
(2007) 08 AHC CK 0160
In the Allahabad High Court

Bhanu Pratap Gangwar and Rajesh Kumar Gangwar	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 24-08-2007

Acts Referred:

Arms Act, 1959 — Section 25, 27, 3
Criminal Procedure Code, 1973 (CrPC) — Section 161, 164
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2007) 08 AHC CK 0160

Hon'ble Judges : Saroj Bala, J;Imtiyaz Murtaza, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Imtiyaz Murtaza, J.—By means of this appeal the appellants have challenged the judgment and order 22.7.2005 passed in S.T. No. 458 of 2001 by Addl. Sessions Judge, Court No. 3, Pilibhit whereby the appellants have been convicted and sentenced to imprisonment for life u/s 302/34 I.P.C. with a Fine of Rs. 5,000/- each and in default of payment of fine, further 3 month's simple imprisonment and further convicted and sentenced the appellants to one year R.I. u/s 25 of Arms Act in S.T. No. 459 and 460 of 2001.

2. On the basis of an information given by Radhey Shyam, Assistant Station Master, Bisalpur that some persons have killed a passenger inside the Train No. 166 Down when it stopped at Bisalpur Station, the F.I.R. was registered at case crime No. 185 of 2000 u/s 302 I.P.C. at Police Station G.R.P. Pilibhit. After registration of the F.I.R. S.I. Jai Prakash commenced the investigation. He recorded the statements of Assistant Station Master, Radhey Shyam and Munna. Thereafter, he reached at the Railway Station, Bisalpur and recorded the statement of Bhoopram, Station Master, Bisalpur. The dead body of unknown person was identified as of Jai Prakash Agnihotri. On his dictation HCP Sachidanand Rai prepared the inquest memo, which is Ext. Ka-9. He prepared letter to R.I., letter to C.M.O., Photo Lash and challan lash, which are Ext. Ka-10

to 12. The dead body was sealed and handed over to constable Om Prakash Misra and constable Rakesh Pandey for carrying it to the mortuary for post mortem examination. He collected blood smeared and plain earth from coach No. 72294 where the dead body was lying and prepared its recovery memo, which is Ext. ka-15. He also collected two empty cartridges of 12 bore and prepared its recovery memo, which is Ext. Ka-16. He also recorded the statement of Manoj Kumar, brother of the deceased. He also recorded the Statements of S.I. Narendra Singh Tewatiya, Rajendra Kumar Jaiswal, Murlidhar and Mohd. Yunus and Bhoopram Station Master. He also recorded the statement of Nanhi Devi and Vinod, brother of the deceased. He also recorded the statement of an eyewitness Atul Kumar Saxena. On 26.9.2000 he prepared the site plan, which is Ext. Ka-17. He recorded the statements of Bhola, Ved Prakash Misra, Chaukidar, and Basant Lal. One scooter, which was left on the road by the assailants was recovered by S.I. Narendra Singh Tewatiya and deposited by him at P.S. Bisalpur. In the Dickey of the scooter a licence in the name of Beniram Gangwar was recovered which was taken into possession.

3. On 29.9.2000 Bhanu Pratap Gangwar and Rajesh Kumar Gangwar were arrested. On the pointing out of Bhanu Pratap Gangwar a 315 bore pistol was recovered and a 12 bore pistol was recovered on the pointing out of Rajesh Kumar Gangwar. The pistols were sealed and recovery memo was prepared which is Ext. Ka-5. He also prepared the site plan of the place of recovery of the country made pistols, which is Ext. Ka-18. On the basis of recoveries of the country made pistols case u/s 25 Arms Act was registered. A letter was also recovered from the pocket of the deceased, which is Ext. Ka-3. On 14.10.2000, statements of Ram Krishna Agnihotri, Azam Khan and S.I. Narendra Singh Tewatiya were recorded. On 17.10.2000 statement of Atul Kumar Sexana u/s 164 Cr.P.C. was recorded by the Magistrate. On 23.10.2000 recovered Pistols were sent for scientific laboratory test. After conclusion of the investigation he submitted charge sheet against the accused persons.

