

(2014) 05 AHC CK 0226

In the Allahabad High Court

Case No : Cr. Appeal Nos. 1534, 1832 and 1834 of 1995

Babban

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 27-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157, 159, 313

Evidence Act, 1872 — Section 134

Penal Code, 1860 (IPC) — Section 141, 147, 148, 149, 302

Citation : (2014) 3 ACR 2972 : (2014) 86 ALLCC 104

Hon'ble Judges : Vimlesh Kumar Shukla, J;Om Prakash-VII, J

Bench : Division Bench

Advocate : Viresh Misra, A.D. Giri, A.K. Srivastva, Ajatshatru Pandey, Apul Mishra, Dileep Kumar, K.K. Dwivedi, R.P. Dwivedi, S. Shekhar, S.K. Tiwari, T.A. Khan and V.K. Chaturvedi, Advocate for the Appellant; A. Pathak, Anurag Khanna, Braham Singh, H.K. Sharma, P.K. Srivastava, Praveen Kumar Srivastava, V.P. Srivastava and Praneet Kumar Srivastava, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Om Prakash-VII, J.—These criminal appeals have been preferred by the accused/appellants against the judgment and order dated 16.9.1995 passed by the VIII Additional District & Sessions Judge, Moradabad in Session Trial No. 484/1994 (State v. Moazzam and others) convicting and sentencing the appellants for the offences punishable u/s 302 read with section 149 IPC for life imprisonment and for offence u/s 148 IPC for two years rigorous imprisonment. All the sentences have been directed to run concurrently. Since these criminal appeals have been filed against the same judgment and order, and have been heard together, therefore, the same are being decided by this judgment.

2. At the very outset, it is very relevant to mention here that during pendency of Criminal Appeal No. 1598 of 1995, the appellant-Moazzam Ali has died. As per the report of the Chief Judicial Magistrate, Moradabad the accused/appellant

Moazzam Ali has been murdered. Accordingly, by the order dated 18.4.2014, this Court passed order directing abatement of Criminal Appeal No. 1598 of 1995 as against the appellant-Moazzam Ali in the said appeal.

3. Now, we are proceeding to consider the criminal appeals in respect of rest of the appellants i.e. Babban, Arshad, Mukarrab, Jahangir and Jamil.

4. The facts of the case are that on 22.3.1994 at about 18.30 hours a written report was lodged by one Athar Husain son of Iqbal Husain, resident of village Peepalsana, Police Station, Bhojpur, District - Moradabad at P.S. Bhojpur alleging that he was a resident of village Peepalsana, P.S. Bhojpur, District - Moradabad and on that very day i.e. 22.3.1994 Azeemul Haq, his brother-in-law, after purchasing grapes from the Thela of Bhoora son of Hamid Raza from the market of his village, was coming back to his house at about 5.30 p.m. Athar Husain (informant), Mamshad, Sabit Ali, Yasin, and Firoz Akhtar were also going a bit behind from Azeemul Haq. The accused Jahangir son of Intezar, Jamil son of Aijaz Husain, Moazzam and Mukarrab sons of Mulla Zafar, Arsad son of Rashid, Babban son of Zaheer suddenly came on the road from the Prathama Bank house of Jahangir and started abusing Azeemul Haq and said that he was opposing his Mangal Bazar and he will not be spared. Azeemul Haq tried to run away but in the meantime Jamil fired upon him with Tamancha, consequently, Azeemul Haq fell-down after receiving the injury. Thereafter, Jahangir fired upon him in the temple. Moazzam and Mukarrab also fired with Tamanchas, Arshad and Babban assaulted him by knives. The informant and other persons rushed there alarming. The accused persons threatened them and ran away in the eastern side through the lane in front of the Bank. Azeemul Haq succumbed to his injuries on the spot. It was further alleged that the occurrence was witnessed by several persons. The dead body of Azeemul Haq was lying on the spot.

5. On the basis of the said written report (Ext. Ka-1), Chik-First Information Report (in short "FIR") (Ext. Ka-2) was lodged on the same day at 18.30 hours at the concerned Police Station at Crime No. 80 of 1994 under sections 147/148/149/302 IPC showing the distance from the place of occurrence to the Police Station as 1-1/2 kilometres. The Investigating Officer proceeded to place of occurrence and inquest report and other police papers (Ext. Ka-5 to Ext Ka-10) in respect of the deceased were prepared and dead body of the deceased, keeping the same in sealed cover and preparing the sample seal, was sent for post-mortem through Constable Virendra Kumar and Constable Bijendra Sharma. The Investigating Officer also took sample of simple earth and blood stained earth from the place of occurrence and kept it in a sealed container. The blood stained grapes found on the spot were also taken into custody and keeping them in polythene sealed in a container. Empty cartridges found on the spot were also taken into custody and were kept in sealed cover. Dr. A.K. Gupta had conducted the autopsy on the dead body of the deceased and following ante-mortem injuries were found:

1. Gunshot wound of entry 8 c.m. x 3 c.m. x brain cavity deep left side head just

above the left ear. Margins are inverted lacerated with blackening and charring around the wound.

2. Gunshot wound of exit 12 c.m. x 4 c.m. on right side head just above the right ear and including ear which is lacerated. Margins are averted and lacerated. Blood clots present. Both above injuries corresponding to each other direction of the wound is lateral and forward, underneath muscles parietal and temporal bones of both sides are fractured. Membranes brain matter lacerated with blood clots.

3. Gunshot wound of entry 4 c.m. x 3 c.m. neck deep in right side face and neck, 6 c.m. Away from right angle of mouth. Margins are inverted and lacerated. Blackening and charring present around the wound. On opening direction of wound is lateral and forward and underneath the muscles and mandible or right side are fractured. Large vessels and nerves of neck two cork wedging one plastic cap piece and nine metallic pieces recovered from the wound.

