

(2017) 04 AHC CK 0144
In the Allahabad High Court
Case No : 913 of 1990

Pahalwan

APPELLANT

Vs

State Of U.P.

RESPONDENT

Date of Decision : 13-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#), [Section 313](#) - Examination of witnesses by police - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 302](#), [Section 307](#) - Punishment for murder - Attempt to murder

Citation : (2017) 04 AHC CK 0144

Hon'ble Judges : Bala Krishna Narayana, Arvind Kumar Mishra

Bench : Division Bench

Advocate : P K Tripathi, Sharad Kumar Srivastava

Judgement

1. Heard Sri Sharad Kumar Srivastava, learned counsel for the appellant, Sri J.K. Upadhyay and Kumari Meena, learned A.G.As. for the State and perused the record.
2. By way of instant criminal appeal, challenge has been made to the validity and sustainability of the judgment and order of conviction dated 26.04.1990 passed by the Sessions Judge, Fatehpur, in Sessions Trial No.487 of 1989 (State Vs. Pahalwan) arising out of Case Crime No.30 of 1989, under Sections 302, 307 IPC, Police Station- Kalyanpur, District- Fatehpur, whereby the accused appellant has been sentenced to life imprisonment and 10 years R.I., respectively. Both the sentences shall run concurrently.
3. Stream of events leading up to this appeal, as discernible from record, appear to be that an FIR was lodged at Police Station- Kalyanpur on 15.2.1989 at 10.45 P.M. by Laxmi s/o Lallu against appellant- Pahalwan s/o Badalu with allegation that "barat" of his daughter had arrived at his home and "dwar-pooja" ceremony was going on and a number of villagers had gathered on the spot including the

"baratis" (attendants of "barat" procession). Appellant- Pahalwan s/o Badalu was of the same village. Pahalwan s/o Badalu was in search of opportune moment and with that view in mind, he fired on Kalloo, which fire also hit Ashwani Anand (one among the "barati") and one unknown person, who was relative of the informant r/o village- Tilsahari within Police Station- Mahrajpur, District- Kanpur, who sustained injury. Pellets also hit Kalloo. The incident was witnessed apart from the informant by Ramesh s/o Sukkhu, Basanta s/o Ramdayal and others. Patromax light was illuminated on the spot. The incident occurred around 10.00 P.M. Request was made for lodging the report and taking appropriate action. The written report is Ex.Ka.1.

4. Contents of written report were taken down in the check FIR by constable Sabir Singh at Case Crime No.30/1989 under Section 307 IPC at Police Station- Kalyanpur, District- Fatehpur on 15.2.1989 at 22.45 hours. The check FIR is Ex.Ka.7. On the basis of entry so made in the check FIR, a case was registered at G.D. No.39 on 15.2.1989 at 10.45 P.M. at aforesaid case crime number under aforesaid sections of IPC against the accused. Copy of GD entry is Ex.Ka.8. Both these entries have been proved by the Investigating Officer- Ram Bahal Singh Chauhan P.W.6., as he was acquainted with the hand-writing of the constable moharrir, who noted relevant entry in aforesaid papers.

5. Record reflects that after lodging of the FIR, the injured were medically examined by Dr. Harishchandra P.W.3 on 15.2.1989 at District Hospital, Fatehpur. Injured Ashwani Anand was examined at 11.50 P.M. on 15.2.1989, wherein the following injury was found on his person:

"(1) Two lacerated wounds abraded collars 0.3cm in diameter 3cm apart on left side of skull lateral one being 7 cm away from top of left ear bleeding present, cavity deep, depth not probed, around the wounds there is traumatic swelling 4 cm x 3 cm in size."

Advised:- X-ray skull, no blackening tattooing or scorching seen around.

Opinion:- Injury is kept u/o, advised X-ray skull for opinion regarding nature and cause of injury. Duration about fresh. Patient admitted.

5. The very same day, one unknown person aged about 30 years had also been examined by Dr. Harishchandra P.W.3 at 11.40 P.M. The following injury was noted on his examination:

"Lacerated wound 5cm. X 1.5 cm. X cavity deep (depth beyond skull bone not probed) on right side of skull 7cm. above right ear, profuse bleeding present. No blackening/tattooing or scorching present. Advised X-ray. Very low pulse. Feeble respiratory value.

Opinion:- Injury is kept u/o and X-ray skull advised to give any opinion regarding nature and cause of injuries. Patient admitted. Surgeon informed. Duration about fresh (seems to be caused by firearm object), but definite opinion can be given only after X-ray report.