4. The post mortem on the dead body of the deceased was conducted by Dr. R.S. Yadav on 26.9.2000 at 3 p.m. and noted following ante mortem injuries on the person of the deceased:

1. Gun shot wound 2 x 2 cm. below chin 2.0 cm. muscle deep. Margin irregular. Blackening present around the wound. On deeper dissection there is a hole in trachea and fractured 2 cervical vertebrae. There are 11 pellets present in the wound.

2. Multiple abrasion on right side of neck in area of 4 x 1 cm. 4.0 cm. above from right clavicle.

3. Gunshot wound 2 x 1.5 cm. x right side upper part of chest below clavicle 4.0 cm. away from tip of right shoulder joint. One bullet present in the wound. Blackening present around the wound. Muscle deep. Margin irregular. Four pellets present in the wounds.

4. Gunshot wounds 2 x 1.5 cm on right shoulder joint lateral part 4.0 cm. below from tip of right shoulder joint blackening present. Muscle deep. Margins irregular. Three pellets present in the wound.

5. Gunshot wound 4 x 6 cm. on right forearm. Margins irregular. Muscle deep. Tendons are seen. Two pellets present. Blackening present.

6. Gunshot wound 3 x 2 cm. on back of right shoulder joint muscle deep. Margin irregular. Blackening present.

7. Multiple gunshot wounds in area of 17 x 7 cm. around the , injury No. 6. Blackening present around the wounds. Biggest size of wound .5 x .5 cm. Smallest size of .2 x .2 cm. Four pellets present.

8. Multiple gunshot wounds in area of 20 x 8 cm. left lower arm elbow and left forearm. Blackening present. Size of biggest wound .5 x .5 cm. smallest of .2 x .2 cm.

9. Contusion 2 x 1 cm. on left side of chest. 17.0 cm. below from left clavicle.

10. Gun shot wound 4 x 2 cm. on back of lumbar region mid part. Fractured lumbar vertebrae. Dept in peritoneal cavity. Seven pellets present. One plastic tickle present.

11. Abrasion 4 x 2 cm. on right knee (Patella)

5. In the opinion of the doctor cause of death of deceased was due to shock and hemorrhage as a result of ante mortem injuries.

6. After the submission of charge sheet case was committed to the court of Session and the Sessions Judge had framed charges u/s 302/34 I.P.C. and 3/25/27 Arms Act against the accused persons which was denied by the accused and claimed trial.

7. In order to prove its case at the trial, the prosecution examined 16 witnesses in all and the case of the defence was of denial and false implication.

8. P.W. 1 Radhey Shyam, Assistant Station Master, Pilibhit deposed that on 25.9.2000 he was posted as Assistant Station Master. At about 13 O'clock in the night he received information from the control room Beesalpur Railway Station that Train No. 166 Down stopped at Beesalpur Station and some persons have shot one man who died. The train was stopped at Beesalpur station. He prepared the memo of information and sent to S.H.O., G.R.P., Pilibhit through one Munna which is Ext. Ka. 1

9. P.W. 2 Mohd. Yunus Siddiqui, Station Superintendent, Beesalpur deposed that on 25.9.2000 he was posted as Station Superintendent, Beesalpur He was present at the railway station at about 12.45 P.M. and at that time Train No. 166 Down reached at the station. He reached there alongwith one Murlidhar. He heard 4-6 shots and hue and cry was raised at the station. He received information that one person had been murdered and assailants have fled away.

He informed the Kotwali Beesalpur and they instructed him to contact G.R.P., Pilibhit. He sent information to A.S.M. Pilibhit and control room Pilibhit who ordered him to remove the bogey and thereafter the train had left the station at 3.25 P.M. In the meantime the police of Kotwali, Beesalpur had arrived.

10. P.W. 3 Rajendra Kumar Jaiswal is a hawker of toffee and groundnut. He did not support the prosecution case. He was declared hostile. In the cross examination he stated that he was resident of Beesalpur. He did not know Bhanu Pratap and Rakesh Kumar. Daroga did not record his statement. He could not say as to how Daroga recorded his 161 Cr.P.C. statement.