4. Gunshot wound of entry 3 c.m. x 3 c.m. x shoulder deep on right side shoulder top 5 c.m. medial to the tip of shoulder. Margins are lacerated and inverted. Blackening and charring around the wound present.

5. Gunshot wound of exit 5 c.m. to 3 c.m. at axilla right side 10 c.m. away from the right nipple. Margins averted are lacerated. On opening the above both wounds corresponding direction of the sound downward and laterally. Underneath the musculature and clavicle fractured on lateral side alongwith injury and laceration to brachial plexus.

6. Gunshot wound of entry 5 c.m. x 4 c.m. area deep on the right upper arm, 6 c.m. below the top of shoulder. Margins are inverted and lacerated. Blackening and charring present. On opening the direction of the wound is downwards and medially underneath humerus bone fractured muscle lacerated. Recovered two piece of plastic cap and one metallic piece.

7. Gunshot wound of entry 3.5 c.m. x 2 c.m. on chest cavity deep away from injury No. 5 is 5.5. c.m. Margins are inverted and lacerated. Blackening and charring present. On opening muscles lacerated one metallic piece and few pieces of wedging recovered.

8. Gunshot wound of entry on left side back 1.5 c.m. x 1 c.m. x chest cavity deep 5 cm. away from mid line 13 c.m. below and away from left scapular angle. Margins are inverted lacerated. Blackening and charring present.

9. Gunshot wound of exit on left side front of chest 3 c.m. x 2 c.m. just away from left nipple on medial side. Margins averted, lacerated on opening both above wounds correspond to each other. Direction of wound forward and medially, underneath muscles, pleura left lung and heard lacerated cavity contains 4 Lb clotted blood.

10. Incised wound 2 c.m. x 1 c.m. x muscle deep on right side back of chest, 8

c.m. away from mid line and 5 c.m. below and away from angle of scapula.

11. Two incised wounds of size 6 c.m. x 3 c.m. x muscle deep on back of right side chest 6 c.m. below injury No. 10.

12. Incised wound 5 c.m. x 1 c.m. on lateral side of right side abdomen 16 cm. below injury No. 11. Injury is muscle deep.

13. Two incised wounds 3 c.m. x 2 c.m. on right side back of buttock 11 cm below injury No. 12.

6. In the opinion of doctor, the death was caused due to shock and haemorrhage as a result of fire-arms injuries. In his opinion, the death took place about 3/4 day before. He stated that he prepared the post-mortem report and proved it as Ext. Ka-16. He stated that injuries 6 and 7 could have occurred by one fire and it may not.

7. Recording the statements of witnesses and preparing the site plan, investigation was completed and charge-sheet against Jahangir, Jamil and Moazzam under sections 147, 148, 149, 302 IPC was filed. Since accused Babban, Arshad and Mukarrab had not been arrested by the Police and they had surrendered before the Court, therefore, the Investigating Officer has recorded their statements and sent the recovered articles for chemical examination and later on submitted charge-sheet against them also. The case being exclusively triable by Session Court, was committed to the Court of Sessions.

8. Accused/appellants appeared and initially a charge against accused Jahangir u/s 147 IPC was framed by the II Additional District & Sessions Judge, Moradabad while charge under sections 148 and 302 read with section 149 IPC were framed against accused Moazzam, Jamil, Mukarrab, Babban and Arshad. During course of trial, charge against accused Jahangir was amended framing the charge under sections 148 and 302 IPC read with section 149 IPC. All the accused have denied the charges framed against them and claimed to be tried.

9. Trial proceeded and on behalf of prosecution, eight witnesses have been examined, wherein PW-1 Athar Husain, PW-2, Yasin are witnesses of fact, PW-3 S.I. Ram Naresh Shukla (first Investigating Officer) in whose presence the case was registered, PW-4 Constable Virendra Kumar, who had taken the dead body of the deceased for postmortem alongwith his companion Bijendra Sharma, PW-5 Head Constable Ram Singh, who prepared the chik FIR, PW-6 Gajendra Singh Rathi (second Investigating Officer), PW-7 Dr. A.K. Gupta, PW-8 S.A. Khan (third Investigating Officer).

10. After closing of evidence, statement of accused/appellants u/s 313 Cr.P.C. was recorded.

11. Accused persons in their statements u/s 313 Cr.P.C. denied the allegations and stated that they have been falsely implicated due to enmity. Accused Babban further stated that Moazzam is the son of his father's sister and that is why he

was falsely implicated. Mukarrab further stated that he is the real brother of Moazzam. Arshad stated that he was real sister's son of Moazzam and Moazzam stated that prior to this occurrence he had got registered a case against Rizwanul Haq in bank dacoity and he was in jail for several days, and since then he had ill-will against him. Rizwanul Haq had implicated him in a false case by his maternal uncle Sabit Ali in which he was acquitted. He was applying his undue influence for falsely implicating him as well as his brother in several criminal cases and they were acquitted and in those cases they were the witnesses.

12. To substantiate the defence case, accused persons examined Shahid Husain as DW-1, Maqbool Husain as DW-2, Krishna Kumar Singh as DW-3 and Pooran Chand Pant, Radio Station Officer, Police Lines, Moradabad as DW-4.

13. After hearing the learned Counsel for the prosecution and defence, the Trial Court has found that the prosecution has fully succeeded in bringing home the charges against the accused/appellants beyond reasonable doubt and the accused/appellants have been convicted and sentenced, hence these appeals.

14. We have heard Shri Vinay Saran, Shri P.K. Mishra, Shri Rahul Mishra and Shri T.A. Khan, learned Counsel for the appellants, Shri Pradeep Pandey, learned Counsel for the complainant and Shri Narendra Kumar Singh Yadav, learned AGA for the State, and have gone through the entire record.

