

(2005) 10 AHC CK 0032

In the Allahabad High Court

Case No : Criminal Appeal No's. 445 and 701 of 2005 and Capital Sentence
Reference No. 2 of 2005

Akhlaq (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Arms Act, 1959 — Section 25, 4
Criminal Procedure Code, 1973 (CrPC) — Section 313, 354(3), 82, 83
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 201

Citation : (2005) 10 AHC CK 0032

Hon'ble Judges : Umeshwar Pandey, J;Imtiyaz Murtaza, J

Bench : Division Bench

Advocate : G.S. Chaturvedi, Sudhanshu Srivastava, Nayan Shri, V.P. Srivastava and Rakesh Chandra Upadhayay, for the Appellant; R.K. Singh and Anurag Pathak and A.G.A., for the Respondent

Judgement

Umeshwar Pandey, J.—The aforesaid two criminal appeals and capital sentence reference arise out of judgment and order of conviction and sentence dated 25.01.2005 rendered in the Sessions Trial No. 880 of 2000 by the Additional Sessions Judge, Saharanpur. Since the judgment and order challenged in these criminal appeals is one and the same and is also the subject matter of capital sentence reference made by the learned Additional Sessions Judge, all the appeals and reference are hereby taken up together for disposal.

2. The appellant accused Akhlaq, Salman, Imtiaz, Nanha Pahalwan and Wakkar stood their trial on the charges for the offences punishable under Sections 148, 302 read with Sections 149 and 201 I.P.C. and Section 25/4 Arms Act before the Additional Sessions Judge and have been convicted for the aforesaid offences and sentenced as following:-

1. All the five accused persons have been sentenced to death for the offences punishable u/s 302 read with Section 149 I.P.C.

2. All of them have been awarded sentence to undergo rigorous imprisonment for three years for the offences punishable u/s 148 I.P.C. and have also been sentenced to undergo rigorous imprisonment for three years for the offence punishable u/s 201 I.P.C.

3. These accused were further directed to undergo rigorous imprisonment for six months each for the offence punishable u/s 25/4 Arms Act. The sentences awarded have been directed to run concurrently.

3. The accused Wakkar, Imtiaz, Nanhe Pahalwan and Salman have preferred their appeals in one set jointly being Criminal Appeal No. 445 of 2005 and the fifth accused Akhlaq has preferred his separate Criminal Appeal No. 701 of 2005.

4. The prosecution case as it appears in the evidence is that the complainant, P.W. 1- Sheikh Jakaullah's brother the deceased-Sujaullah Mintu was running an iron foundry and he had invested a sum of Rs. 60,000/- in certain lottery scheme run by the accused Akhlaq. The deceased had earned in the said lottery a sum of Rs. 60,000/- about a month before the incident and he was quite often reminding Akhlaq for its payment. The accused always tried to avoid payment and when on 07.08.2000, the deceased again reminded him (Akhlaq), he and his brothers, the other four accused persons threatened and told him that they would collectively make the payment to him and would one day eliminate him. This fact was intimated by the deceased to his brother Sheikh Jakaullah (P.W. 1). The deceased, on daily routine left home on 09.08.2000 at about 9.00 a.m. for the iron foundry and had returned back at about 8.00 p.m. At 8.30 p.m. the accused Akhlaq gave a telephone call to Mintu, the deceased whereupon he told his wife-Zebi (P.W. 3) that he was going to Akhlaq's shop as he was called by him for taking the payment of money and would be returning within ten minutes. He went out in his Bajaj Scooter No. D.I.A.-2291. The deceased when did not return till 11.00 p.m., the complainant got anxious about him and went out in his search. At about 11.45 p.m. he came across Hemraj "Furniture-wala", from whom he inquired about his brother. He told P.W. 1 that he had seen Mintu at about 10.00 p.m. at fee accused Akhlaq's shop where he and the accused Imtiaz, Wakkar and Akhlaq were also present. Thereafter, the complainant (P.W. 1) again started searching his brother but he could not get him anywhere and lastly he came back to his foundry and sat there. At about 12.15 a.m., he noticed the accused Wakkar, Akhlaq and Imtiaz along with two others coming down the stairs of first floor room of Akhlaq's shop. After coming down, Akhlaq started closing the door of the first floor staircase and when the complainant Sheikh Jakaullah inquired from him about his brother, he was told by him (Akhlaq) that the deceased Mintu was telling him for going to Chandigarh and he might have gone there only. During this conversation, Akhlaq was extremely perplexed. The complainant (P.W. 1) again started searching for his brother afresh but when he did not succeed, he came back to his foundry and sat on a chair. Next morning at about 9.00 a.m., the accused Akhlaq came to his shop and P.W. 1 again inquired from him about his brother Mintu and the reply of Akhlaq was the same. On this

juncture also Akhlaq looked quite disturbed. That gave rise to some suspicion against him (Akhlaq) and as such P.W. 1 asked him to show his first floor room but the accused avoided on the pretext that he was not having the keys of the room. Thereafter the complainant Jakaullah obtained some ladder with the help of which he ascended from behind through Aara machine shop of Bhoora. From the roof of said first floor room, he got down through the staircase and found blood lying on the floor. He peeped into the room through a gap and saw that several pieces of dead body of his brother were lying there. Those pieces were kept in bags and some cloth. He was shocked at the scene and started raising alarm. He got down and told the people present there about actual state of affairs. At that point of time, P.W. 6-Sompal told him that in the night at about 11.00 p.m. while he was present at his furniture shop for the "Pooja", he heard some shrieks from the first floor room of Akhlaq. He (P.W. 6) was also told by the accused Akhlaq to close his shop but he informed him that his community "Pooja" was to be done whereafter only he would go. The door of first floor room of Akhlaq's shop was broken open by the agitated crowd of people collected there and the scene inside was horrifying. The pieces of body of deceased Sujaullah @ Mintu were lying on the floor. Immediately afterwards, Jakaullah prepared the written report (Ext. Ka-1) and lodged it at the police station on 10.08.2000 at 10.00 a.m.

