
(2017) 01 AHC CK 0154
In the Allahabad High Court
Case No : Criminal Appeal No. 6583 of 2004

Karan Singh

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

Arms Act, 1959 — Section 25

Penal Code, 1860 (IPC) — Section 302, Section 377, Section 506

Citation : (2017) 98 ACrC 795 : (2017) 1 AllCrRulings 1104 : (2017) 4 AllLJ 384

Hon'ble Judges : Bharat Bhushan and Alok Kumar Mukherjee, JJ.

Bench : Division Bench

Advocate : D.P.S. Chauhan, Ambrish Kumar, Swadhesh Kumar, Vimal Kumar Sharma and Vinod Kumar, Advocates, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Bharat Bhushan, J.—Appellants Karan Singh and Kallu @ Sarvesh have assailed common judgment and order dated 25.11.2004 passed by the Additional Sessions Judge (Fast Track Court No.1) Kanpur Dehat in Sessions Trial No.396 of 2002 (Karan Singh and another v. State of U.P.) arising out of Crime No.191 of 2002 under Sections 302, 377 and 506 IPC, and in Sessions Trial No.367 of 2003 (Karan Singh v. State of U.P.) arising out of Crime No.193 of 2002 under Section 25 Arms Act, P.S. Rasoolabad, District Kanpur Dehat whereby both appellants were convicted and sentenced to undergo rigorous imprisonment for ten years under Section 377 I.P.C. along with fine of Rs.2000/- with default stipulation, further convicted and sentenced to undergo life imprisonment under Section 302/34 I.P.C. along with fine of Rs.2000/- with default stipulation and further convicted and sentenced to undergo rigorous imprisonment for five years each under Section 506 I.P.C.

2. In addition to that appellant Karan Singh was also convicted and sentenced to undergo rigorous imprisonment for five years under Section 25 of Arms Act,

arising out of Crime No. 193 of 2002 along with fine of Rs.1000/- with default stipulation. All the substantive sentences of each accused/appellant were ordered to run concurrently.

3. The prosecution story in brief is that marriage ceremony of one Pyarelal Gupta's daughter was being performed in the night of 16/17.6.2002 wherein a movie was being shown on video. A large number of village folks including informant Umesh Khan (P.W.1) had gathered for watching the movie. Informant Umesh Khan (P.W. 1) along with Prakash Singh (P.W.2) left the movie between 12 am and 1 am for returning home. As soon as they arrived near the room of appellant Karan Singh, they witnessed the throttling and strangulation of informant's 13 years old brother, deceased Dilshad. Appellant Karan Singh and Co-appellant Kallu @ Sarvesh were murdering Dilshad. The informant and his companions raised alarm whereupon appellant Karan Singh first brandished the pistol and threatened to kill them and then scampered away.

4. The informant Umesh Khan (P.W.1) found dead body of his deceased brother in a room meant for keeping straw. They also realized that deceased Dilshad had been sodomized i.e. the appellants had committed sexual act against the order of nature with deceased Dilshad prior to his murder. Death of Dilshad created uproar and several village folks also arrived on the spot. Some of these witnesses had recognised the offenders in the light of torches and generator employed nearby in marriage ceremony (supra).

5. Informant Umesh Khan (P.W.1) got the F.I.R. scribed by one Pramod Singh and thereafter lodged it in the next morning at 12:30 pm at P.S. Rasoolabad which was located almost fourteen kilo meters away from the place of occurrence i.e. village Alipur Ramhar. The police recorded this case in Case Crime No.191 of 2002 initially under Section 302 and 506 IPC. The investigation was entrusted to S.I. Brijnath Singh Sengar (P.W. 5). I.O. commenced investigation immediately, recorded the statement of informant Umesh Khan (P.W.1), chik writer and witnesses Sonelal and Ravindra Pratap Singh. After obtaining postmortem report and after recording statements of some of the witnesses, Section 377 IPC was also added. It appears that the Investigating Officer Sri Brijnath Singh Sengar (P.W. 5) and other police personnel initiated search for perpetrators of crime. He received information on 18.6.2002 from unknown informant that appellants were trying to run away from the clutches of the police. Police party managed to arrest both appellants near the canal, village Alipur Ramhar at about 9:30 pm. A country made pistol of 315 bore and two live cartridges of the same bore were allegedly recovered from the possession of appellant Karan Singh. Second appellant namely, Kallu @ Sarvesh was also arrested simultaneously. However, no contraband is said to have been recovered from the possession of appellant Kallu @ Sarvesh.

