

(2009) 03 AHC CK 0169
In the Allahabad High Court

Ganesh Yadav and Others (in Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 31-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 175, 313, 82, 83

Explosive Substances Act, 1908 — Section 5

Penal Code, 1860 (IPC) — Section 120B, 216, 302, 307, 34

Citation : (2009) 03 AHC CK 0169

Hon'ble Judges : Vijay Kumar Verma, J;Shiv Charan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Vijay Kumar Verma, J.—Challenge in this Appeal is to the judgement and order dated 10.12.1999 passed by the 4th Addl. Sessions Judge, Gorakhpur in Session Trial No. 465 of 1996 connected with S.T. No. 465-A of 1996, whereby acquitting the accused Rampreet and Bhagwat of the offence punishable u/s 120-B of Indian Penal Code (in short, "the I.P.C.") and further acquitting the accused Arjun and Ramjeet of the offence punishable u/s 216 I.P.C., the appellants-accused Ganesh Yadav, Channa @ Ram Chandra Yadav and Babunna Yadav have been convicted and sentenced to undergo imprisonment for life u/s 302 read with Section 34 IPC and ten years" rigorous imprisonment u/s 307 read with Section 34 IPC. However, these accused-appellants also have been acquitted of the offences punishable u/s 120-B IPC and Section 5 Explosive Substance Act.

2. In a very shocking incident, which occurred in the intervening night of 19/20-8-1995 at about 11-30 p.m. in village Jungle Agahi, tola Bharwal situated under the jurisdiction of P.S. Pipi Ganj, District Gorakhpur, brutal murder of three kids of the complainant Shanker Yadav s/o Lal Chandra was committed. In the same incident Shanker Yadav (P.W. 6), his wife Smt. Sandhyawati (P.W.3) and mother Smt. Jokhna sustained injuries.

3. Background facts, as projected by the prosecution in a nutshell are as follows:

Bethol, resident of village Bharwal, had two sons namely Rampreet and Lal Chandra. Appellants-accused Ganesh Yadav, Channa @ Ram Chandra Yadav and Babunna Yadav are the sons of Rampreet Yadav. The complainant Shanker Yadav is the son of Lal Chandra. When Shanker Yadav was aged about six months, his father Lal Chandra died, due to which his mother Smt. Jokhna went away to her maika in village Chokha carrying Shanker with her. About four years prior to the incident, consolidation proceedings started in village Bharwal. Hence, Shanker Yadav along with his mother, wife and children came back to his village Bharwal and began to live in his parental house. Shanker and accused Rampreet had half share each in the agricultural land left by Bethol, but Rampreet was not inclined to give the land of the share of Shanker to him and hence, Shanker filed objections in consolidation proceedings. The accused Bhagwat is the brother-in-law of accused Ram Chandra. He was clerk of an Advocate in Gorakhpur. When Shanker Yadav filed the case in consolidation proceedings, the accused Rampreet and his sons began to pressurise him to change his statement in consolidation proceedings, for which Shanker was not ready. On this, Rampreet and his sons as well as Bhagwat threatened Shanker to face the consequences. The house of Thakur Yadav is situated in eastern side of the house of Shanker and there is about 1-11/2 ft. wide gali in between these houses. At the time of incident, Thakur Yadav was not living in his house and a post office was functioning there. Prosecution case is that in the intervening night of 19/20-8-1995 Shanker Yadav, his mother Smt. Jokhna and wife Smt. Sandhyawati along-with daughters Poonam and Suman and son Sadanand were sleeping on the roof of their house. A lantern was illuminating on the roof. At about 11.30 p.m. a bomb was hurled from the house of Thakur Yadav, which fell down near Shanker, due to which he and his wife sustained injuries and they all awakened and began to raise hue and cry. In the meantime, another bomb was also hurled from the roof of Thakur Yadav, which fell down near the feet of Shanker, due to which he again was injured. These bombs were hurled by an unknown person, who was not known by name to Shanker and his family members. After sustaining bomb injuries, Shanker reached on the staircase of his house and took the side of wall. Thereafter, the accused Ganesh Yadav, Chandra Yadav @ Ram Chandra and Babunna Yadav, who were armed with gandasas came on the roof of Shanker and killed his all the three children by causing injuries to them by means of gandasas. Prior to the committing of murder of children, the appellant Babunna gave gandasa blow to Smt. Jokhna, mother of Shanker, due to which she sustained injuries. Smt. Sandhyawati, wife of Shanker, was sleeping near her children. Successive gandasa blows were given to Smt. Sandhyawati by the appellant Ganesh thereby causing grievous injuries to her. On hearing hue and cry, Behrichi s/o Jhinu, Phulraj Yadav s/o Bansdev and Patai s/o Dulare along with other persons came there having torches in their hands and saw the incident. Therefore, the accused persons came down from the roof and fled away.

4. After aforesaid incident, Shanker Yadav got the written report Ext. Ka-2 scribed from Village Pradhan Satya Narayan Yadav (P.W. 2) and thereafter

leaving the dead bodies of his children on the roof, he went to P.S. Pipi Ganj carrying his injured mother and wife in the tractor-trolley of Bheerichy and handed over the written report there. On the basis of this written report, chik FIR Ext. Ka-9 was prepared by the then Head Moharrir Govind Dixit (P.W. 8), who registered a case u/s 302/307 IPC and Section 5 Explosive Substance Act at crime No. 259 of 1995 on 20.08.1995 at 00.20 a.m. against Ganesh Yadav, Chandra Yadav, Babunna Yadav and one unknown person. Entry about registration of the case was made at the same time in G.D. No. 2 Ext. Ka-8.

5. After registration of the FIR, the injured Shanker, his wife Smt. Shandhywati and mother Smt. Jokhna were sent for medical examination and treatment to District Hospital, Gorakhpur, where they were medically examined by Dr. Surendra Dev (P.W. 9). The following injuries were found on the person of these injured- Injuries of Smt. Jokhna vide Injury Report Ext.Ka-9 (Medical Examination on 20.08.1985 at 2.50 a.m.)

(1) Incised wound 16 cm x 3.2 cm x muscle deep on right side neck extended from right mendable to back of neck. 1.4 cm. below right ear. Kept under observation.

(2) Incised wound 4 cm x 1.5 cm x muscle deep at right scapula.

All the injuries were fresh in duration and caused by some sharp edged weapon. Injuries of Shanker vide Injury Report Ext. Ka-10 (Medical Examination on 20.08.1995 at 3.00 a.m.)

(1) Lacerated wound 13 cm x 1 cm x muscle deep (Rt.) supra scapular part.

(2) Lacerated wound 5 cm x 1 x muscle deep middle of (Rt.) shoulder.

(3) Abrasion with contusion 15 cm x 12 cm on (Rt.) side neck with (Rt.) ear which is lacerated blackening present around all wound with singing of hair at (Rt.) temporal region kept under observation.

