
(2015) 05 AHC CK 0013
In the Allahabad High Court
Case No : Criminal Appeal No. 2703 of 1987

Kali Charan

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 25-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 157, 161, 162, 174
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2015) 3 ACR 2627 : (2015) 7 ADJ 105 : (2015) 6 ALJ 147

Hon'ble Judges : S.K. Gupta, J;Om Prakash-VII, J

Bench : Division Bench

Advocate : J.S. Kashyap, for the Appellant

Final Decision : Dismissed

Judgement

Om Prakash-VII, J.—This criminal appeal has been preferred by the appellants Kali Charan, Jawahar, Khan Sahai (since died), Raghuvir (since died), Mani Ram, Brindawan and Atma Ram (since died) against the judgment and order dated 13.11.1987 passed by II Additional Sessions Judge, Etah in Sessions Trial No. 364 of 1986, State Vs. Kali Charan and others whereby accused-appellant Kali Charan was convicted and sentenced for the offence under Sections 302 IPC to undergo imprisonment of life and for the offence under Section 148 IPC to undergo rigorous imprisonment for 1 1/2 years. Other accused-appellants were convicted and sentenced for the offence under Sections 302 read with 149 IPC to undergo imprisonment of life and for the offence under Section 148 IPC to undergo rigorous imprisonment for 1 1/2 years.

2. Prosecution story in nutshell is that on 6.5.1986, a written report was submitted at the police station Jaithra by the informant Hakim Singh mentioning therein that on 6.5.1986, he (informant) along with number of other persons of village Tossaiya had gone to take part in the fair of Baba Lalpuri. The deceased Chandrahas alias Pappu aged about 15 years was also with them. In the fair, an altercation had taken place between accused Jawahar Singh and Chandrahas

over the drinking water from a public water supply system. It may be mentioned here that all the accused are Dheemar by caste while all the prosecution witnesses including the deceased belong to the Lodha caste. Hakim Singh and others alongwith Chandrahas were returning to their village from the fair at about 6:00 P.M. When they were near the tube-well of Jawahar, they found accused-appellants named above hiding themselves behind the cowdung pyramids. Out of them, accused-appellants Kalicharan and Jawahar were armed with guns and rest of them were armed with countrymade pistols. On seeing the complainant Hakim Singh, Chandrahas and their companions, accused Jawahar came out hurling abuses that they would not spare any of them (Hakim Singh etc.). Upon hearing this statement of Jawahar, Hakim Singh and his companions started running for their life towards village. Jawahar fired upon them from behind but the shot did not hit anybody. Thereafter, Kalicharan fired gunshot which hit on the head of Chandrahas alias Pappu who fell down unconscious on the spot. Thereafter other accused also fired with murderous intention but fortunately none was injured. Hakim Singh and others raised alarm. In response to the alarm raised by Hakim Singh, Netrapal alias Naresh Singh, Ram Dularey, Sunder Singh and many other people of the village came on the spot and on their intervention, the accused fled away to their village which was at a short distance from the place of occurrence.

3. On the basis of written report (Ex.Ka-1) submitted by the informant Hakim Singh, Chick first information report (Ex.Ka.-9) was initially registered at crime No. 124 of 1986 under Sections 147, 148, 149, 307 IPC at Police Station Jaithra on the same day at 23:00 hours against all the accused-appellants. G.D. Entry (Ex.Ka.10) was also made at Rapat No. 33 on the same day.

4. Investigation was entrusted to S.I. Ram Pal Singh. As per prosecution evidence, injured Chandrahas alias Pappu was taken to the concerned police station. He was immediately sent for treatment to the District Hospital, Etah from the police station, but he died on the way when he was being taken in a bus to District Hospital. No medical examination could be conducted by the doctor concerned. On the basis of information sent by the District Hospital, the Inquest Report (Ex.Ka-3) was prepared in the morning of 7.5.1986 at 9:30 A.M. because the dead body of the deceased Chandrahas alias Pappu had been kept in the mortuary of District Hospital. Form No. 13 (Ex.Ka.-4) and Photo Lash (Ex. Ka.-5) were also prepared at the time of preparing the inquest report. Letters to R.I. and C.M.O. (Ex.Ka.-6 and 7) were prepared by the police concerned. Dead body was kept in sealed cloth, therefore, sample seal (Ex.Ka.-8) was also prepared at that time. On the basis of information received from the District Hospital, Etah regarding the death of the deceased Chandrahas alias Pappu, case was converted into the offence under Sections 147, 148, 149, 302 IPC and investigation was carried out. The investigating officer had recorded the statements of witnesses present at the time of lodging of the first information report at the police station concerned and also interrogated other witnesses during investigation. The injured was in unconscious state, therefore, his statement could not be recorded

at the police station concerned as he had been sent for treatment on the basis of "majroobi chhithi".

Investigating officer had taken the plain earth and blood stained earth from the spot and prepared memo (Ex.Ka.-2). Investigating officer had also prepared site plan (Ex.Ka.-11).

5. Postmortem on the body of the deceased was conducted at the mortuary of the District Hospital on 7.5.1986 at 4:00 P.M. Deceased was carried by Constables Roshan Lal and Rajveer in a sealed bundle of cloth. As per postmortem report, which is Ex.Ka.13, deceased was aged about 15 years and time of death was about half day at the time of postmortem. Deceased was of average built having normal musculature. Rigor mortis was present in both the upper and lower extremities and no sign of decomposition was present on the body. Eyes were closed. Body had been identified by the Constables mentioned above.

Following ante-mortem injuries were found by the Doctor B.V. Verma while conducting the postmortem on the dead body of the deceased Chandrahas alias Pappu:

(i). Multiple firearm wound of entry on the left side of head all over each 0.25 cm. x 0.25 cm. x cranial cavity deep 5 cm. above left ear. Blackening was not present around the wound. Directions was found left to right and straight.

On internal examination, frontal, temporal and parietal bones were found fractured. Membranes were found lacerated on left side. Haematoma found present in brain. Five small rounded pellets and ten flat metallic pieces were recovered from the wound. About four ounce undigested food was present in the stomach in the process of digestion, which could not be identified. There was undigested semi liquid food material in the small intestine in the process of digestion and faecal matter and gases were found in the large intestine. The death was caused due to coma as a result of ante-mortem injuries.

6. Investigating officer after collecting the evidence and interrogating the witnesses under section 161 Cr.P.C. finding sufficient evidence against the accused-appellants submitted the charge-sheet (Ex.Ka.-14) before the Magistrate concerned.