15. Learned Counsel for the appellants have made the following submissions:

1. There was no motive to commit the alleged offence and the motive stated by the prosecution was not in existence as no opposition or controversy ever arisen between the parties before this incident. Thus, the appellants have been falsely implicated in this case.

2. The eye account witnesses, PW-1 & PW-2 were not present on the spot at the time of the occurrence and their presence at the time of occurrence is doubtful because the witnesses examined by the prosecution as eye account witnesses have not received any injury in the incident.

3. The prosecution case is not supported by any independent witness.

4. The witnesses examined by the prosecution as eye account witnesses are inimical and partisan witnesses.

5. Medical evidence does not corroborate the prosecution case.

6. FIR is ante-timed. It was not in existence at the time mentioned in the chik. Special report has been sent belatedly in the matter. At the time of preparing the inquest report, the FIR was not in existence. There is unexplained inordinate delay in bringing the dead body at mortuary.

7. Accused/appellants Jahangir and Jamil were present elsewhere at the time of the incident.

8. There is major contradictions, variations, discrepancies and inconsistency in

the prosecution evidence. There is also improvement in prosecution case at the stage of evidence.

16. Making the aforesaid submissions, learned Counsel for the appellants pray that the present appeals be allowed and the impugned judgment and order be set-aside and the appellants may be acquitted from the charges levelled against them.

17. On the other hand, learned Counsel for the complainant as well as the learned AGA for the State have submitted that special report has been sent timely. If it is not placed before the Circle Officer or the Magistrate concerned timely, the prosecution case will not be disbelieved on this score. The prosecution has explained that it was a sensitive case, therefore, one police officer had reached on the spot immediately and prepared panchayatnama. Reference has been given of the details mentioned in the special report, inquest report and other police papers. Medical evidence fully supports the prosecution case. Plea of alibi taken on behalf of Jahangir and Jamil has not been established by cogent evidence. Testimony of defence witnesses are not believable. FIR is not ante-timed and in the facts and circumstances of the case, it has been lodged promptly. Laches or lapse on the part of the police or investigating agency will not affect the testimony of the ocular witnesses. On the basis of non-entering of detail of any other incident in the general diary on the date of this incident shall not be presumed that the general diary was kept open because there was delay in lodging the FIR. The witnesses may be interested witnesses or partisan witnesses but their testimony cannot be thrown out only on this ground. Only precaution has to be taken by the Court to scrutinize the statements cautiously. Minor contradictions, discrepancy, inconsistency in the statements of witnesses do not affect the veracity of the statements.

18. Thus, making the aforesaid submissions and further submission that the prosecution has established the motive, it is submitted that the prosecution has fully succeeded to prove the guilt of the accused/appellants beyond shadow of reasonable doubt and the findings of the Trial Court are based on evidence available on record and it has rightly believed the prosecution case and has rightly convicted the accused/appellants.

19. We have considered the submissions made by the learned Counsel for the parties and have carefully gone through the entire record and evidence.

20. At first, the Court proceeds to examine the evidence available on record and the conclusion drawn by the Trial Court and the submissions made by the appellants regarding ante-timed FIR and delay in dispatching the special report to the Magistrate.

21. The Trial Court after discussing the evidence has concluded that the first information report was already in existence before preparing the inquest report and other papers and the special report required to be sent to the concerned Magistrate, has been sent on 22.3.1994. Thus, the first information report was

not found ante timed.

22. In the instant matter, offence is said to have been committed on 22.3.1994 at 5:30 p.m. As per chick report Ext. Ka-2, first information report was lodged on the same day at 6:30 p.m. In the chick report, there is mention about sending of the special report that "Dwara Daak Agley Din". Inquest report Ext. Ka-5 has been prepared on 22.3.1994 at about 21:08 hours. In the first column, date and time for lodging the first information report is shown as 22.3.1994 at 18:30 hours. The police officials, who have prepared the inquest report and other police papers, have also reached on the spot on 22.3.1994 at 19:30 hours at village Peepalsana. In the column of the informant, name of Athar Hussain, has been mentioned. In the column of causes of death, it is mentioned that deceased was done to death by firing and stabbing the knife.

23. Learned Counsel for the appellants have vehemently referred and challenged the distance mentioned in the inquest report and have submitted that initially only 1/2 km. has been mentioned in the inquest report, but later on, manipulating it distance has been shown as 1-1/2 kms. Learned Counsel for the appellants have also referred the statement of P.W. 3 S.I. Ram Naresh Shukla and has argued that this witness has admitted before the Court that he had not recorded the statements of any witnesses and had reached on the spot and prepared the inquest report and other police papers and also sent the dead body for post-mortem.

24. Referring the statement of the Constable, who had brought the dead body for post-mortem, it has also been argued that dead body had been brought in the same night at Police Line, but no entry in this regard was made in the police records. Thus, it was emphasized that first information report was not in existence till that period, therefore, dead body was sent for postmortem at a belated stage.

25. Learned Counsel for the appellants have placed reliance on the law laid down in the following cases:

(I) Brijendra Singh v. State of U.P. (1993) 30 ACC 470, wherein this Court has disbelieved the prosecution evidence on the ground that there were discrepancies in details of the distance mentioned in the inquest report and inquest report was also silent about the weapon used. Thus, on the ground that first information report is brought into existence long after the occurrence, prosecution case is disbelieved.

(II) Balaka Singh and Others Vs. The State of Punjab, wherein the Apex Court has allowed the Appeal and acquitted the appellants on the ground that the manner in which the first information report and the inquest report have been made, throws considerable doubt on the complicity of the appellants in the crime.

(III) Rajeevan and Another Vs. State of Kerala, wherein the Apex Court also doubted the genuineness of the first information report because it was lodged

after a gap of 12 hours and there was delay in forwarding the special report to the Magistrate and no satisfactory explanation thereof has been given.

