

(2003) 11 AHC CK 0020

In the Allahabad High Court

Case No : Criminal Appeal No's. 1780, 1805 and 1810 of 2002, Reference No. 2 of 2002, Government Appeal No. 4026 of 2002 and Criminal Revision No's. 1240 and 1241 of 2002

Parvinder and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 25-11-2003

Acts Referred:

Arms Act, 1959 — Section 25, 27
Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 138, 27
Penal Code, 1860 (IPC) — Section 147, 149, 302, 395, 452

Citation : (2004) 1 ACR 407

Hon'ble Judges : U.S. Tripathi, J;M. Chaudhary, J

Bench : Division Bench

Advocate : Ravindra Nath Rai, Rajiv Gupta, P.N. Misra, Dilip Kumar, V.M. Zaidi, S.K. Garg, Shashank Shekhar, G.S. Chaturvedi, Pankaj Bharti, Mohd. Yusuf, A.K. Rai, D.R. Chaudhary and A.K. Dwivedi, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

U.S. Tripathi, J.—The above appeals and revisions have been directed against the judgment and order dated 18.5.2002, passed by Special Judge (E.C. Act), Muzaffar-nagar in Sessions Trial Nos. 344 of 2000, 341 of 2000, 342 of 2000 and 343 of 2000 convicting Appellants Parvinder, Subhash, Chandraveer, Satyapal and Sahdeo, under Sections 148 and 302, I.P.C. read with 149, I.P.C. and 452, I.P.C. and sentencing each of them to one year rigorous imprisonment u/s 148, I.P.C., death penalty u/s 302 read with 149, I.P.C. and two years R.I. u/s 452, I.P.C. Appellants Subhash and Chandraveer were further convicted u/s 27, Arms Act and each of them were sentenced to R.I. for a period of three years and acquitting the accused Respondents of Government Appeal No. 4020 of 2002. The learned Sessions Judge has also sent a reference for confirmation of death sentence awarded to above Appellants.

2. The prosecution story, briefly stated, was as under:

Data Ram and Lila Pat were real brothers and sons of Ganga Sahai, Data Ram had six sons, namely, Phool Singh, Malkhan Singh, Lal Singh, Sahab Lal, Zile Singh and Samay Singh. Malkhan Singh had 5 sons, namely, Rajendra, Rajesh (accused), Anandpal, Sahdeo (Appellant No. 6) and Dharmendra alias Bittu (absconding accused). Samay Singh, the brother of Malkhan Singh, has two sons Satyendra (accused) and Virendra (accused). Sachin (accused) is son of Rajesh (accused). Lila Pat had six sons, namely, Balbir, Hukum Singh, Jaibir Singh (deceased-1), Padam Singh (deceased-2), Chhote and Dharamveer. Balbir had two sons namely, Prad Pal Singh (deceased-4) and Chandraveer. Hukum Singh had three sons, namely, Prem Singh (deceased-7), Rakesh (deceased-8) and Gulbir. Sonu (deceased-5) was son of Rakesh, Jaibir Singh (deceased-1) had four sons namely Brijesh Kumar (P.W. 1), Ashok (deceased-3), Lokesh and Prahlad. Padam Singh (deceased-2) had two sons, namely, Krishnabir and Yashpal. Chhote had a son, namely, Raj Bahadur (P.W. 2) and Dharamveer had a son, namely, Anil. Rajpal Singh (deceased-6) was brother-in-law (sala of Jaibir) deceased.

3. Himmat Singh had two sons Bharat Singh and Mukhtiyar Singh. Bharat Singh had two sons Bahoran and Kabool. Bahoran had two sons Satyapal (Appellant No. 5) and Harbir (accused). Kabool had two sons Kunwarpal and Vedpal. Kunwarpal had a son Parvinder (Appellant No. 1). Mukhtiyar Singh had two sons Kalyan and Jai Lal. Kalyan had two sons Subhash (Appellant No. 2) and Chandraveer (Appellant No. 3).