7. Material/article found on the body of the deceased were returned to the S.P. concerned by the Doctor. G.D. entry at police station concerned regarding receipt of the same is Ex.Ka.-12. Since case was triable by the Sessions Court, it was committed to the Court of Session for trial.

8. Accused-appellants appeared before the Sessions Court. Charge against accused-appellant Kali Charan was framed under Sections 302 and 148 IPC and against rest of the accused-appellants charge under Sections 148, 302 read with 149 IPC was framed.

9. All the accused-appellants denied the charges framed against them and claimed their trial.

10. In order to prove its case, prosecution examined P.W.1 Hakim Singh, who is the informant of the case and had taken the deceased to the police station concerned, P.W.2 Mahtab Singh, P.W.3 Amar Singh, who are also said to be the eyewitnesses, P.W.4 S.I. Ram Pal Singh, who had investigated the matter, P.W.5 Dr. B.V. Verma, who had conducted the postmortem on the body of the deceased, P.W.6 D.K. Sisodiya, S.O., who had submitted the charge-sheet in the matter against the accused-appellants.

Court has also summoned the witness Brahmajeet, the Lekhpal of the village concerned as C.W.1 for furnishing the topography of the spot.

11. After conclusion of the prosecution evidence, trial Court has recorded the statements under Section 313 Cr.P.C. of the accused-appellants.

Accused-appellant Jawahar has denied the prosecution case and has also feigned ignorance about the investigation and preparation of police papers. He has stated that witnesses, examined by the prosecution, have deposed before the Court against him on account of animosity. The investigating officer has submitted the bogus charge-sheet. He has specifically stated that ancestors of this appellant used to fetch water from the residence of the witnesses and informant. Later on, appellant had stopped this practice. Again they compelled the appellant to continue such practice, but the appellant denied, therefore, this false case was lodged. In the additional statement under Section 313 Cr.P.C., accused has specifically stated that field belonging to Jwala is not adjacent to the field of Dwarka and Lav Kush, but it is far away, towards the north-west corner. The Lekhpal (C.W.1) in his statement has given the details of the topography of the scene of offence.

Almost same facts have been stated by all the appellants in their statements recorded under Section 313 Cr.P.C.

12. Appellants in their defence have not adduced any oral evidence, but in documentary evidence, they have filed two papers (i) copy of statement of one Chhede Lal recorded in Suit No. 28 of 1985 in the Court of Tehsildar, Aliganj and (ii) copy of statement of Brindawan recorded in the aforesaid Suit.

13. Trial Court, after hearing the parties, vide impugned judgment and order convicted and sentenced the accused-appellants as above. Hence, this appeal.

14. We have heard Sri J.S. Kashyap, learned counsel for the appellants and Sri Rajiv Sharma, learned A.G.A. for the State and have also gone through the entire record.

15. Sri Kashyap, learned counsel for the appellants submitted that the trial Court has not rightly appreciated the prosecution evidence. Facts mentioned in the charge framed against the appellants are not correct. The first information report

was not in existence at the time mentioned in it. Reference at this stage was given of the inquest report and other police papers prepared at the time of preparing the inquest report and also the statements of the prosecution witnesses. It was argued that non-mentioning of the crime number and penal sections in the police papers itself indicate that the first information report was prepared subsequently. No one has seen the incident. The witnesses, said to be the eyewitnesses, have not actually seen the occurrence, therefore, they have made self-contradictory statements on the point of place and time of the incident and also time of the death of the deceased. Medical evidence also does not support the oral version. There are major contradictions in the statements of the said eyewitness accounts regarding the manner of the incident. Omissions and laches committed by the investigating officer go to the root of the matter and are fatal to the prosecution case, but the trial Court has not considered this aspect of the matter. The investigating officer had taken the blood stained and plain earth from the place of incident, but has not sent it for chemical examination, therefore, place of occurrence is also not established in the matter. The whole prosecution story is unnatural and improbable.

It was further argued on behalf of the appellants that motive attributed against the appellants in the matter is not sufficient to commit the said offence, but there is chance of false implication. Prosecution case is not supported by any independent witnesses.

Learned counsel for the appellants has placed reliance on a decision of the Apex Court in *Kailash Gour and Others Vs. State of Assam*, AIR 2012 SC 786 : (2012) CriLJ 1050 : (2012) 1 JCC 519 : (2011) 14 JT 306 : (2011) 13 SCALE 549 : (2012) 2 SCC 34 : (2012) 1 UJ 47 : (2012) AIRSCW 524 .

16. Sri Rajiv Sharma, learned A.G.A. appearing on behalf of the State has argued that since site plan was not properly prepared by the investigating officer, the trial Court, in order to make this point clear, had summoned and examined the concerned Lekhpal as C.W.1 who had clearly narrated the topography of the place of occurrence before the Court. Prosecution has been able to establish the date, time and place of the occurrence. Medical evidence fully supported the prosecution case. Contradictions shown by the defence are not of vital nature and do not go to the root of the prosecution case and are not fatal to prosecution. Witnesses are relatives, but they were present on the spot. The accused-appellants had formed an unlawful assembly and assaulted the informant's side. The deceased received injuries in the said incident on the date, time and place as mentioned in the first information report and died on the way to the hospital. Laches or omissions on the part of the investigating officer do not affect the oral testimony of the eyewitness accounts, who have clearly and consistently established the prosecution case.

17. Findings of the Trial Court:

(I) P.W.1 Hakim Singh, P.W.2 Mahtab Singh and P.W.3 Amar Singh had no

personal enmity with any of the accused-appellants. Thus, there was no reason for them to falsely implicate the accused-appellants in this case.

(II) Sentiments and feelings of the accused-appellants were hurt due to the altercation took in the fair over the drinking water.

(III) Site plan prepared by the investigating officer is based on imagination. In fact, he had not inspected the spot, therefore, no reliance was placed on the site plan prepared by the investigating officer.

(IV) Chandrahas alias Pappu was shot at and injured towards north-west at a distance about 100 yards from the tube-well of Jawahar. According to the statements of C.W. 1 Lekhpal Brahmajeet and P.W.1 Hakim Singh, P.W.2 Mahtab Singh and P.W.3 Amar Singh, the place of occurrence must have been the field of Jwala.

(V) It has come in the prosecution evidence that P.W.2 Mahtab Singh was running behind the deceased, but it did not mean that P.W.2 was geometrically at the back of the deceased.