6. On a conclusion of investigation two charge sheets one in Crime No.191 of 2002 under Sections 302/377 and 506 IPC (Ext. Ka-12) against both appellants and another in Crime No.193 of 2002, under Section 25 of Arms Act (Ext.

Ka-15), only against appellant Karan Singh were submitted.

7. The Sessions Judge consolidated both session trials and framed charges against appellants Karan Singh and Kallu @ Sarvesh under Sections 302, 377 and 506 IPC on 28.9.2002. Similarly, appellant Karan Singh was also charged under Section 25 (Arms Act) on 9.8.2002 after obtaining sanction of District Magistrate (Ext Ka-16) for recovery of country made pistol of 315 bore as well as two live cartridges of same bore. Accused appellants denied charges and claimed to be tried.

8. Prosecution adduced the evidence of six witnesses, namely, P.W. 1 informant Umesh Kahn, P.W. 2 Prakash Singh, P.W. 3 Head Constable Ram Pratap Singh (recorded FIR), P.W. 4 Dr. M.K. Jain (conducted postmortem), P.W. 5 S.I. Brij Nath Singh Sengar (I.O.) and P.W. 6 A.S.I. Kunwar Singh Bhadauriya I.O. of Crime No.193 of 2002 under Section 25 Arms Act.

9. FIR (Ext. Ka-1), Chik report (Ext. Ka-2), extract of memorandum of recovery of country made pistol subsequent to arrest of appellants on 18.6.2002 (Ext Ka-13), first site plan (Ext. Ka- 5), second site plan (Ext Ka-14), postmortem report (Ext. Ka-4), extract of G.D. of recording of FIR of P.S. Rasoolabad (Ext. Ka-3), inquest report (Ext. Ka-6), Copy of letter of I.O. to R.I. Kanpur Dehat (Ext Ka-7), sample of seal (Ext. Ka-8), letter of I.O. to CMO, Kanpur Dehat (Ext. Ka-9), Police form No.379 Photo Nash (Ext. Ka- 10), Police Form No. 33 (Ext. Ka-11), Charge sheet against accused persons under Section 302 etc (Ext. Ka-12), charge sheet against second appellant Karan Singh (Ext. Ka-15), sanction of District Magistrate (Ext. Ka-16), Chik report of Crime No.193 of 2002 under Section 25 Arms Act (Ext. Ka-17) and extract of G.D. of P.S. Rasoolabad regarding entries of arrest of appellant Karan Singh (Ext. Ka-18) are available on record.

10. It is pertinent to point out that P.W. 4 Dr. M.K. Jain found following ante mortem injuries on the person of deceased:

(i) Multiple abraded contusion over front of neck in an area of 11 cm x 4 cm just below chin largest size 5 cm x 2 cm and smallest size 1 cm x 0.5 cm.

(ii) Multiple laceration around external anal orifice slide preserved.

11. The statements of accused persons were recorded under Section 313 Cr.P.C. wherein they denied all allegations and claimed false implication on account of prior enmity. Appellants were given opportunity to adduce evidence in defence but of no avail. The learned Additional Sessions Judge was convinced of prosecution evidence and held appellants guilty of offences as charged. Therefore, he convicted both appellants as aforesaid. This judgment is under challenge before this Court.

12. Heard Sri Ambarish Kumar and Sri Tahir Hussain advocates on behalf of appellants and Sri Syed Ali Murtaza, learned A.G.A. on behalf of State.