11. P.W. 4 Bhoopram Assistant Station Master, Railway Station Beesalpur deposed that on 25.9.2000 he was posted on the same post and he was present on his duty. At about 12.45 P.M. 166 DN train arrived at Beesalpur station and some persons had committed murder of a boy and hue and cry was raised at the railway station. One boy was lying dead in the gallery of Coach No. 72294. He immediately informed the Assistant Station Master, Pilibhit.

12. P.W. 5 S.I., Narendra Singh Tevatiya deposed that on 25.9.2000 he was posted as Sub Inspector, Police Station Beesalpur. On that date Jai Prakash Agnihotri was murdered. After receiving the information about the murder he also reached at the railway station.

13. He enquired about the incident. Atul Saxena, aged about 12 years informed him that he lives in Mohalla Kayasthan, Qasba Pooranpur with his uncle Vidhya Shanker Saxena. At about 12.30 P.M. he was sitting on a bench at Railway Station Beesalpur for going to Pooranpur. One boy also reached and sat beside him. As the train stopped at the platform, Bhanu Pratap and Rajesh came and put his hand on the shoulder of the boy, who was sitting beside him and he started running away. Bhanu Pratap and Rajesh started chasing him, carrying country made pistols in their hands. That boy entered into a bogey. Rajesh and Bhanu Pratap entered into the bogey and fired upon the boy. Both the assailants were known to that boy and they went away towards Qasba Beesalpur.

14. P.W. 6 Smt. Nanhi Devi deposed that she knew Bhanu Pratap and Rajesh who were friends of his deceased son. About 1 year and ten months back, she alongwith her son Vinod and Raju had gone to Beesalpur for taking medicine. Raju @ Jai Prakash went to Pilibhit for appearing in the examination. He had to board a train. She and Vinod purchased the medicines and were returning to their home. While they were returning, Rajesh and Bhanu Pratap met them on a scooter and they extended threat to her son. At about 1.00 in the noon she received information that her son was murdered.

15. P.W. 7 Vinod Kumar deposed that he alongwith his brother Jai Prakash Agnihotri and mother came to Beesalpur for treatment of his son Deepak. From the gate of Beesalpur Hospital Raju went to railway station for going to Pilibhit. After purchasing medicines he alongwith his mother were returning to their house. At about 11.45 A.M. Bhanu Pratap and Rajesh met them. They were very

angry. They told his mother that Raju used to write letters to their sister and he had illicit relations with her. They should stop him otherwise he would be killed. They returned to their Mohalla. At about 1.00 O" Clock they received information that Raju was murdered. He also proved hand-writing of deceased which are Exts. Ka. 3 and Ka. 4.

16. P.W. 8 Basant Lal deposed that he was Chowkidar of a woodshed. About 2 years back at about 12.00 O'clock, two persons parked their scooter in front of his shop and went towards railway station. After sometime he heard shots from the side of railway station and those two boys reached and tried to start the scooter but it did not start. They fled away leaving their scooter in front of his shed. The police had taken away the scooter.

17. P.W. 9 Ved Prakash deposed that he was a tenant in the house of deceased Raju. Bhanu Pratap and Rajesh were friends of Raju. About 2 years back Raju was murdered. About one or two months prior to his murder, Raju was not liking them and they stopped coming to his home. Few days prior to the occurrence he saw Rajesh in the house of Raju on the roof of his house. Seeing Rajesh he realised that he was very angry and he also warned Raju that he should be careful from Rajesh and Bhanu Pratap.

18. P.W. 10 H.C. Digvijay Sharma deposed that on 29.9.2000 he was posted at Police Station G.R.P., Pilibhit and in his presence accused were arrested and on the pointing out of the accused Bhanu Pratap one country made pistol was recovered and another country made pistol was also recovered on the pointing out of Rajesh. Recovery memo of country made pistols is Ext. Ka. 5.

19. P.W. 11 Dr. R.S. Yadav conducted the autopsy on the dead body of the deceased.

20. P.W. 12 Awadhesh is the witness of recovery memo. He deposed that on 29.9.2000 in his presence country made pistols were recovered on the pointing out of the accused.

21. P.W. 13 is Atul Kumar Saxena. He did not support the prosecution case. He stated that his statement u/s 164 Cr.P.C. was recorded and he had given the statement under the fear of police. He was declared hostile. The Sessions Judge had directed identification of the accused but he failed to identify the accused.