(VI) Injuries caused to the deceased while he was running ahead could have occurred in the manner as stated by the prosecution witnesses.

(VII) Oral testimony of P.W.1 Hakim Singh, P.W.2 Mahtab Singh and P.W.3 Amar Singh find support from the medical evidence.

(VIII) Investigating Officer has not properly and fairly investigated the case, therefore, there are some contradictions in the statement of investigating officer with the statements of P.W.1 Hakim Singh, P.W.2 Mahtab Singh and P.W.3 Amar Singh, but these contradictions are not fatal to the prosecution case.

(IX) Blackening was not found present around the injuries of the deceased.

(X) Time of occurrence, as stated in the prosecution case and supported by the witnesses, tallies with the medical evidence.

18. Discussions

We take first of all the motive part of the case for committing the offence.

As per the first information report, deceased Chandrahas alias Pappu, P.W.1 informant Hakim Singh and other persons had gone to the fair of Baba Lalpuri, which was just 2 Kms. away from their village. Some altercation took place between the informant's side and the accused side over the drinking water in the fair. When the deceased and his fellow men were returning from the fair at about 6:00 P.M. and reached the place of occurrence, the alleged incident was committed by the accused-persons.

Appellants'-accused plea is that they were falsely implicated in this case for the reason that they had refused to carry out the traditional work of fetching water for the informant's side as was earlier done by their ancestors. Due to which the

informant's side became very much infuriated and brought such false accusation.

Trial Court's finding is that the present offence is not a community clash because in the village concerned, a large number of people belonging to both the communities are residing. If the incident had taken place due to community clash, then the accused would have been more in numbers. In our considered view, the finding of the Trial Court's is correct because prosecution witnesses have clearly stated that some altercation over drinking water in the fair had taken place between both the parties and for that reason when the informant's side were on the way to their village, the alleged offence was committed by the accused-appellants. Thus, the facts stated in the first information report regarding the genesis of the incident was fully supported by the prosecution witnesses who were present on the spot. In this matter, motive part appears to be trivial in nature. Motive can play a crucial role in committing an offence and in the same can be used to falsely implicate the accused. The "Motive" is a double edged weapon. It is sufficient to state that in a case of direct eyewitness account like the present one, the motive is not at all important.

Now the Court proceeds to take up the first information report. As has been argued by the learned counsel for the appellants that the first information report was not in existence at the time mentioned in the Chick report, reference has been given about several police papers prepared at the time of inquest and also during investigation. Here it may be mentioned that the first information report was lodged on 6.5.1986 at 23:00 hours. Offence is said to have been committed on 6.5.1986 at 6:00 P.M. Distance between the place of occurrence and police station is about 18 Kms. Prosecution case is that after the incident, the injured was kept at some place in the village and thereafter injured was carried on a bullock cart by the informant's side to the concerned police station. It is also the case of the prosecution that written report (Ex.Ka-1) was prepared in the village concerned itself. Informant Hakim Singh was also accompanying the deceased while returning from the fair. The first information report was initially lodged for the offence under Sections 147, 148, 149, 307 IPC, meaning thereby if the prosecution case is to be taken as true, the deceased Chandrahas alias Pappu was alive when they reached the concerned police station. It is also the case of the prosecution that after registering the case, the deceased was sent for medical treatment on the basis of majroobi chhithi. Initially, the deceased was taken to Jaithra P.H.C., but later on, he was referred to District Hospital. When they were taking the deceased on a bus to the District Hospital, he died on the way. Dead body of the deceased was kept in the mortuary where the inquest report was prepared after receiving the information by the police concerned. From the perusal of the inquest report, it is clear that date and time of giving information regarding the incident to the concerned police station is 7.5.1986 at 6:10 A.M. Date for starting the inquest proceedings is also 7.5.1986, but time is shown as 7:45 A.M. Date and time for closing the inquest proceedings is 7.5.1986 at 9:30 A.M. Inquest report was prepared at the mortuary. Crime number etc. have not been shown in the inquest report. Similarly, in Form No. 13

and other police papers prepared at the time of preparing the inquest report, crime number etc. have not been shown.

Submission of the learned counsel for the appellants that if the first information report was in existence at the time mentioned in the Chick itself, then why the date of information to the police concerned was shown in the inquest report as 7.5.1986. Referring this paper and other police papers in which the crime number has not been mentioned, it was argued that certainly the first information report was not in existence at that time. To substantiate the argument, statements of P.W.1 Hakim Singh, P.W.2 Mahtab Singh and P.W.3 Amar Singh were also referred.

To analyze this fact, we have closely scrutinized the statement of P.W.1 Hakim Singh, P.W.2 Mahtab Singh and P.W.3 Amar Singh. P.W.1 has consistently and clearly stated before the Court that he prepared the first information report in the village itself, thereafter proceeded to the police station. The same fact has been stated by P.W.3 Amar Singh. The portion of the statement of P.W.2 Mahtab Singh referred to by the appellants' counsel has come in his statement when he was answering the questions regarding registration of the chick first information report. He has clearly stated that first information report was registered at police station concerned. Preparation of written report and registration of F.I.R. are two different things. Therefore, argument advanced by the learned counsel for the appellants is not acceptable on this point.

P.W.3 Amar Singh has stated that they stayed for about 15 minutes at the police station concerned. P.W. 2 Mahtab Singh has stated that they reached the concerned police station at about 10:00 P.M. or 11:00 P.M., 5 hours were consumed in reaching the police station concerned. They proceeded to the police station after an hour of the incident. Referring to this portion of the statement of P.W.2 Mahtab Singh, the learned counsel for the appellants has argued that if this fact stated by P.W.2 Mahtab Singh is taken into consideration, then first information report could not have existed at the time mentioned in it i.e. 11:00 A.M. Here we would like to mention that after the incident, in arranging the bullock cart and covering the distance of 18 Kms., some time must have been consumed and merely on this ground it cannot be held that the first information report was not in existence at the time mentioned in it. Exact time consumed in preparation of written report and covering the distance cannot be possibly explained. Some variations are bound to occur in the statements.

In this context, it may be mentioned here that witness is not a tape recorder. When a witness is giving evidence more than a year later about what happened a year earlier, it cannot be expected from him to possess an exact memory to recall the details of an incident occurred a year back. He may not be able to say the exact time consumed by the witness in reaching the police station. Villagers do not maintain any document to record the time for proceeding to the police station.

