

(2015) 08 AHC CK 0030

In the Allahabad High Court

Case No : Cri. Appeal No. 5722 of 2007 and Cr. A. No. 6855 of 2007

Hori Lal and Others

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 11-08-2015

Acts Referred:

Arms Act, 1959 — Section 25
Evidence Act, 1872 — Section 25, 26, 27
Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2015) 90 ALLCC 929

Hon'ble Judges : Surendra Vikram Singh Rathore, J; Raghvendra Kumar, J

Bench : Division Bench

Advocate : S.D.S. Jadun, Jai Raj Singh Tomar, Sushila Jadaun, Kavita Tomar and P.K. Singh, for the Appellant; P.K. Singh, Advocates for the Respondent

Judgement

Surendra Vikram Singh Rathore, J—Criminal Appeal No. 5722 of 2007-Hori Lal and others v. State of U.P. and Criminal Appeal No. 6855 of 2007-Kaloo v. State of U.P. arise out of a common judgment, hence, the same are being disposed of by a common judgment. Learned Counsel for the appellants, learned A.G.A. for the State were heard. We have perused the material available on record.

2. Criminal Appeal No. 5722 of 2007 has been preferred by the appellants-Hori Lal and Nanhku who are real brothers and sons of Panna Lal and Laxmi Kant son of Indrapal and Criminal Appeal No. 6855 of 2007 has been preferred by the appellant Kaloo challenging the judgment and order dated 20.8.2007 passed by Additional Sessions Judge, Kanpur Nagar in Sessions Trial No. 721 of 2005 and Sessions Trial No. 722 of 2005, arising out of Case Crime Nos. 104 of 2005 and 115 of 2005, Police Station Maharajpur, District Kanpur Nagar whereby all the appellants were convicted for the offence under section 302 read with section 34 IPC and were sentenced to undergo imprisonment for life and also with fine of Rs. 5000/-. The appellants were further convicted for the offence under section 307 read with section 34 IPC and were sentenced to undergo rigorous imprisonment for a period of four years each and also with fine of Rs. 1000/-

each, with default stipulation of three months" additional imprisonment. The appellant Kalloo was also convicted for the offence under section 25 Arms Act and was sentenced to undergo rigorous imprisonment for a period of three years and also with fine of Rs. 1000/- with default stipulation of three months additional imprisonment.

3. All the sentences were directed to run concurrently.

4. At present appellant Kalloo and Hori Lal are in custody and the appellant Laxmi Kant and Nanhku are on bail.

5. Case of the prosecution, as disclosed in the FIR, was that on 7.4.2001 one Gore Lal son of Panna Lal was murdered in which Karan, Tara and Surjan who happens to be sons of complainant Smt. Raj Rani were falsely implicated. Because of that enmity the appellants on 29.4.2005, when Karan and Surjan were sitting on the door of one Siyawati Pasi in village Chhatmara at about 4.00 p.m., brothers of Gorey Lal (deceased of earlier incident) Kalloo, Hori Lal and Nanhku who were real brothers alongwith one Laxmi Kant who was resident of a different village reached at the house of Siyawati Pasi and after taking out their country made pistols exhorted to kill them. Appellants Surjan and Kalloo started running to save themselves and they were chased by the appellants for a distance of about half kilometer. Lastly Karan was apprehended in the field of Ram Singh where Kalloo fired at the deceased Karan with his country made pistol and caused his death. The appellants also fired at Surjan with their country made pistols but anyhow he survived and ran away from there. The incident is alleged to have been witnessed by Surjan and the other persons who were working in their fields. When complainant Raj Rani, after getting the information of this incident, was going towards the place of occurrence then all the appellants met her on the way who were armed with their country made pistols and were coming back after committing murder of his son Karan. Seeing the complainant-appellant Hori Lal said that According to the complainant Hori Lal was a convicted accused in the murder case of her husband and was sentenced with imprisonment for life. At the time of this incident he was on bail in appeal. The complainant made an effort to trace Surjan but she could not succeed and thereafter the FIR of this case was lodged on 29.4.2005 at about 20:05 hours at police station Maharajpur which was at a distance of about four and half kilometers from the place of occurrence.