4. Anandpal, S/o Malkhan Singh was murdered on 5.3.1999, Jaibir Singh (deceased), Padam Singh (deceased), Sonu (deceased), Chhote Singh, Hukum Singh, Krishnabir, Chandraveer, Gulbir and Lokesh descendants of Lila Pat were nominated as accused in said murder case. Krishnabir, Chandraveer and Gulbir were in jail, while other accused of said case were on bail. The above case (Sessions Trial No. 842 of 1999) was pending at the time of occurrence of this case in the Court of VI Ith Additional Sessions Judge, Muzaffarnagar. On account of murder of Anandpal, there was strong enmity between the parties.

5. 12.1.2000 was the date fixed in the above Sessions Trial No. 842 of 1999. Brijesh Kumar (P.W. 1) along with Jaibir Singh, Padam Singh, Ashok, Pard Pal Singh, Rajpal Singh, Sonu, Rakesh, Prem Singh (all deceased), Raj Bahadur (P.W. 2) and Anil and others had come to the Courts at Muzaffarnagar in connection with the said case. In the evening Brijesh Kumar (P.W. 1), Raj Bahadur (P.W. 2) and above persons were returning to their house by bus. Other passengers were also sitting in the bus. When the bus carrying above persons and other passengers crossed village Bahadurpur and reached near field of Chandra, two white coloured maruti cars and one red coloured motor cycle came in front of the bus and got it stopped. The Appellants and other accused persons got down of the maruti cars and motor cycle. Appellants Subhash and Dharmendra alias Bittu (since absconding) were having rifles, Appellants Sahdeo, Chandraveer and

Satyapal were having guns, Appellant Parvinder was having country made pistol, accused Respondent Satyendra was having country made pistol and remaining accused Respondents Rajesh, Harbir Singh, Kunwarpal Singh, Virendra Singh and Sachin were having dandas. The Appellants, abusing and saying that they had to take revenge of the murder of Anandpal entered into the bus from its two gates and started firing on the deceased. Deceased Jaibir, Padam Singh, Ashok, Prad Pal Singh, Sonu and Rajpal Singh sustained fire arm injuries and died on the spot. Brijesh Kumar (P.W. 1), Raj Bahadur (P.W. 2), Anil and other passengers of the bus jumped out of the bus and ran to save their lives. The Appellants and other accused chased Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) who ultimately hid themselves in the house of Hukum Singh at village Munauwar Pur. The Appellants and other accused entered into the house of Hukum Singh and fired on Rakesh and Prem Singh deceased, who died on the spot. They also looted ornaments, cash and double barrel gun from the house of Hukum Singh and threatened that in case anyone came forward, became witness or lodged report, would meet the same fate. Due to fear of the Appellants and accused no person of the village came forward.

6. After the occurrence Brijesh Kumar (P.W. 1) prepared report of the occurrence (Ext. Ka-1) and came to police station Sikhera, where he lodged report at 7.15 p.m. On the basis of written report chik F.I.R. (Ext. Ka-82) was prepared by head constable Asarpal Singh, who made an endorsement of the same at G.D. report (Ext. Ka-83) and registered a case against the Appellants, other accused and Bittu under Sections 147, 148, 149, 302, 307, 395, 397, 452, 504 and 506, I.P.C.