Hon"ble Supreme Court in Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, AIR 1983 SC 753 : (1983) CriLJ 1096 : (1983) 2 Crimes 232 : (1983) 1 SCALE 665 : (1983) 3 SCC 217 : (1983) 3 SCR 280 has observed that over much importance cannot be attached to minor discrepancies. The reasons are obvious:

"(i) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(ii) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(iii) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

(iv) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(v) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment 1.1 at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(vi) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(vii) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him-Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment."

Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses cannot be annexed with undue importance. More so when the all important "probabilities-factor" echoes in favour of the version narrated by the witnesses.

Thus, on the strength of statement made by the witnesses, it cannot be said that the informant and injured had not reached the police station concerned at about

11:00 P.M. and they had not gone to Jaithra P.H.C. The registration of first information report can also not be doubted on this point on the ground that prosecution could not make it clear whether the bus taken by them from Jaithra to District Headquarters, Etah was the last bus or not. All these facts raised by the learned counsel for the appellants are also not of any significance because in the instant case, first information report was lodged initially only under Sections 147, 148, 149, 307 IPC.

At this stage, it was also pointed out that in one police paper (Ex.Ka-2) inspite of death of the deceased, penal section of the offence has been mentioned only as Section 307 IPC. Certainly, it is true, but this fact alone cannot be a ground to doubt the veracity and authenticity of the first information report. It is possible that this fact was mentioned in Ex.Ka.-2 due to mistake. Similarly, in the inquest report, if date and time of information is shown as 7.5.1986 at 6:10 A.M. and the case crime number is not shown in this document, then also it cannot be held that the first information report was not in existence at the time mentioned in the Chick (Ex.Ka-9).

Before proceeding to discuss other points, we would also prefer to discuss the next argument of the appellants regarding place of occurrence and presence of eyewitnesses on the spot.

It is the submission of the learned counsel for the appellants that if the place shown in the site plan regarding place of occurrence is taken into consideration in consonance with the statements made by the said eyewitness accounts, the whole prosecution story appears to be doubtful. Presence of eyewitness accounts on the spot at the time of incident also appears to be doubtful.

A perusal of the record shows that the investigating officer has shown the place of occurrence as the field of Lav Kush while the eyewitness accounts examined on behalf of the prosecution have clearly and categorically stated that place of occurrence is the field of Jwala, which is situated towards north side of the tube-well of Jawahar. A perusal of the record also shows that trial Court found that investigating officer has not properly and legally prepared the site plan, therefore, to ascertain this fact, trial Court summoned the Lekhpal concerned as C.W.1. Trial Court after going through the evidence of P.W.1, P.W.2, P.W.3 and C.W.1 came to the conclusion that place of occurrence was the field of Jwala. The investigating officer has casually prepared the site plan on the basis of imagination without inspecting the spot showing the wrong place of occurrence. P.W.1 Hakim Singh, P.W.2 Mahtab Singh and P.W.3 Amar Singh all were returning along with the deceased at the time of occurrence from the fair and the whole incident had occurred before them when they were running away to save themselves.

In defence, appellants have also not shown any grave enmity which may be a ground to falsely implicate the appellants in the matter. The prosecution case is consistent and clear that all the accused persons armed with the firearms have

made several fire. Fire made by accused-appellant Kali Charan hit the deceased which caused injuries to him resultantly he died on the way to hospital.

Presence of eyewitnesses on the spot at the time of occurrence also cannot be doubted on the ground that they belong to same caste as of the deceased. Trial Court's finding in this regard is based on the evidence available on record. P.W.1, P.W.2 and P.W.3 are the natural and probable witnesses. It was a day light occurrence and the offence was committed by the accused-appellants before them, therefore their testimony inspires confidence. The presence of the eyewitness accounts on the spot also cannot be doubted as their testimony is also corroborated and supported by the medical evidence. All the eyewitness accounts have stated that while they were running to save themselves, accused persons fired upon them when they were about the distance of 10 paces from them. One fire hit the deceased Chandrahas alias Pappu. If the places where the accused-appellants, deceased and the witnesses were present, tallied and compared with the evidence, prosecution case appears more probable.

Eyewitness accounts have also stated that when they were running towards their village to save themselves, accused persons, who were chasing them were on the left side of them. Injuries were also found on the left side of the head of the deceased. Plea of the appellants that if the appellants were chasing from behind the deceased, then the injuries found on the body of the deceased cannot come, is not acceptable. It may be mentioned here that no blackening has been found in the injury mentioned in the postmortem report. Although, this point was assailed by the appellants, but the same is not acceptable as postmortem report itself is clear that blackening was not found present on the body. The finding of the Trial Court is that after firing, the pellets of the cartridge would certainly spread over, therefore, the area of the injury of the deceased is probable and natural one. In this matter, there is no conflict in the medical evidence and oral testimony and there is no question for giving the credence to the oral evidence over the medical evidence. Both supportive to each other.

Trial Court has recorded a finding that investigating officer has not made a fair and proper investigation and has acted maliciously. Placing reliance on this finding, the appellants' argument is that the first information report was not in existence at the time mentioned in the Chick and it has come in existence after due deliberation. Incident had taken place elsewhere, but only to falsely implicate the present appellants, place of occurrence was shown as field of Jwala while the site plan does not support the prosecution case itself. It is also noteworthy here that we have discussed here-in-above on the point of place of occurrence and found it to be a field belonging to Jwala, therefore, fault committed on part of investigating officer does not make the testimony of eyewitness accounts untrustworthy.

At this stage, learned counsel for the appellants has placed reliance on a decision of the Apex Court in *Kailash Gour and Others Vs. State of Assam*, AIR 2012 SC 786 : (2012) CriLJ 1050 : (2012) 1 JCC 519 : (2011) 14 JT 306 : (2011) 13

SCALE 549 : (2012) 2 SCC 34 : (2012) 1 UJ 47 : (2012) AIRSCW 524 . In this matter, the case was referred to the larger Bench, which, in its judgment, confirmed the acquittal of the accused. Relevant paras of the said judgment are quoted below.