(IV) Bhajan Singh @ Harbhajan Singh and Others Vs. State of Haryana, The relevant paragraphs No. 28, 29 & 30 of the said judgment are quoted below:

28. Thus, from the above it is evident that the Cr.P.C. provides for internal and external checks: one of them being the receipt of a copy of the FIR by the Magistrate concerned. It serves the purpose that the FIR be not ante-timed or ante-dated. The Magistrate must be immediately informed of every serious offence so that he may be in a position to act u/s 159 Cr.P.C., if so required. Section 159 Cr.P.C. empowers the Magistrate to hold the investigation or preliminary enquiry of the offence either himself or through the Magistrate subordinate to him. This is designed to keep the Magistrate informed of the investigation so as to enable him to control investigation and, if necessary, to give appropriate direction.

29. It is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or investigation is not fair and forthright. Every such delay is not fatal unless prejudice to the accused is shown. The expression "forthwith" mentioned therein does not mean that the prosecution is required to explain delay of every hour in sending the FIR to the Magistrate. In a given case, if number of dead and injured persons is very high, delay in dispatching the report is natural. Of course, the same is to be sent within reasonable time in the prevalent circumstances.

30. However, un-explained inordinate delay in sending the copy of FIR to the Magistrate may affect the prosecution case adversely. An adverse inference may be drawn against the prosecution when there are circumstances from which an inference can be drawn that there were chances of manipulation in the FIR by falsely roping in the accused persons after due deliberations. Delay provides legitimate basis for suspicion of the FIR, as it affords sufficient time to the prosecution to introduce improvements and embellishments. Thus, a delay in dispatch of the FIR by itself is not a circumstance which can throw out the prosecution's case in its entirety, particularly when the prosecution furnishes a cogent explanation for the delay in dispatch of the report or prosecution case itself is proved by leading unimpeachable evidence.

26. Learned Counsel for the appellants have also placed reliance on the decision of this Court passed in Government Appeal No. 1226 of 1982 (State of U.P. v. Raghuveer Singh) on 19.9.2013 wherein also Government Appeal against acquittal was dismissed.

27. It is true that a prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding its true version. If there is some delay in filing the first information report, the complainant must give explanation for the same. At the same time, it may also be noted that delay

in lodging the first information report does not make the complaint case improbable when such delay is properly explained. However, a deliberate delay in lodging the complaint may prove to be fatal. In such situation, the Court has to carefully examine the facts before it for the reasons that complainant side may initiate criminal proceedings just to harass the other side with mala fide intention.

28. In the instant case, first information report Ext. Ka-1 has been prepared by the complainant P.W.-1 Athar Hussain on 22.3.1994 and has been presented on the same day before the police station concerned. Offence is said to have been committed on the same day at 5:30 p.m. As per prosecution story and the entries made in the chick report Ext. Ka-2, the same has been prepared on the day of occurrence at 6:30 p.m. at police station concerned. G.D. Entry Ext. Ka-3 has also been prepared at Sl. No. 34 at 6:30 p.m. giving all the details of the crime number, sections of the offence and other details. Ext. Ka-4 is the paper which indicates that special report regarding the matter has been sent on the same day through Rapat No. 38 at 9:20 p.m. Inquest report finds place crime number, sections of the offence, date and time of the occurrence and the date and time of starting the investigation. Inquest report also finds place the name of the informant, description of the weapon, the name of the Constables to whom dead body had been handed over for post-mortem. Date and time for completion of the inquest have also been mentioned. Detailed report on the point of lodging of the first information report and appointment of Panch have been mentioned in the inquest report. P.W. 3 S.I. Ram Naresh Shukla, who has prepared the inquest report, has also prepared the other police papers. Letter to R.I., photo lash, form No. 13, letter to C.M.O., sample seal, fard recovery memo of blood stained earth and plain earth and also fard recovery of the blood found on the spot. This witness has also prepared fard recovery of the empty cartridges found on the spot. In all these papers, there is mention of crime number and sections and also other details require to be mentioned.

29. The witnesses examined by the prosecution to prove this fact that first information report was lodged on the date and time mentioned in the chick report and the special report had been sent immediately, have categorically stated before the Court that first information report had been lodged at the time mentioned in the chick report on the basis of written report Ext. Ka-1. Only on this basis that in the chick report in relevant column there is endorsement that "Dwara Daak Agley Din", it shall not be presumed that at that time special report had not been sent to the Magistrate concerned. Prosecution has been able to establish in the case that special report has been sent on 22.3.1994 to the Magistrate concerned.

30. As per provisions of section 157 Cr.P.C., it is obligatory on the part of the Officer Incharge of the Police Station to send a report of the information received to a Magistrate forthwith. P.W. 3 S.I. Ram Naresh Shukla has clearly explained the reason of non-recording the evidence of the witnesses before proceeding to the place of occurrence. This witness has also clearly explained that he

proceeded to the place of occurrence along with the case diary and all other relevant papers. Since situation at the spot was tensed, he along with other police personnel without making any delay proceeded to the spot and started preparation of inquest report. The constable, who has prepared the chick report, has also stated that chick report had been prepared on the basis of written report Ext. Ka-1 at the time mentioned in the chick report Ext. Ka-2. G.D. Entry had also been made. P.W.-3 S.I. Ram Naresh Shukla had proceeded along with all the papers. Mentioning of crime number, sections of the offence and other details in all the papers mentioned above also indicates that first information report had been lodged before preparation of these papers.

31. Defence has tried to establish putting the question from the witnesses that manipulation in the inquest report has been made altering the distance as 1-1/2 kms., but on question, P.W. 3 had denied this fact in the cross-examination. He has also explained the reason for non-recording the evidence immediately and proceeding forthwith on the spot. The Constables, who had brought the dead body for post-mortem, have also explained the reason for not making any entry in the R.I. Office.