(4) Lacerated wound 2.5 cm x .5 cm x depth under observation at dorsom of (Rt.) forearm middle arm under observation.

(5) Abraded traumatic swollen in area of 6 cm x 4.5 cm on outer aspect of (Rt.) shoulder joint kept under observation.

(6) Lacerated wound in area of 5 cm x 2 cm x depth under observation on medial side of (Rt.) leg 15 cm below to (Rt.) knee joint under observation.

(7) Abraded traumatic swollen 4.5 cm x 5 cm at outer aspect of (Lt.) shoulder.

(8) Multiple small laceration abrasion and scorching points of wounds sizes in area of 43 cm x 6 cm on out. medial aspect of (Lt.) leg lineas 3/4 & medial aspect of fort and ankle kept under observation.

All the injuries were fresh in duration and surrounded by blackening and were caused by some explosive material.

Injuries of Smt. Sandhyawati vide Injury Report Ext. Ka-11 (Medical Examination on 20.08.1995 at 3.10 a.m.)

(1) Multiple incised wound in area of 17 cm x 10 cm x bone deep on (Lt.) side face extended from lat. of (Lt.) eye to back of neck including (Lt.) ear. Injury kept under observation.

(ii) Incised wound 6 cm x 2 cm x muscle deep on (Lt.) side of chick, 6 cm Lat. of angle of mouth. Kept under observation.

(iii) Incised wound 5 cm x .5 cm x muscle deep at chin. Kept under observation.

(iv) Incised wound 9 cm x 3 cm x bone deep at (Rt.) shoulder kept under observation.

(v) Incised wound 2 cm x .5 cm x muscle deep upper part of (Lt.) hand on dorsum surface kept under observation.

(vi) Incised wound 3 cm x 1 cm x bone deep on (Lt.) ring finger kept under observation.

(vii) Abraded contusion 7 cm x 3 cm (Rt.) upper arm middle part Lat aspect. u.o.

(viii) Incised wound 6 cm x .5 cm on back of (Lt.) arm just above elbow joint. All the injuries were fresh in duration and caused by some sharp edged weapon. After medical examination, all these injured were admitted in the hospital for treatment. Smt. Jokhna was examined by ENT Surgeon Dr. R. N. Sahi (P.W. 10). Smt. Sandhyawati and Shanker also remained in the treatment of Dr. R. N. Sahi and other doctors. The details of their treatment is given in bed head tickets (Ext. Ka-12, Ext. Ka-13 and Ext. Ka-14).

6.S. I. Durga Prasad Singh (P.W. 14) was posted as Station Officer at P.S. Pipi Ganj. The case was registered in his presence. He himself took-up the investigation in his hands. The statement of complainant Shanker was recorded at the police station itself. After sending Shanker, his wife Smt. Sandhyawati and mother Smt. Jokhan for medical examination and treatment to the District Hospital, Gorakhpur, S.O. Durga Prasad Singh along with police force reached on the place of incident. Two constables were deployed on the roof of the house of complainant in the night to keep watch over the dead bodies of Km. Suman, Poonam and Sadanand. Thereafter search for the accused persons was made in the night, but in vain. The inquest proceedings on the dead bodies was conducted by PW-14 in the morning on 20.08.1995, during which inquest report and other connected papers Ext. Ka-23 to 31 were got prepared from S.I. Prahlad Tiwari and thereafter, the dead bodies in sealed condition were sent through the constables for post-mortem examination, which was conducted by Dr. D.P. Verma, P.W. 12.

7. According to the post-mortem report Ext. Ka-20, post-mortem examination on the dead body of Km. Poonam aged about six years was conducted at 4.00 p.m. on 20.08.1995. The following ante mortem injuries were found on her person:

(1) Incised wound on back of skull on its back 8.5 cm x 6 cm x C. deep.

(2) Incised wound 5 cm below (1) on back of neck transversely situated 7.5 cm x 5 cm x C. deep.

8. On the same day, at 5.00 p.m., postmortem examination on the dead body of Master Sadanand, aged about 4 years, was conducted. According to the post mortem report, Ext.-ka 21, the following ante-mortem injuries were found on his person:

(1) Incised wound on back of skull with back 15 cm x 6 cm x bone deep spine is cut. Spinal cord cordial C1- C2.

(2) Incised wound on upper part on back transversely 20 cm x 9 cm x bone deep.

9. The post mortem examination on the dead body of Km. Suman, aged about 5 months, was conducted on the same day at 5.30 p.m. According to the post mortem report, Ext. Ka-22, following ante-mortem injuries were found on her person:

(1) Incised wound on back of skull 15 cm x 8 cm x trachea deep cutting concord spine above C1.

(2) Incised wound on back upper part transversely situated 18 cm x 8 cm x bone deep.

The death of all the deceased was caused due to shock and haemorrhage as a result of ante mortem injuries.

10. After sending the dead bodies for postmortem examination, S.O. Durga Prasad Singh made spot inspection and got the site plan Ext. Ka-32 prepared from S.I. Prahlad Tiwari. Pieces of bomb were found lying on the place of incident, which were taken into possession and fard Ext. Ka-33 was got prepared by S.I. Prahlad Tiwari. Blood stained and simple cement from the places where dead bodies were lying was collected and fard Ext. Ka-34 was got prepared from S.I. Prahlad Singh. Blood stained hairs of Smt. Jhokhna were found lying on the roof, which too were taken into possession and fard Ext. Ka-35 was got prepared. Blood stained kathri (bichhauna) and pieces of clothes were also taken into possession and fard Ext. Ka-36 was got prepared by S.I. Prahlad Tiwari. Thereafter, the statements of the witnesses Patai Yadav and Phulaz Yadav were recorded. The torches of the witnesses Phulaz, Behrichi and Patel and lantern of the complainant were inspected by PW-14 and after giving them in the supurdgi of witnesses fard supurdginama Ext. Ka-1 was got prepared by S.I. Prahlad Tiwari. When the accused persons could not be arrested, warrants u/s 82/83 Cr.P.C. were obtained from the Court of Magistrate concerned and attachment of the property of accused Ganesh Chand and Babunna was made.