22. P.W. 14 Ram Krishna deposed that on 25.9.2000 two boys had parked their scooter in front of woodshed. The police had taken the possession of the scooter. The name of Rajesh was written on the back of the scooter. Registration papers of the scooter were also recovered from the dicky of the scooter which were in the name of the father of the accused. He had signed the recovery memo which is Ext. Ka. 2.

23. P.W. 15 Sub Inspector Jai Prakash deposed that on 25.9.2000 at 1.10 P.M. he registered the report on the basis of written memo of S.M., Pilibhit. A case was registered at Case Crime No. 185/00 u/s 302 I.P.C. against unknown persons, He

started the investigation. He recorded the statements of Assistant Station Master and Sri Munna. He reached at the railway station and recorded the statement of Bhoopram, Station Master, Beesalpur. On his direction H.C.P. Sachiddanand prepared the inquest memo, which is Ext. Ka. 9. Letter to R.I., letter to C.M.O. and photo lash, are Exts. Ka. 10 to 12. Challan lash and sample seal are Ext. Ka. 13 and 14. The dead body was sealed and handed over to Constables Om Prakash and Rajesh Pandey for carrying it to the mortuary for post-mortem examination. He collected the plain and blood smeared earth from the bogie and prepared its recovery memo which is Ext. Ka. 15. He also recovered 2 empty cartridges of 12 bore and prepared its recovery memo which is Ext. Ka. 16. Thereafter he recorded the statement of brother of the deceased Manoj Kumar. On 25.9.2000 he recorded the statements of Munna Lal, Sarvesh Mishra and Nand Kishore. Thereafter the statements of S.I. Narendra Singh Tiwariya, Rajendra Kumar Jaiswal, Murlidhar, Mohd. Unis Siddiqui and Bhoopram, Station Master were recorded. He also recorded the statements of Nanhi Devi, mother and Vinod Kumar, brother of the deceased. Thereafter he recorded the statement of eye witness Atul Kumar Saxena. On 26.9.2000 he prepared the site plan on the pointing out of Atul Kumar Saxena which is Ext. Ka. 17. Thereafter the statements of Bhola, Ved Prakash Mishra and Chowkidar Basant Lal were recorded. He also prepared the recovery memo of driving license and registration paper recovered from the dicky of the scooter deposited by S.I. Narendra Singh Tewariya which are Exts. Ka. 7 & Ka. 8. On 29.9.2000 accused Bhanu Pratap Gangwar and Rajesh Gangwar were arrested and on their pointing out country made pistols were recovered. A case u/s 25 Arms Act was also registered against the accused persons. The recovery memo of country made pistols is Ext. Ka. 5. He prepared the site plan of the place of recovery, which is Ext. Ka. 18. He also recorded the statement of Awadhesh Kumar, a witness of recovery of weapon of assault. Two love letters were also recovered from the pocket of the deceased, which are Ext. Ka. 3 and 4. On 17.10.2000 statement u/s 164 Cr.P.C. of Atul Kumar was recorded. On 23.10.2000 weapons of assault were sent for scientific examination. On 30.10.2000 he submitted the chargesheet against the accused.

24. P.W. 16 Jaswant Singh deposed that on 29.9.2000 he was posted as Sub Inspector, Police Station G.R.P., Pilibhit. Case Crime No. 186 of 2000 against Bhanu Pratap and case crime No. 187 of 2000 against Rajesh Kumar were registered u/s 25 Arms Act. He investigated the cases. He recorded statements of the witnesses and prepared the site plan, which are Ext. Ka. 22 and Ka 23. On 4.10.2000 he obtained sanction for the Prosecution from District Magistrate, Pilibhit which are Ext. Ka. 24 and Ka. 25. He submitted the chargesheet against the accused persons, which are Ext. ka. 26 and Ka. 27.

25. The Sessions Judge relying upon the prosecution case convicted and sentenced the appellants, as aforesaid.

26. We have heard Shri Dileep Kumar and Shri R.K. Vaish, learned Counsel for the appellants and Shri N.L. Srivastava, learned A.G.A. for the State.

27. The case in hand is of direct as well as circumstantial evidence. The findings of the trial court are based upon both kinds of evidences.