6. Both the aforesaid injury reports of Ashwani Anand and the unknown person have been proved by the Dr. Harishchandra P.W.3 as Ex.Ka.2 and Ex.Ka.3, respectively.

7. Doctor witness has further testified to the extent that the unknown person died in the night intervening 15/16.2.1989 around 2.10 A.M. and his death report was submitted by the doctor, which is Ex.Ka.4.

8. Injured Kalloo s/o Sukhnandan aged 40 years was medically examined at PHC- Gopalganj on 15.2.1989 at 11.15 P.M. by Dr. S.K. Bajpayee P.W.5, who noted the following injuries on his person:

"(1) G.S.W. (wound of entry)- 1/4 cm. x 1/4 cm. x skin deep over time Lateral Epicondyle of Rt. forearm. Scab present.

(2) G.S.W. (wound of entry)- Abrasion 1/4 cm. x 1/4 cm. x skin deep over the Rt. side back 6 cm. below the spine of Rt. scapula.

(3) G.S.W. (wound of entry)- Abrasion 1/4 cm. x 1/4 cm. x skin deep over time Rt. side back 9.5 cm. below the medial border of spine of Rt. scapula. Oozing present.

8. All the injuries were simple in nature caused by some fire-arm. No blackening or tattooing present. Duration fresh. Injury report has been proved as Ex.Ka.6 by Dr. S.K. Bajpayee at P.H.C. Gopalganj.

9. Record further reveals that Shyam Lal died during the course of his treatment and information of his death was intimated to the police, consequently, S.I. M. Parikh along with colleague constables arrived on the spot and held inquest of Shyam Lal; it commenced at 10.50 A.M. and completed at 12.25 P.M. on 16.02.1989. Formal proof of the inquest has been dispensed with, therefore, it has been exhibited as Exhibit Ka-15. Opinion was expressed by the inquest witnesses and the Investigating Officer for sending the body for postmortem examination for ascertaining cause of death. In the process relevant papers were prepared by the Investigating Officer i.e. letter to R.I. Exhibit Ka-17, letter to CMO Exhibit Ka-18, Police Challan Form 13 (challan dead body) Exhibit Ka-19, photo nash Exhibit Ka-20 and specimen seal Exhibit Ka-21.

10. Consequently, dead body was sent for postmortem examination where Dr. Narendra Kumar P.W.4 conducted autopsy on the cadaver of deceased- Shyam Lal- at 03.30 P.M. on 17.02.1989 at mortuary- Fatehpur. He noted following antemortem injuries on his body:-

Ante-mortem injury (1) Gunshot wound of entry 4 cm x 4 cm x cavity deep on right side of skull, 5 cm above right ear. No blackening or scorching present. Duration of wound is from right to left, underlying temporal and parietal bone is fractured.

11. In the opinion of doctor, cause of death was stated to be antemortem gunshot injury. Dr. witness- Dr. Narendra Kumar P.W.4 has proved postmortem

report as Exhibit Ka-5. His testimony on page-44 of the paper-book indicates that Shyam Lal died during the course of treatment in hospital in the night intervening 15/16.02.1989 at 02.10 A.M.

12. Investigation of this case was underway and it was entrusted to Ram Bahal Singh Chauhan P.W.6. He prepared memo of "kurta" of injured Kallu, as Exhibit Ka-9. He proceeded to the spot at village- Padhara, recorded statement of various prosecution witnesses, inspected the spot of the incident, prepared site plan- Exhibit Ka-10, obtained copy of postmortem report of deceased- Shyam Lal on 19.02.1989, converted the case under Section 304 IPC from under Section 307 IPC and made entry in the concerned General Diary at Serial No.11 of date 19.02.1989 at 6.37 A.M., copy whereof has been proved as Exhibit Ka-11. He also recorded statement of informant- Laxmi and injured- Ashwani Anand on 21.02.1989 and 3.3.1989, respectively, at village- Padhara. Accused Pahalwan surrendered in court on 10.03.1989. Therefore, he (P.W.6) also recorded statement of the accused in jail on 16.03.1989 and after completing investigation, filed charge-sheet against the accused, which is Exhibit Ka-12.

13. Consequently, proceeding of the case was committed to the court of Sessions. As a sequel to that, this case was made over for trial and disposal to the court of Sessions Judge, Fatehpur where it was numbered as S.T. No.487 of 1989. The appellant was heard on point of charge and the trial court was, prima facie, satisfied with the case against the accused-appellant. Therefore, it framed charge against the accused-appellant under Sections 302, and 307 IPC. Charges were read over and explained to the accused, who abjured charges and opted for trial.