13. Learned counsel for appellants have submitted that F.I.R. was filed with considerable delay without any explanation. He has claimed that the discrepancies enshrined in the prosecution evidence reveal that witnesses were not present on the spot. A claim was made that witnesses especially informant Umesh Khan, P.W. 1 did not stop the accused persons from committing the crime despite his claim of sudden appearance on that spot. Learned counsel for appellants have also pointed out that FIR was sent to the Magistrate with considerable delay thereby creating doubt about the process of investigation as well as execution of documents. He has also claimed that investigation is tainted and was done with pre conceived notion not in order to discover the truth but to somehow implicate appellants in this case. The counsel has drawn the attention of this Court towards the fact that site plan (Ext. Ka-5)) does not show the straw allegedly lying inside the room of crime. Further argument is that FIR was ante timed.

14. On the contrary, Sri Syed Ali Murtaza, learned A.G.A. has submitted that it was the room of appellant Karan Singh in which the crime was committed and corpse recovered. Both appellants and the cadaver of Dilshad were found inside the room, therefore, it is incumbent upon the accused persons to explain their presence inside the room. He has also submitted that the incident was witnessed by real brother of deceased, namely, P.W. 1 Umesh Khan and supported by independent witness, namely, P.W. 2 Prakash Singh. He has also argued that inquest report (Ext. Ka-6) contains the crime number meaning thereby that FIR was in existence prior to execution of inquest report. Therefore the argument of ante timings of FIR is not sustainable.

15. We have carefully perused the prosecution story which indicates that 13 years old deceased Dilshad was first over powered by appellants Karan Singh and Kallu @ Sarvesh then he was dragged inside the room used for storage of straw. Admittedly, room was without window and door. Thereafter the boy was subjected to sodomy either by both appellants or by one of the appellant. Subsequently, appellants murdered deceased Dilshad by throttling. At this point, informant Umesh Khan (P.W. 1) brother of deceased and his companion Prakash Singh (P.W.2) were coming back to their residence after watching the movie on video at Pyarelal's compound. They allegedly witnessed the throttling and naturally intervened by raising alarm. The prosecution says that appellant Karan Singh waved a country made pistol upon them and also threatened to kill then sprinted away with Co-appellant Kallu @ Sarvesh. This is the sum and substance of prosecution story. It is apparent that no one was able to witness the initial part of the incident. Both eye witnesses claims to have seen only the throttling of deceased Dilshad. They constructed the remaining part of the story by the condition of cadaver of deceased Dilshad. His underwear was pulled off. There are allegations of presence of traces of semen and blood on that underwear. It is also said that underwear was full of feces. The prosecution has further said that a report was lodged next morning at 12:30 pm at P.S. Rasoolabad, district Kanpur Dehat i.e. after almost 12 hours of the incident after getting it scribed by

one Pramod Singh in the morning around 8 am.

16. The record has revealed that appellant Karan Singh is the maternal uncle (mama) of Co-accused Kallu @ Sarvesh so in essence the allegations are that maternal uncle Karan Singh and his nephew (Bhanja) Kallu @ Sarvesh either together or one of them sodomized deceased Dilshad and then both of them killed him by throttling. Incidentally the corpse of deceased Dilshad was indeed recovered in the stand alone room of appellant Karan Singh with no door and window of any kind used for storage of straw. The prosecution evidence reveals that marriage of daughter of their neighbour Pyarelal was being performed and on that occasion a VCR (Video Cassettes Recorder) was employed for screening a hindi movie; and that admittedly 300-400 people had gathered to watch the movie. A generator was used for lighting marriage ceremony and for running VCR.

17. The evidence of P.W. 1 Umesh Khan and P.W. 2 Prakash Singh also reveals that this movie was being shown very close to the place of occurrence. The oral evidence and the site plan (Ext Ka-5) indicates that the house of Umesh Khan (informant) and appellant Karan Singh are very very close to the place of occurrence. The lane from which the incident was claimed to have been witnessed by witnesses is merely two and a half paces in width. In fact one of the eye witnesses has admitted that not more than two persons can cross the lane simultaneously. P.W. 1 Umesh Khan, brother of deceased has admitted said fact.