On 26.08.1985 a raid was made at the house of Arjun in Village Baijnathpur, P.S. Kampeerganj (Gorakhpur) to make the arrest of accused persons, but they fled away from there. Thereafter, Arjun was arrested for the offence punishable u/s

216 I.P.C. for giving shelter to the accused persons. On the same day, raid was made at the house of Ramjeet in village Bane to make the arrest of accused persons, but from there also the accused persons fled away and hence Ramjeet was also arrested for the offence punishable u/s 216 I.P.C. These two accused were brought to P.S. Pipi Ganj, where entry of their arrest and arrival was made in G.D. No. 14 on 26.08.1995 at 12.30 p.m. vide Ext. Ka-38. When the accused Ganesh, Ram Chandra and Babunna surrendered in Court on 25.09.1995, their statements were recorded in jail. On the basis of their disclosure statements, an application Ext. Ka-39 for police custody remand was given in the Court of Magistrate concerned, which was allowed on 07.10.1995. In pursuance of that order, the accused Ganesh, Babunna and Ram Chandra were taken into police custody from District Jail Gorakhpur on 08.10.1995 and on their pointing out three gandasas (material Ext. 1 to 3) were recovered by S.I. Prahlad Tiwari P.W. 11 and recovery memo Ext. Ka-6 was prepared in this regard. Prior to that, due to law and order situation, investigation was entrusted to S.I. Prahlad Tiwari on 07.10.1995. After making recovery of gandasas on the pointing of the accused, inspection of the place of recovery was made by S.I. Prahlad Tiwari and site plan Ext. Ka-15 was prepared. Statements of the witnesses of recovery were recorded and thereafter the accused persons along with recovered gandasas were brought to P.S. Pipi Ganj, where entry was made in G.D. No. 19 at 3.45 p.m. on 08.10.1995 vide Ext. Ka-16. The entry of departure of S.I. Prahlad Tiwari from P.S. Pipi Ganj to make the recovery of weapons on the pointing out of accused persons was made in GD No. 10 at 7.20 a.m. on 08.10.1995 vide Ext. Ka-17.

11. Investigation was again taken up in his hands by S.O. Durga Prasad Singh on 11.10.1995. The recovered three gandasas and blood stained cement and clothes etc. were sent for chemical examination to Forensic Science Laboratory vide Ext. Ka-20. From the statement of accused Bhagwat, the name of unknown accused came to light. After completion of the investigation against the accused Babunna, Ganesh, Chandra @ Ram Chandra, Bhagwat, Ramjeet and Arjun, chargesheet Ext. Ka-41 was submitted against them on 27.11.1995 and investigation against Rampreet and Rajbhan remained continued. After arrest of the accused Rampreet on 13.01.1996, chargesheet Ext. Ka-42 was submitted against him, in which the accused Rajbhan @ Ramadhar was shown absconder, as he could not be arrested inspite of attachment of his property.

12. On the basis of the chargesheets mentioned above, the accused persons were summoned to face the trial and on the case being committed to the Court of Session, charge u/s 120-B and 307/302, both read with Section 34 IPC and Section 5 Explosive Substance Act was framed against the accused Ganesh Yadav, Channa @ Ram Chandra and Babunna. Separate charge u/s 216 IPC was framed against the accused Ramjeet and Arjun. The accused Bhagwat and Rampreet were charged separately u/s 120-B IPC. All the accused pleaded not guilty and claimed to be tried.

13. The prosecution in order to bring home the charges to the accused persons

examined sixteen witnesses in all. P.W. 1 Phulaz @ Phulraj has claimed himself to be the eyewitness of the incident. He has proved Fard Supurdginama torches Ext. Ka-1. P.W. 2 Satnarayan Yadav is the scribe of written report Ext. Ka-2. He is not the eyewitness of the incident, but he has deposed about the motive of committing the crime by the accused persons. PW-3 Sandhyawati is the injured. P.W. 4 Babu Lal is the witness of conspiracy, which is said to have been hatched by the accused Ganesh, Ram Chandra, Babunna, Rampreet and Bhagwat along with one other person. Since the accused persons have been acquitted of the charge of conspiracy and State of UP has not preferred any appeal against their acquittal, hence the statement of this witness is not required to be discussed in detail now, because in the absence of appeal against acquittal this Court can not set-aside the acquittal of the accused persons u/s 120-B IPC. PW-5 Sri Kant is the witness of recovery of gandasas on the pointing out of the appellants. The said recovery is said to have been made on 08.10.1995. He has proved recovery memo Ext. ka-6 and gandasas material Ext. 1 to 3. P.W. 6 Shanker is the complainant. He also had sustained injuries in the incident. Written report Ext. Ka-2 has been proved by him. P.W. 7 Prem Shanker is the witness of making search of the accused persons in the house of Arjun and Ramjeet, but since these accused have also been acquitted of the charge u/s 216 IPC for giving shelter to other accused, hence it is not necessary to discuss in detail the testimony of this witness. P.W. 8 Head Constable Govind Dixit was posted as Head Moharrir at P.S. Pipi Ganj. He is the scribe of chik FIR Ext. Ka-9 and GD of registration of FIR Ext. Ka-8. Both these documents have been proved by him. P.W. 9 Dr. Surendra Dev had medically examined Smt. Jokhna, Shanker and his wife Smt. Sandhyawati on 20.08.1995 in District Hospital, Gorakhpur. He has proved their injuries and injury reports Ext. Ka-9 to Ext. Ka-11. P.W. 10 Dr. R. N. Shahi was posted as ENT surgeon in District Hospital Gorakhpur on 20.08.1995. When the injured Shanker, his wife Smt. Sandhywati and mother Smt. Jokhna were admitted in the hospital, they remained in his treatment. Bad head tickets Ext. Kha-12, Ext. Ka-13 and Ext. Ka-14 have been proved by Dr. Rahi. P.W. 11 S.I. Prahlad Tiwari was posted as Sub-Inspector at P.S. Pipi Ganj, Gorakhpur at the time of incident. Investigation was handed over to him on 07.10.1995. After taking the accused Ganesh, Babunna and Ram Chander in police custody from District jail, Gorakhpur on 08.10.1995, recovery of gandasas material Ext. 1 to 3 was made by him on their pointing out in presence of other witnesses. Recovery memo Ext. Ka-6 has been proved by him. Site plan Ext. Ka-15 of the place of recovery of gandasas was also prepared by this witness, which has been proved by him. Copy of GD No. 15 dated 08.10.1995 Ext. Ka-16 and copy of GD No. 10 time 7.20 a.m. dated 08.10.1995 Ext. Ka-17 have also been proved by him. P.W. 12 Dr. D. P. Verma had conducted postmortem examination of all the three deceased. Postmortem reports Ext. Ka-20 to Ext. Ka-22 have been proved by him. P.W. 13 Constable Rajnikant Yadav had carried the dead bodies along with constable Tehsildar Singh Yadav for postmortem examination on 20.08.1995. P.W. 14 S.I. Durga Prasad Singh is the Investigating Officer. He has proved the papers, which have been mentioned herein-above. P.W. 15 constable Suresh

Chand Yadav had carried special report of this case on 20.08.1995 for making service on the authorities concerned. He departed from the police station at 3.05 a.m. on 20.08.1995 and after making service of special report came back at 8.10 p.m. on the same day. PW-16 Constable Shiv Shanker Singh had carried certain articles and gandas for chemical examination to Forensic Science Laboratory, Uttar Pradesh, Lucknow on 06.12.1995. This is the entire evidence which has been adduced by the prosecution in support of its case.