32. As per the inquest report, dead body has been handed over to the Constables in the late night. Therefore, some time has been exhausted in reaching the headquarters. Non-entry in the G.D. maintained in the R.I. Office in the night itself will not affect the prosecution case. In the matter when the reason has been clearly explained by the constable Virendra Kumar (P.W.-4), variations and discrepancies in the statement and evidence led by the prosecution in this regard do not affect the prosecution case, as first information report was lodged on the date and time mentioned in the chick report. Special report had also been sent to the Magistrate concerned. It might be possible that special report has been placed before the Circle Officer and the Magistrate concerned later on, but the duty on the part of the Officer Incharge of the Police Station concerned has been duly performed immediately as required under the law.

33. The Trial Court's view is based on the facts and evidence available on record and also in accordance with the law. We are of the view that there is no need to infer otherwise.

34. Learned Counsel for the appellants have also submitted that there was no motive to commit the present offence by the appellants and motive assigned in the first information report as well as during the trial was non-existent and prosecution has not led any evidence to show that there was any opposition or controversy in regard to the alleged Mangal Bazar. Accused appellants were supporters of the opponent of the brother of the deceased namely Rizwanul Haq, who was the Member of Legislative Assembly. Therefore, they were falsely implicated in the present case.

35. A perusal and scrutiny of entire evidence available on record, it is clear that

defence has tried to establish that prosecution side borne enmity with the appellants on several counts.

36. It may be mentioned here that enmity is a double edged weapon which may be a reason to commit an offence and at the same time it may also be a reason for false implication. Therefore, in the matter, evidence/statements of the eye account witnesses have to be scrutinized carefully and cautiously.

37. In the present matter, the Trial Court has concluded that prosecution has been able to establish the motive. Trial Court's conclusion is that witnesses have stated that appellants before causing the death of the deceased have stated that "deceased caused hindrance in functioning of Mangal Bazaar". The mental status i.e. mens rea of the criminals/offenders is the mind set of the offenders. In some cases, motive can be gathered from the facts and circumstances of the case and in some cases it is open/clear. Therefore, as has been mentioned above, where there are eye account witnesses, motive part does not play very vital role. It may be also noted here that as none knows the mind of criminal as to what is the design operating in their mind. Motive is locked in the heart of offender and motive may be known to assassin and no one else may know who gave birth of such evil thoughts in his mind.

38. Now the Court proceeds to discuss other submissions raised by the learned Counsel for the appellants and take-up the submission regarding place of occurrence.

39. In the FIR, the offence is said to have been committed in the village market of Peepalsana on the road side. Site plan prepared by the Investigating Officer indicates that the incident has taken place at place shown as "A" in front of the shop of Bhoora Bhurji on the road. The deceased was returning after purchasing the grapes from the place shown with the letter "F" in the site plan and when he reached at place shown as "A" accused persons came there from southern side. Witnesses mentioned in the FIR were also coming towards southern side and they were just behind ten paces from the deceased. Dead body of the deceased was also found by the Investigating Officer preparing the inquest report in front of the house and shop of the Bhoora Bhurji on the road. Although the people of the locality have not been examined by the prosecution before the Court to substantiate this fact yet the witnesses examined as eye account witnesses by the prosecution have also stated the same place of occurrence. The Trial Court has concluded that the prosecution has been able to establish the place of occurrence beyond the reasonable doubt. The Investigating Officer has also found the blood stained earth, blood stained grapes and used cartridges near the place shown by letter "A" in the site plan, meaning thereby the prosecution story that the deceased was done to death at the place shown in the site plan finds support from this evidence collected by the Investigating Officer. Thus, in view of the above, the finding recorded by the Trial Court on this point is in accordance with the evidence available on record and does not require any interference.

40. As far as the medical evidence is concerned, learned Counsel for the appellants have submitted that the medical evidence adduced by the prosecution is contrary to the oral evidence. The prosecution witnesses have consistently stated that only four fires were made by the accused persons but nine fire-arm injuries were found on the body of the deceased at the time of post-mortem. Thus, placing reliance on the proposition laid down by the Supreme Court in the case of Balmiki Singh Vs. Ram Chander Singh and Others, submissions have been made that injuries found on the body of the deceased have not been explained by the prosecution.

41. Dr. A.K. Gupta - PW-7, who has conducted the post-mortem on the dead body of the deceased and prepared the post-mortem report has found nine firearm wounds and incised wounds and all the injuries are ante-mortem injuries. The prosecution witnesses Nos. 1 and 2 both have stated that only four fires had been made by the accused persons. The Trial Court after analysing the evidence available on record has observed as follows:

From the post-mortem report it is evident that injuries No. 1 and 2 are caused by one shot, injury No. 5 is exit injury of injury No. 4 and the doctor had stated that injuries No. 6 and 7 could have been caused by one shot. He also opined the possibility otherwise. Injuries No. 8 and 9 are caused by one shot and injuries No. 3 and 4 are caused by one fire as they are on the right shoulder and this injury could have been caused by pellets. Other injuries No. 10, 11, 12 and 13 are undoubtedly caused by knives.