The prosecution in order to prove guilt of the accused examined as many as six prosecution witnesses. Brief reference of the same is sketched herein below:-

14. Laxmi P.W.1 is the informant and he has lodged the first information report, Exhibit Ka-1 and he is an eye-witness of the occurrence.

15. Kallu P.W.2 is the injured witness of the occurrence.

16. Dr. Harishchandra P.W.3 has medically examined injured Aswani Anand and one unknown persons on 15.02.1989 at 11.50 and 11.40 P.M. and has proved medical examination reports, Exhibit Ka-2 and Ka-3, respectively.

17. Dr. Narendra Kumar P.W.4 has conducted autopsy on the dead body of deceased- Shyam Lal at 03.30 P.M. on 17.02.1989 and has proved postmortem examination report Exhibit Ka-5.

18. Dr. S.K. Bajpai P.W.5 has medically examined Kallu at PHC Gopalgunj on 15.02.1989 and has proved injury found on the examination of his person as Exhibit Ka-6.

19. Ram Bahal Singh Chauhan P.W.6 is the Investigating Officer. Apart from proving his investigation, he has also proved relevant entries made in the

concerned Check FIR and GD entry of date 15.02.1989. He has detailed the various steps, whereby he prepared the site plan (Exhibit Ka-10) and memo of "kurta" (Exhibit Ka-9). He has filed charge-sheet (Exhibit Ka-12).

20. Except as above, no other testimony was adduced, therefore, evidence for the prosecution was closed and statement of the accused was recorded under Section 313 Cr.P.C., wherein, he claimed to have been falsely implicated in this case on account of enmity.

21. The defence has not led any evidence, whatsoever.

22. Learned trial Judge after considering the case on its merit returned aforesaid finding of conviction and sentenced accused to imprisonment for life under Section 302 IPC and further sentenced him 10 years R.I. under Section 307 IPC.

23. Consequently, this appeal.

24. We have heard, in extenso, argument pros and cons and also perused the record of this appeal.

25. It has been vehemently claimed on behalf of the appellant that the first information report is ante-timed and result of concoction. The written report was lodged only after consultation. The place of occurrence is not certain and no blood was recovered from the alleged spot. No reliable proof regarding availability of light on the spot at the time of occurrence has been proved. Manner of assault, vis-a-vis, seat of injury, are improbable and highly doubtful. Fact of previous enmity was wrongly misused. Informant has not spelt name of one injured in FIR, however, he has described him as an unknown person, whereas, he was deceased- Shyam Lal- relative of informant. This by itself shows that the informant was neither present on the spot nor did he witness the incident. The statement of prosecution witnesses of fact is on the face dubious, full of conjunctures, imagination and outcome of tutoring, besides being contradictory to each other. The prosecution case does not inspire confidence and the trial court failed to appreciate these particular aspects of the case and erroneously recorded conviction and passed sentence.

26. Learned AGA while retorting to aforesaid argument has come out heavily and has engaged attention of the Court to the injury reports of the various injured persons, whose injury reports have been proved by doctor witnesses and the injury so caused is in-conformity with the eye-account testimony of firing being done on the spot by the accused. The manner and style of incident has been specifically proved by the prosecution witnesses of fact. The medical examination of the injured so done soon after the occurrence around 11.40, 11.50 P.M. and around 11.15 in the night. The source of light has also been proved by these witnesses that one illuminated petromax was kept there. May be, that there are certain inconsistencies surfacing in the testimony of the prosecution witnesses of fact, but these inconsistencies, on its face, are of trivial and petty nature and the same cannot be given pivotal importance because the crux and core of the

incident has been proved in a consistent manner by cogent testimony. Testimony of the prosecution witnesses of fact inspires confidence and the same is clinching and creditworthiness of the prosecution witnesses is established. Prosecution witnesses have replied fairly to every particular question regarding occurrence and the manner and style of occurrence. Their testimony is intact on point of involvement of the accused in the incident and it also proves presence of these witnesses on the spot at the time of occurrence besides proving source of light.

27. More so, the incident took place when marriage ceremony of daughter of informant was going on; one can visualize such a situation in a marriage ceremony that it will never be performed without any source of light being arranged. It is unthinkable that the ceremony will go on in darkness.