5. On lodging of the first information report the case under Sections 147, 148, 302, 149 and 201 I.P.C. was registered. The investigation of the case was started by P.W. 14, Inspector R.P. Sharma of the concerned police station. Immediately after the case was registered, he recorded the statements of Constable Sayeed Ahmad, who had prepared the check F.I.R. (Ext. Ka-5) and made the relevant entry in general diary. He thereafter copied these documents in his case diary and proceeded for the place of occurrence along with police force and the complainant. The Investigating Officer, P.W. 14 after reaching the shop of the accused Akhlaq got the lock of stair case broken open and went to the first floor room where he found the body of deceased Sujaullah @ Mintu lying in pieces. His head was separated from the neck and both the legs and arms were amputated from knee and elbow joints. There was pool of clotted blood in the room. The pieces were tied in clothes and bags. The shirt, baniyan and underwear worn by the deceased were completely blood stained. He gave direction to the S.I. Kashyap for doing the inquest upon the dead body. He prepared the inquest report (Ext. Ka-26). He also got prepared" sketch of dead body, challan of dead body, letter to the C.M.O. and letter to R.I. (Ext. Ka-27, Ka-28, Ka-29 and Ka-30 respectively). He prepared the site plan of place of occurrence (Ext. Ka-25). The Investigating Officer also got the dead body photographed through some professional (material Ext. Ka-1 to Ka-3). The Investigating Officer thereafter took the pieces of blood stained floor and plain floor separately in his possession and got it sealed on the spot and prepared its fard (Ext. Ka-31). The dead body was sealed and sent for postmortem examination.

6. The next day i.e. 11.8.2000, the Investigating Officer proceeded for further

investigation and arrested the accused Akhlaq and interrogated him. Relying upon Akhlaq's statement, he along with police force started from the police station and took the witnesses Jakaullah (P.W. 1) and Saifullah from the way. The accused took them to Ashraf's house wherefrom the scooter of deceased was recovered on his discovery made before the police in presence of those witnesses. The blood stained knife was also found inside the box of the scooter, which was got sealed on the spot and its recovery memo was prepared. He prepared site plan of place of recovery (Ext. Ka-6) and thereafter the accused was brought back to the police station and the recovered articles along with accused were lodged there. A case u/s 25/4 Arms Act was separately registered against Akhlaq.

7. The other accused Nanha Pahalwan, Salman and Wakkar were since absconding, the Investigating Officer obtained the processes under Sections 82 and 83 Cr. P.C. against them. On 16.8.2000, he arrested the accused Wakkar who got one blood stained dagger used by him in the crime of murder of Sujaullah recovered from a "Kabristan" (graveyard) in presence of the witness Jeeshan and the complainant Jakaullah. The recovery memo (Ext. Ka-4) was prepared by the I.O. and the recovered dagger was got sealed. The site plan of place of recovery was also prepared in Ext. Ka-43 and the accused along with recovered dagger was brought to the police station and a separate case u/s 25/4 Arms Act was registered against him.

8. On 19.8.2000, the Investigating Officer R.P. Sharma arrested the accused Imtiaz and interrogated him. He also disclosed to him and agreed for the recovery of knife used in the crime for which the Investigating Officer and the police party proceeded along with him to Kabir Nursery, wherefrom below the heaps of brick pieces, the accused took out blood stained trouser of the deceased in which blood stained knife used in the crime was wrapped and gave it to the police in presence of the witnesses. Its recovery memo (Ext. Ka-48) was prepared on the spot and site plan of the place of recovery in Ext. Ka-49 was also sketched there only. The trouser of the deceased was also having a leather belt tied around its waist lining.

9. On 21.8.2000 the Investigating Officer moved the Magistrate for issuing attachment warrant against the remaining accused Salman and Nanha Pahalwan but he could not obtain it and on 30.8.2000 he received information that Nanha Pahalwan had surrendered before the court. On 2.9.2000 P.W. 14, R.P. Sharma, the Investigating Officer got a report that the accused Salman had also surrendered before the court. Accordingly, he recorded the statements of both these accused Salman and Nanha Pahalwan inside the jail and thereafter on 07.09.2000, he got their police custody remand for ten hours only. He took them out from District Jail on police custody remand and got them medically examined. He interrogated Salman in police custody and he made disclosures for the recovery of blood stained knife used in the crime and blood stained watch of the deceased. He took the police party in presence of the witnesses Samir and

Faridurahman to his residence and the accused took out blood stained watch belonging to the deceased and blood stained knife used in the crime from inside the house. These recovered articles were got sealed on the spot and its fard (Ext. Ka-17) was prepared. The site plan of place of recovery was prepared (Ext. Ka-54). The recovered articles and the accused were brought back to the police station where a case u/s 25/4 Arms Act was separately registered against him. Thereafter on the same day, the accused Nanha Pahalwan on interrogation disclosed to the Investigating Officer for recovery of one blood stained knife and for that purpose he took the police party to a tin shed (barsati) located in a "Kabristan" (graveyard) where from below the heap of some wood he took out the blood stained knife and gave it to P.W. 14. A recovery memo (Ext. Ka-16) was prepared on the spot and site plan of place of recovery (Ext. Ka-58) was also prepared. The recovered article along with accused was brought to the police station where a separate case u/s 25/4 Arms Act was registered. Thereafter, these two accused were taken to the court of Magistrate where from they were remanded to the judicial custody. The recovered blood stained articles including the instruments used for the crime and different other articles belonging to the deceased were sent for serological test to the laboratory where-from a report (Ext. Ka-61) was received. In the said report dated 03.01.2003, the Serologist found the knives recovered from the accused Akhlaq, Imtiaz, Salman and Nanha Pahalwan stained with human blood. The trouser belonging to the deceased and pvc bags were also found stained with human blood. The pieces of shirt, baniyan, underwear of the deceased were also stained with human blood and one knife, which was sent in a separate sealed bundle, was also found stained with human blood. The pieces of floor taken in possession from the spot at the time of recovery of dead body of the deceased were also found stained with blood.

10. While coming backward, we find from the evidence on record that the dead body of the deceased Sujallah was sent in sealed condition after inquest for the postmortem examination, which was conducted on the same day (10.08.2000) at 9.30 p.m. under the orders of the District Magistrate in artificial light. P.W. 4, Dr. K.K. Mehta, who did the autopsy of the dead body, has recorded the observations and findings in the postmortem report (Ext. Ka-4). As many as 10 incised wounds, which included the complete amputation of the left arm from elbow joint, right arm from the elbow joint, right leg from the knee joint, left leg from the knee joint. The head from the neck was cut through and through in which neck bone was cut at sl. No. 2. All the wounds were clean cut. The head and face of the deceased had also several cut injuries. In the opinion of Dr. Mehta, the deceased had died about 18 hours before the autopsy. He has also observed that the pieces when put at places in the limbs of the body, there was complete coordination of the cuts made for the amputations. All the vessels of the neck including cervical vertebrae No. 2 and the Oesophagus with trachea were cut. P.W. 4 had further opined that the death of the deceased was on account of shock and haemorrhage as result of aforementioned ante-mortem injuries. He prepared the postmortem report in Ext. Ka-4 after full examination of the dead

body.