6. The case of the defence was of their false implication because of the old enmity between the two families.

7. After registration of the case investigation started and the inquest proceedings took place. The dead body was sent for post-mortem which was conducted on 30.4.2005 at about 1.00 p.m. and the following injuries were found on his person:

(A) Abraded contusion 2 c.m. x 1 c.m. on right side of forehead 4 c.m. above right eye brow.

(B) Firearm wound of entry 4 c.m. x 3 c.m. x buccal cavity deep on the right side of face and upper part of the neck just below right ear. Margins inverted, black collar present around wound. Underlying lower jaw was fractured.

(C) Firearm wound of exit 8 c.m. x 5 c.m. x buccal cavity deep, margins over the upper jaw right side fractured, on the right side of face below right nasal bone and right maxilla bone were fractured.

In the opinion of the doctor the duration of the death was about one day and cause of death was hemorrhage and shock due to ante-mortem fire arm injury.

8. During course of investigation, on 18.5.2005, appellant Kalloo was taken on police remand and on his pointing out a country made pistol which was kept in a polythene bag and was buried underground alongwith one live cartridge 12 bore was recovered and its memo was prepared and this case under section 25 of Arms Act was also tried and decided alongwith the main offence as S.T. No. 722 of 2007.

9. In order to prove its case, the prosecution has examined PW-1 Smt. Raj Rani, the complainant of this case and mother of the deceased Karan but she is not an eye-witness of this case. PW-2 is Constable Jai Chand Chaudhary, who was a member of the police party at the time of alleged recovery of country made pistol on the pointing out of appellant Kalloo. PW-3 is Surjan who is an eye-witness of this case, who at the relevant time was sitting with the deceased Karan (his real brother) and was also attacked by the accused persons. He has supported the case of the prosecution. PW-4 is Dr. S.N. Bajpai, who has conducted the post-mortem on the body of the deceased. PW-5 S.I. Manoj Kumar Singh, who has conducted the inquest proceedings on the body of the deceased on 29.4.2005, PW-6 is Inspector Yogendra Kumar Rai, Investigating Officer of this case and is also a witness of recovery under section 27 of the Evidence Act. PW-7 is Constable Shambhu Dayal Patel, who has prepared the chik report and G.D. of this case, PW-8 is the subsequent Investigating Officer of this case who after completion of the investigation has filed the charge-sheet in this case, PW-9 is S.I. Ajai Kumar, Investigating Officer of the case under Arms Act.

10. No evidence has been adduced on behalf of the appellants in their defence.

11. Learned Trial Court after appreciating the evidence on record has convicted the appellants as above. Hence, the instant appeals.

12. Submission of the learned Counsel for the appellants was that in the instant case, the complainant was not an eye-witness of this incident and evidence of PW-2 was not the least reliable. It has further been submitted that the prosecution has utterly failed to prove as to how the complainant came to know about the incident and she narrated the entire incident in the FIR which shows that it was prepared at the police station in consultation with the police while by that time there was no information as to how the offence was committed. It has further been submitted that the evidence of PW-3 Surjan and his conduct was

not the least reliable and it appears from his evidence that he was not even present in the village and subsequently he came to the village. Since there was none to support this false prosecution story, therefore he has been cited as a witness to support the case of the prosecution. A false case has been concocted and the prosecution has utterly failed to produce any independent witness to support the case of the prosecution. Since appellants Hori Lal was an accused in the murder of the husband of the complainant thereafter he alongwith his brothers has been falsely implicated.

13. Learned Additional Government Advocate has submitted that in the instant case admittedly the complainant side and the accused-appellants both were having very strong enmity and several murders had taken place from both the sides and because of that enmity the deceased Karan who was accused in the murder case of brother of Hori Lal was murdered. Therefore, there was very strong motive for the appellants to commit this offence and because of the fear of the appellants no independent person could dare to come forward as a witness in this case.