42. Certainly the prosecution case is that only four fires have been made by the accused persons but there are nine fire-arm injuries. Injury No. 2 is the exit injury of injury No. 1. Similarly, injury No. 5 is the exit wound of injury No. 4. In the same way, injury No. 9 is the exit wound of injury No. 8. Thus, injury Nos. 1, 2, 4, 5, 8, and 9 are the results of three fires only. Now remains injury Nos. 3, 6 and 7. PW-7-Dr. A.K. Gupta, who has conducted the post-mortem on the dead body of the deceased, has opined that injury Nos. 6 and 7 may be the result of one shot. Injury No. 3 is on the right shoulder. Injury No. 4 is also on the same direction and place, therefore, the Trial Court has rightly concluded that the injury Nos. 3 and 4 are caused by one fire as they are on the right shoulder. If the conclusion arrived at by the Trial Court and the submissions made by the learned Counsel for the appellants are compared with the fact and evidence available on record then it is clear that the prosecution has clearly explained the injuries found on the body of the deceased. Accused are said to have used country-made pistol, which are not standard weapon. Causing of injuries depends upon the capacity of the country-made pistol and the cartridges/pellets used therein. Thus, the finding of the Trial Court on this issue that the medical evidence fully corroborates the oral evidence cannot be said to be perverse and the said findings arrived at by the Trial Court are based on the evidence available on record. Four accused persons have opened fires, therefore it is possible that more than four injuries may cause.

43. So far as the law laid down by the Supreme Court in the case of Balmiki Singh (Supra) is concerned, this Court is of the view that the same is distinguishable from the facts of the present case and is not applicable to this case because in the present case all the injuries found on the body of the deceased have been explained by the prosecution satisfactorily.

44. As far as submission regarding presence of eye witnesses on the spot is concerned, in the FIR, informant Athar Husain has mentioned himself as eye witness. PW-2 Yasin is also said to be eye witness. One Mamshad, Sabit, Firoz Akhtar have also been mentioned as eye witnesses. The prosecution has examined before the Court only informant Athar Husain and Yasin. The appellants' plea is that these witnesses are the chance witnesses and they do not reside in the same vicinity. There is no occasion to remain them present on the spot at the time of the occurrence.

45. PW-1 Athar Husain has lodged the FIR wherein it has been mentioned that he is the eye account witness. As per this witness, the deceased was returning from village market after purchasing the grapes at about 5.30 p.m. This witness was also going to his house behind the deceased. Other witness mentioned in the FIR were also behind the deceased. When PW-1 has been examined before the Court, he stated that at that point of time he was returning from his field and Yasin, Haji Shakir Ali, Firoz Akhtar, Mamshad also met with this witness at the crossing, and the deceased Azeemul Haq was going 10-12 pace ahead to them.

46. PW-2 Yasin has stated that on the day of occurrence, he was returning to his house after playing cricket from the field of Kisan Seva Kendra situated at Peepalsana and witnesses Sabit, Firoz Akhtar, Mamshad and Athar Husain also met with this witness on the way. They were proceeding towards their houses talking each other. The deceased was about 10 paces ahead from them.

47. Site plan prepared by the Investigating Officer (Ext. Ka-15) indicates that the houses situate both side of the road, where the present incident took place, do not belong to the witnesses examined by the prosecution but the place of incident is the market place, and witnesses have stated the reason for their presence. Although they are chance witnesses, the reason for their presence on the spot have been explained by them before the Court. It is settled legal proposition that FIR in a criminal case is not an encyclopedia and it is not necessary to give the every minute details of the crime in the FIR.

48. PW-1 has not mentioned the reason of his presence on the spot in the FIR but during course of evidence he has cleared this fact. FW-2 has also cleared this fact before the Court that he was returning after playing cricket. Offence is said to have been committed on 5.30 p.m., therefore, the presence of PW-2 on the spot is not improbable. Although defence has put several questions to this witness in the cross examination to establish that there was no occasion to remain him present on the spot at the time of occurrence and this witness only to be an eye account witness has stated before the Court a false story, but this

witness has replied to all the questions put to him, and he has explained the reason of his presence on the spot. During course of cross-examination, this witness has stated that he had told the Investigating Officer that he was returning from school on the day of occurrence but this witness on the question put to him by the defence Counsel has categorically stated that he had gone to play cricket and was returning after playing cricket as his grand mother was all alone in the house. If this is the factual situation then only on this basis that this witness had told the Investigating Officer at one point of time that he was returning from school the fact that he was returning at the relevant time from the way cannot be disbelieved.

49. Defence has also tried to establish the enmity with this witness from some of appellants but this witness during cross-examination has denied these facts. The Trial Court on close scrutiny of the submissions raised by both the parties and the evidence available on record has come to the conclusion that both the witnesses examined before the Trial Court are natural witnesses and they have explained the reasons for their presence on the spot and they are eye account witnesses.

50. Learned Counsel for the appellants have also raised the submission that as all the witnesses mentioned in the FIR have not been examined, therefore, it shall be presumed that if they would have been examined, they had not supported the prosecution case. Thus, this submission has been made to draw adverse inference against the prosecution.

51. It is settled proposition of law that it is not the matter of quantity of evidence but the quality of evidence produced by the prosecution. In this regard, a reference can be taken to a case law reported in Food Inspector Vs. G. Satyanarayana, wherein the Hon"ble Supreme Court has held that it is not the number of witnesses but it is the quality of evidence which is required to be taken note of by the Courts for ascertaining the truth of the allegations made against the accused. Section 134 of The Evidence Act provides that no particular number of witnesses is required for proof of any fact. The witnesses of fact produced on behalf of the prosecution, are trustworthy and well reliable and merely because no independent witness has been examined, the evidence of witnesses of fact cannot be discarded.

52. Learned Counsel for the appellants have also submitted that PW-1 and PW-2 are interested, related, inimical and partisan witnesses, therefore, only on the basis of testimony of these witnesses prosecution case cannot be held to be proved.