11. The Investigating Officer, after having recorded and collected the entire evidence and jotting down the statements of the witnesses found it to be a case fully established against the accused and charge sheets in Ext. Ka-62 under Sections 147, 148, 149, 302, 201 and 120B I.P.C. was submitted against five accused persons and charge sheets u/s 25/4 Arms Act in Ext. Ka-24, Ka-22, Ka-20, Ka-18 and Ka-17 were submitted respectively against the accused Salman, Wakkar, Imtiaz, Akhlaq and Nanha Pahalwan.

12. The appellants accused did not plead guilty to the charges aforesaid leveled against them by the trial court and in the statement u/s 313 Cr. P.C. they stated that they had been falsely implicated in the case on account of enmity. The accused appellant-Akhlaq further stated that the deceased Mintu was occupying the first floor room, the place of incident, which belongs to his (Akhlaq's) mother, for his office on rent and he used to bring call-girls there to quench his sex. The accused Nanha Pahalwan and Salman, stated before the trial court that they had absolutely no connection with the accused Akhlaq and Imtiaz and took a plea that they were also having enmity with the accused Akhlaq. In the statement of appellant Wakkar, it has come that his residence is separate and away from the residence of other accused persons and have absolutely no concern with them.

13. The prosecution in support of its case has examined P.W. 1 Jakaullah, the complainant, P.W. 2 - Safullah, a witness of recovery of the articles (scooter belonging to the deceased and blood stained knife used in the crime) on the disclosure made by the accused appellant Akhlaq, P.W. 3- Smt. Zebi, the wife of deceased, Dr. K.K. Mehta, who conducted the postmortem examination of the dead body of deceased Sujauallah @ Mintu, P.W. 5 Head Constable, Sayeed Ahmad, P.W. 6-Sompal, the owner of furniture shop in the neighbourhood of the shop of accused Akhlaq on the first floor of which the deceased was done to death. He is a witness, who had heard human shrieks from the aforesaid first floor room during night of the incident. P.W. 7 is a Constable Saoraj Singh and P.W. 8 is Head Constable Jay Veer Singh. P.W. 9-Kirtan Pal is also a formal witness whereas P.W. 10 Sub-Inspector Police, K.K. Tyagi, P.W. 11 S.I. Subhash Tomar, P.W. 12 S.I. Suresh Chandra, P.W. 13 S.I. Sudhir Pal and P.W.-14 Inspector R.P. Sharma, the Investigating Officer. P.Ws. 10 to 13 are the Investigating Officers, who submitted the charge sheets for the offence punishable u/s 25/4 Arms Act whereas P.W. 14, Inspector R.P. Sharma is the Investigating Officer, who submitted the charge sheet in the main case under Sections 148, 302/149 and 201 I.P.C. P.W. 1, 2, 3 and 6 are witnesses of some facts relating to the circumstantial evidence recorded in the case against the appellants whereas the other witnesses are formal witness though they have given out certain statements of facts too.

14. The prosecution has also proved documents Ext. Ka-1 to Ka-62, which includes the written report of the occurrence submitted by the complainant (Ext.

Ka-1) and subsequent report (Ext. Ka-2) naming two other accused Salman and Nanha Pahalwan on the basis of information given to P.W. 1, the complainant by one Irfan Ahmad, the different recovery memos prepared for the recoveries conducted on the basis of discoveries made by the accused persons, the postmortem report, the report of Serologist, different copies of general diary and charge sheets etc.

15. From the side of the defence in this case, the accused Akhlaq had though filed two papers in his defence, being a rent note and a Hibinama (gift deed) but these documents have not been formally proved on record. From the side of defence no oral evidence has been recorded.

16. Learned Additional Sessions Judge trying the cases together after hearing the parties and after perusal of the entire material available on record, held the appellants guilty for the offences with which they were charged and the impugned judgment was rendered recording conviction and imposing sentences, as detailed above.

17. We have heard Sri V.P. Srivastava, counsel appearing for the appellant-Akhlaq, Sri G.S. Chaturvedi, Sr. Advocate, assisted by Sri Sudhanshu Srivastava, counsel appearing for the remaining appellants and learned A.G.A. for the respondents at length and have perused the paper book and also the original record received from the trial court.

18. At the very outset it has been submitted by the learned counsel for the appellants that it is a case in which there is no direct evidence of the main offence of murder etc. and the conviction in the case has been recorded only on the basis of circumstantial evidence. It has been thus emphasised from the side of the defence that this case in any view of the matter is not one, which can be said as having such credible evidence of the circumstances from which the conclusion of guilt for the charged offence is to be drawn and it cannot satisfy the court to have established such fact, which could be said to be consistent only with hypothesis of the guilt of accused. The evidence on record is not such, which could establish the fact as not to leave any reasonable ground for conclusion consistent with the innocence of the accused. In addition to this submission, the learned counsel for the appellants has also submitted that it is not a case, which could be classified as falling in the category of "rarest of rare" cases where extreme penalty of death sentence could be awarded by the trial court. In the light of the aforesaid argument advanced from the side of the appellants, we are taking the submissions for discussion below, one by one.

19. In the first place, we propose to take up the circumstances, which have been made available in evidence by the prosecution upon which it bases its contention that the murder of the deceased Mintu has been committed by none other than the present five appellants. For this purpose, the circumstances appearing in the case have been disclosed in the evidence of P.W. 1 Jakaulah, the complainant, P.W. 2 Saifullah, P.W. 3 Smt. Zebi, P.W. 6 Sompal and the Investigating Officer

R.P. Sharma, P.W. 14, who has all along been the person leading the police party and the witnesses before whom the accused are said to have made disclosures about the discoveries of incriminating articles allegedly recovered from their possession. As regards the circumstances, which are said to be appearing in the evidence of the aforesaid witnesses, it may be enumerated and serialised as below:-

(1) P.W. 3, the witness Smt. Zebi has deposed about the fact that her husband, the deceased in the night of incident when came back from his karkhana (iron foundry) at about 8.00 p.m., he, soon after received a telephonic call from the appellant accused Akhlaq at about 8.30 p.m. whereafter he intimated her about Akhlaq's call and immediately went to him by his scooter at 8.30 p.m.