18. Evidence has further revealed that both eye witnesses came back from the Pyare Lal's house after watching the full movie. This fact has been conceded by P.W. 2 Prakash Singh. There is no reason to conclude that 300-400 people, who had been watching movie along with eye witnesses remained rooted at Pyare Lal's place. It is very safe to assume that all of them watched the movie and left for their respective homes on completion of movie, almost simultaneously. Some of them may be a little ahead and some others slightly behind but it is reasonably safe to conclude that all 300-400 movie watchers were traversing the village almost simultaneously towards their respective homes. This conclusion finds support from the testimony of P.W. 1 Umesh Khan and P.W. 2 Prakash Singh wherein they have claimed that several village folks arrived the place of occurrence promptly when they raised alarm after witnessing the incident and yet both the appellants managed to flee from the place of occurrence by passing both the eye witnesses and entire village folks by crossing the very small lane. This scenario does not appeal to logic and reason.

19. Admittedly deceased Dilshad was also watching that movie with 300-400 village folks. His brother P.W. 1 Umesh Khan has admitted that deceased Dilshad and both appellants Karan Singh and Kallu @ Sarvesh were also watching movie along with hundreds of village folks. P.W. 2 Prakash Singh has specified that deceased Dilshad left the movie merely 15-20 minutes before the departure of eye-witnesses. These prosecution witnesses have not specified the departure

time of appellants. However, admittedly deceased Dilshad left the movie merely 15-20 minutes prior to the incident.

20. It indicates that during the window of this 15-20 minute's period, deceased Dilshad left Pyarelal's house/compound, managed to skip 300-400 other village folks, was lured to appellant Karan Singh's room full of straw, then subjected to sodomy by one or two grown up men and thereafter killed by throttling in the close vicinity of 300-400 village personnel and the residence of deceased himself. There is not an iota of evidence that any alarm was raised by deceased Dilshad. This is the core of prosecution story and these allegations do not appear to be logical. It is very difficult to believe this story. It is true that deceased Dilshad was child but still 13 years old child. It is pertinent to point out that both appellants had antagonistic relationship with the informant. This fact has been admitted by both eye witnesses. Appellants too have not disputed this fact. The question of prior enmity is double edged sword but the existence of enmity does indeed requires a careful evaluation of prosecution evidence. It is very difficult to accept that the entire incident took only 15-20 minutes near large number of village folks and yet only two witnesses with prior enmities were able to see the some part of the incident.

21. It is pertinent to point out that FIR was lodged almost after 12 hours. The FIR does not contain any explanation for this delay. But P.W. 1 informant Umesh Khan has tried to give some reason for it. He said that after the recovery of dead body he remained at the place of occurrence for some time then he went to inform his relations. He came back and then dictated FIR to one Pramod somewhere around 7 am. in the morning and then went to the police station on foot to lodge the FIR. The place of occurrence, namely village Alipur Ramhar was located merely 14 kms away from the police station Rasoolabad, therefore, the FIR was lodged at 12:30 am.

22. This witness has claimed that one Uday Singh (not produced) Sher Singh (not produced) and Ram Karan (not produced) etc. accompanied him to police station. P.W. 2 Prakash Singh admittedly did not accompany the informant (P.W.1) to the police station, Rasoolabad.

23. P.W. 1 informant Umesh Khan has said that he spent 5-5.15 hours to reach P.S. Rasoolabad and thereafter managed to arrive back in his village at about 1:15 pm. He has also testified that his elder brother Saeed Khan did not accompany him to the police station. The prosecution story, therefore, claims that an incident occurred in the previous night between 12-01 am. FIR was dictated at 7 am. and lodged at 12:30 pm. on next day and informant came back to the place of occurrence by 01:15 pm. None of these informations or assertions of P.W. 1 Umesh Khan appeal to the reason or gets support by any other evidence on record. In fact the contents of FIR and the circumstances related to FIR really create doubt about the presence of these witnesses on the spot.