28. The first circumstance is of motive. The deceased was having an affair with the sister of the appellants, which was objected to by all of them. In support of this circumstance the prosecution has examined P.W. 6 Smt. Nanhi Devi who is mother of the deceased and P.W. 7 Vinod Kumar who is brother of the deceased. Both have deposed that on the date of occurrence, P.W. 6 Nanhi Devi and P.W. 7 Vinod Kumar had gone to Beesalpur to consult a doctor with regard to illness of grand daughter of P.W. 6, a two years old son of P.W. 7 Vinod Kumar. They stated that they had gone to Beesalpur alongwith the deceased Raju. Raju @ Jai Prakash, the deceased, left them at about 11 A.M. at the gate of the hospital for appearing in the examination paper in Pilibhit. He had to board a train at Beesalpur railway station. They had purchased medicines and were returning to their house. On their way Rajesh and Bhanu Pratap met them on a scooter and told them to warn her son as he had visited their house alongwith letter and in case he will not mend his ways he will have to face the consequences. The accused had threatened them at about 1 1.45 A.M. At about 1.00 O" clock she heard the news about the murder of her son.

29. P.W. 7 corroborated the testimony of P.W. 6. He also identified the writing of Raju on Ext. Kha. 13/67 and Kha. 13/68 which are Ext. Ka. 3 and Ka. 4. He also informed the investigating officer at the time of preparation of inquest report but he could not tell the reason as to why this fact has not been mentioned in his statement u/s 161 Cr.P.C. In support of the motive, P.W. 9 Ved Prakash @ Bhola was also examined. He stated that he was a tenant in the house of the deceased Raju. Bhanu Pratap and Rajesh were friend of Raju and they used to visit his house. About one or two months prior to the occurrence there was ill will between the accused and Raju and they stopped coming to his house. Few days prior to the occurrence he had seen Rajesh at the house of Raju. He had seen him and he had an impression that he was angry and he had also warned Raju to be careful from Rajesh and Bhanu Pratap. The evidence of P.Ws. 6,7 and 9 indicates that there was some ill will between the appellants and the accused in connection with some affair of the deceased with the sister of the appellants.

30. The defence has challenged the motive of the crime on the ground that the name of the sister of the appellants was Soni but the letter, which was alleged to have been recovered from the pocket of the deceased, the name of Kajal was mentioned in these letters and even the name of Raju @ Jai Prakash was mentioned as Sahil.

31. It appears that there was some enmity between the appellants and accused persons. The motive for committing the offence is difficult to prove by direct evidence. It is held to be a double edged weapon. There must be some reason for false implication also.

32. The other circumstance relied upon by the trial court is testimony of P.W. 8

Basant Lal who was Chowkidar of woodshed who deposed that on the date of occurrence two persons parked their scooter in front of the woodshed and after some time he heard shots from the side of railway station. These two persons who had parked their scooter came running and tried to start the scooter but they failed. Thereafter they left the scooter and ran away. He gave an information at the police station. He could not tell the number of the scooter nor he could identify the persons who had parked their scooter. P.W. 5 Sub Inspector N.S. Tewatiya and P.W. 14 Ram Krishna also deposed about the recovery of a scooter in front of the woodshed. This witness stated that the number of the recovered scooter was UP 26A-9589 which was in the name of Beni Ram, father of the appellants. From the scooter driving licence of Beni Ram was also recovered.

33. The two circumstances mentioned above in this case are that accused had threatened the deceased sometime prior to the occurrence and thereafter one scooter recovered in front of the woodshed which was parked by two boys prior to incident of firing and they again returned to take the scooter alongwith them but they failed to start the scooter and ultimately they left the scooter at that place and this scooter was registered in the name of the father of the appellants. It is important to mention that Chowkidar of woodshed did not identify the accused in court and the accused were not put up for identification during investigation. It cannot be said with certainty that these were the appellants who had parked the scooter. These two circumstances, in our opinion, do not prove that the appellants alone were the persons who had parked their scooter.