7. The investigation of the case was taken up by Sri Vinod Kumar Tevatia (P.W. 4). He interrogated Brijesh Kumar (P.W. 1) at the police station and thereafter came to the house of Hukum Singh, where he got conducted inquest of the dead bodies of Prem Singh and Rakesh deceased through Sub-Inspector, S. P. Sharma, who prepared inquest reports (Exts. Ka-10 and Ka-11) and other relevant papers, sealed the dead bodies and sent for post-mortem. He also collected one misfired five cartridge of 315 bore, one empty cartridge of 12 bore, one empty cartridge of 8 mm. and one empty cartridge of 38 mm. from the house of Hukum Singh. Thereafter, he came to the place of earlier part of incident where dead bodies of Sonu, Ashok, Prad Pal Singh, Raj Pal Singh, Padam Singh and Jaibir Singh were lying in the bus. Inquest of the above dead bodies was conducted by Sri S. P. Tyagi, Sub-Inspector, who prepared inquest reports (Exts. Ka-28, Ka-35, Ka-42, Ka-49, Ka-56 and Ka-63) sealed the dead bodies and sent for post-mortem. The Investigating Officer Sri Vinod Kumar Tevatia (P.W. 4) collected one empty cartridge of 8 mm. one empty cartridge of 38 bore and two bullets from the bus on 13.1.2000. He also collected three empty cartridge of 8 mm. and one empty cartridge of 12 bore from outside the bus. The Investigating Officer had also collected blood stained and simple earth from both the places of occurrence.

8. On 17.1.2000, accused Satyendra surrendered in the Court. The Investigating Officer took his police custody remand on 22.1.2000 and on the same day on the

pointing out of Satyendra one country made pistol and one Hero Honda motor cycle bearing Registration No. U.P. 12-9819 were recovered from his sugarcane field in the presence of Amit Kumar and Yashpal. The Investigating Officer took the above articles into possession and prepared recovery memos. On 24.1.2000, the Investigating Officer, visited the place of recovery and prepared site plan. On 28.1.2000, Appellants Sahdeo, Chandraveer and Subhash surrendered in the Court. The Investigating Officer interrogated them on 29.1.2000. On 4.2.2000, the Investigating Officer took police custody remand of above accused and on the pointing out of Appellant Sahdeo one white coloured maruti car bearing Registration No. U.P. 15 G-7574 was recovered from his tube well. The Investigating Officer took into possession the above maruti car and prepared recovery memo. On 5.2.2000, on the pointing out of Appellant Subhash, one rifle 315 bore and on the pointing out of Appellant Chandraveer one gun was recovered. The Investigating Officer took into possession the above rifle and gun sealed it and prepared recovery memo. He also prepared site plan of the places of recovery.

9. Autopsy on the dead bodies of eight deceased were conducted on 13.1.2000 by Dr. Vipin Chandra Gupta (P.W. 3). On completion of investigation, the Investigating Officer submitted charge-sheet against the Appellants and other accused persons.

10. Separate cases under Arms Act were registered against Satyendra, Subhash and Chandraveer, which were investigated by Sushil Kumar Singh Yadav (P.W. 5) and Satya Prakash Tyagi (P.W. 7), in which separate charge-sheets were submitted against them.

11. Cognizance of the case was taken up by the Magistrate, who committed the case to the Court of Sessions.

12. Bittu alias Dharmendra was absconding. The Appellants and other accused persons were charged with the offences punishable under Sections 147, 148, I.P.C. 302 read with 149, I.P.C., 395, I.P.C. and 452, I.P.C. The Appellants and other accused pleaded not guilty and contended that they were falsely implicated on account of enmity.

13. Accused Rajesh raised plea of alibi. Chandraveer further contended that he was witness in the case of murder of Anandpal Singh and was falsely implicated on account of it. Accused Satyendra further contended that no recovery was made on his pointing out and since he was scribe of the report of murder case of Anandpal, he was falsely implicated. Accused Satyapal further contended that his licensed gun was taken by the police from his house and his father was witness in Anandpal's murder case and therefore, he was falsely implicated. Accused Parvinder further contended that his grandfather Bahoran was witness in Anandpal's murder case and he was falsely implicated. Accused Sachin contended that on the date of occurrence, his age was 16 years and Maruti car belonged to his mother, which was recovered by the police in the absence of his

mother. Harbir contended that his father was witness in Anandpal's murder case. Kunwar Pal further contended that his elder brother Bahoran was witness in Anandpal's murder case. Accused Virendra further contended that Satyendra his real brother was scribe of F.I.R. of Anandpal's murder case and Sahdeo contended that he was complainant of Anandpal's murder case and therefore, they were falsely implicated. Accused Satyendra also filed a written statement u/s 313, Cr. P.C.