(2) P.W. 1 Jakaulah when noticed that his brother Mintu did not return till late in the night, he has deposed before the court that he went out in his search and reached Akhlaq's shop nearby his foundry. There he was told by "Hamraj Furniturewala" that he had seen Mintu at the shop of accused Akhlaq. After he sat down at his foundry on the chair, he in the hours of mid night noticed the accused Akhlaq, Imtiaz and Wakkar along with two others coming down the stairs from first floor step room of the accused. He also noticed that Akhlaq was extremely perplexed when he inquired from him about his brother. He was told by Akhlaq that Mintu, the deceased was telling him about his likely departure for Chandigarh.

(3) P.W. 1 remained in his foundry till morning and at 9.00 a.m. of 10.8.2000 when Akhlaq again visited the shop. P.W. 1 further inquired from him about his brother and at that juncture also the accused (Akhlaq) looked nervous giving rise to some suspicion in the mind of the complainant.

(4) P.W. 1 asked Akhlaq to show his first floor room which he avoided on the pretext of not possessing the key of locked room.

(5) On account of suspicion so arisen in the mind of P.W. 1, he, in hope of getting some clue in the room about his brother, ascended the roof of the said room through a ladder from the side of saw machine of Bhoora behind the building of accused Akhlaq. From the roof he got down through the stairs and found presence of blood there and when he peeped from the crevices of door in the room he was shocked at the sight of the pieces of his brother's dead body wrapped in the pvc bags and the some cloth.

(6) P.W. 1 having been completely frightened at the scene of the room rushed down and raised alarm which attracted people from among whom P.W. 6 Sompal came to him and told of having heard the shrieks of man coming from the room of the incident.

(7) P.W. 6 Sompal states that in the night of 9.8.2000 at about 11.00 p.m. he heard the shrieks of a man coming from the first floor room of the accused Akhlaq's shop.

(8) The last circumstance relating to the incident, which has come in the evidence before the trial court, is the evidence of recoveries of instruments used in the crime by the accused persons and also the recoveries of the scooter, watch and trouser all blood stained belonging to the deceased from the possession of those accused, as detailed above.

20. Now, while analysing the evidence about the aforesaid circumstances, it has to be found out if the prosecution which has led its evidence to establish them is so trustworthy and credible as to successfully prove them against the accused. The evidence, which has been recorded by the trial court for this purpose in support of the aforesaid incriminating circumstances are the statements of the witnesses P.W. 1, P.W. 2, P.W. 3, P.W. 6 and P.W. 14, as detailed above. It has been submitted as also referred to above, from the side of the appellants that the circumstantial evidence in majority of the cases are dangerous to the extent that it leads the court also to make conjectures and at the same time giving rise to suspicion in the mind when it is mistakenly treated as a legal proof for convicting the accused.

21. It is true that in certain cases the circumstantial evidence is dangerous in the aforesaid sense and the courts are therefore, time and again advised in several propositions of law of the Hon'ble Apex Court that while dealing with circumstantial evidence the rules specially applicable to such evidence must be born in mind by the courts. The aforesaid danger of creation of conjectures and suspicions making such evidence as a valid legal proof of the charges is always there. Therefore, it is well established legal proposition that the evidence from which conclusion of guilt is to be drawn, should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of guilt of the accused. The circumstances should also be of a conclusive nature and tendency as to exclude every hypothesis but the one proposed to be proved by the prosecution. For this there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must show that in all human probability the act must have been done by the accused. This principle was laid down way back in the year 1952 by the Hon'ble Apex Court in the case of Hanumant Vs. The State of Madhya Pradesh, . The said principles about the status of circumstantial evidence have been consistently dealt with in several subsequent cases by the Hon'ble Supreme Court and the conviction based solely on circumstantial evidence has been held to be permissible, of course after the evidence has been tested on those lines.

22. In the case of Sharad Birdhichand Sarda Vs. State of Maharashtra, , while dealing with the circumstantial evidence it has been held that onus is on the prosecution to prove that the chain is complete and the infirmity or lacuna in the prosecution cannot be cured by a false defence or plea. The conditions precedent, in the words of Hon'ble Apex Court, must be fully established before reliance is placed by the court on such evidence for passing a conviction order.

The circumstances must and not may be established.

23. In *Hukam Singh Vs. State of Rajasthan*, , the Hon''ble Supreme Court has summarized in short as to what should be the worth of the prosecution evidence in a case of circumstantial evidence. In this case, it is laid down that the evidence should unmistakably point to one and one conclusion only that the accused person and none other perpetrated the alleged crime. In case the prosecution evidence is not susceptible of any rational explanation, no conviction can be based upon it. In *Bhagat Ram Vs. State of Punjab*, , it has been propounded that the cumulative effect of the circumstantial evidence must be such as to negative innocence of the accused but in case there is a probable evidence presented from the side of the accused, the court has not to weigh its balance with the prosecution evidence. In *Dhananjay Chatterjee alias Dhana v. State of West Bengal* 1994 SCC (Cri) 358, it has been laid down that even though it is not necessary for the defence to render an explanation to prove innocence but if such defence rendered is found false, it cannot be used to support the prosecution case against the accused. The abscondence of the appellant has been said to be a material circumstance in case of murder. Only the legally established circumstance and not merely indignation of the court can form the basis of conviction. More serious the crime greater should be the care taken to scrutinise the evidence lest suspicion takes place of proof. Hon''ble Apex Court in *State of U.P. Vs. Ashok Kumar Srivastava*, , has laid down the guidelines about appreciation of such circumstantial evidence produced in criminal cases. It has been observed in the aforesaid case that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonable but capable of two inferences, the one in favour of the accused must be accepted. The circumstances relied upon by the prosecution must be found to have been fully established and its cumulative effect points out only to the hypothesis of guilt of the accused, then only the court should resort to recording the conviction of accused in the case. It is not necessary to meet every hypothesis put forward by the accused however far-fetched or fanciful it might be nor does it mean that the prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise.