14. In their statements recorded u/s 313 of the Code of Criminal Procedure (in short, "the Cr.P.C."), the appellants-accused denying prosecution allegations have stated that due to enmity, they have been falsely implicated in this case. It is further stated that the complainant lodged false report against them due to conspiracy of village Pradhan, Satnarayan Yadav and some other persons. The accused-appellant Channa @ Ram Chandra made further statement that "hamare vadi ke parivar se koi jhagda fasad nahin tha. Ham log shanti purvak reh rahe the. Vadi apne pure hisse ka kabij va dakhila tha. Khandani makan mein reh raha tha. Hamse uski koi mukadmeinbaji nahin thi. Vadi se anya kai logon se chakbandi mein mukadmein baji ho rahi thi."

The appellant-accused Babunna Yadav has further stated in answer to question No. 20 in his examination u/s 313 Cr.P.C. that the FIR does not bear thumb impression of complainant and he was not at the police station at the time of registration of FIR. It is also stated by the accused that on next day of the incident Satnarayan and police personnel looted his property and his house also was fallen down.

15. The accused persons in their defence have examined DW-1 Ram Adhare and DW-2 Janardhan Prasad. They have stated in their statements that on 21.08.1995, the police had enquired from them about the house of Ramjeet and Arjun and thereafter Arjun and Ramjeet were carried by the police to the police station.

16. The learned trial court having taken the entire evidence into consideration acquitting some accused and also acquitting the appellants-accused of the charges u/s 120-B IPC and Section 5, Explosive Substance Act, convicted and sentenced them as stated in para-1 above. Hence, this appeal.

17. We have heard Sri Braham Singh and Sri M.P. Yadav, Advocates appearing for the appellants and learned AGA for the State and perused the entire evidence and other material on record carefully.

18. To prove the happening of the incident, the prosecution has examined one independent eyewitness Phulaz @ Phulraj (PW-1) and two injured Smt. Sandhyawati (P.W. 3) and Shanker (P.W. 6). First we take up the evidence of injured witnesses. The injured Shanker was examined in trial court on 24.10.1998 as PW-6. Regarding the incident in which his three children were brutally murdered, Shanker has stated that about three years ago, when he, his daughters Poonam and Suman, son Sadanand, wife Smt. Sandhyawati and

mother Smt. Jokhna were sleeping on the roof of the house, at about 11.30 p.m. a bomb was thrown near him by an unknown person from the roof of the house of Thakur Yadav, due to which he sustained injuries and they all awakened and began to raise hue and cry. In the meantime, another bomb was hurled towards him from the house of Thakur Yadav, which fell down near his feet and from that bomb also he sustained injuries. It is further stated by the witness that Ganesh, Babunna, Ram Chandra and Rampreet exhorted saying that cut them all. P.W. 6 has further stated that at that time, the accused Ganesh, Babunna and Ram Chandra were having Gandasas in their hands. It is also stated by the witness that Babunna gave gandasa blow on the neck of his mother Smt. Jokhna, due to which she sustained injuries. Thereafter, Ganesh gave gandasa blow to Poonam due to which she died. The accused Channa @ Ram Chander committed murder of Sadanand by giving gandasa blow in his neck. Thereafter Babunna gave gandasa blow to Suman aged about four months, due to which she also died instantaneously. It is further stated by the witness that Ganesh caused injuries by gandasa to his wife Sandhyawati. P.W. 6 has further stated that when on hearing hue and cry, Behrichi, Phulaz and Patai rushed towards his house, the unknown person hurled a bomb towards them saying that you all rush away, otherwise they all would be killed and thereafter the accused persons firing from tamancha, descended from the roof through the staircase of the house of Thakur Yadav and fled away from there. It is also stated by P.W. 6 that a lantern was illuminating on the roof at the place where they were sleeping and there was electric light also on the poll near the house of Ganesh. A lantern was brought by the witness in trial court at the time of his examination. It is further stated by P.W. 6 that the witnesses were also having torches. It is also stated by Shanker that after getting the written report (Ext. ka-2) scribed from Satnarayan Yadav, he went to P.S. Pipi Ganj carrying his injured mother and wife in the tractor trolley and after reaching there lodged the FIR. PW 6 Shanker has deposed about the motive also.

19. Next witness about the incident is Smt. Sandhyawati P.W. 3, who is the wife of Shanker. She also had sustained injuries in the incident. Her examination-in-chief in trial court was recorded on 18.08.1998. About the incident, she has stated that about more than three years ago in the next night of Janmashtami, when she, her husband Shanker, children Sadanand, Poonam and Suman and mother-in-law after taking their meal were sleeping on the roof of their house, at about 11.30 p.m. a bomb was hurled on their roof, due to which her husband Shanker sustained injuries in his shoulder and they all awakened immediately and she saw that one unknown person and Ganesh, Channa @ Ram Chandra and Babunna were abusing from the house of Thakur Yadav. With a view to save himself, her husband went to the staircase. In the meantime, another bomb also fell down on their roof due to which her husband sustained injuries in his leg. It is further stated by P.W. 3 that they all began to cry saying that "Ganesh, Channa and Babunna have come to kill us". Smt. Sandhyawati has further stated that after hurling two bombs, Ganesh, Chanda and Babunna, who were armed

with gandasas, came on the roof of her house saying that "all have been injured, kill them" and fourth unknown person remained on the roof of Thakur Yadav. It is further stated by P.W. 3 that after reaching on their roof, Ganesh gave gandasa blow to Poonam, Chandra gave blow of gandasa to Sadanand and Babunna gave gandasa blow to Suman, due to which they all succumbed to the injuries instantaneously. The witness has also stated that when she went near to her children, the accused Ganesh gave gandasa blows to her, due to which she also sustained injuries. It is also stated by P.W. 3 that a lantern was illuminating on the roof, where they were sleeping. Smt. Sandhyawati has further stated that on hearing hue and cry, village people came there having torches and when they challenged the accused persons, a sound of fire and bomb explosion was heard and thereafter, all the three accused persons fled away through the stair case of Thakur Yadav. It is also stated by P.W. 3 that nobody was residing in the house of Thakur Yadav and post office was functioning there at the time of incident. She has further stated that after the incident many persons came to her house, who carried them to P.S. Pipi Ganj in the tractor trolley of Behrichi and thereafter she as well as her husband and mother-in-law were sent to District Hospital, Gorakhpur, where they were admitted. Smt. Sandhyawati has further stated that this incident was caused by the accused persons due to the dispute of partition of the land, because the accused persons were not giving the land of the share of her husband.