53. In the light of the submissions made here-in-above, we have scrutinized the entire evidence carefully. If the presence of witnesses examined by the prosecution have been found natural and their testimony is supported with other evidences, then there is no requirement of law that the same may be corroborated by independent witnesses, and then only such evidence can be

taken into account. There is no universal rule as to warrant rejection of evidence of a witness merely because he/she is related to or interested in the parties to either side. In such cases, if the presence of such a witness at the time of occurrence is proved or considered to be natural and the evidence tendered by such witness is found in the light of the surrounding circumstances and probabilities of the case to be true, it can provide a good and sound basis for conviction of the accused. Similarly, a witness may be shown as inimical and near relative but in such circumstances the Court has a duty to scrutinize their evidence with great care, caution and circumspection and be very careful in weighing such evidence. Thus, now it is settled that evidence of a witness cannot be discarded merely on the ground that he is a related witness, if otherwise the same is found credible. Similar is the position regarding interested witness. A witness may be called "interested" only when he or she derives some benefit from the result of a litigation. Related witness cannot be equated with the interested witness. The views expressed by us are also supported with the pronouncement of the Supreme Court in the case of State of U.P. Vs. Kishanpal and Others, which is as under (paragraphs 8, 9, 10, 11 & 12 of the said judgment):

8. As observed earlier, though the High Court accepted the testimony of PWs 1, 5, 7 and 9 while confirming the conviction and sentences of Onkar Singh has not given due credence to their testimonies in respect of other accused. This Court has repeatedly (sic) the testimony of prosecution witnesses was cogent, reliable and confidence inspiring it cannot be discarded merely on the ground that the witness happened to be relative of the deceased. The plea "interested witness" "related witness" has been succinctly explained by this Court in State of Rajasthan Vs. Smt. Kalki and Another, The following conclusion in paragraph 7 is relevant:

7. As mentioned above the High Court has declined to rely on the evidence of PW 1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is, she is the wife of the deceased; but she cannot be called an "interested" witness. She is related to the deceased. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested".

9. From the above it is clear that "related" is not equivalent to "interested". The witness may be called "interested" only when he or she has derived some benefit from the result of a litigation in the decree in a civil case, or in seeing an accused

person punished. A witness, who is a natural one and is the only possible eye-witness in the circumstances of a case cannot be said to be "interested".

10. The plea of defence that it would not be safe to accept the evidence of the eye witnesses who are the close relatives of the deceased, has not been accepted by this Court. There is no such universal rule as to warrant rejection of the evidence of a witness merely because he/she was related to or interested in the parties to either side. In such cases, if the presence of such a witness at the time of occurrence is proved or considered to be natural and the evidence tendered by such witness is found in the light of the surrounding circumstances and probabilities of the case to be true, it can provide a good and sound basis for conviction of the accused. Where it is shown that there is enmity and the witnesses are near relatives too, the Court has a duty to scrutinize their evidence with great care, caution and circumspection and be very careful too in weighing such evidence. The testimony of related witnesses, if after deep scrutiny, found to be credible cannot be discarded. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness, if otherwise the same is found credible. The witness could be a relative but that does not mean his statement should be rejected. In such a case, it is the duty of the Court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the Court while scrutinizing the evidence of the interested witness. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the Court to place credence on the statement. The ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible. Vide *State of Andhra Pradesh Vs. Veddula Veera Reddy and Others*, *Ram Anup Singh and Others Vs. State of Bihar*, *Harijana Narayana and Others Vs. The State of Andhra Pradesh*, , *Anil Sharma and Others Vs. State of Jharkhand*, *Harijana Narayana and Others Vs. The State of Andhra Pradesh*, , *Salim Sahab Vs. State of Madhya Pradesh*, , *Kapildeo Mandal and Others Vs. State of Bihar*, , *D. Sailu Vs. State of A.P.*, In *Kulesh Mondal Vs. The State of West Bengal*, this Court considered the reliability of interested/related witnesses and has reiterated the earlier rulings and it is worthwhile to refer the same which reads as under:

11. "7. We may also observe that the ground that the [witnesses being close relatives and consequently being partisan witnesses,] should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh and Others Vs. State of Punjab*, , in which surprise was expressed over the

impression which prevailed in the minds of the members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed: (AIR p. 366, para. 25).

25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavored to dispel in *Rameshwar Vs. The State of Rajasthan*, We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of Counsel.

8. Again in *Masalti Vs. State of U.P.*, this Court observed: (AIR pp-209-10, para. 14)

14. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

9. To the same effect is the decision in *The State of Punjab Vs. Jagir Singh, Baljit Singh and Karam Singh, Lehna Vs. State of Haryana*, As observed by this Court in *State of Rajasthan Vs. Smt. Kalki and Another*, normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in *Krishna Mochi and Others Vs. State of Bihar*,

54. In the present case, both the witnesses examined by the prosecution are most natural witnesses, their presence at the spot at the time of occurrence is explained, therefore, non-examination of all the witnesses mentioned in the FIR will not affect the credibility of these two witnesses examined as eye account witnesses. A trend has been developed in the society that even if the accident takes place before the persons but they try to keep them away from facing the Court proceedings. No one involves himself as witness in such type of matters. Thus, the submission raised by the learned Counsel for the appellants in this respect is not acceptable. PW-1 and PW-2 may be interested or partisan

witnesses and they may have not received injuries in the said incident but their testimony cannot be discarded, thrown out or disbelieved for these reasons. During course of examination in the Trial Court, the defence has tried to establish that these witnesses, examined as eye account witnesses, were inimical to the appellants but this ground is also not sufficient to discard or disbelieve them as their presence on the spot at the time of occurrence is fully believable. Statements of PW-1 and PW-2 do not require any corroboration with the evidence of other witnesses. There is also no such improvement in the evidence of prosecution, which demolishes the prosecution case.

55. Thus, the presence of PW-1 and PW-2 on the spot at the time of occurrence is not doubtful and the same has been established by the prosecution. The finding of the Trial Court on this point finds support with the evidence available on record and the same does not require any interference.