28. Motive in shape of enmity has also been proved in the testimony, though motive is of not much relevance, because it is eye-account testimony case, wherein motive is relegated to the background.

29. We have also considered the rival submissions.

30. In our considered opinion, the core consideration for adjudication of this appeal relates to fact whether the prosecution has been able to successfully establish its case beyond all reasonable doubt against the accused?

31. Before we advert to the main proposition set up by the prosecution against the accused, it would be appropriate to have a dip into the contents of the first information report- Ex.Ka.1. Written report was lodged by informant Laxmi of village Padhara on 15.2.1989 at 10.45 P.M. at Police Station- Kalyanpur of District- Fatehpur, wherein it was alleged that "dwar pooja" ceremony was going on after "barat" procession of his daughter had arrived. A number of people had gathered, which included the villagers and the "baratis" (attendants of "barat" procession). Old enmity of Kallu of village- Padhara existed with Pahalwan. Pahalwan s/o Badalu was in hunt of opportune moment and with that view in mind, he fired on Kallu with country-made gun, which hit Ashwani Anand, one among the "baratis" and one more unknown person being a relative of informant of village- Tilshahari, Police Station- Mahrajpur, District- Kanpur. Kallu sustained pellet injury. The incident was witnessed by Ramesh s/o Sukkhu, Basanta s/o Ramdayal and others besides the informant. There was illuminated light of petromax in front of door of the informant. The incident took place around 10.00 P.M.

32. In the light of allegations made in the first information report, the genesis of the case has been ascribed to be existing old enmity between accused- Pahalwan and one Kallu and Pahalwan allegedly caused pellet injury on several other persons including Kallu. In this backdrop of factual scene, we have to critically scrutinize the testimony forthcoming from the prosecution witnesses of fact particularly the injured witnesses and its evidenciary value, vis-a- vis, circumstances of the case.

33. The motivating factor attributed for causing the incident pertains to fact of existing old enmity. Apart from FIR, reference of enmity also emerges from perusal of testimony of both the eye-witnesses- Laxmi P.W.1 and Kallu P.W.2.

34. Laxmi P.W.1 has categorically stated about existing old enmity between accused- appellant Pahalwan and Kallu P.W.2. He has also testified on point that Pahalwan was always in hunt of Kallu (P.W.2) on account of enmity. The fact of enmity has been fortified by testimony of Kallu P.W.2, when he has detailed reasons behind existing enmity between himself and accused- Pahalwan. He has testified to the ambit that long-drawn enmity existed with the accused. The accused- Pahalwan had teased daughter of Baisakhu of his village, whereupon, Baisakhu had complained about the same with him. This witness (P.W.2) scolded the accused, then the accused abused him and developed grudge against him and got his field grazed (through cattle). After field of this witness was got grazed by the accused, then he asked him not to indulge in such activity, whereupon, Pahalwan had threatened him with life. This way, it is obvious that the point of enmity has been sufficiently proved and it cannot be said that the motive suggested in the first information report is either weak or inconsistent. But particular facts have been described behind enmity, which prove factum of enmity as motive behind the incident.

35. Now, in so far as the point of occurrence is concerned, then we gather from the testimony of aforesaid two witnesses of fact that on the date of occurrence (15.2.1989), "barat" procession of daughter of the informant had arrived at his home and some "dwar pooja" ceremony was going on in the illuminated light of petromax in front of house. It was 15.2.1989. "Barat" procession had come from Delhi. It was around 10 P.M. Some petromax was emitting light under a neem tree and the informant along with Kallu and other persons were present on the spot and one relative of informant Shyam Lal was also present. While the ceremony was going on, Pahalwan opened fire on Kallu with intention to kill him with his country-made gun, due to which Shyam Lal, Kallu and Ashwani Anand sustained pellet injury. The incident was witnessed by Basanta, Ramesh and Badlu besides the informant in petromax light. The report was lodged and the injured were taken by Matador to the police station from where they were taken to the hospital. Laxmi P.W.1 has proved his written report Ex.Ka.1. Similarly, he has also testified in his examination-in-chief that Shyam Lal died while under treatment the same night at 2.10 A.M. (16.2.1989).