14. The prosecution in support of its case examined Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) as witnesses of fact, besides Dr. Vipin Chandra Gupta (P.W. 3), Sri V. K. Tevatia, Investigating Officer (P.W. 4), Sri Sushil Kumar Singh Yadav (P.W. 5), constable Asar Pal Singh (P.W. 6) and Satya Prakash Tyagi, Investigating Officer (P.W. 7). The Appellants examined Ved Pal Singh (D.W. 1), Samay Singh (D.W. 2), Smt. Pinki (D.W. 3), Harpal Singh (D.W. 4) and Sri M. M. Sharma, advocate (D.W. 5) and also filed certain documents.

15. The learned Sessions Judge on considering the evidence of the prosecution as well as that of the accused persons held that the prosecution established the guilt of the Appellants Subhash, Sahdeo, Chandraveer, Satyapal and Parvinder for the offences punishable under Sections 148, I.P.C., 302 read with 149, I.P.C. and 452, I.P.C. That offence punishable u/s 395, I.P.C. was not proved. He further held that the prosecution could not establish the guilt of accused Harbir, Kunwar Pal, Rajesh, Sachin, Satyendra and Virendra. With these findings, the learned Sessions Judge acquitted Appellants Harbir, Kunwar Pal, Rajesh, Sachin, Satyendra and Virendra. However, the learned Sessions Judge convicted Appellants Subhash, Sahdeo, Chandraveer, Satyapal and Parvinder under Sections 148 and 302 read with 149, I.P.C. and 452, I.P.C. He further convicted Appellants Subhash and Chandraveer u/s 25/27, Arms Act.

16. On quantum of punishment, the learned Sessions Judge held that the case of above five Appellants was rarest of rare and they were liable for death sentence. Therefore, he sentenced Appellants Sahdeo, Subhash, Chandraveer, Satyapal and Parvinder to extreme penalty of death u/s 302 read with 149, I.P.C., one year R.I. u/s 148, I.P.C., two years R.I. u/s 452, I.P.C. and three years R.I. u/s 27, Arms Act.

17. Aggrieved with their above conviction and sentence the Appellants separately filed three appeals and State of U.P. filed Government Appeal against the acquittal of other accused. Complainant Brijesh Kumar also filed criminal revisions against acquittal of accused Respondents.

18. All the appeals and revisions arise out of same judgment and order and, therefore, are being disposed of by a common judgment with the consent of the parties learned Counsel.

19. We have heard Sri Dilip Kumar, learned Counsel for the Appellants Parvinder, Subhash and Chandraveer, Sri Sashank Sekhar, learned Counsel for the Appellant Satyapal and Sri G. S. Chaturvedi and Sri V. M. Zaidi, learned Counsel for the

Appellant Sahdeo and learned A.G.A. in Government Appeal, Sri P. N. Misra, learned senior counsel for accused Respondents in Government Appeal and Sri Pankaj Bharti for revisionist in both revisions and have perused the entire evidence on record.

20. The Appellants have not disputed the death of eight deceased as well as their cause of death. Dr. Vipin Chandra Gupta (P.W. 3) who conducted autopsy on the above eight deceased found following ante-mortem and internal injuries, which are being described separately as below:

Post-mortem of Rakesh deceased

21. There were following ante-mortem injuries on his person:

(1) Fire arm lacerated wound .03 x 2.5 cm. x bone deep on the back of left elbow joint region. 15 tiny pellets recovered from muscle of elbow joint region with the area of tattooing 6 cm. x 4 cm. around it. Fracture of both bones.

(2) Fire arm lacerated wound 1.5 x 0.1 cm. x muscle deep on centre of upper chin with area of blackening 4 cm. x 3 cm. around it, with lacerated wound on tip of tongue. 12 tiny pellets recovered from tongue.