24. First of all, the informant Umesh Khan (P.W. 1) has clearly said that

subsequent to his knowledge about the death of his brother Dilshad, he merely kept sitting near the place of occurrence and then became busy in informing his relations. FIR (Ext. Ka-1) says virtually same thing. FIR indicates that both appellants threatened the informant Umesh Khan (P.W.1) not to raise alarm and then fled from the place of occurrence while waving the gun upon the eye witnesses. Informant Umesh Khan has claimed that every word of FIR was dictated by him to Pramod and yet informant was not aware of several information/allegations enshrined in FIR. Essence of prosecution case is that informant accidentally became aware of murder of his brother Dilshad, yet instead of going either to the doctor or to the police, he went to inform his illusive relations. Incidentally none of these relative has been produced during trial. Ordinarily, the informant should have been aware of his own dictations but his cross examination reveals that he was unaware of several facts enshrined in the FIR. For instance FIR named a specific witness Prakash Singh S/o Ram Singh (P.W. 2) and yet P.W. 1 Umesh Khan claimed ignorance about the name of father of Prakash Singh. In his testimony informant Umesh Khan conceded that even during his deposition, he was not aware of the name of father of P.W. 2 Prakash Singh. He has also said that he covered distance of 14-15 Kms up to police station on foot in about 5 hours but managed to come back in the village within 30-40 minutes and he has not explained or given any clarification for this apparent incongruity. In FIR no specific position and the condition of cadaver was given while in examination-in-chief of informant it was specifically asserted that the underwear of deceased was lying by the side of corpse and it was full of fecal matter, blood and semen. The same witness during cross-examination changed the version and said that deceased was completely naked and there was no fecal material in his underwear, though he did say that semen was present on the underwear. He specified that he dictated this fact to Pramod, the scribe of FIR but failed to explain the absence of this fact in FIR.

25. P.W. 1 informant Umesh Khan has also said that his elder brother Saeed Khan did not go to police station with him but this fact has been disputed by P.W. 2 Prakash Singh. Prakash Singh has specifically asserted that informant Umesh Khan and his elder brother Saeed Khan together left for police station at 8-9 am. This is a very important discrepancy which has not been explained by prosecution. First the discrepancy itself create doubt about the presence of witnesses on the spot. Second, there is very significant fact available in prosecution evidence which again create doubt about the presence of witnesses on the spot. The core of prosecution story is that P.W. 1 Umesh Khan, brother of deceased Dilshad lodged the report about the incident to police station and his brother Saeed Khan did not go to police station and yet the inquest report (Ext. Ka-6) says the information about the cadaver of deceased was given by Saeed Khan, the elder brother of informant Umesh Kahn (P.W. 1). This fact has been admitted by P.W. 5 Brij Nath Singh Senger. But he failed to give any explanation in this regard. He merely said that this fact has been written by one Sub Inspector V.P. Mishra; and that only he can explain it. But V.P. Mishra was not

produced by prosecution in evidence. Surprisingly, P.W. 5 Brij Nath Singh Senger admitted the contents of inquest report which says that the information was given at 1:30 pm. on 17.6.2002. If the police station Rasoolabad received information at 1:30 pm, then how come the FIR was registered at 12:30 pm? And that too in the name of P.W. 1 Umesh Khan and not in the name of Saeed Khan. Ordinarily FIR is the first information. Inquest report (Ext Ka-6) and the testimony of P.W. 5 Brij Nath Singh (I.O.) indicate that this information was in fact furnished by Saeed Khan, elder brother of informant Umesh Khan but neither the G.D. of the police station Rasoolabad nor any other document indicate the presence of Saeed Khan and despite repeated questioning, no satisfactory explanation was provided either by P.W. 3 constable Ram Pratap Singh who recorded the FIR and P.W. 5 Brij Nath Singh Senger, the then S.H.O., P.S. Rasoolabad. The S.H.O./I.O. has placed the liability of explaining these discrepancies on the shoulder of illusive S.I. V.P. Mishra but V.P. Mishra was not produced in trial by prosecution.