36. Kallu P.W.2 himself is injured witness and he has also testified on the same line and he has been extensively and strenuously cross-examined on point whether he saw the accused at the time of the occurrence, whereupon consistent reply has been given that, he not only saw the incident but also identified the accused, while he opened fire on him. At that point of time, injured Kallu was standing near door of house of Badlu and pellet injuries were caused by the accused to Ashwani Anand, Shyam Lal and himself. Ashwani was a member of "barat" procession, while Shyam Lal was relative of Laxmi. Kallu has also been

cross-examined on several vital aspects of the case, whereby his testimony appearing in his examination-in-chief is not adversely affected, but the same is consistently established. Apart from some trivial omissions in the statement recorded by the Investigating Officer under Section 161 Cr.P.C., he has specifically testified and proved to the magnitude that at the time when fire was hit, all the injured were in standing position and they were not sitting. In so far as source of light is concerned, consistent version has been elicited from the testimony of both the aforesaid eye-witnesses that there was petromax which emitted light on the spot. We also come across testimony of the Investigating Officer when he has also confirmed to the availability of source of light at the time of the occurrence. He has testified in his cross-examination that at the time of the incident, some petromax was emitting light. Although he did not enquire about the petromax as to whom it belonged to. He has also stated that he did not make any memo of the gas (petromax). He has testified that he visited the spot during daytime, therefore, he did not see the petromax. Although the Investigating Officer Ram Bahal Singh Chauhan P.W.6 has testified that he did not find any blood-stains on the spot although the surface of the spot is clay/soil.

37. At this stage, learned A.G.A. has submitted that the place of occurrence was being attended and frequented by a number of persons- at least 60-70 people and the people had gathered to celebrate marriage ceremony of informant's daughter and the fire hit each of the two injured and one deceased, while they were in standing position and it is no case that not pellets but some bullet hit injured and the injured were immediately moved from the place, therefore, possibility of blood spilling on the ground becomes bleak. Even if some drop of blood fell on the ground then there is possibility of same being wiped out under fact of such large gathering on the spot.

38. The argument carries force while collated with the attendant facts and circumstances of this case. Obviously, in such a situation, possibility of blood falling on the ground is reduced to the minimum and it is not a case of the prosecution that after the fire hit the injured, blood oozed out and fell on the ground. Therefore, mere absence of blood on the spot would not weaken case of the prosecution. Assuming it to be that blood fell down there then it being soil surface possibility its being wiped out can not be ruled out.

39. Thus absence of blood on the spot would not invariably create doubt about actual place of occurrence. At this stage, it would be appropriate to have a look on the injury caused to the unknown person aged about 30 years, who was examined by Dr. Harishchandra P.W.3 on 15.02.1989 at about 11.40 P.M., wherein, injury in shape of "Lacerated wound 5cm. X 1.5 cm. X cavity deep (depth beyond skull bone not probed) on right side of skull 7cm. above right ear, profuse bleeding present. No blackening/tattooing or scorching present. Advised X-ray. Very low pulse. Feeble respiratory value. Injury kept under observation and X-ray skull advised to give any opinion regarding nature and cause of injuries. Patient admitted. Surgeon informed. Duration about fresh (seems to be

caused by firearm object), but definite opinion can be given only after X-ray report."

40. This injury report has been proved as Exhibit Ka-3 by Dr. Harishchandra P.W.3.

41. Similarly injured Ashwani Anand was examined at 11.50 P.M. on 15.02.1989 by the same doctor, wherein the following injury was found on his person:

"(1) Two lacerated wounds abraded collars 0.3cm in diameter 3cm apart on left side of skull lateral one being 7 cm away from top of left ear bleeding present, cavity deep, depth not probed, around the wounds there is traumatic swelling 4 cm x 3 cm in size."

Advised:- X-ray skull, no blackening tattooing or scorching seen around.

Opinion:- Injury is kept under observation, advised X-ray skull for opinion regarding nature and cause of injury. Duration about fresh. Patient admitted.

This injury report has been proved as Exhibit Ka-2 by Dr. Harishchandra P.W.2.

42. At this stage, it can be observed that medical examination of Kalloo was done by Dr. S.K. Bajpai P.W.5 at PHC- Gopalganj on 15.02.1989 itself at 11.15 P.M., wherein the following injuries were found on his person:

(1) G.S.W. (wound of entry)- ? cm x ? cm x skin deep over the lateral epicondyle of right forearm. scab present.

(2) G.S.W. (wound of entry) abrasion ? cm x ? cm x ? cm x skin deep over the right side back 6 cm below the spine of right scapula.

(3) G.S.W. (wound of entry) abrasion ? cm x ? cm x skin deep over the right side back 9.5 cm below the medial border of spine of right scapula. Oozing present.