"27. It is one of the fundamental principles of criminal jurisprudence that an accused is presumed to be innocent till he is proved to be guilty. It is equally well settled that suspicion howsoever strong can never take the place of proof. There is indeed a long distance between accused "may have committed the offence" and "must have committed the offence" which must be traversed by the prosecution by adducing reliable and cogent evidence. Presumption of innocence has been recognised as a human right which cannot be wished away. See Narendra Singh and Another Vs. State of M.P., (2004) CriLJ 2842 : (2004) 1 DMC 799 : (2004) 1 JT 29 Supp : (2004) 4 SCALE 543 : (2004) 10 SCC 699 : (2004) 3 SCR 1148 : (2004) AIRSCW 3094 : (2004) 3 Supreme 304 and Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and Another, AIR 2005 SC 2277 : (2005) CriLJ 2533 : (2005) 4 JT 123 : (2005) 5 SCC 294 : (2005) 3 SCR 345 : (2005) AIRSCW 2215 : (2005) 3 Supreme 679 . To the same effect is the decision of this Court in S. Ganesan Vs. Rama Raghuraman and Others, (2011) 1 Crimes 165 : (2011) 3 JCC 1542 : (2011) 1 JT 1 : (2011) 2 RCR(Criminal) 283 : (2011) 1 SCALE 12 : (2011) 2 SCC 83 : (2011) 1 SCR 27 : (2011) AIRSCW 2751 : (2011) AIRSCW 3937 : (2011) 3 Supreme 431 : (2011) 5 Supreme 308 where this Court observed:

"Every accused is presumed to be innocent unless his guilt is proved. The Presumption of innocence is human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India."

28. The above views were reiterated by this Court in State of U.P. Vs. Naresh and Others, (2011) CriLJ 2162 : (2011) 3 JT 508 : (2011) 2 RCR(Criminal) 364 : (2011) 3 SCALE 425 : (2011) 4 SCC 324 : (2011) 2 SCC(Cri) 216 : (2011) AIRSCW 1877 .

29. In his dissenting judgment our esteemed Brother, Bedi, J. has referred to as many as five different Reports of Commissions of Enquiry set up over the past five decades or so to point out that the findings recorded in the reports submitted by the Commissions indicate an anti-minority bias among the police force in communal riot situations and investigations. Copious extracts from the reports reproduced in the judgment no doubt suggest that in situations when the police ought to protect the citizens against acts of communal violence, it has at times failed to do so giving rise to the perception that the police force as a whole is insensitive to the fears, concerns, safety and security of the minority communities. Whether these reports have been accepted by the governments concerned and if so how far have they contributed to the reform of the force is a matter with which we are not directly concerned in this case. All that we need to say is that sooner such reforms are brought the better it would be for an inclusive society like ours where every citizen regardless of his caste or creed is

entitled to protection of his life, limb and property. It will indeed be a sad day for the secular credentials of this country if the perception of the minority communities about the fairness and impartiality of the police force were to be what the reports are suggestive of. And yet it may not be wholly correct to say that the police deliberately make no attempt to prevent incidents of communal violence or that efforts to protect the life and property of the minorities is invariably half hearted or that instead of assailants the victims themselves are picked up by the police. So also there is no reason for us to generalise and say that there is an attempt not to register cases against assailants and when such cases are registered loopholes are intentionally left to facilitate acquittals or that the evidence led in the Courts is deliberately distorted. No one can perhaps dispute that in certain cases such aberrations may have taken place. But we do not think that such instances are enough to denounce or condemn the entire force for ought we know that for every life lost in a violent incident the force may have saved ten, who may have but for timely intervention been similarly lost to mindless violence. Suffice it to say that while the police force may have much to be sorry about and while there is always room for improvement in terms of infusing spirit of commitment, sincerity and selfless service towards the citizens it cannot be said that the entire force stands discredited. At any rate the legal proposition formulated by Bedi J. based on the past failures do not appear to us to be the solution to the problem. We say with utmost respect to the erudition of our Brother that we do not share his view that the reports of the Commissions of Enquiry set up in the past can justify a departure from the rules of evidence or the fundamental tenets of the criminal justice system. That an accused is presumed to be innocent till he is proved guilty beyond a reasonable doubt is a principle that cannot be sacrificed on the altar of inefficiency, inadequacy or inept handling of the investigation by the police. The benefit arising from any such faulty investigation ought to go to the accused and not to the prosecution. So also, the quality and creditability of the evidence required to bring home the guilt of the accused cannot be different in cases where the investigation is satisfactory vis-a-vis cases in which it is not. The rules of evidence and the standards by which the same has to be evaluated also cannot be different in cases depending upon whether the case has any communal overtones or in an ordinary crime for passion, gain or avarice. The prosecution it is axiomatic, must establish its case against the accused by leading evidence that is accepted by the standards that are known to criminal jurisprudence regardless whether the crime is committed in the course of communal disturbances or otherwise. In short there can only be one set of rules and standards when it comes to trials and judgment in criminal cases unless the statute provides for any thing specially applicable to a particular case or class of cases. Beyond that we do not consider it necessary or proper to say anything."

In the case of State of Rajasthan Vs. Bhawani and Another, AIR 2003 SC 4230 : (2003) CriLJ 3857 : (2003) 5 SCALE 595 : (2003) 7 SCC 291 : (2003) 1 SCR 996 Supp : (2003) 2 UJ 1417 : (2003) AIRSCW 3953 : (2003) 5 Supreme 287 , the

Hon"ble Supreme Court in paragraphs No. 10 and 11 has held as under:

"10. The High Court has extensively relied upon the site plan prepared by the investigating officer for discarding the prosecution case and for this purpose has referred to the place from where the accused are alleged to have entered the Nohara, the place from where they are alleged to have fired upon the deceased and also has drawn an inference that the place wherefrom the accused are alleged to have fired upon the deceased, the shot could not have hit the houses on the eastern side of the Nohara. Many things mentioned in the site plan have been noted by the investigating officer on the basis of the statements given by the witnesses. Obviously, the place from where the accused entered the Nohara and the place from where they resorted to firing is based upon the statement of the witnesses. These are clearly hit by Section 162 Cr.P.C. What the investigating officer personally saw and noted alone would be admissible. This legal position was explained in *Tori Singh Vs. The State of Uttar Pradesh*, AIR 1962 SC 399 : (1962) 3 SCR 580 in following words: "A rough sketch map prepared by the sub-inspector on the basis of statements made to him by witnesses during the course of investigation and showing the place where the deceased was hit and also the places where the witnesses were at the time of the incident would not be admissible in evidence in view of the provisions of S.162 of the Code of Criminal Procedure, for it is in effect nothing more than the statement of the Sub-Inspector that the eye-witnesses told him that the deceased was at such and such place at the time when he was hit. The sketch-map would be admissible so far as it indicates all that the Sub-Inspector saw himself at the spot; but any mark put on the sketch-map based on the statements made by the witnesses to the Sub-Inspector would be inadmissible in view of the clear provisions of S.162 of the Code of Criminal Procedure as it will be no more than a statement made to the police during investigation. Therefore, such marks on the map cannot be used to found any argument as to the improbability of the deceased being hit on that part of the body where he was actually injured, if he was standing at the spot marked on the sketch-map."