20. Both the witnesses were subjected to lengthy cross-examination by the learned Counsel for the accused persons, but nothing could be elicited from their mouth so as to discard the creditworthiness of their statement. The ocular evidence of these witnesses is fully corroborated by medical evidence. They both are injured and hence their presence at the time of incident is not doubtful. After going through the statements of these witness carefully, we are of the considered opinion that their testimony is wholly reliable. There is no material contradiction in the testimony of these witnesses and on the basis of their testimony, it is fully proved beyond reasonable doubt that murder of their children was committed by the appellants-accused Ganesh, Channa @ Ram Chandra and Babunna on the alleged date, time and place. From the reliable testimony of these eyewitnesses, this fact is also established that there was light of lantern at the time of incident and in that light they had duly recognized the accused persons, who were previously known to them being their close relative. All the three accused are cousin of the complainant Shanker and hence the question of mis-identity does not at all arise. When the murder of children was committed by the appellants by giving gandasa blows, Smt. Sandhyawati was present there near to them. It has come in the testimony of the witnesses that the accused persons were not covering their faces at the time of committing the crime. Therefore, there was no difficulty in identifying the appellants at the time of incident. A known person can be recognized from short distance even in the light of stars in open space. The complainant Shanker had sustained injuries by bombs' explosion and he also had recognized the appellants at the time of the incident.

21. One independent witness Phulaj @ Phulraj has also been examined by the prosecution as eyewitness of the incident. His statement as PW-1 was recorded in trial court on 07.03.1998. About the happening of the incident, Phulaz @ Phulraj has stated that about 21/2 years ago in the next night of Janmashtmi at about 11.30 p.m., he heard the sound of explosion of two bombs in western side of house, on which he rushed towards that place having a lathi and torch and at that time many other persons of village also came there having lathies and torches. The witness has further stated that he saw that the accused Ganesh, Chandra and Babunna were cutting the children of Shanker by gandasas on the roof of his wife. It is also stated by the witness that Shanker, his mother and wife also sustained injuries in the incident. It is further stated by PW-1 that when the incident was happening on the roof, the mother and wife of Shanker were weeping and crying saying that Ganesh, Babunna and Chandra have been cutting them all. This witness has further stated that after the incident Ganesh, Babunna and Chandra and their unknown companion came down from the roof through the staircase of Thakur Yadav and fled away and at that time also, he had seen them. It is also stated by P.W. 1 that due to the fear of tamancha and bomb, village people could not apprehend the accused persons, who fled away towards the north side giving threatening to kill by bomb. PW-1 has further stated that when he reached on the roof of Shanker, he saw that all the three children were killed and Shanker, his mother and wife were also lying in injured condition. Although the witness had not accompanied the injured persons to P.S. Pipi Ganj, but he has stated that after the incident Shanker, his wife and mother went to P.S. Pipi Ganj in the tractor of Behrichi. This witness had shown his torch to the investigating officer. Fard Ext. ka-1 of the torch has been proved by him. Although in his examination-in-chief, PW-1 Phulaj has claimed himself to be the eyewitness of the actual incident of committing the murder of the children, but during cross-examination on 06.04.1998, he has stated that he did not see the accused persons on the roof of the house and he had seen them, when they were fleeing away after descending from the roof through the staircase. In the same cross-examination, the witness has further stated that he did not see the accused committing the murder of deceased persons and causing injuries to the injured. Therefore, although on the basis of aforesaid statement of cross-examination of P.W. 1 Phulaz, it is apparent that he did not see the accused persons at the time of committing the murder of the deceased and causing injuries to the injured, but on the basis of his testimony also this fact is fully established beyond reasonable doubt that murder of the children of Shanker was committed at the roof of his house and injuries to him, his wife and mother were also caused in the same incident, which happened in the next night of Janmashtmi at about 11.30 p.m. From the testimony of this witness, this fact also is established that bombs also exploded in the incident.

22. The ocular evidence of injured Shanker and Sandhyawati as well as the witness Phulaj finds corroboration from the medical evidence. We have already mentioned the injuries, which were found on the person of deceased and injured

persons. Injuries to all the three deceased were caused by sharp edged weapon. Dr. D. P. Verma P.W. 12, who conducted postmortem examination on the dead bodies, has stated in his statement that injuries of all the deceased were possible to be caused in the intervening night of 19/20-08-1995 at about 11.30 p.m. by means of some heavy sharp edged weapon. All the three deceased died instantaneously as a result of shock and haemorrhage caused by the ante mortem injuries sustained by them. The injured Smt. Jokhna was medically examined by Dr. Surendra Dev P.W. 9 at 2.50 a.m. on 20.08.1995. Two incised wound were found on her person. Ext. Ka-10 is the injury report of Shanker. About the injuries of Shanker, P.W. 9 Dr. Surendra Dev has stated that his injuries were caused by some explosive substance like bomb. Ext. Ka-11 is the injury report of Smt. Sandhyawati wife of Shanker. Numerous incised wounds were found on her person at the time of medical examination by Dr. Surendra Dev. Regarding the injuries of these persons, Dr. Surendra Dev has stated that injuries of all these three injured were possible to be caused in the intervening night of 19/20-8-1995 at about 11.30 p.m. According to Dr. Dev, the injuries of Smt. Jokhna and Sandhyawati were caused by some sharp edged weapon. As such, the medical evidence is fully corroborating ocular evidence in present case.

23. Regarding the testimony of P.W. 6 Shanker, it was contended by the learned Counsel for the appellants that this witness did not see the incident of causing injuries to his children and wife and hence, his testimony is not material to establish the complicity of the appellants in the incident. The contention of the learned Counsel was that Shanker had come down from the roof at the time of causing injuries to the children and Smt. Sandhyawati as stated by him during cross-examination and hence there was no occasion for him to see the incident of causing injuries to Smt. Sandhyawati and children on the roof of the house. We do not find any force in this contention. It has come in the statement of PW-6 Shanker that after sustaining bomb injuries, he had taken the side of wall on the staircase and was witnessing the incident from there. At page 5 (Paper No. 70 of paper book) of his statement, Shanker has stated that after sustaining injuries, he did not run away with a view to save himself, but he took the side of wall on the staircase and when the accused persons began to cut his children on the roof, he came down from there and hence he could not see the accused persons at the time of causing injuries to his wife. From this statement, it can not be inferred that Shanker had not seen the accused persons on the roof of his house at the time of causing injuries to his children, because the witness has specifically stated that when the accused persons began to kill his children on the roof, only then he came down. Although as stated by Shanker at page 5 of his statement, he did not see the accused persons causing injuries to his wife, but prior to that he had seen the entire incident and also had seen the accused persons causing injuries to his children. Role of all the three appellants has also been specified by P.W. 6 at page 5 of his statement. He has stated that the accused Babunna gave blow to his mother, the accused Ganesh gave blow to Poonam and Ram Chandra @ Channa gave blow to Sadanand and thereafter

Babunna came near to his youngest daughter Suman and killed her. At page 7 (paper No. 72 of paperbook) also, P.W. 6 Shanker has stated that "mere upar jab pehla bam chala tab main jine se sat kar khada ho gaya. Jab mulziman ghatna ghatit kar chuke tab mujhe aihwas hua ki ab mulziman mujhe bhi mareinge. Tabhi sidhi pakad kar niche chala aya." From this statement, it is crystal clear that P.W. 6 Shanker had seen and recognized the appellants-accused at the time of incident and injuries to his mother and children were caused by the accused persons in his presence.