26. There are several discrepancies which support the allegation of defence that FIR was ante timed. The absence of name of Saeed Khan is one of them. The fact that this information by Saeed Khan was given at 1:30 pm, indicates ante timing. A considerable delay in lodging the FIR is itself suspicious. Several interpolations on inquest report (Ext. Ka-6) also create doubt. In fact the crime number was written in red ink after making interpolation. Names of police officials entrusted with the responsibility of carrying the cadaver to the mortuary were interpolated and changed. Some columns of inquest reports were not filled at all. Allegation of ante timing of FIR finds support from several tell-tale indicators. Inquest report says that inquest proceedings were initiated at 01:30 pm. Chik says that FIR was recorded at 12:30 pm. P.W. 3 Ram Pratap Singh says that he took half an hour to record chik FIR. Another 25 minutes were taken by him for making relevant entries in G.D. of the P.S. Rasoolabad. Then his statement was taken by the I.O. on the police station itself. Incidentally P.W.3 Ram Pratap Singh has said that his statement was taken after 90 minutes of recording of G.D. Meaning thereby that first the written report was received then another one hour was taken in carving out chik report and making entries in G.D. After another 90 minutes recording of statement of head constable began. Recording of statement of P.W. 3 Ram Pratap Singh must have taken some time. As per inquest report information about cadaver was furnished by Saeed Khan, brother of informant Umesh Khan (P.W.1) at 01:30 pm. This calculation indicates that I.O. could not have left the police station before 4:30-05 pm. in the evening and yet the Police reached at the place of occurrence between 01-02 pm. The I.O. has testified that he left the police station at 12:30pm. Interestingly, P.W. 5 Brij Nath Singh Senger has conceded that a departure time of 12:30 pm. is shown in general diary of the police station while he actually left the police station at 1:15 pm. and reached the place of occurrence by 1:40 pm. First the I.O. has conceded that wrong entries were made in G.D. of police station. Secondly, even the present entries are apparently false as there was no

way I.O. could have left the police station prior to 4:30-05 pm.

27. Even if we assume that the F.I.R. was registered at 12:30 pm. there was no way Investigating Officer could have reached the place of occurrence at 01:40 pm. in the light of testimony of P.W. 3 constable Ram Pratap Singh because it was well nigh impossible for head constable to carve out chik report and make entries in G.D. before 01:30 pm. and he has conceded this fact. Thereafter his statement was recorded. It was initiated after 90 minutes of making entries in G.D. Meaning thereby that his statement was initiated at 3:00 pm. as per his own statement. There are vast discrepancies between the statements of P.W. 3 head constable Ram Pratap Singh and P.W. 5 Brij Nath Singh Senger and these significant, serious and fatal discrepancies have not been explained by the prosecution at all.

28. P.W. 2 Prakash Singh has repeatedly conceded that he made different statements at different times. These admissions are enshrined in various places of his testimony (Page 28-29 of the paper book). P.W. 1 Umesh Khan (informant) said that underwear of deceased Dilshad was lying besides his dead naked body while P.W. 2 Prakash Singh has said that deceased was wearing underwear but it was pulled down upto his thighs.

29. Surprisingly, the statement of P.W. 2 Prakash Singh was recorded after ten days of the incident without any explanation despite the claim that I.O. visited the village of occurrence several times subsequent to the alleged discovery of body of deceased Dilshad.

30. The Apex Court in *Vijaybhai Bhanabhai Patel v. Navnitbhai Nathubhai Patel* 2004 AIR (SC) 4607 has held that recording of statements of widow and son of deceased by I.O. after two days of occurrence creates doubt about the prosecution version. We believe that it may not be true in every case but the fact remains that in the instant case, the informant Umesh Khan (P.W.1) himself has claimed that only two witnesses, namely, Umesh Khan (P.W. 1) and Prakash Singh (P.W. 2) witnessed the actual throttling of deceased Dilshad as stated earlier. The earlier part of the incident in which the deceased Dilshad was allegedly sodomized was not seen by any witnesses. But prosecution claims that only two witnesses saw the incident of throttling and yet for ten days the statement of P.W. 2 Prakash Singh was not recorded by the I.O. No satisfactory explanation has been given. In this case I.O. visited the place of occurrence same day. Even after his first visit, he visited the village several time as admitted by P.W. 2 Prakash Singh and yet for full ten days his statement was not recorded by I.O. The Apex Court in *State of U.P. v. Bhagwan and another* (1997) 11 SCC 19 has held that non recording of statement of eye witnesses by police within time despite sufficient opportunity to record it raises doubt about the authenticity of FIR and also the testimony of eye witnesses.