14. Perusal of the FIR itself shows that Smt. Raj Rani was not an eyewitness of any fact. At the time of incident she was present in her house which was situated at a distance of one kilometer from the place of occurrence and only after getting the information of this incident, she was going towards the said place. She states that while she was on the way she met with the accused persons who were coming back after committing the offence. Horilal stated that . She states that FIR was scribed by some unknown person on her dictation and thereafter it was lodged at the police station. Perusal of the FIR shows that all the details of the incident, that the deceased alongwith Surjan were sitting at the house of Siyawati in village Chhatmara where the appellants reached and after challenging the deceased they were chased for about half kilometer thereafter the appellant Kalloo caused the death of Karan by firing at him in the field of Ram Singh, were mentioned in the FIR. The appellants are also alleged to have fired on PW-3 Surjan. However he has not received any injury. In her cross examination she has stated that after visiting the place of occurrence she came back to her house and thereafter she lodged the FIR. She has admitted that she was not told by anyone about this incident as nobody was ready to tell her because of the terror of accused persons. She has admitted that several murders have taken place since 1988 in both the families and both the families are at daggers drawn. She has admitted in her cross-examination that she got the information that her son has been murdered in her house and the said village was at the distance of about one kilometer. So virtually there was also no occasion to meet the appellants while going towards the place of occurrence because admittedly her village was about one kilometer from the place of occurrence. After lodging the FIR she came back to her village at about 9.00 p.m. She had gone to the place where the incident had taken place with Darogaji at about 10.00 p.m. Nobody accompanied her to the police station, nor to the place where the incident had taken place. The FIR was scribed at the door of her house. She has also admitted that no

person of the village Chhatmara told her that her son was murdered by accused persons and her son Surjan, who is an eye-witness of this incident, met her after about two days of the incident. He met her at her house. Thus the evidence of this witness clearly indicates that neither she has seen the incident nor she was told about the incident by any person and she met her son Surjan, who is the sole eyewitness of this incident, after two days. Even if her statement is taken to be true even then while she was going towards the place of occurrence then Hori Lal only told her that But the details of the incident and role played by them were not disclosed by the appellants. So virtually this witness, according to her own statement, had no information about the incident. But perusal of the FIR clearly shows that all the details have been mentioned in the FIR. The prosecution has made absolutely no effort to explain this ambiguity as to how the complainant came to know such details of this incident and without any information how the roles played by accused persons and the manner in which the incident has taken place were mentioned in the FIR.

15. Law is settled on the point that prosecution must prove its case beyond reasonable doubt and must stand on its own legs. Prosecution cannot take advantage of any weakness of the defence. It is really strange that during investigation neither the Investigating Officer made any effort to enquire this aspect nor during trial public prosecutor made any effort to get it explained as to how the complainant narrated all the details of the incident in her F.I.R.

16. The aforementioned omission on the part of the prosecution leaves a big gap and there is nothing on record even to presume as to how the complainant got the information of this incident and how all the details of the incident were mentioned in the FIR. This fact, by itself, makes the defence story probable that the FIR was prepared in collusion with the police and specific role of firing and the manner of the incident was only a cooked up story. Specific question was put in cross-examination to the Investigating Officer whether they made any effort to question the complainant as to how she came to know about the entire incident. This question was replied in negative by PW-6 Inspector Yogendra Kumar Rai. Even the name of the person who has scribed the FIR was not disclosed. According to the admitted case of the prosecution the deceased and PW-3 Surjan were chased for about half kilometer from the house of Siyawati to the field of Ram Singh but not even a single person could be produced by the prosecution to prove this aspect of the case. Admittedly chain of murders have taken place in two families, so in such a situation no independent person would involve himself as a witness and invite the enmity of the other party.

17. In the present day world people avoid to become a witnesses in a criminal cases because they consider it as a civil dispute between two parties and they avoid to invite enmity with the accused persons. This apathy of the public has become a big hindrance in the administration of criminal justice.

18. Hon'ble Apex Court in the case of Shiv Ram and Another Vs. State of U.P., AIR 1997 SC 3996 : (1998) CriLJ 76 : (1997) 8 JT 500 : (1997) 6 SCALE 466 :

(1998) 1 SCC 149 : (1997) 4 SCR 531 Supp , has considered this aspect and was of the view that nowadays it is a common tendency that no outsider would like to get involve in a criminal case much less in the crime of present magnitude. Therefore it is quite natural that no independent witness will come forward to assist the prosecution. It is well settled that the evidence of witnesses cannot be discredited only on the ground that they are close relatives of the deceased persons but what is required in such situation is that the Court must scrutinize the evidence of such witnesses with utmost care and caution.