24. Regarding the light at the time of incident, it was contended by the learned Counsel for the appellants that incident is said to have occurred in the next night of Janmashtmi at about 11.30 p.m., whereas the moon might have risen after midnight on that date and hence in the dark night, there was no occasion for the witnesses to identify the assailants. Regarding the light of lantern, it was submitted by the learned Counsel for the appellants that in the written report Ext. Ka-2, it is not mentioned that lantern was illuminating on the roof at the time of incident and hence existence of light of lantern becomes doubtful. It was further submitted in this regard that in the chik FIR Ext. Ka-7, light of lantern has been purposely introduced by the Head Moharrir and hence, no importance can be attached to the question and answer in the chik FIR. It is true that in the written report Ext. Ka-2, which was got scribed by the complainant from village pradhan Satnarayan Yadav, it was not mentioned that lantern was illuminating on the roof at the time of incident, but on this ground, it can not be said that there was no occasion for the witnesses to identify the appellants at the time of incident. After scribing the chik FIR Ext. Ka-7, the then head moharrir Govind Dixit P.W. 8 had asked the following question from the complainant Shanker at the time of registration of the case:

Prashn: Andheri rat mein kis prakash dwara aap va aapke parivar va gavahan dwara mulziman ko pehchana gaya?

Uttar: Lalten v torch ki roshni se main tatha meri aurat va maan tatha gavahan dwara mulziman ko pehchana hai.

In our opinion, the head moharrir did not commit any illegality in seeking clarification about the light from the complainant at the time of registration of FIR and from the answer given by the complainant Shanker to the question put to him by the head moharrir, this fact is borne out that light of lantern was there at the place of incident in which he and his wife and mother recognized the appellants-accused at the time of incident. Moreover, the incident had occurred in open place on the roof. Shanker and his wife Sandhyawati had seen the appellants-accused at the time of incident from a very short distance. As we have stated herein-above also, a known person can be recognized even in stars" light in open place from a short distance. Therefore, there was no difficulty for Shanker(P.W.6) and his wife Sandhyawati (P.W.3) in recognizing the appellants at the time of incident.

25. It was further vehemently contended by the learned Counsel for the appellants that FIR of this case is ante-timed and was registered in the morning after conducting inquest proceedings. It was submitted in this regard that name of the accused and witnesses and the weapons carried by the accused persons at the time of incident are not mentioned in the inquest reports and on this ground it can be inferred that FIR was not in existence at the time of holding the inquest proceedings. Next submission in this regard was that when P.W. 7 Prem Shanker came to the house of the complainant Shanker in the morning at about 5.00 a.m. on 20.08.1995, he (Shanker), was present there, as stated by P.W. 7 Prem Shanker at page 3 (paper No. 76 of paperbook) in his statement. Drawing our attention towards the statement of page 3 of P.W. 7 Prem Shanker, it was contended by the learned Counsel for the appellants that when the complainant Shanker was present in village at about 5.00 a.m. on 20.08.1995, then the theory of lodging the FIR by him in the intervening night of 19/20-8-1995 at 00.20 hours is falsified. We are not at all impressed with both these contentions. So far as the statement of P.W. 7 Prem Shanker is concerned, his statement that when he reached at the house of Shanker at about 5.00 a.m. after the incident, then Shanker was present there at his house, is apparently false, because after medical examination of Shanker on 20.08.1995 at 3.00 a.m. by P.W. 9 Dr. Surendra Dev, he was admitted in hospital, as stated by P.W. 9. Therefore, Shanker could not be present at his house at about 5.00 a.m. on 20.08.1995 and hence, no importance can be attached to the statement of P.W. 7 Prem Shanker about the presence of complainant Shanker at his house at about 5.00 a.m. on 20.08.1995 and on the basis of this statement, it can not be inferred that FIR is ante-timed.

26. About the omission to mention the names of accused and witnesses in the inquest reports, it was submitted by the learned Counsel for the appellants that had the FIR was in existence at the time of holding the inquest proceedings in the morning of 20.08.1995, then names of the appellants and witnesses and the weapons carried by the accused ought to have been mentioned in the inquest reports on the basis of the FIR and since in the inquest reports, this important fact is missing, hence it would be inferred that FIR was not in existence at the time of holding the inquest proceedings. This submission of the learned Counsel is wholly misconceived and can not be accepted, because it is not the requirement of law to mention the name of the accused persons and the weapons carried by them in the inquest report. In this regard reference may be made to the case of Radhamohan Singh @ Lal Saheb and Ors. v. State of U.P. J.T.2006 (1) SC 482, in which the Hon"ble Apex Court has observed that mentioning of the name of accused and witnesses or weapons carried by the accused in the inquest report is not the requirement of law and inquest report is confined to the ascertainment of the apparent cause of death and it need not mention, who assaulted the deceased and who were the witnesses of the assault.

27. The provision for holding of inquest is contained in Section 174 Cr.P.C. Heading of Section is, "Police to enquire and report on suicide etc." Sub-sections

(1) and (2) thereof read as under:

174. Police to enquire and report on suicide, etc. (1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

28. The language of the aforesaid statutory provision is plain and simple and there is no ambiguity therein. An investigation u/s 174 Cr.P.C. is limited in scope and is confined to the ascertainment of the apparent cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal and homicidal or caused by animal. It is for this limited purpose that persons acquainted with the facts of the case are summoned and examined u/s 175 Cr.P.C. The details of the overt acts are not necessary to be recorded in the inquest report. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted or who are the witnesses of the assault is foreign to the ambit and scope of proceedings u/s 174 Cr.P.C. Neither in practice nor in law it is necessary for the person holding the inquest to mention all these details.

29. In *Pedda Narayana and Others Vs. State of Andhra Pradesh*, it was held by the Hon'ble Apex Court that the proceedings u/s 174 Cr.P.C. have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings u/s 174. Neither in practice nor in law was it necessary for the police to mention those details in the inquest report. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. Their omission is not sufficient to put the prosecution out of Court.

30. In *Mrs. Shakila Khader and Others Vs. Nausheer Cama and Others*, the contention raised that non-mention of a person's name in the inquest report would show that he was not a eye-witness of the incident was repelled on the ground that an inquest u/s 174 Cr.P.C. is concerned with establishing the cause of death and only evidence necessary to establish it need be brought out. The same view was taken in *Eqbal Baig Vs. State of Andhra Pradesh*, that the non-mention of name of an eye-witness in the inquest report could not be a ground to reject his testimony. Similarly, the absence of the name of the accused in the inquest report cannot lead to an inference that he was not present at the time of commission of the offence, as the inquest report is not the statement of a person wherein all the names (accused and also the eye-witnesses) ought to have been mentioned.