(3) Fire arm lacerated wound tunnel type 8 cm. x 4 cm. on right side abdomen. 4 cm. above the umbilicus. Blackening present around the wound x muscle deep.

(4) Fire arm lacerated wound 3 cm. x 2 cm. x muscle deep on right inguinal region outer 2/3rd part. 2 wadding and one plastic black circular piece recovered from the muscles.

(5) Fire arm lacerated wound 6 cm. x 3.5 cm. x muscle deep on inner and lower 3rd of right thigh. One wadding piece one plastic black circular piece and three pellets recovered.

(6) Fire arm lacerated wound 03 cm. x 2 cm. on left side chest 14 cm. below left nipple at 6 O'clock position passed through spleen stomach and liver. One wadding two black plastic pieces and three metallic pieces recovered from right chest wall.

(7) Fire arm lacerated wound 02 cm. x 1.5 cm. x lung deep on left axillary region, outer side, passed through left lung right lung and came out as wound of exit. 04 cm. x 3.5 cm. on right side back, middle part just below scapula.

The internal examination showed that pleura was lacerated, peritoneum was lacerated, peritoneal cavity contained about 1/2 litres of blood and clots. Stomach was lacerated. Small intestine was lacerated and contained faecal matters. Liver and spleen were lacerated. The death was as a result of fire arm injury to vital organs like lung liver, spleen, stomach and intestine.

Post-mortem of Sonu deceased

22. There were following ante-mortem injuries on the person of deceased.

(1) Fire arm lacerated wound .25 cm. x .25 cm. x brain deep with inverted margin of left side back of head 03 cm. behind the left ear passed through the cerebrum and bullet linged in the muscle of right side forehead at outer angle right eye brow and scaled.

(2) Fire arm lacerated wound 01 x 0.5 cm. x muscle deep on left axillary region with inverted margins and bullet lodged in left side chest muscles and scaled.

(3) Fire arm lacerated wound 4.5 cm. x 03 cm. x lung deep with inverted margins and area of tattooing 9 cm. x 6 cm. around the wound (wound of entry) on left side chest 14 cm. below the nipple at 6.30 O'clock position passed through the lungs and came out as lacerated wound 2 cm. x 1 cm. with everted margins, 14 cm. below the axilla (wound of exit).

The internal examination showed that there was fracture of frontal, maxillary and occipital bones. Membranes and brain were lacerated, pleura and left lung were lacerated.

Death was due to fire arm injury to vital organs brain and lung.

Post-mortem of Ashok deceased

23. Ante-mortem injuries:

(1) Fire arm lacerated wound 4.5 cm. x 3.5 cm. x brain deep, with inverted margins on left side fore-head, outer region, 02 cm. away from outer part of left eye, wound of entry, passed through the brain matters. One bullet recovered from brain matters.

(2) Multiple fire arm lacerated wound in an area 6 cm. x 4 cm. on front and middle of right fore-arm. Six pellets recovered from muscle x muscle deep, inverted margins.

(3) Fire arm lacerated wound 2.5 cm. x 2 cm. x lungs deep on right side chest 02 cm. below the nipple at 6 O'clock position, inverted margins passed through the lungs and intestines and came out with multiple lacerated wounds in an area 12 cm. x 8 cm. on left side back, lower part with everted margins, as wound of exit.

(4) Fire arm lacerated wound 2.5 cm. x 02 cm. x cavity deep on left side back, with area of charring 5 cm. x 3 cm. around it, 06 cm. above the iliac crest, passed through the abdomen and came out on right side abdomen 5 cm. x 3 cm. everted margins. 10 cm. below the nipple at 7 O'clock position.

(5) Fire arm lacerated wound 04 cm. x 02 cm. x bone deep on back of left hand and came out as wound of exit 11 cm. x 09 cm. with everted margins on front of hand.