In another case Appa v. State of Gujarat AIR 1988 SC 698, Hon"ble Apex Court observed that Experience reminds us that civilized people are generally insensitive when crime is committed even in their presence. They withdraw from both, victim and vigilant. They keep themselves away from the Court. They take crime as a civil dispute. This kind of apathy of general public is indeed unfortunate but it is everywhere whether in village life or town and city. One cannot ignore this handicap. Evidence of witnesses has to be appreciated keeping in view such ground realities. Therefore, the Court instead of doubting the prosecution case where no independent witness has been examined must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any suggested by the accused.

19. But it does not absolve prosecution from discharging its burden to prove its case beyond reasonable doubt. Evidence of prosecution witness on which prosecution places reliance must be wholly reliable.

20. Now there is sole evidence of PW-3 Surjan is before us. He has supported the case of the prosecution and has stated that appellant Kalloo fired at Karan due to which he died on the spot and thereafter the other appellants also fired at him with their country made pistols. Admittedly, no injury has been received by this witness. This witness in his cross-examination has admitted that for the last 15 years there was enmity in the two families and several murders have taken place in which the members of both the families were made accused. He has stated that he had not given the information of this incident on that day nor he told this fact to anybody and he went to village Sudhauli. When he came to know that the police has come then after arrival of the police he went to the said place. At that time dead body was lying there and at about 3-4 a.m. in the night the dead body was taken to Maharajpur. It is really strange that PW-1 also states that she also reached the place of occurrence with police but these two witnesses have not stated that they met the other. He stayed in village Chakeri in the said night. The police dropped him at Chakeri village. He has stated that the accused persons have also shot" one or two fires on him but the said fires did not hit him. He was chased by the accused persons for some distance. He has stated that he had left his village Goraiya and lives in Fatehpur. However, his brother Karan was living in village Goraiya. At the time of incident he had gone to Chatmara to hire a tractor for thrashing. He has admitted that he did not talk with any person for tractor and thrasher. Tractor and thrasher were not available in the said village at that

time. So they sat down under the "Jamun" tree. He has admitted that he was hiding himself in village Sudhauli but neither he disclosed this incident to Pradhan nor to the village Chowkipur and this place was at a distance of about 300 meters from the place of occurrence. According to the appellants this witness was present in village Kanswari, District Fatehpur and after the incident he was called and this false FIR was lodged. PW-4 is a formal witness who has proved the post-mortem-report and according to his evidence there was wound of entry and wound of exit and the said injury was the cause of his death. PW-6 is the Investigating Officer. As stated earlier, he has stated that he made no effort to inquire from the complainant Raj Rani as to how she came to know about the details of the incident. At this stage it would be pertinent to mention here that country made pistol which is alleged to have been recovered on the pointing out of the appellant Kalloo was sent for Forensic Science Lab for test but it did not match with the empty cartridge which was recovered from the place of occurrence. Learned Trial Court on this point has observed that reason for this report would be that the said empty cartridge might have been fired from the country made pistol of the co-accused person and not by the country made pistol of the appellant Kalloo. So far as the factum of recovery of country made pistol is concerned that stands proved by the evidence of the witnesses. Admittedly, PW-3 Surjan was living in District Fatehpur on the date of incident and he admits that he came to village Chhatmara in search of tractor and thrasher but not even a single witness to this effect that he contacted any person for the tractor and thrasher could be produced. PW-3 has admitted that he was living at Fatehpur on the date of incident so this aspect also makes his presence on the scene of occurrence highly doubtful. After admission of PW-3 Surjan that he was living in Fatehpur on the date of incident his presence on the place of occurrence becomes highly improbable and in absence of any evidence that he made any effort to contact any person to hire tractor, his presence on the scene of occurrence becomes unbelievable as the reason for his presence could not be established. Even his subsequent conduct that for a period of two days he made no effort to contact his own mother when his real brother was murdered is also highly unnatural. Admittedly, he came to the place of occurrence while the police was present on the scene of occurrence and he says that the police dropped him at village Sudhauli. Even when this witness was sitting in the police Jeep, he made no request to take him to his own village to meet his own mother. Apart from it, PW-1 Smt. Raj Rani has also nowhere stated that on the said date PW-3 Surjan had come to her house from Fatehpur and he along with deceased went to Chhatmara to engage tractor and thrasher. She has nowhere stated at what time Karan left his house and for what purpose and with whom. While according to the evidence of PW-3 the deceased Karan, at the relevant time, was living in village Goraiya where the complainant Raj Rani resides. So it shows that the evidence of PW-1 is only a tutored story. She was the best witness to state at what time her son Karan left the house and with whom and also for what purpose.