31. The view taken in *Podda Narayana v. State of A.P.* (supra) was approved by a three-judge Bench in *Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh*, and it was held that the testimony of eye-witnesses could not be discarded on the ground that their names did not figure in the inquest report prepared at the earliest point of time. The nature and purpose of inquest held u/s 174 Cr.P.C. was also explained in the case of *Amar Singh Vs. Balwinder Singh and Others*,

32. Thus it is well settled by a catena of decisions of the Hon'ble Apex Court that the purpose of holding an inquest is very limited, viz., to ascertain as to whether a person has committed suicide or has been killed by another or by an animal or by machinery or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence. There is absolutely no requirement in law of mentioning the details of the FIR, names of the accused or the names of the eye-witnesses or the gist of their statement nor it is required to be signed by any eyewitnesses.

33. Therefore, in view of the law laid down by the Hon'ble Apex Court in the cases mentioned herein-above, due to non-mentioning the names of accused-appellants in the inquest reports, it cannot be inferred that murder of the deceased persons was committed by some unknown persons and FIR was not in existence, as contended by the learned Counsel for the appellants.

34. It was also vehemently contended by the learned Counsel for the appellants that motive as alleged in FIR and evidence is false, because prior to the incident, the complainant Shanker had got possession over the agricultural land of his share and since there was no dispute about the land, hence there was no motive for the appellants-accused to commit the alleged offences. We find ourselves unable to agree with this submission of the learned Counsel for the appellants. From the statement of PW-6 Shanker, this fact is borne out that at the time of incident, a dispute regarding the agricultural land was going on between the parties and matter was pending in consolidation proceedings. The manner in which the murders of three children were committed shows that such murders can be committed only by the persons, who wanted to eliminate entire family of Shanker. From the evidence this fact is borne out that when Shanker was aged

about 5 or 6 months, his father Lal Chand had died and thereafter his mother Smt. Jokhna went away to her maika carrying him with her. It is also borne out from evidence that when consolidation proceedings started, Shanker came to his native village Bharwal and began to live in his parental house. It is admitted that Bethol had two sons namely Rampreet and Lal Chand. Rampreet is the father of the appellants-accused, whereas Lal Chand was the father of Shanker. In the agricultural land left by Bethol, there was half share of Lal Chand, but after his death, the land of his share also was being cultivated by Rampreet and his sons (appellants-herein), because as stated above, after the death of Lal Chand, his wife Smt. Jokhna had gone away to her maika carrying his son Shanker with her. When Shanker came back to his native village on the commencement of consolidation proceedings and claimed his half share in the ancestral agricultural land from his uncle Rampreet and his sons (appellants-accused), they felt annoyed and declined to give the land of his share, due to which he was compelled to file objections in consolidation proceedings claiming his half share in ancestral agricultural land. This was the root of entire incident. If some unknown persons would have come to commit the murder of Shanker for any reason whatsoever, then they would not have killed innocent kids. It appears that the appellants-accused wanted to eliminate the entire family of Shanker, so that they may become absolute owner of the entire ancestral agricultural land left by Bethol and it was for this reason that in a planned manner, the appellants-accused along with one unknown person came at the place of incident and after hurling bombs towards Shanker and his family members in the intervening night of 19/20-8-1995 caused injuries to Shanker, his wife Sandhyawati and mother Smt. Jokhna and also committed brutal murder of three innocent kids, who were sleeping on the roof with their father and mother. Even a small girl aged about four months was not left alive and three children were brutally murdered by causing them injuries by means of gandasas, which were recovered on the pointing out of the appellants vide recovery memo Ext. ka-6, on which human blood was found as per report dated 31.12.1995 of chemical examiner, which is available in lower court record. Therefore, it can not be said that there was no motive for the appellants-accused to commit the offences, with which they have been charged.

35. Moreover, it is a case of direct evidence. The prosecution has adduced reliable oral evidence in the form of statement of Shanker P.W. 6 and his wife Smt. Sandhyawati P.W. 3, who both are injured and their presence at the time of incident is not doubtful. Their testimony is also wholly reliable. It is well settled principle of law that where there is direct reliable evidence to prove the crime, the matter of motive loses significance. In the case of Thaman Kumar Vs. State of Union Territory of Chandigarh, , the Hon'ble Apex Court has observed as under:

There is no such principle or rule of law that where the prosecution fails to prove the motive for commission of the crime, it must necessarily result in acquittal of the accused. Where the ocular evidence is found to be trustworthy and reliable

and finds corroboration from the medical evidence, a finding of guilt can safely be recorded even if the motive for the commission of the crime has not been proved.

36. In the case of State of Himachal Pradesh Vs. Jeet Singh, the Apex Court has made the following observations:

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

37. The following observations regarding motive made by the Hon'ble Apex Court in the case of Nathuni Yadav and Ors. v. State of Bihar and Anr. 1997 (34) ACC 576 are worth mentioning:

Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impells a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Chambell struck a note of caution in "Reg v. Palmer" thus: "but if there be any motive which can be assigned I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of Criminal Courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties.

38. In the case of Molu and Others Vs. State of Haryana, , the Hon'ble Apex Court has held as under in para 11 of the report at page 2505:

It is well settled that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Sometimes the motive is clear and can be proved and sometimes, however, the motive is shrouded in mystery and it is very difficult to locate the same. If, however, the evidence of the eye-witnesses is credit-worthy and is believed by the Court which has placed implicit reliance on them, the question whether there is any motive or not becomes wholly irrelevant.

39. Regarding motive for commission of crime, the Apex Court has observed as under in the case of Suresh Chandra Bahri Vs. State of Bihar with Gurbachan

Singh,

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

40. Drawing our attention towards the statements of Smt. Sandhyawati and Shanker, it was further submitted by the learned Counsel for the appellants that according to the statements of these witnesses, the assailants were not covering their faces at the time of incident, which is indicative of the fact that some unknown persons might have committed the incident, because a neighbour would not commit such crime without taking precaution to conceal his identity. The contention of the learned Counsel was that time of about midnight was chosen to commit the crime and at such time if the appellants had committed the crime, they would have certainly covered their faces so that they might not be identified by the witnesses and since the faces of the assailants were open, the only inference that can be drawn would be that the appellants had not committed the alleged crime. We find no force in this contention also. The appellants had not come to commit robbery or dacoity in the house of the complainant. They had come to eliminate the entire family of Shanker in very daring manner and with that motive, the appellants not only caused injuries to Shanker, his mother and wife, but they brutally murdered his three innocent kids by causing them injuries by means of gandas. Complicity of the appellants in the said incident is established beyond all reasonable doubt on the basis of wholly reliable testimony of Shanker and Smt. Sandhyawati, which finds corroboration from the medical evidence. Therefore, merely because the appellants were not covering their faces, it can not be inferred that some unknown assailants had committed the alleged offences. Heinous crimes like murder, abduction etc. are being committed now-a-days in day and night without taking precaution to conceal the identity. Therefore, the aforesaid contention of the learned Counsel for the appellants can not be accepted being devoid of any force.