31. We believe that there are too many discrepancies in the prosecution case. Both eye witnesses had antagonistic relationship with appellants, therefore, in

the light of these antagonistic relationship, the delayed FIR without satisfactory explanation and several discrepancies enshrined in the prosecution evidence, create doubt about the presence of witnesses on the spot. The fact that the first information was given by Saeed Khan and yet his name is not mentioned anywhere in G.D. etc, creates doubt about the prosecution case. Why was Saeed Khan not produced in the evidence? He could have explained the information given by him to the Police. In fact P.S. Rasoolabad itself should have been recorded information at least in G.D. of the police station.

32. We are convinced that the FIR was ante timed. An attempt to manipulate and create evidence is palpable. The genesis of the prosecution case is shrouded in the mystery. We have carefully examined the testimony of I.O. Brij Nath Singh Senger (P.W. 5) of Crime No. 191 of 2002 as well as the I.O. Kunwar Singh (P.W.6) of Crime No.193 of 2002 under Section 25 Arms Act. Fact of the matter as far as recovery of arms is concerned only one witness namely, P.W.5 Brij Nath Singh Sengar has been placed on record. No independent public witness has been placed despite the prior information of accused.

33. The conduct of I.O. Brij Nath Singh Senger in Crime No.191 of 2002 reveals that he investigated the crime of sexual assault and alleged murder in a very lackadaisical manner. Initially when his testimony was recorded on 9.5.2003 even the recovered articles were not placed before the court. The Fard Baramadgi (Ext. Ka-17) was not present in the court. In fact this witness was recalled in the trial court on the application of prosecution to connect the stated articles with said recovery. The testimony of this witness is not credible and trustworthy to say the least. No significant corroborative evidence has been placed by prosecution. The Fard Baramadgi (Ext. Ka-13) indicates that a country made pistol of 315 bore and two live cartridges of the same bore was recovered. However, the evidence of P.W. 5 Brij Nath Singh Senger is confusing and uncertain as far as identity of recovered pistol and live cartridges are concerned. We are not convinced of this evidence at all. Fact of the matter is that Investigating Officer should have sent these materials then stated recovered articles for forensic examination which was not done. It is pertinent to point out that the investigator of Crime No.193 of 2002 of offence under Section 25 Arms Act, P.W. 6 Kunwar Singh was in fact the subordinate of P.W. 5 Brij Nath Singh Senger who allegedly recovered the country made pistol and live cartridges. This recovery is not convincing at all. We believe that the prosecution has failed to establish its case beyond all reasonable doubt, therefore, appellants are entitled of benefit of doubt.

34. Considering all facts and circumstances of the case, the common judgment and order dated 25.11.2004 passed by the Additional Sessions Judge (Fast Track Court No.1) Kanpur Dehat in Sessions Trial No.396 of 2002 (Karan Singh and another v. State of U.P.) arising out of Crime No.191 of 2002 under Sections 302, 377 and 506 IPC, and in Sessions Trial No.367 of 2003 (Karan Singh v. State of U.P.) arising out of Crime No.193 of 2002 under Section 25 Arms Act, P.S.

Rasoolabad, District Kanpur Dehat are hereby set aside. The appeal is allowed. Both surviving appellants, namely, Karan Singh and Kallu @ Sarvesh are acquitted. Their sureties are discharged. The appellants be released forthwith if they are in custody and not wanted in any other case.

35. Let a copy of this order be certified to concerned court through Sessions Judge, Kanpur Dehat within a fortnight for compliance. The court concerned shall report the compliance within a month thereafter.