34. The last circumstance relied upon by the trial court is recovery of one 12 bore country made pistol on the pointing out of Rajesh and another country made pistol on the pointing out of Bhanu Pratap. In support of this recovery the prosecution has examined Jai Prakash, I.O., H.C. Digvijay Sharma and Awadhesh. They deposed that the accused Rajesh and Bhanu Pratap were arrested and on their pointing out from a pond opposite Beesalpur railway station two country made pistols were recovered. The Sessions Judge relied upon these evidence to connect the appellants with crime on the ground that in the post mortem examination report the injuries of 12 bore and 315 bore country made pistols were found on the person of the deceased. It is also important to mention that there is no such evidence on the record to connect these weapons with the crime. Two empty cartridges of 12 bore were alleged to have been recovered from the place of occurrence which were sent to ballistic expert for examination but ballistic expert report dated 26.11.2001 failed to connect recovered cartridges with the weapons recovered on the pointing out of the appellants and the Sessions had wrongly held that the weapons recovered on the pointing out of the appellant were connected with the crime.

35. The next most important evidence of the prosecution is the testimony of P.W. 13 A.K. Saxena. He did not support the prosecution case in court. He was declared hostile. The prosecution has filed his 164 Cr.P.C. statement in which he

named the appellants as accused. The Sessions Judge also relied upon the statement of the accused recorded u/s 164 Cr.P.C. The trial court ignored the fundamental rule of criminal jurisprudence that a statement of witness recorded u/s 164 Cr.P.C. cannot be used as substantive evidence and can be used only for the purpose of contradicting or corroborating him. See *George and Others Vs. State of Kerala and Another*, *Ram Kishan Singh Vs. Harmit Kaur and Another*, and *State of Delhi Vs. Shri Ram Lohia*,

36. This case is based upon only upon circumstantial evidence and the prosecution has proved following circumstances against the appellants:

(i) There was enmity between the deceased and the appellants in connection with some affair of the deceased with the sister of the appellants.

(ii) Prior to the occurrence they had met with the brother and mother of the deceased while they were on a scooter and extended threats.

(iii) Two boys had parked their scooter in front of a woodshed prior to incident of shooting at the railway station and thereafter they had tried to start the scooter but they could not do so and left the scooter in front of the woodshed and this scooter was registered in the name of father of the appellants.

(iv) After their arrest two country made pistols one 12 bore and one 315 bore were recovered on the pointing out of the appellants.

37. In our opinion these circumstances do not connect the appellants with the crime. The prosecution failed to prove that the appellants were the persons who had parked their scooter and they were the boys who were trying to take away the scooter in front of the woodshed. P.W. 8 Basant Lal did not identify the appellants as the boys who had parked their scooter and in our opinion this evidence is not sufficient to connect the appellants that they were present at the woodshed.

38. It has been laid down by the Apex Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

39. In the case of *Padala Veera Redely v. State of Andhra Pradesh* 1991 SCC 407 the Apex Court laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

1. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

2. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

3. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that with in all human probability the crime was committed by the accused and none else; and.

4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

40. The case in hand has to be gauged in the background of aforesaid principles.

41. In the light of the above, we are of the opinion that the circumstances alleged against the appellants are not such which unerringly prove that the appellants alone had committed the murder of the deceased.

42. These circumstances raise only suspicion against the appellants but it is well settled that suspicion, howsoever strong it may be, cannot take the place of proof. In any view of the matter, on the basis of the circumstances, it is not possible to draw an irresistible conclusion, which is in compatible with innocence of the appellants so as to complete the chain. It is well settled that in a case of circumstantial evidence, the chain of circumstances must be complete and in case there is any missing link therein, the same cannot form the basis for conviction. A strong suspicion, no doubt, exists against the appellants but such suspicion cannot be the basis of conviction, going by the standard of proof required in a criminal case.

43. for the foregoing reasons we are of the opinion that the prosecution has failed to prove its case beyond reasonable doubt against the appellants.

44. In the result this appeal is allowed. The conviction and sentences of appellants Bhanu Pratap Gangwar and Rajesh Kumar Gangwar under Sections 302/34 I.P.C. and 25 Arms Act is hereby set aside. Both the appellants are acquitted of the charges they were convicted for. The appellants are in jail. They shall be released forthwith unless wanted in any other case.

45. Office is directed to communicate this order to the court concerned within 15 days from today for compliance of this order.