41. It was further submitted by learned Counsel for the appellants that Shanker was not present at the time of incident and his injuries have been fabricated only with a view to show his presence at the time of incident. The contention of the learned Counsel was that main grudge to the appellants was with Shanker, but he was not killed. It was further submitted by the learned Counsel in this context

that Shanker would not have been spared had he been present on the spot at the time of incident. We are not at all impressed with this submission also. We have already mentioned the injuries, which were found on the person of Shanker at the time of his medical examination by Dr. Surendra Dev. Ext. Ka-10 is the injury report of Shanker, which shows that as many as eight injuries were sustained by him. According to Dr. Surendra Dev P.W. 9, the injuries of Shanker were caused by some explosive substance like bomb. After medical examination, Shanker was admitted in the hospital for further treatment. Injuries of Shanker were neither superficial nor self-inflicted. It has come in evidence that after sustaining bomb injuries, Shanker had come on the staircase and from the side of wall, he witnessed further incident and when the appellants-accused began to cause injuries by means of gandas to his kids, he came down through the staircase. Therefore, presence of Shanker can not be doubted merely because he was not followed by the appellants to commit his murder.

42. Certain lapses on the part of investigating officer were also brought to our notice. It was submitted in this context by the learned Counsel for the appellants that although murder of kids and injuries to the injured persons are said to have been caused due to dispute of agricultural land, but the investigating officer did not make any effort to collect the papers of litigation from the consolidation department and on this ground it can be said that the motive as alleged by the prosecution is not proved. It was further submitted regarding the lapse on the part of investigating officer that statement of Smt. Sandhyawati and Smt. Jokhna were recorded by the investigating officer Durga Prasad Singh (PW-14) with great delay on 25.11.1995, whereas the incident had occurred in the month of August 1995. It is true that P.W. 14 Durga Prasad Singh has stated at page 4 (paper No. 100 of paper book) of his statement that he had recorded the statements of Smt. Jokhna and Smt. Sandhyawati on 25.11.1995, but in our considered opinion, due to this lapse or any other lapse on the part of investigating officer, the prosecution case can not be thrown out. It is well settled principle of criminal law by a catena of decisions of this Court and Hon'ble Apex Court that prosecution would not suffer due to the negligence and laches on the part of investigating officer. The Full Bench of this Court in the case of Gopal v. State of U.P. (38) 1999 ACC 549 has held that investigation of the case, if faulty, even mischievous or collusive should not be a ground to reject the ocular testimony of the witnesses. The following observations of para 12 of the judgement are worth mentioning:

At the very outset, we want to say that it is very easy to find fault with anything. Even accurate computers are prone to commit faults and mistakes. Not only this, human mind cannot be read. Sometimes it works in the direction that it becomes adamant to help one party and tries its level best to spoil the case. It is well known, at least by the police officers, who investigate the case, also know that they should take prompt action and should immediately record the statement of the witnesses. They should not make cuttings and over writings etc. in the police papers so as to create suspicion about the sanctity of the papers. They should

fairly prepare the inquest report and police papers and should write the case diary with accuracy and correctly. These preposition of law and facts cannot be doubted. But if the police officers deliberately sleep over the matter, try to spoil the case and do not record the evidence of the witnesses immediately, the poor dead persons who have been killed cannot come out to say why you are spoiling the case. The bereaved family and the witnesses have only to remain silent spectators to what the police officers do. If they intervene, a judicial notice of the fact can be taken that they are humiliated, even beaten and implicated in false cases. Fear of police atrocities keeps them mum.

43. Drawing our attention towards the statement of P.W. 3 Sandhyawati at page 3 (paper No. 56 of the paper book), it was submitted by the learned Counsel for the appellants that prior to the registration of FIR, the police had reached on the place of incident and thereafter with consultation of police, FIR was registered and hence, due to this serious lacuna regrading registration of the FIR, prosecution case becomes doubtful. We find no force in this contention. Assuming for the sake of argument that on getting information from any source about the commission of such horrible incident in which three innocent kids were brutally murdered and injuries were caused to other persons, the police had reached on the place of incident with a view to maintain the law and order situation and FIR was registered thereafter by the complainant Shanker, then on this ground, the case of the prosecution can not be thrown out. It has come in evidence of the witnesses that Shanker had got the written report Ext. Ka-2 scribed in the village from Pradhan Satnarayan Yadav (PW-2) after the incident and then he went to P.S. Pipi Ganj carrying his injured wife and mother with him by tractor and after reaching at the police station, he lodged the FIR there. We have already held that FIR is not ante timed. There is nothing on record to show that FIR was lodged with consultation of police. Therefore, no benefit of arrival of the police at the place of incident prior to lodging the FIR can be extended to the appellants.

44. No other point worth mentioning was urged before us by the learned Counsel for the parties.

45. Before parting with this judgement, we would like to point out a glaring mistake committed by the trial court in passing the sentence. The learned trial court has not imposed any fine alongwith substantive sentence of imprisonment for the offence punishable u/s 302 I.P.C., whereas it is mandatory to impose fine also in case of conviction u/s 302 IPC. The language used in Section 302 I.P.C. is, "and shall also be liable to fine". Where the expression used by the legislature in the Sections for which conviction is recorded is "and shall also be liable to fine", the Court is under obligation to impose fine also in addition to substantive sentence of imprisonment. No discretion is left to the Court to levy or not to levy fine and imposition of both imprisonment and fine is imperative in such case, as held by the Hon"ble Apex Court in the case of Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others, in which reference has been made to the case of Rajasthan

Pharmaceutical Laboratory, Bangalore and Others Vs. State of Karnataka,

46. In view of the foregoing discussion, the appeal has to be dismissed, as the learned Trial court has not committed any error of law or fact in convicting the appellants-accused. Since the State of U.P. has not preferred any appeal for enhancement of sentence, hence we are not inclined to enhance the sentence by imposing fine or awarding death sentence.

47. Consequently the appeal being bereft of any merit is hereby dismissed. The conviction and sentence of the accused-appellants Ganesh Yadav, Channa @ Ram Chandra Yadav and Babunna Yadav is affirmed. All the three appellants are undergoing sentence in jail. They shall be kept there to serve out the remaining sentence awarded by the trial court.

48. The Office is directed to return trial court record expeditiously along with a copy of this judgement.