24. In the light of the aforesaid proposition of law, while scrutinising the evidence led by the prosecution in this case, we find certain incriminating circumstances, as already detailed above. Whether or not these circumstances have been fully established by the prosecution as to point out towards the hypothesis of guilt of the accused for offences with which they were charged, a proper assessment of the evidence on record is to be made.

25. In the first place, the prosecution has established before the court through its evidence that the murder of the deceased Sujaullah @ Mintu was committed in the room located on the first floor of the shop belonging to the accused Akhlaq and his brothers. It is not disputed nor any objection has been raised in this context by the learned counsel representing the appellants that this murder was

committed at any other place than the aforesaid room. The defence submitted a simple explanation that the said room belonged to the mother of the appellant Akhlaq and it was occupied on rent by the deceased for his office. The deceased also used to quite often, bring call-girls in this room for his sexual satisfaction. In support of this defence, no evidence on record has been advanced except the statement of the accused Akhlaq, recorded u/s 313 Cr. P.C. Two documents, one allegedly being a rent note and the other a gift deed, were though, submitted before the trial court by the accused persons but those have not been duly proved on record and obviously not admissible in evidence. The trial court as such, has not taken any notice of the same. We also cannot look into those documents as they are not valid peaces of evidence. On the basis of these documents, learned counsel for the accused-Akhlaq has, in guided words, tried to emphasise that rent note is a document showing the tenancy of the deceased in the said room and the second document, the gift deed was filed as a proof of the fact that the first floor room belonging to the accused Akhlaq, was gifted by him to his mother and he had no concern with it at the time of incident. Obviously, no cogent explanation and acceptable evidence being advanced in support of the defence theory, it is wholly unbelievable that the room in question was in occupation of the deceased at the time of incident as his office.

26. In the aforesaid facts and circumstances, if the prosecution evidence establishes the fact that pieces of dead body of Sujaulah @ Mintu were recovered from this room, it is definitely a very strong circumstance to point out towards the hypothesis of guilt for the offences allegedly committed by the accused appellants. A particular incident of murder is said to have taken place in the premises belonging to the accused and the dead body of the person murdered is found there, a cogent explanation is definitely accepted if given from the side of the defence; but there being none it is definitely a very strong circumstance to point out towards the guilt for the charged offences against the accused. In this case, this circumstance has been fully established and obviously there is no scope for any escape of the accused from it.

27. In the second place what we find from the evidence of prosecution is that the deceased Sujaulah @ Mintu when came back home after his day's work at about 8.00 p.m. soon thereafter within half an hour he is said to have received a telephonic call from the appellant Akhlaq calling him then and there for making payment of the lottery money, which was due for such payment by the accused. In order to prove this circumstance of receipt of the telephonic call from the appellant Akhlaq, P.W. 3 - Smt. Zebi, the wife of deceased has been produced and her statement recorded before the trial court goes almost unchallenged. She states that after her husband came back home at 8.00 p.m., he received a telephonic call at 8.30 p.m. over which he had some talk and immediately afterwards left informing her that Akhlaq's call had been received and he was called by him for taking payment of money at his shop. He thereafter at once went out on his scooter but did not come back. She subsequently came to know that he was found murdered. She also gave out the fact in her statement that

when her husband did not come back late till about 11.00 p.m., she informed her "Jeth" (husband's elder brother, P.W. 1). Such statement of P.W. 3, when, has not been adversely hit in the cross-examination before the trial court, there is absolutely no occasion to doubt its credibility. Nothing during the course of argument by the learned counsel for the appellant, has been pointed out as a major defect in her statement as to warrant its rejection by the court. Obviously, this fact is fully established from her statement that the deceased after receipt of telephonic call went to Akhlaq's shop by his scooter to receive the payment from him. This statement gets further corroboration from the statement of P.W. 1- Jakaullah, the brother of the deceased, that he was informed by Smt. Zebi (P.W. 3) that the deceased Mintu, after his telephonic talk at about 8.30 p.m. had left home for accused Akhlaq's shop and did not come back late in the night till 11.00 p.m. P.W. 1 getting anxious on this information had proceeded for the iron foundry where the deceased used to work. This piece of statement of P.W. 1 also does not find any challenge from the cross-examination as to give it a dent to its credibility. It is in pursuance of this information that further progress in tracing the dead body of the deceased has been made by him (P.W. 1). Thus, the statement of P.W. 3 fully substantiated and corroborated by the statement of P.W. 1 is wholly reliable and recovery of the dead body from the place of occurrence further establishes the fact that the deceased, as disclosed by P.W. 3 - Smt. Zebi, had gone in the fateful night, to the accused Akhlaq's shop where his dead body on the first floor was found cut in pieces. Thus, to summarize, the prosecution evidence fully establishes that the deceased had gone to Akhlaq's shop on a telephonic call from him (accused) to receive his payment, which was due to him from the accused.

28. In the third place the circumstance which we have noticed, as forwarded in the evidence by the prosecution, is that P.W. 1 Jakaullah, the complainant and the brother of the deceased when did not succeed in searching him out in the fateful night he sat down at iron foundry on a chair and by the mid night he noticed the accused Akhlaq, Imtiaz and Wakkar along with two other persons coming down the stairs of the first floor room where the dead body was later on found. He approached the appellant Akhlaq, who was extremely perplexed to find P.W. 1 there inquiring from him about his brother Mintu. In any case, this murder of Mintu took place during that night only and if P.W. 1 had seen three of the appellants by face coming from the first floor room, it is definitely a very strong circumstance to point out towards the culpability and involvement of these accused persons in the crime. This circumstance gets further strengthened when P.W. 1 also noticed, the anxiety on the face of the appellant Akhlaq when enquired and asked about the deceased. The circumstance about their presence on the first floor nearby the time of incident and the identification of the aforesaid three accused persons coupled with facial expression of Akhlaq showing his perplexity point towards nothing but to the involvement of these persons in the crime. The evidence so given by P.W. 1 Jakaullah on this point is wholly believable. Though subjected to a very lengthy cross-examination the evidence

of this witness, on perusal does not show that the accused and the complainant (P.W. 1) ever had any such unhealthy relations as to prompt P.W. 1 to falsely implicate them in the crime. On the other hand, the relevant evidence on the aforesaid circumstances, as appearing in the evidence of this witness does not get any adverse impact on it from any part of the cross examination. The statement, which has been given on this circumstance by P.W. 1 is wholly reliable and it points directly towards involvement of at least these three accused appellants namely Akhlaq, Imtiaz and Wakkar in the crime.