The internal examination showed that there were fracture of frontal and parietal bones. Membranes and brain were lacerated. Pleura and both lungs were lacerated. Abdominal cavity contained about 1 litre blood and clots. Small and large intestines were lacerated and contained faecal matters. Liver and left

kidney were lacerated. Death was due to fire arm injury to vital organs brain, lung, liver, kidney and intestines.

Post-mortem of Prad Pal Singh

24. There were following ante-mortem injuries on the person of deceased.

(1) Fire arm lacerated wound 01 cm. x 01 cm. x brain deep on front of tragus of right ear passed through the brain and came out as wound of exit lacerated wound 5 cm. x 3.5 cm. with everted margins left side upper lip, nose and face.

(2) Multiple tiny abrasions rounded and superficial in an area of 11 cm. x 05 cm. on front and upper part of right arm.

The internal examination showed that there were fracture of temporal and maxilla bones. Membranes of the brain were lacerated. The death was due to fire arm injury to vital organs brain.

Post-mortem of Raj Pal Singh.

25. There were following ante-mortem injuries on the person of deceased.

(1) Multiple lacerated wound in an area 9 cm. x 6 cm. x bone deep on top of head, largest 03 x 0.5 cm. and smallest 01 x 0.5 cm. x bone deep.

(2) Fire arm lacerated wound 1.5 cm. x 01 cm. on right side back 6.5 cm. below the right scapula, inverted margins, passed through abdomen, liver and came out with left abdomen as lacerated wound 6.5 cm. x 03 cm., 2.5 cm. away from the umbilicus at 3 O'clock position.

(3) Fire arm lacerated wound 01 cm. x 01 cm. x bone deep inverted margins on back of right thigh lower 1/3rd part, inverted margins, passed through the bone and came out as wound of exit 3 cm. x 2 cm. with everted margins on front and middle of right thigh with fracture of femur bone.

(4) Fire arm lacerated wound 1 cm. x 1 cm. bone deep on back middle of right leg, inverted margins and passed through the bone and came out as wound of exit, lacerated wound 3 cm. x 1.5 cm. on front and lower third of right leg with fracture of both bones.

The internal examination showed that there were fracture of parietal bone. Right pleura and lungs were lacerated. Blood and blood clots were present in thoracic cavity. Peritoneum, small intestine and liver were lacerated and blood and blood clots were present in abdominal cavity. Death was due to fire arm injury to vital organs lung, liver and intestine.

Post-mortem of Padam Singh deceased

26. There were following ante-mortem injuries on the person of deceased.

(1) Fire arm lacerated wound 5 cm. x 4 cm. x brain deep on right side back of head just behind the ear, inverted margins, wound of entry, came out with

wound of exit 7 cm. x 4 cm. with everted margins, on left side face just in front of left ear.

(2) Fire arm lacerated wound 5 cm. x 4.5 cm. x lung deep on left side chest 10 cm. medial from left nipple at 10 O'clock position passed through lungs and came out as wound of exit 10 cm. x 6 cm. on left side back middle part with everted margins, (wound of exit) just below the scapula.

(3) Fire arm lacerated wound 6 cm. x 3 cm. x muscle deep on front of right hand, inner aspect, blackening present around the margins.

The internal examination showed that there were fractures of frontal, parietal and occipital bones. Membranes of the brain were lacerated. Left pleura and lung were also lacerated. Blood and blood clots were present in thoracic cavity. Death was as a result of the fire arm injury to vital organs brain and lung.

Post-mortem of Jaibir Singh deceased.

27. There were following ante-mortem injuries on the person of deceased.

(1) Fire arm lacerated wound 02 cm. x 1.5 cm. x brain deep 07 cm. behind the right ear, passed through the brain and came out from right side face, wound of exit 12 cm. x 15 cm. brain matter came out from wound.

(2) Fire arm lacerated wound 1.5 cm. x 1 cm. muscle deep back side of scapular region in an area of 8 cm. x 7 cm. around it inverted margins, came out with wound of exit 2.5 cm. x 1.5 cm. wound of exit on back 9 cm. below the head of shoulder (hemi sphere).