Therefore, the findings recorded by the High Court on the basis of the site plan prepared by the investigating officer whereby it discarded the prosecution case is clearly illegal being based upon inadmissible evidence and has to be set aside.

11. The High Court has also relied upon some very trifling and insignificant matters like recovery of some live and empty cartridges which the counsel for the accused before it submitted to be that of a 303 bore revolver or gun. Relying upon this recovery, it has been held that as according to the eye-witnesses none of the accused had a 303 revolver or gun, the prosecution case was rendered doubtful. The eye-witnesses have consistently deposed that Hari Singh and Amilal, accused were armed with country-made pistols and in such cases it is difficult to visualize what was the nature of the cartridges or bullets used. Therefore, even assuming that some empty cartridges of 303 bore were recovered, it could not affect the prosecution case in any manner."

Hon"ble Supreme Court in the case of Sri Sambhu Das @ Bijoy Das and Another Vs. State of Assam, AIR 2010 SC 3300 : (2010) 9 JT 470 : (2010) 10 SCC 374 : (2010) AIRSCW 5489 : (2010) 6 Supreme 475 held as under.

"(17) The Inquest Report is prepared under Section 174 Cr.P.C. The object of the inquest proceedings is to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what the cause of death is? 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 under Section 174 Cr.P.C. The names of the assailants and the manner of assault are not required to be mentioned in the inquest report. The purpose of preparing the inquest report is for making a note in regard to identification marks of the accused. The inquest report is not a substantive evidence. Mention of the name of the accused and eye witness in the inquest report is not necessary. Due to non-mentioning of the name of the accused in the inquest report, it cannot be inferred that FIR was not in existence at the time of inquest proceedings. Inquest report and post mortem report cannot be termed to be substantive evidence and any discrepancy occurring therein can neither be termed to be fatal nor even a suspicious circumstance which would warrant a benefit to the accused and the resultant dismissal of the prosecution case. The contents of the inquest report cannot be termed as evidence, but they can be looked into to test the veracity of the witnesses. When an officer incharge of Police Station receives information that a person had committed suicide or has been killed or died under suspicious circumstances, he shall inform the matter to the nearest Magistrate to hold Inquest. A criminal case is registered on the basis of information and investigation is commenced under Section 157 of Cr.P.C. and the information is recorded under Section 154 of Cr.P.C. and, thereafter, the inquest is held under Section 174 Cr.P.C. This Court, in the case of Pedda Narayana and Others Vs. State of Andhra Pradesh, AIR 1975 SC 1252 : (1975) 4 SCC 153 : (1975) SCR 84 Supp , has indicated that the proceedings under Section 174 Cr.P.C. have limited scope. The object of the proceedings is merely to ascertain whether a person has died in suspicious circumstances or an unnatural death and if so, what is the apparent cause of the death. The question regarding 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 proceeding under Section 174. Neither in practice nor in law was it necessary for the Police to mention these details in the Inquest Report. In George and Others Vs. State of Kerala and Another, AIR 1998 SC 1376 : (1998) CriLJ 2034 : (1998) 2 Crimes 27 : (1998) 2 JT 496 : (1998) LabIC 1390 : (1998) 1 LLJ 1063 : (1998) 2 SCALE 411 : (1998) 4 SCC 605 : (1998) 2 SCR 303 : (1998) 3 SLJ 183 : (1998) AIRSCW 1255 : (1998) 3 Supreme 192 , it has been held that the Investigating Office is not obliged to investigate, at the stage of Inquest, or to ascertain as to who were the assailants. In Suresh Rai and Others Vs. State of Bihar, AIR 2000 SC 2207 : (2000) CriLJ 3457 : (2000) 4 JT 12 : (2000) 3 SCALE 1 : (2000) 4 SCC 84 : (2000) 2 SCR 796 : (2000) AIRSCW

2305 : (2000) 3 Supreme 266 , it has been held that under Section 174 read with Section 178 of Cr.P.C., Inquest Report is prepared by the Investigating Officer to find out prima facie the nature of injuries and the possible weapon used in causing those injuries as also possible cause of death.

(18) This Court has consistently held that Inquest Report cannot be treated as substantive evidence but may be utilized for contradicting the witnesses of the Inquest. Section 175 Cr.P.C. provides that a Police Officer proceedings under Section 174 may, by an order in writing, summon two or more persons for the purpose of the said investigation. The provisions of Sections 174 and 175 afford a complete Code in itself for the purpose of inquiries in cases of accidental or suspicious deaths."

The aim and object of Section 174 Cr.P.C. was illustrated by the Hon"ble Supreme Court in Radha Mohan Singh @ Lal Saheb and Others Vs. State of U.P., AIR 2006 SC 951 : (2006) CriLJ 1121 : (2006) 2 CTC 762 : (2006) 1 JT 428 : (2006) 1 SCALE 369 : (2006) 2 SCC 450 : (2006) 1 SCR 519 : (2006) 1 UJ 370 : (2006) AIRSCW 421 : (2006) 1 Supreme 371 and has held as under.

"The language of the aforesaid statutory provision is plain and simple and there is no ambiguity therein. An investigation under Section 174 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 or homicidal or caused by animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. It is for this limited purpose that persons acquainted with the facts of the case are summoned and examined under Section 175. 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 under Section 174. Neither in practice nor in law it is necessary for the person holding the inquest to mention all these details."

The same view has also been reiterated earlier by the Hon"ble Supreme Court in the case of Amar Singh Vs. Balwinder Singh and Others, AIR 2003 SC 1164 : (2003) CriLJ 1282 : (2003) 2 JT 1 : (2003) 1 SCALE 529 : (2003) 2 SCC 518 : (2003) 1 SCR 754 : (2003) 1 UJ 529 .