29. The other part of the circumstances, which is said to be incriminating against the accused and is present in the evidence of the prosecution is again one which has been given out by the aforesaid witness Jakaulah (P.W. 1) only. Poor man, the brother of the deceased when could not search out his brother inspite of the whole night endeavour, he was in extreme dismay and agony and was all along sitting at the iron foundry till 9.00 a.m. of 10.8.2000 when he found the appellant Akhlaq again visiting his shop. He rushed to him and again inquired about his brother. At that point of time, it has come in the evidence of P.W. 1 that Akhlaq on inquiry became quite nervous. In this part of evidence also there is hardly any cross-examination worth the name which could be said to go to improbablise the fact deposed by him before the trial court in this context. The next factor of the circumstances present in the case, which is also noticeable in the evidence of P.W. 1 is that when he asked Akhlaq at that moment to show the first floor room of his shop he avoided on the pretext of not possessing the key of locked room. The nervous look of the accused Akhlaq and then the act of avoidance of showing the room to P.W. 1 by him definitely indicates to no other factor except towards the prosecution theory of his culpability in the crime. On this point also, in detailed cross-examination of P.W. 1, there is nothing in his evidence as to dent and create doubt in the credibility and truth of this fact.

30. The last two factors in the statement of P.W. 1 obviously, were enough to raise suspicion in his mind about getting some clue of his brother inside the first floor room. As such, as stated by P.W. 1, he arranged a ladder to climb the roof of the said room from behind, through saw machine compound of Bhoora. On reaching the roof he, when got down through the stairs on the first floor, he noticed scattered blood on the floor and then after peeping through the crevices in the door he found the pieces of dead body of his brother. Obviously, the evidence of P.W. 1 on this point is not at all to be doubted and his evidence has rightly been accepted by the trial court, more specially when no objection to the subsequent recovery of dead body from that room is raised, rather admitted to the defence.

31. The other circumstance, which has been made available towards showing the involvement and culpability of the accused persons in this crime is evidenced in the statement of P.W. 6 - Sompal, who has stated that in the night of 9/10.8.2000 at about 11.00 p.m. he heard the human shrieks coming out from the first floor room of Akhlaq's shop. This witness has also a furniture shop in

the neighbourhood of the shop of accused. In the morning at about 9.30 p.m., as stated by P.W. 6, when Jakaulah (P.W. 1) came to him inquiring about his brother, he had told him that in the previous night he had heard the human shrieks coming from the said first floor room. This witness has been cross-examined only by the counsel representing the accused Akhlaq. The other accused persons have not done any cross-examination of this witness. The learned counsel arguing on behalf of the appellant - Akhlaq has pointed out one sentence in the cross-examination of P.W. 6 where he states that in the said night he had closed his shop at 9.00 p.m. and on this basis, he submitted that when the furniture shop of the witness was closed at 9.00 p.m. there was no occasion of his presence in the shop at 11.00 p.m. by which time he claims to have heard the shrieks from Akhlaq's room.

32. In this context it is pertinent to note that P.W. 6 has stated in the beginning of his examination in chief before the trial court that in the night of incident there was some "Bagad Chhari Pooja" and in order to receive "prasad" of the same, he had sat down outside and in front of his shop waiting for that. Therefore, this statement of P.W. 6 that he had closed his shop at 9.00 p.m. does not offer any benefit to the appellants. His presence in the neighbourhood of the place of incident is fully established and there is no occasion for this witness to give a false statement, which might be injurious to one or the other accused in the present case. There is no enmity in between the accused persons and this witness. He is wholly an independent witness. His statement in one sentence that he had heard shrieks coming out from Akhlaq's shop in the said night is such an evidence, which has been rightly found to be wholly reliable by the trial court and it definitely does constitute a very strong circumstance to indicate towards culpability of the accused persons who had been subsequently found coming out from the said room through staircase at mid night by P.W. 1.

33. The last and foremost circumstance, which is made available in the evidence of the prosecution relates to the respective recoveries of incriminating articles made from the accused appellants, the details of which have already been enumerated in the preceding paragraphs. These recoveries are the instruments (blood stained knives, daggers) allegedly used in the crime and the blood stained scooter, trouser and watch of the deceased. The recovery memos relating to these articles have been duly proved in the evidence before the trial court. It is further established from the report of the Serologist (Ext. Ka-61) that these articles did have blood stains on it. It is further proved from the report that knives recovered from the appellants Akhlaq, Imtiaz and Salman had the stains of human blood on it. One belt of the deceased wrapped with the aforesaid blood stained trouser has also been recovered from the accused Imtiaz. That belt and trouser, as per the Serologist's report, had blood stains on it. The blood on the trouser was human blood. These recoveries are said to have been made on the disclosures made by the appellants to the police and at their pointing out u/s 27 of the Evidence Act. Much stress has been made from the side of the appellants that the recoveries, for want of reliable evidence to prove it, are not acceptable

and the evidence led by the prosecution in this context should not be relied upon. Learned counsel submitted that for the purpose to prove the recoveries, the evidence, which has been led by the prosecution is that of the brother of deceased (P.W. 1) and the Investigating Officer, Inspector, R.P. Sharma (P.W. 14). Each and every recovery has been made in their presence and there is no independent witness to support their version, examined before the court. The reason given by the learned counsel is that the evidence of brother of the deceased is of an interested witness and as such should not be accepted and the evidence of P.W. 14 being that of Investigating Officer of the case is also not acceptable.