21. After careful scrutiny of the evidences, we are of the considered view that the sole evidence of Surjan was not the least reliable. Neither he could satisfy the Court regarding his presence on the place of occurrence nor he could furnish any logical explanation not to meet his mother. Apart from it, keeping in view the said long and strong enmity he has not sustained even a single pellet injury while he stayed at a village which was only at a distance of 300 meters from the place of incident. These circumstances give rise to the only inference of his absence on the place of occurrence at the time of the incident. Once the Court reaches the conclusion that the evidence of PW-3 Surjan was not reliable then there is no other evidence on record to connect the appellants with the instant offence. The only inference that can be drawn from the above circumstance is that Smt. Raj Rani got the information of this incident. She went to police station and keeping in view the criminal background and strong enmity between the two families this story was cooked up and Surjan was made a witness in the said FIR. He was subsequently called from Fatehpur and he came after about two days. The conduct of this witness, as stated earlier, was highly unnatural. Hon"ble Apex Court in a recent judgment in the case of Abdul Razzaq v. State of Karnataka 2015 (152) AIC 155 (SC), has considered the conduct of a witness while appreciating his evidence.

22. Absolutely abnormal conduct of a witness gives rise to the inference that he is not a" truthful witness. His such conduct supports the defence theory that he has not seen the incident. The Hon"ble Apex Court has considered this aspect in para 10 of this judgment which is being reproduced as under:--

"The Trial Court was, in our opinion perfectly justified in taking that view. The conduct of the prosecution witnesses does not inspire confidence not only because they did not intervene when Basavaraj was being assaulted but also because post event, the witnesses did practically nothing to help the unfortunate soul, who was left to die with his hands tied for over 4 hours without any succour coming from any quarter. The High Court has made light of these aspects and thereby fallen in an error."

23. So far as the appellant Kalloo is concerned, the recovery of country made pistol on his pointing out was, proved but the said country made pistol could not be connected with the offence as the recovered cartridge did not match with the recovered empty cartridge. So the appellant Kalloo deserves to be convicted only for the offence under section 25 of Arms Act.

24. Since we have found the evidence regarding recovery of the country made pistol to be proved beyond reasonable doubt. So now the question to be considered is what would be the evidentiary value of this recovery which is alleged to have been made under section 27 of the Indian Evidence Act. Before proceeding further we would like to discuss the law regarding recovery of section 27 of the Indian Evidence Act.

25. The scope and ambit of section 27 of the Evidence Act were illuminatingly

stated in Pulukuri Kottaya and others vs. Emperor AIR 1947 67 (Privy Council) , in the following words, which have become locus classicus:

"It is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this and the information given must relate distinctly to this fact. Information as to past user or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the information to his knowledge and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which stabbed A.", these words, are inadmissible since they do not related to the discovery of the knife in the house of the informant."

The aforesaid position was again highlighted in Prabhu Vs. State of U.P., AIR 1963 SC 1113 : (1963) 65 PLR 339 : (1963) 2 SCR 881 :

"19. Although the interpretation and scope of section 27 has been the subject of several authoritative pronouncements, its application to concrete cases in the background events proved therein is not always free from difficulty. It will, therefore, be worthwhile at the outset, to have a short and swift glance at section 27 and be reminded of its requirements. The section says:

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to confession or not, as relates distinctly to the fact thereby discovered may be proved."