(3) Fire arm lacerated wound 3 cm. x 2 cm. x intestine deep on right side back lower part 07 cm. away from vertebral column. 4 metallic pellets were recovered from the intestine.

(4) Lacerated wound 2.5 cm. x 02 cm. x muscle deep with swelling 10 cm. x 6 cm. around, on right thigh lower part of thigh, front region. Fracture of shaft of femur.

The internal examination showed that there were fracture of occipital, frontal and parietal bones. Membranes were lacerated. Anterior, middle and posterior cranial fossa were fractured. Peritoneum and small intestine were also lacerated. Abdominal cavity contained blood and clots. Death was as a result of fire arm injury to vital organs brain and intestine.

Post-mortem of Prem Singh, deceased.

28. There were following ante-mortem injuries on the person of deceased.

(1) Fire arm lacerated wound .02 cm. x 02 cm. x bone deep on right side chin close to mid line, inverted margins, passed through the muscles and bones of lower jaw and came out as a wound of exit 6 cm. x 5 cm. with everted margins, fracture of mandible bone.

(2) Fire arm tunnel shape lacerated wound 6 cm. x 2 cm. on right side neck upper part x muscle deep, with bleeding present around the margins.

(3) Fire arm lacerated wound 4 cm. x .3 cm. x heart deep on centre of sternum lower part, 7 cm. medial from left nipple, passed through heart and came out as wound of exit 1.5 cm. x 01 cm. with everted margins on right side back 4 cm. below scapula and 10 cm. from vertebral column.

The internal examination showed that pericardium and heart were lacerated and thoracic cavity contained two litre blood and clot. The death was as a result of fire arm injury to vital organ heart.

The above medical evidence has not been challenged. From the above medical evidence it is proved that the above eight deceased died due to fire arm injuries caused on them.

29. The motive of the case alleged by the prosecution was that Anandpal, brother of Appellant Sahdeo, Rajesh accused and Dharmendra alias Bittu (since absconding) as well as uncle of accused Sachin, Satyendra and Virendra, was murdered on 5.3.1999, Jaibir Singh, Padam Singh and Sonu deceased as well as Chhote, Hukum Singh, Krishnabir, Gulbir, Chandraveer and Lokesh were accused in the said murder case of Anandpal and the Appellants and other accused were annoyed with the murder of Anandpal and they wanted to take revenge. It has come in the evidence of Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) that while the Appellants and other accused stopped the bus, in which the deceased and above witnesses were travelling, they were abusing the deceased and were talking of taking revenge of the murder of Anandpal. Thus, there was strong motive for the Appellants and other accused to take revenge of the murder of Anandpal, who was close relative of the some of the Appellants and accused, by killing the deceased, who were allegedly responsible for the said murder. It is also clear from the evidence on record that targets of Appellants and other accused were mainly the accused of Anandpal's murder case, as Jaibir Singh, Padam Singh and Sonu accused of said murder case were killed. The other accused of the said case, namely, Krishnabir, Gulbir and Chandraveer were confined in jail and, therefore, after the date of the case, they were sent back to the jail and were not available to the Appellants and other accused. It has also been clarified in the evidence of the prosecution witnesses that Chhote and Hukum Singh, who were also accused in the said case came to their village subsequently and another accused Lokesh had gone to his relations. Therefore, they were not available to the Appellants. The other deceased, namely, Ashok, Prad Pal Singh, Sonu, Prem Singh and Rakesh were also of the family of Hukum Singh, Jaibir Singh and Padam Singh and Rajpal Singh deceased was sala of Jaibir Singh. Therefore, the deceased were either accused of the said case or their close relatives with whom the Appellants and other accused were having strong grudge.