56. So far the submission regarding discrepancies and contradictions pointed out by the learned Counsel for the appellants in the statements of PW-1 PW-2 and other witnesses are concerned, they are not having much force because presence of PW-1 and PW-2 on the spot at the time of the incident is very much established by the prosecution evidence. Apart to this, it is well settled proposition of law that any inconsistency or discrepancy occurred in the investigation or laches on the part of the Investigating Officer does not affect the veracity of statement of reliable prosecution witnesses until and unless such discrepancies are of such nature that the entire prosecution story is collapsed.

57. Latin maxim "falsus in uno, falsus in omnibus" is not applicable in India. If anything stated by a witness on any unimportant point appears to be not true, then also the clear and consistent statement made by him on material points cannot be thrown out.

58. Now this Court proceeds to examine the role played by the appellants in committing the offence and also the plea of alibi taken by the appellants Jahangir and Jamil.

59. The prosecution case is that when the deceased was coming back to his house after purchasing grapes from village market of Peepalsana and as and when he reached in front of the house of Bhoora Bhurji, the appellants came out from the house of Jahangir, in which Prathama Bank was running, and they reached on the spot and abusing and threatening the deceased that he was causing hindrance in arrangement of mangal bazar, accused appellant Jamil opened fire from his tamancha thereby deceased received injuries and fell down, thereafter, accused appellant Jahangir also opened fire on temple of deceased. Accused appellant Mukarrab and Moazzam (died during pendency of this appeal) also caused fire-arm injuries from their weapons. Other accused appellants Arshad and Babban caused injuries from their knives. PW-1 has also stated the same fact before the Court during the course of cross-examination. This witness is consistent on this point. PW-2, whose presence has also been established on

the spot at the time of occurrence, has also supported the prosecution case. On the point of causing fire-arm injuries to the deceased, as has been mentioned in the FIR and has been stated by the eye account witnesses before the Court, the witnesses, who have been tested by the defence at length by cross-examination, have clearly and consistently stated the same fact. Medical evidence fully supports the prosecution case. Two appellants were armed with knives and incised wounds found on the body of the deceased have been caused by sharp edged weapon and that may be caused by knives. The contention raised by the learned Counsel for the appellants that as no stab wounds have been found on the body of the deceased, therefore, participation of those appellants, who were armed with knives, is denied, is not acceptable. PW-7 Dr. A.G. Gupta has clearly stated that incised wounds found on the body of the deceased may be caused by knives. It is pertinent to mention here that in all probability the wounds caused by knives will not be necessarily stab wounds because it depends upon the manner and style of the person causing injuries with knives. Medical evidence in the matter does not belly that incised wounds found on the body of the deceased cannot be caused by knives. Four accused have been assigned with firearm. All the four accused have caused fire-arm injuries. Number of injuries found on the body of the deceased tally with the fires made by them. There is no any inconsistency or contradiction or improvement on this point. As the participation of all the appellants in committing the present offence has been categorically and consistently stated by the eye account witnesses, the plea of alibi taken by the appellants Jahangir and Jamil has not been established. Statement of DW-1 Shahid Husain, DW-2 Maqbool Husain, DW-3 Krishna Kumar Singh and DW-4 Pooran Chandra are oral statements. It both these appellants were not present on the spot at the time of occurrence and were present elsewhere in an election proceeding, then some concrete and cogent evidence must have been produced by the defence so that no other presumption except alibi can be drawn. In the instant case place of occurrence and the place where the said two appellants are said to have been present in an election of cooperative are not on much distance that they cannot be present on the place of occurrence at the time mentioned in the FIR. The Trial Court has rightly disbelieved the plea of alibi and this Court does not find any illegality with the said finding.

60. The Trial Court has found guilty to the accused appellants for committing the murder of the deceased Azeemul Haq and convicted and sentenced to the accused appellants for the offence u/s 302 read with section 149 IPC and also for offence u/s 148 IPC. Having considered the entire facts and circumstances of the case and the evidence available on record when the accused appellants were six in number and they have committed the present offence in furtherance of common object of wrongful assembly, the essential ingredients defined u/s 141 IPC are fully attracted in the present matter, all the appellants were armed with deadly weapon, therefore, the Trial Court has rightly convicted and sentenced to all the accused appellants for the offence u/s 148 IPC also. Accused appellants opened fire and caused knives injury to the deceased Azeemul Haq, resultantly

he died on the spot. Thus, the conclusion taken by the Trial Court regarding conviction and sentence of the accused appellants is also in accordance with law and the evidence available on record.

61. Considering the entire aspects of the matter and looking to the circumstances, under which the present offence has been committed, we are of the view that the impugned judgment and order passed by the Trial Court is well thought and well discussed and the Trial Court has rightly held that the prosecution has succeeded to prove the guilt of the accused/appellants beyond reasonable doubt. As such, the impugned judgment and order passed by the Trial Court is liable to be upheld and the appeals having no force are liable to be dismissed.

62. Accordingly Criminal Appeal No. 1832 of 1995, Criminal Appeal No. 1834 of 1995 and Criminal Appeal No. 1534 of 1995 are dismissed.

63. The conviction and sentence imposed upon the accused/appellants Babban, Arshad, Mokarrab, Jahangir and Jamil is hereby confirmed.

64. The accused appellants Babban, Arshad, Mokarrab, Jahangir and Jamil are on bail. Their personal and surety bonds are cancelled and they are directed to surrender before the Chief Judicial Magistrate concerned within four weeks from today, who shall take them into custody and send them in jail for serving out the remaining sentence imposed upon them by the Trial Court. In case they fail to surrender, as directed above, the Chief Judicial Magistrate concerned is directed to take coercive action against them in this regard.

65. Copy of this judgment be kept on the record of Criminal Appeal No. 1834 of 1995 and Criminal Appeal No. 1534 of 1995. Copy of this judgment alongwith lower Court record be sent forthwith to the Sessions Judge, Moradabad for compliance.