At one time, it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in Palukuri Kotayya's case (supra) and in the case of Udai Bhan Vs. The State of Uttar Pradesh, AIR 1962 SC 1116 : (1962) 2 SCR 830 Supp , Hon"ble the Apex Court has considered various requirements of the section as follows:

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by accused's own act.

(4) The persons giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

As observed in Pulukuri Kotayya's case (supra) it can seldom happen that information leading to the discovery of a fact forms the foundation of the prosecution case. It is one link in the chain of proof and the other links must be forged in manner allowed by law. To similar effect was the view expressed in K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, AIR 1962 SC 1788 : (1963) 3 SCR 412

(Emphasis added)

26. Hon'ble the Apex Court in the case of Madhu Vs. State of Kerala, AIR 2012 SC 664 : (2012) CriLJ 1230 : (2012) 1 Crimes 148 : (2012) 1 JCC 620 : (2012) 1 JT 181 : (2012) 1 SCALE 226 : (2012) 2 SCC 399 : (2012) AIRSCW 782 : (2012) 1 Supreme 342 has considered the scope of evidentiary value of recovery made under section 27 of the Indian Evidence Act. Hon'ble Apex Court in the later part of para 17 has held as under:

"It is, therefore, apparent that in terms of the mandate of sections 25 and 26 of the Indian Evidence Act, the said statements could not be used against accused Madhu and Sibi. But then, there is an exception to the rule provided for by sections 25 and 26 aforesaid, under section 27 of the Indian Evidence Act. Section 27 of the Indian Evidence Act is being extracted hereunder:

26. How much of information received from accused may be proved Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

As an exception, section 27 of the Indian Evidence Act provides that a confessional statement made to a police officer or while an accused is in police custody, can be proved against him, if the same leads to the discovery of an unknown fact. The rationale of sections 25 and 26 of the Indian Evidence Act is, that police may procure a confession by coercion or threat. The exception postulated under section 27 of the Indian Evidence Act is applicable only if the confessional statement leads to the discovery of some new fact. The relevance under the exception postulated by section 27 aforesaid, is limited as it relates distinctly to the fact thereby discovered..... The rationale behind

section 27 of the Indian Evidence Act is, that the facts in question would have remained unknown but for the disclosure of the same by the accused. Discovery of facts itself, therefore, substantiates the truth of the confessional statement, and since it is truth that a Court must endeavour to search, section 27 aforesaid has been incorporated as an exception to the mandate contained in sections 25 and 26 of the Indian Evidence Act."

In the instant case as stated earlier, the said recovery of country made pistol does not stand connected with the offence because the country made pistol which was sent for Forensic Science Lab was not matched with the empty cartridge which was recovered from the place of occurrence. Apart from it, as discussed earlier, evidence of PW-3 Surjan is not the least reliable. So keeping in view the discussion regarding the outer evidence lead by prosecution merely on the basis of the said recovery the appellant Kalloo cannot be held guilty for the offence of murder and for attempt to commit murder of PW-3 Surjan.

27. In view of the discussion made above, after careful scrutiny of the evidence, we are of the considered view that conviction of all the appellants for the offence under sections 302/34 and 307/34 IPC deserves to be set aside. Accordingly, Criminal Appeal No. 5722 of 2007 Hori Lal and others v. State of U.P. deserves to be allowed and is hereby allowed. The Criminal Appeal No. 6855 of 2007 Kalloo v. State of U.P. deserves to be partly allowed and is hereby partly allowed. Conviction of the appellant Kalloo under section 25 of Arms Act is hereby confirmed. However he is acquitted of all the other charges levelled against him. Since the appellant Kalloo has already remained in custody for a period of more than 8 years in the instant case. Therefore, he has already completed sentence inflicted by the Trial Court for the offence for which he is found guilty. Hence no further sentence is required to be inflicted for the offence under section 25 Arms Act. The appellant Kalloo and Hori Lal are in custody and remaining appellants are on bail. Appellants Kalloo and Hori Lal shall be released forthwith, if they are not wanted in any other case. Remaining appellant Nanhku and Laxmi Kant are on bail. Their bail bonds is cancelled and sureties discharged. They are acquitted of the charges levelled against them. They be set at liberty. Office is directed to communicate this order forthwith to the Court concerned to ensure compliance and to send back the Lower Court record.