कर दिया और गोपाल सिंह घायल होकर गिर गये। गोपाल सिंह के फायर चेहरे पर लगा था। सहदेव ने दूसरा फायर सत्यदेव पर किया लेकिन थोड़ा सत्यदेव के हट जाने से उसके लगा नहीं। इसके बाद सुघड़ सिंह ने कहा कि अब भाग चलो अब भीड़ इकट्ठी हो रही है। तब मुलजिमान पच्छिम साईड को घटनास्थल से चले गये। गोपाल सिंह घटनास्थल पर ही मर गये।"

In cross-examination:

"नागेन्द्र ने कहा था कि गोली मार दो। उस वक्त मुलजिमान में से किसी पर कोई हथियार नहीं थे। घटनास्थल पर मुलजिम अशोक मौजूद नहीं था। मैंने अशोक को वहां पर यह कहते नहीं सुना कि सहदेव से कहा "मेरी बंदूक मेरी बैठक (में रक्खी है भाग कर उठा लो और मार दे साले को।" यह व्यान मैंने दरोगा जी को नहीं दिया है। मैं नहीं कह सकता की दरोगा जी ने मेरा यह बयान कैसे लिख लिया।"

58. The aforesaid contradictions in the testimonies of P.W.-1 and P.W.-2 at various levels referred to above makes the entire

testimonies of P.W.-1 and P.W.-2 doubtful and raises a big question mainly about the genesis of the entire prosecution case and renders a serious doubt about the truthfulness of the testimony of P.W.-1 and P.W.-2 and as such, their testimony is liable to be discarded.

59. It is also important to note here that as per the testimony of P.W.1/first informant (cross-examination)/prosecution version, earlier there was a fight between the two accused, namely, Ashok @ Ranjit and Nagendra and both of them instituted cases against each other under Section 307 I.P.C. but subsequently, they entered into compromise and the said cases were withdrawn by them. During the course of trial the defence also filed a copy of the charge-sheet dated 27th February, 1977 (Exhibit-kha-3) in case crime no. 22 under Section 147, 148, 149 and 307 I.P.C. wherein the accused Sughar Singh was complainant and the accused Ashok @ Ranjit was one of the accused along with other witnesses during the course of investigation of the instant case.

60. From the aforesaid facts, it is quite evident that there were inimical relationship between the accused Sughar Singh along with his sons Nagendra and Sahdeo and the accused Ashok @ Ranjit. Therefore it is impossible to believe that the accused Ashok @ Ranjit would associate himself with the other accused Sughar Singh, Nagendra Singh and Sahdeo Singh in commission of the alleged crime in any manner. This fact also casts a serious dent in the prosecution case and makes it highly doubtful.

61. The defence has also succeeded to prove that they have been falsely implicated in commissioning of the alleged crime. In support of the said plea, during the course of trial, the defence filed a copy of the F.I.R dated 14th November, 1978 (Exhibit-kha/4) registered as case crime no. 1068 under Sections 147, 148 and 307 I.P.C. lodged by one Nirankar Singh against the prosecution witnesses during the course of investigation, namely, Ranvir Singh, Yatendra Singh, Gajendra Singh, Narendra Singh and Gopal Singh (present deceased), wherein the accused Sughar Singh was one of the witnesses of prosecution in that case. During the

course of trial, the defence also filed a copy of the Khatuani (Exhibit-kha/7) wherein the deceased Gopal Singh and witnesses of investigation, namely, Sangram Singh, Jagdish Singh, Ranvir Singh, Ramesh Chandra were co-tenants, in order to prove that they belonged to the same family. The aforesaid facts also create a doubt in the prosecution case.

62. The non production of Durveen Singh brother of the accused Sughar Singh and uncle and brother of the first informant and deceased respectively as prosecution witnesses during the course of trial also makes the prosecution case weak. When as a matter of fact they could be star witnesses of the prosecution side, as they were the persons with whom initially there were altercation with the accused Sughar Singh, Nagendra Singh and Sahdeo Singh as per the prosecution version. Withholding of the said witness, for no rhyme or reason, further makes the prosecution story doubtful.

63. We may also record that there is faulty investigation in the present case because the pellets recovered from the body of the deceased, empty cartridge recovered from the place of occurrence and the crime weapon i.e. gun, which is alleged to have been used in commissioning of the alleged offence and has recovered from the brother-in-law of accused Ashok have not been sent for their chemical examination to the concerned Forensic Science Laboratory in order to establish that the pellets, empty cartridge and the gun were actually used in the commission of the alleged offence, which further creates a serious dent in the prosecution story and makes it doubtful.

64. We also take note of the judgment of the Apex Court in the case of **Ballu & Another Vs. State of Madhya Pradesh** reported in *2024 SCC OnLine SC 481*, wherein it has been held that it is impermissible for the High Court to interfere with the acquittal unless trial court's view is perverse or impossible. The relevant portion whereof reads as follows:

“20. The High Court could have interfered in the criminal appeal only if it came to the conclusion that the findings of the trial Judge were either perverse or impossible. As already discussed hereinbefore, no perversity or impossibility could be found in the approach adopted by the learned trial Judge.

21. In any case, even if two views are possible and the trial Judge found the other view to be more probable, an interference would not have been warranted by the High Court, unless the view taken by the learned trial Judge was a perverse or impossible view.

22. In that view of the matter, we find that the judgment passed by the High Court is totally unsustainable in law.”

65. After considering the facts and circumstances of the case, law laid down by the Apex Court referred to herein above and examining the findings recorded by the trial court in acquittal of accused-respondents Sughar Singh, Nagendra Singh, Sahdeo Singh and Ashok @ Ranjit of all the charges levelled against them, we are in full agreement with the findings recorded by the trial court. The trial court has fully examined the evidence led by the prosecution in correct perspective and the finding returned by it that the prosecution has not succeeded in proving its case beyond reasonable doubt against the accused-respondents can be legally sustained. The prosecution has not fully established the guilt of the accused-respondents on the basis of evidence led at the stage of trial by the prosecution. The acquittal of the accused-respondents, Sughar Singh, Nagendra Singh, Sahdeo Singh and Ashok @ Ranjit of all the charges framed against them, is consequently, affirmed.

66. Consequently, in view of the deliberations held above the Government Appeal filed on behalf of the State stands dismissed.

67. There shall be no order as to costs.

(Shiv Shanker Prasad, J.) (Rajiv Gupta, J.)

Order Date :- 31.05.2024

Sushil/-