34. As regards the evidence advanced in the aforesaid context of recoveries of the incriminating articles, the statement of P.W. 1 cannot be thrown away simply because it comes out from the mouth of the brother of deceased. The reliability of the interested witness is to be judged by the court and if on the test of its credibility the evidence is found to be suffering from infirmities like improbability etc. it cannot be accepted. A very lengthy cross-examination has been done and as also discussed by the trial court, there is nothing to show that P.W. 1 had any intention whatsoever to implicate the accused persons falsely in this case. No enmity between him and the appellants accused ever existed before the alleged incident. In case, the Investigating Officer has asked P.W. 1 to accompany him as and when occasion arose for making the recoveries on the disclosure of facts made by the accused persons, this alone cannot be a ground to reject his evidence. As regards P.W. 14, he has also been subjected to be a very lengthy cross-examination by the defence in the trial court and his statement cannot be said to have any infirmity whatsoever or such lacunae as to give an occasion to the trial court or even to this court to doubt about the facts narrated by him. Neither P.W. 1 Jakaullah nor the Investigating Officer, P.W. 14 had any intention or animus to implicate the accused falsely in this case leaving aside real culprits who are said to have murdered the deceased in a barbarous manner. Therefore, the respective incriminating articles, as detailed in the previous paragraphs, are definitely proved to have been recovered from the respective accused persons. Therefore, these recoveries are such circumstance which point out only to the involvement and culpability of the accused appellants in the present case of murder of Mintu. The recoveries of illicit knives from them are itself sufficient to prove the guilt for the charged offence u/s 25/4 Arms Act.

35. Learned counsel for the appellants in the aforesaid context of recoveries of incriminating articles, has submitted that only on the basis of recoveries the conviction should not have been recorded. This argument has however been confined to the accused Nanha Pahalwan and Salman. Their names do not find place in the F.I.R. (Ext. Ka-1) initially given at the police station by P.W. 1. In this written F.I.R. he had named only accused appellants Akhlaq, Wakkar and Imtiaz and two more persons he was not able to identify. The names of the remaining appellants Nanha Pahalwan and Salman have figured on the basis of subsequent information received by P.W. 1 from one Irfan s/o Abdul Majid, a "panwala"

having his stall nearby the shop of accused Akhlaq and the iron foundry of the deceased. Irfan is said to have seen in the fateful night at about 11.00 p.m., all the five appellants along with deceased going to the up stairs first floor room where the incident had taken place. This information was given by Irfan to P.W. 1. after the case was registered and the investigation was in progress. It has been argued on behalf of the appellants that this Irfan, "Panwala" was a witness of last seen of the deceased in the company of accused persons but he has not been produced in the witness box before the trial court. This circumstance of the deceased being last seen in the company of the accused Nanha Pahalwan and Salman has definitely not been proved on record. It is also submitted that against these two accused persons there is no evidence on record except the respective recoveries claimed to have been made on the disclosure made before the police. Therefore, there is no substantive material evidence upon which the conviction of at least Salman and Nanha Pahalwan for the offences punishable under Sections 148, 302/149 and 201 of I.P.C. could have been recorded.

36. We fully agree with the aforesaid submissions of the learned counsel for the appellants. Only on the basis of recoveries made by the police and proved before the court, the offence of murder of the deceased against the aforesaid two appellants, Nanha Pahalwan and Salman, cannot be said to be proved. The circumstantial evidence, which was very relevant in the present case relating to their presence and participation in the crime and which could be made available in the statement of Irfan "Panwala, having not been made, the case of murder in any view of the matter cannot be taken to have been proved beyond reasonable shadow of doubt. Therefore, we find that these two appellants should be given the benefit of doubt in the case relating to the offences punishable under Sections 148, 302/149 and 201 I.P.C. Since there is sufficient evidence in the context of recoveries of blood stained knives from these two accused, their conviction for the offence punishable u/s 25/4 Arms Act, cannot however, be disturbed and the punishment for the said offence awarded against them in the trial court has to be confirmed.

37. As regards the remaining appellants namely Akhlaq, Imtiaz and Wakkar, the circumstances, which have been fully established beyond reasonable shadow of doubt against them may thus be summarised. The prosecution has proved by cogent evidence before the trial court that --

1. The deceased had his lottery money in sum of Rs. 60,000/- due against the accused Akhlaq and his brothers, who were running the said scheme. They were not making the payment and on getting reminders from the accused, had threatened him earlier to the incident.

2. In the fateful night of 9.8.2000 at about 8.30 p.m., the deceased received a telephonic call from the accused Akhlaq to immediately see him at his shop to receive the payment.

3. The deceased went to Akhlaq's shop on his scooter to receive the payment

but did not come back.

4. The sound of human shrieks were heard from the first floor room of accused Akhlaq's shop by P.W. 6, Sompal in the night of incident at about 11.00 p.m.

5. Thereafter, at midnight the brother of the deceased, P.W. 1, the complainant noticed three accused persons namely Akhlaq, Imtiaz and Wakkar along with two more persons coming down the stairs from the first floor of the said building.

6. On inquiry made by P.W. 1 from Akhlaq about his brother, the perplexity and nervousness noticed on his (Akhlaq) face.

7. The next morning at about 9.00 p.m. of 10.8.2000, the complainant, P.W. 1 noticed Akhlaq again visiting his shop and on further inquiry made to him by the complainant, his expression and the presence of perplexity galore on the face, he avoided the request of complainant to open the first floor room.

8. The complainant on getting suspicious and also in hope of obtaining some clue from the first floor room climbed on it through a ladder from behind the building and found presence of blood and on peeping through crevices in the door, noticed the horrifying scene inside where the dead body of his brother was lying cut in pieces. The room on first floor was in occupation of the accused at the time of incident.

9. The last but foremost circumstance is recoveries of blood stained knives and dagger made on the discoveries and pointing out of the accused coupled with the recoveries of scooter, blood stained trouser, belt and the watch of the deceased on such disclosure and pointing out of the accused persons themselves.

38. The aforesaid circumstances are fully established on record through clinching evidence of the witnesses P.W. 1, P.W. 2, P.W. 6 and P.W. 14, whose statements find definite corroboration from the evidence of other witnesses and the documents filed and proved on record. It is in the face of overwhelming circumstantial evidence available on record that the trial court has held the accused Akhlaq, Imtiaz and Wakkar guilty for the offences punishable under Sections 148, 302/149, 201 I.P.C. and 25/4 Arms Act. We find that such unblemished evidence of the circumstances, as enumerated above, unmistakably point to one and one conclusion only that the aforesaid three accused persons along with two more persons and none other perpetuated the crime of murder and rioting etc. There is no rational explanation available on record to whisk away the reasonable conclusion derived from such evidence about the hypothesis of guilt of accused. The cumulative effect of these circumstances is such that it totally negatives the possibility of innocence of the accused.