43. All injuries were simple in nature caused by the discharge of a firearm. Blackening, tattooing, gunpowder absent.

44. This injury report has been proved as Exhibit Ka-6 by Dr. S.K. Bajpai P.W.5.

45. In the opinion of both the doctors, who examined the three injured in the night intervening 15/16.2.1989 have invariably certified to the ambit that these injuries were gunshot injuries. We also found on perusal of these injury reports that no blackening, tattooing or scorching was caused by these injuries, which is indicative of fact that the fire must have been opened at least from a distance of about 6 to 10 steps and the victim should be in standing position at the relevant point of time. The witnesses and the informant had ample opportunity to see the accused, who was known to the informant and Kallu (P.W.2). Kallu- P.W.2 has proved fact of long-drawn enmity between Pahalwan and himself.

46. We also come across fact that the unknown person was Shyam Lal and he succumbed to his injuries while under treatment, the very same night at 2.10

A.M., therefore, his inquest was held on 16.02.1989 at 10.50 A.M. and was completed at 12.25 P.M. Postmortem examination on his body was conducted by the doctor at 3.30 P.M. on 17.02.1989. It has been testified by the doctor that the death occurred at 2.10 A.M. on 16.02.1989 at District Hospital- Fatehpur. Therefore, it is obvious that the unknown person, who was recognized as Shyam Lal died during the course of treatment on 16.01.1989. The postmortem examination report has been proved by Dr. Narendra Kumar P.W.4 as Exhibit Ka-5.

47. Perusal of testimony of Dr. Harishchandra P.W.3, who medically examined Shyam Lal at 11.40 P.M. on 15.02.1989 stands corroborated by ocular testimony of aforesaid two witnesses, namely, Laxmi P.W.1 and Kallu P.W.2. Doctor has expressed explicit opinion that these injuries could have been caused around 10.00 P.M. on 15.2.1989, therefore, date, time, place and manner of occurrence stands consistently proved in a reasonable way by the testimonial description of the witnesses of fact and by the attendant circumstances of the case.

48. Perusal of the site plan, Exhibit Ka-10, shows that the place where the "dwar-pooja" ceremony was going on has been shown by word "X" which place lies in front of house of Badlu; "A" is the spot shown in the site plan from where accused Pahalwan fired on Kallu and the marks shown by "arrow" is the way followed by the accused for ensuring his escape after commission of the offence. This gives a clear-cut picture of the place of occurrence and the place where the fire hit the injured.

49. Argument has been raised to the ambit that no specific place of respective witnesses have been shown to have been specifically occupied by them but that omission on part of the Investigating Officer would not minimize relevancy of presence of witnesses on the spot, because the entire functioning was centralized on and around place where "dwar-pooja" ceremony was going on.

50. Moreover, if Investigating Officer failed to come out with specific details in the site plan about specific place held by the witnesses then that would fall within the periphery of lapses committed by the Investigating Officer and that being the case, it will not adversely affect case of the prosecution.

51. Above analysis and critical scrutiny would suggest that the fact of occurrence is consistently proved to have been caused by the accused. There is no substantial contradiction occurring in the testimony of both the prosecution witnesses of fact Laxmi P.W.1 and the injured witness Kallu P.W.2, and their testimony, on the whole, appears to be on target, proving the guilt of the accused beyond all reasonable doubt that it was accused- Pahalwan who fired on Kallu on 15.2.1989 at about 10.00 P.M. when "dwar-pooja" ceremony in the marriage of daughter of the informant (P.W.1) was going on and the fire caused injury to three persons including the deceased- Shyam Lal. It being so, we can observe in all fairness that the testimony forthcoming is innocuous and in conformity with the medical evidence and giving thrust to the prosecution case,

eventually establishing the charges against the accused. The weapon used and the injury caused is itself indicative of fact that he intended to cause death and he had reason to believe that the fire so opened on the spot can cause death and injury on the informant side.

52. It is well established jurisprudential principle that the prosecution would have to prove its case beyond all reasonable doubt and then only the guilt will be deemed to have been established against an accused as is the case in hand.

53. The learned trial Judge while appraising the facts and circumstances of the case and evaluating testimony of the prosecution witnesses has rightly convicted the accused and passed just sentence, which finding and sentence is upheld by us in this appeal. Consequently, the appeal sans merit and is accordingly dismissed.

54. Appellant- Pahalwan is on bail. His bails bonds and sureties are hereby cancelled. He shall be taken into custody forthwith for serving out the remaining part of his sentence.

55. Let a copy of this order be certified to the concerned trial court for its intimation and follow up action.