In the matter of Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh, AIR 1991 SC 1853 : (1991) CriLJ 2653 : (1991) 3 Crimes 82 : (1991) 3 JT 151 : (1991) 2 SCALE 80 : (1991) 3 SCC 627 : (1991) 3 SCR 1 , a three Judges Bench of Hon"ble Supreme Court has rejected the contention raised on behalf of the appellant that the evidence of eyewitnesses could not be relied upon as their names did not figure in the inquest report prepared at the earliest point of time.

In the instant case, when the packets of blood stained and plain earth were opened before the Court, some manipulation was found on the cover of packet.

Trial Court found that the said case property was of a different crime number. Therefore, the prosecution failed to prove that the blood was found on the place of occurrence. The Sessions Court has rightly commented on the lapses made on the part of the investigating agency. The testimony of eyewitness accounts P.W.1 Hakim Singh, P.W.2 Mahtab Singh and P.W.3 Amar Singh which are supported with medical evidence cannot be disbelieved.

Now the question whether on this ground and on the ground of mentioning of wrong details in the inquest report and non-mentioning of the names of the accused-appellants, case crime number and details of offences in the police papers, the existence of the first information report could be doubted. As we have noticed in the present matter that investigating officer has not performed his duty in accordance with law and acted casually and negligently, but in our considered opinion only on this basis, the prosecution case cannot be thrown out.

Hon'ble Supreme Court in the case of Kailash Gour (Supra) allowed the appeal acquitting the appellant on the ground that the first information report was registered after preparation of the inquest report and other police papers and also after due consultation and deliberation with the community leader after a gap of long time. The facts of the present case are entirely different from the facts of Kailash Gour's (Supra) case.

So far as the fact regarding non-taking of the blood stained clothes is concerned, trial Court's finding is that the investigating officer has not taken into custody the clothes and has never demanded the same from the witnesses, therefore, there was no opportunity for submission of the clothes by the witnesses to the investigating officer. In this respect it is noteworthy here that witnesses have explained satisfactorily the reason before the trial Court regarding non-submission of the blood stained clothes to the investigating officer. Fact of each case differs and in some cases this may be a peculiar fact to disown the prosecution case, but in the present matter, we are of the view that non-submission of blood stained clothes to the investigating officer cannot be a ground to disown the testimony of the eyewitness accounts and medical evidence, as has been held by the Hon'ble Supreme Court in the case of Khujji @ Surendra Tiwari (Supra).

As we have discussed here-in-above, the place of occurrence in the present matter is the field belonging to Jwala. Eyewitness accounts P.W.1 Hakim Singh, P.W.2 Mahtab Singh and P.W.3 Amar Singh and C.W.1 Brahmajeet have clearly and consistently made it clear that there was a field of Jwala towards north side of the tube-well of Jawahar. Eyewitness accounts had deposed consistently before the trial Court that incident took place in the field of Jwala. Topographical details given by C.W.1, the Lekhpal and the statements recorded under Section 313 Cr.P.C. of the accused persons also substantiate this fact as has been observed by the trial Court in the impugned judgment and order itself. Trial Court has recorded additional statement under Section 313 Cr.P.C. after recording the evidence of C.W.1 Lekhpal and has specifically put question to the accused-

appellant about the situation of the field of Jwala. Accused-appellants have also stated that the field of Jwala was situated towards north side of tube-well of Jawahar.

Thus in the present matter, place of occurrence was the field of Jwala even though the investigating officer had prepared the defective and wrong sketch map (site plan). He prepared the site plan on the basis of imagination without inspecting the spot that is why adverse comments were made by the trial Court against the erring investigating officer. Hence, no infirmity or illegality is found in the finding recorded by the trial Court.

It may also be mentioned here that only on the ground of faulty or defective investigation in the present matter, as we have recorded above, the testimony of the eyewitness accounts cannot be brushed aside. The law laid down in the case of Kailash Gour (Supra) is not applicable in this matter, as the fact of the present case differs from the facts of Kailash Gour's case.

In the case of Bhawani (supra), full Bench of the Hon'ble Supreme Court has held that on the ground of defective investigation, the prosecution case cannot be thrown out.

The law laid down by the Hon'ble Supreme Court in the case of Bhawani (supra) on the point of preparing of defective site plan and mentioning of wrong details in the inquest report can safely be applied in the present matter as the prosecution witnesses have clearly and cogently established the date, time and place of occurrence. It is also established with the statements made by the witnesses that written report (Ex.Ka.-1) was got written in the village itself. Thereafter they proceeded to the police station by taking the injured on a bullock cart and reached there at about 11:00 P.M. after covering a distance of 18 kms. First information report was registered on the basis of written report submitted by the informant at the time mentioned in the Chick.

It is also established in the matter that the injured was sent for medical treatment and he was taken to Jaithra Government Hospital, where after he was referred to District Hospital. Deceased was taken on a bus to the District Hospital, but he died on the way. The first information report was initially registered under Section 307 IPC, therefore, defect or mistake committed by the police in preparing the inquest report and other police papers do not affect the credibility of the testimony of the eyewitness accounts. Firearm injuries are received by the deceased in the said incident caused by the appellant Kali Charan. Medical evidence fully supported and corroborated the oral testimony of the eyewitness accounts. Injuries found on the body of the deceased can be caused in the manner as has been stated by the prosecution witnesses. Time of occurrence also tallies with the medical evidence. Therefore, we are of the view that testimony of P.W.1 Hakim Singh, P.W.2 Mahtab Singh and P.W.3 Amar Singh and C.W.1 Lekhpal Brahmajeet and P.W.5 Dr. B.P. Verma inspire confidence of the Court. Trial Court has rightly placed reliance on the testimony of these witnesses

and has made adverse comments against the investigating officer. Pleas raised by the appellants on this score are not tenable and finding recorded by the trial Court on these issues are not liable to be disturbed. Omissions and laches on the part of the investigating officer are not vital to the prosecution case in this matter. From where the fire is said to have made upon the deceased and the place where the deceased was present at that time, the injuries could be caused on the body of the deceased.

Contradictions and omissions regarding distance between the place of occurrence and village Tausaiya and distance between the tube-well and village Tausaiya stated by the witnesses and also non-examination of the mother of the deceased do not go to the root of the case. They are of minor importance.

We would also like to refer to the law laid down by the Hon"ble Supreme Court in the case of Gangabhavani Vs. Rayapati Venkat Reddy and Others, (2013) 9 AD 493 : AIR 2013 SC 3681 : (2013) CriLJ 4618 : (2013) 4 RCR(Criminal) 853 : (2013) 11 SCALE 132 : (2014) 1 SCJ 756 on the issue of contradictions/omission and normal discrepancies occurred in the deposition of the witnesses wherein it was held as under.

"Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence stands crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-a-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.

CONTRADICTIONS IN EVIDENCE:

9. In State of U.P. Vs. Naresh and Others, (2011) CriLJ 2162 : (2011) 3 JT 508 : (2011) 2 RCR(Criminal) 364 : (2011) 3 SCALE 425 : (2011) 4 SCC 324 : (2011) 2 SCC(Cri) 216 : (2011) AIRSCW 1877 , this Court after considering a large number of its earlier judgments held:

"In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited." A similar view has been re-iterated by this Court in *Tahsildar Singh and Another Vs. The State of Uttar Pradesh*, AIR 1959 SC 1012 : (1959) CriLJ 1231 : (1959) 2 SCR 875 Supp ; *Pudhu Raja and Another Vs. State*, rep. by Inspector of Police, (2012) 4 JCC 2751 : (2012) 9 JT 252 : (2012) 9 SCALE 177 : (2012) 11 SCC 196 ; and *Lal Bahadur and Others Vs. State (NCT of Delhi)*, (2013) 4 AD 416 : (2013) CriLJ 2205 : (2013) 2 Crimes 209 : (2013) 2 RCR(Criminal) 620 : (2013) 5 SCALE 467 : (2013) 4 SCC 557 .

10. Thus, it is evident that in case there are minor contradictions in the depositions of the witnesses the same are bound to be ignored as the same cannot be dubbed as improvements and it is likely to be so as the statement in the court is recorded after an inordinate delay. In case the contradictions are so material that the same go to the root of the case, materially affect the trial or core of the prosecution case, the court has to form its opinion about the credibility of the witnesses and find out as to whether their depositions inspire confidence."

19. Hence, in the present matter, we find that contradictions, omissions, laches, exaggerations occurred in the statement of witnesses and lapses done on the part of the police do not affect the ocular testimony of the witnesses and the same cannot be dubbed as improvement because such type of minor inconsistencies, contradictions, omissions etc. are bound to occur in every case.

20. As the Hon"ble Supreme Court has held in the case of *Bharwada Bhoginbhai Hirjibhai* (Supra) that ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation and one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time- sense of individuals which varies from person to person.

21. It is also noteworthy that every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-

attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. Different persons admittedly seeing an event give different versions of the same incident and usually it varies to a considerable extent.

22. Thus, in the present matter, on the basis of foregoing discussions, we are of the view that trial Court finding recorded on the point of first information report, presence of eyewitness accounts, medical evidence, place of occurrence, date and time of occurrence are based on evidence available on record. There is no infirmity or perversity or illegality in the impugned judgment and order and no interference is required by this Court.

23. As far as the participation of the appellants in the offence is concerned, all the three witnesses have consistently and categorically stated that all the accused armed with firearm were present on the spot and one of them i.e. the accused-appellant Jawahar exhorted to kill the persons belonging to the informant side. Thereafter, accused-appellant Kali Charan opened fire, which hit the deceased. While exhorting, his fellowman accused-appellant Jawahar had also fired upon the informant's side. When the deceased, informant and other witnesses were running away to save themselves, the accused-appellants also had opened fire. Although role assigned to the other accused-appellants has not been specified, but it is clear that all the accused-appellants had formed an unlawful assembly from the very beginning and in furtherance of common object of the wrongful assembly to commit the present offence participated in the crime along with the weapon assigned to them.

24. Accused-appellant Jawahar had exhorted and fired in furtherance of the common object of unlawful assembly formed by them. Accused-appellant Kali Charan had also fired in furtherance of the common object of the unlawful assembly, which hit the deceased, who died later on.

25. Presence and participation of all the accused-appellants on the spot in furtherance of the common object of unlawful assembly formed by them is established beyond reasonable doubt by the statements of P.W.1 Hakim Singh, P.W.2 Mahtab Singh and P.W.3 Amar Singh.

26. Accused-appellants Khan Sahai, Raghuvir, and Atma Ram have died during pendency of the appeal, therefore, their appeal has been abated. Hence, only participation of the accused-appellants Kali Charan, Jawahar, Mani Ram and Brindawan are before us for consideration.

27. The role assigned to accused-appellants Kali Charan and Jawahar have been specified by the witnesses stating that fire made by Kali Charan hit the deceased. The case of the accused-appellants Mani Ram and Brindawan cannot be segregated from the case of accused-appellants Kali Charan and Jawahar. Both the accused-appellants i.e. Mani Ram and Brindawan knew very well from the beginning the design of the unlawful assembly. All the four accused-appellants are liable for the commission of the present offence being the member of an

unlawful assembly. All the accused-appellants were armed with firearms.

28. As far as mentioning of wrong details in the charge is concerned, we have closely perused the charge framed against the accused-appellants. In the charge under Section 302 IPC, this fact has been mentioned that deceased died on the spot. Charge could be modified at any stage of trial, therefore, this defect is not taken to negate or throw out the prosecution case.

29. On close scrutiny of all the depositions/statements made by the eyewitness accounts and the medical evidence, we are of the view that the accused-appellants have faced the trial on the strength that deceased died when he was taken to the hospital. In cross-examination this fact has also been taken into consideration. Therefore, no prejudice has been caused to the accused-appellants. Thus, the point raised by the accused-appellants on this score is also not acceptable.

30. In view of the foregoing discussions and on close scrutiny of the entire evidence, we are of the considered view that impugned judgment and order passed by the trial Court does not suffer from any illegality, infirmity or perversity. Findings recorded by the trial Court are based on the evidence available on record and also on settled legal proposition of law. Trial court has not committed any error of law or fact in convicting and sentencing the accused-appellants under the aforesaid offence.

31. Consequently the appeal being bereft of any merit is hereby dismissed. The conviction and sentence of the accused-appellants Kali Charan, Jawahar, Mani Ram and Brindawan is affirmed. Since these accused-appellants are on bail, their bail bonds are cancelled. All the accused-appellants are hereby directed to surrender before the Chief Judicial Magistrate concerned forthwith to serve out the remaining sentence imposed upon them. Chief Judicial Magistrate concerned is also directed to take coercive steps if the accused-appellants fail to surrender.

32. The record of the trial Court along with copy of the judgment be sent to the Court concerned and Chief Judicial Magistrate concerned for immediate compliance. Compliance report be also submitted to this Court.