39. Thus, in the facts and circumstances, we find ourselves in full agreement with the trial court's judgment in so-far-as it relates to the conviction of aforesaid three accused persons (Akhlaq, Imtiaz and Wakkar) for the respective offences with which they were charged. We have already held above that the other two accused persons namely Salman and Nanha Pahalwan are proved

guilty only for illegal possession of illicit arms (knives) and they are to be convicted only for the offence punishable u/s 25/4 Arms Act. For the rest of the offences, they have to be acquitted.

40. In the last, learned counsel for the appellants has emphasised with full force that it is not a case in which the extreme penalty of death sentence to all the five appellants, rather to any of the appellants should have been awarded. The case, as such, cannot be categorized as one of the "rarest of rare", which could warrant the award of extreme penalty.

41. This argument is not disputable that the extreme penalty, more specially after addition of Section 354(3) in the Code of Criminal Procedure, should be awarded only in the "rarest of rare" cases. The sentence of life imprisonment is a rule in the cases of murder etc. and death sentence is an exception; therefore, the death sentence should be imposed only when the life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime. The extreme penalty should be imposed by the courts only when it is found that imposition of sentence of life imprisonment cannot be conscientiously exercised having regard to the extreme nature and circumstances of the crime and all other relevant circumstances. The courts have to make a balance sheet of aggravating and mitigating circumstances and while doing so, the mitigating circumstances have to be drawn up and accorded full weightage and a just balance has to be struck between the two before option for award of punishment is exercised.

42. The Hon"ble Apex Court has laid down such principles for award of extreme penalty of death sentence in the leading case of Bachan Singh Vs. State of Punjab, . This judgment was rendered in a case of reference to the Constitution Bench of the Hon"ble Court where the question on validity of death penalty for murder was to be answered by the bench. The majority view of the bench has given certain guidelines for the award of extreme penalty. In the case, where such penalties are provided, the courts are said not to look to the crime but imposition of death penalty must relate to the criminal. The aggravating and mitigating circumstances have also been tried to be enumerated to certain extent but the Hon"ble Court has specifically indicated in the judgment that indication of the circumstances being aggravating or mitigating are not exhaustive and depends upon the facts and. circumstances of each individual case. The courts have to exercise the discretion in imposition of such penalty in extremely judicial manner after making proper balance of these circumstances. The judicial decisions of courts have, of course tried to crystalise such principles as to the aggravating and mitigating circumstances in certain cases. In Ediga Anamma Vs. State of Andhra Pradesh, , the Hon"ble Supreme Court had held that if the offence is only constructive being u/s 302 read with Section 149, the court may humanely opt for award of life imprisonment. It has been further held in this judgment by the Hon"ble Court that such situations where award of death penalty is not warranted, cannot be fed into a judicial computer as such

situations are astrological imponderables in an imperfect and undulating society.

43. Obviously, what has been emphasised by the courts in different pronouncement and decisions given, we find one thing common that the aggravating and mitigating circumstances, as available in the cases, have to be balanced very critically before the courts can opt to award the death penalty in case of murder etc. When we take up the present case, it is found that the murder of deceased Mintu is obviously brutal, diabolical and committed in a dastardly manner. But it is not so as to be capable of arousing intense and extreme indignation of the society or a community. No doubt, the body of the deceased has been cut into pieces and kept duly packed in several bags and a cloth piece but such act of the accused may also give us an occasion to think that the accused persons had made these pieces of the body and locked it in a room simply with an intention to make convenient disposal of the same. Thus, the purpose behind cutting the dead body into pieces, does not appear to have much intensity as to arouse the extreme indignation of the community or even the family members of the deceased. The very act of keeping these pieces of body of the deceased in different packets indicates to the fact that it was all done for making the evidence of this murder to disappear for the purpose to screen offenders. It is in this view of the matter also that the accused persons have been charged and held guilty for the offence punishable u/s 201 I.P.C. Therefore, it may seemingly appear that the manner in which Mintu was murdered was brutal and diabolical but since the intention of the accused for adopting this method of committing the crime was intended for some other purpose than to arouse the indignation of society or the family members of the deceased, it cannot be taken to be a case actually falling in category of "rarest of rare".

44. Learned trial court while awarding the extreme penalty for the offence of murder has, in fact, failed to make a balance of mitigating and aggravating circumstances as available in the case. The intention of the accused persons was only to do away with the deceased so that they might not be reminded in future for payment of lottery money due against them. They committed this murder even though in cold blood but did it quite stealthily. It is not a crime with enormous proportion. It is a case of murder of individual only in furtherance of common object of the accused. In the case of Ediga Anamma (supra), it has been laid down that in such circumstances, the court may humanely opt for award of life imprisonment. The award of death sentence to as many as five appellants accused by the trial court was further unreasonable in view of the fact that as against the life of one deceased, the court had proposed to take away with the lives of five persons. We do not find any justification in the present case for award of extreme penalty of death against the appellants and therefore, the punishment so awarded, is liable to be altered and commuted to imprisonment for life. As regards the punishment awarded for other offences punishable under Sections 148 and 201 I.P.C., we do not find any justification for making an alteration in the same.

45. In result, Criminal Appeal Nos. 701 of 2005 and 445 of 2005 are hereby partly allowed. The Capital Sentence Reference No. 2 of 2005 is rejected. The judgment and order of conviction and sentence dated 25.01.2005 in so-far-as it relates to conviction of the appellants Akhlaq, Wakkar and Imtiaz for the offences punishable under Sections 148, 302/149, 201 I.P.C. and Section 25/4 Arms Act is confirmed but the impugned judgment as it relates to conviction of the accused appellants Nanha Pahalwan and Salman, it is modified to the extent that we convict them only for the offence punishable u/s 25/4 Arms Act. The order of punishment and sentence awarded as against the appellants Akhlaq, Wakkar and Imtiaz for the offences punishable u/s 302/149 I.P.C. is commuted from death penalty to that of imprisonment for life. The punishment as awarded for the other offences punishable under Sections 148, 201 I.P.C. and 25/4 Arms Act shall remain unchanged but the other two appellants Salman and Nanha Pahalwan are hereby acquitted for the offences punishable under Sections 148, 302/149 and 201 I.P.C. but their conviction and sentence for the offence punishable u/s 25/4 Arms Act, as awarded by the trial court, shall remain as it is. The appellants are in the lock up. Let a copy of this judgment along with original record be immediately transmitted to the Sessions Judge, Saharanpur, for necessary compliance and follow up action. The compliance report be submitted to this court within a reasonable period.