30. The learned Counsel for the Appellants contended that according to F.I.R.

version Anil, another eye-witness, who was not examined, had hidden himself inside nearby sugarcane field and he saw and heard from the said sugarcane field that the Appellants and other accused after committing murder of the deceased were laughing loudly and by kicking and spitting on the dead bodies were saying that they had taken revenge of the murder of Anandpal. But Anil was not examined and, therefore, motive has not been established. It is true that Anil, who was also an eye-witness and had seen the subsequent act of Appellants and other accused and heard their utterances regarding taking revenge of the murder of Anandpal was not examined, but Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) had categorically stated that while the Appellants and other accused were boarding the bus, in which the 8 deceased and witnesses were travelling, they started abusing the deceased and other persons and were talking about taking revenge of the murder of Anandpal. Thus, the above evidence of the two witnesses has clearly proved the motive.

31. It was further contended by the learned Counsel for the Appellants that Appellants Parvinder, Subhash and Chandraveer as well as accused Satyapal and Harbir did not belong to the family of Anandpal and, therefore, there was no motive for them to commit the murder of the deceased. No doubt, the Appellants Parvinder, Subhash and Chandraveer as well as accused Satyapal and Harbir were not of the family of Anandpal, but Bahoran, father of accused Satyapal and Harbir, was prosecution witness in the murder case of Anandpal and Appellant Parvinder was grandson of Kabool, the brother of Bahoran, while Appellants Subhash and Chandraveer also belonged to the family of Bahoran. Therefore, the other Appellants and accused were also having concern with the murder of Anandpal and were in league with the other Appellants and accused belonging to the family of Anandpal. This shows that the other Appellants and accused, who were of the family of Bahoran Singh had also motive to join the object of other Appellants and other accused belonging to the family of Anandpal. Therefore, the prosecution has established that all the Appellants and other accused had strong motive.

32. The date, time and places of occurrence have not seriously been disputed. According to prosecution occurrence took place on the evening of 12.1.2000, earlier on the road in the jungle between villages Munauwar Pur and Bahadurpur inside the ill-fated Bus No. 7941, where six persons, namely, Padam Singh, Jaibir Singh, Ashok Kumar, Prad Pal Singh, Rajpal Singh and Sonu were gunned down and subsequently in the house of Hukum Singh in village Munauwar Pur, where the two deceased, namely, Rakesh and Prem Singh were gunned down. The Investigating Officer visited the above spots in the night of occurrence and found the dead bodies of Rakesh and Prem Singh lying in the house of Hukum Singh and the dead bodies of Padam Singh, Jaibir Singh, Ashok, Prad Pal Singh and Rajpal Singh and Sonu lying in the ill-fated bus in the above jungle. The Investigating Officer had also recovered blood and empty cartridges pellets, etc. from the above two places. The above places of occurrence have not been challenged. The presence of dead bodies of the above injured at the places of

occurrence as well as blood, empty cartridges, pellets at said places proved the places of occurrence. Therefore, it is also established that occurrence took place on 12.1.2000 at 5-5.15 p.m. and just thereafter earlier in the bus on road near village Bahadurpur and subsequently in the house of Hukum Singh.

33. Before advertng to the contentions raised by the learned Counsel for the Appellants, learned A.G.A. the learned Counsel for the accused in Government appeal and revisions, we would like to give the gist of evidence of ocular witnesses.

34. Brijesh Kumar (P.W. 1) stated that on 12.1.2000 he along with deceased and other persons had gone to the Court of Additional Sessions Judge (Km. Manju Gupta) in connection with the murder case of Anandpal. In the evening he proceeded to his village in bus, Jaibir Singh, Padam Singh, Ashok Prad Pal, Rajpal, Sonu, Rakesh, Prem Singh (all deceased) ; Anil Kumar and Raj Bahadur (P.W. 2) were also with him. Rajpal deceased was his relative (brother-in-law (sala) of Jaibir deceased). When the bus carrying him and above persons crossed village Bahadurpur and reached near field of Cahandra, two white coloured maruti cars and one red coloured motor cycle came from behind the bus and by overtaking stopped the bus. Dharmendra, Sahdeo, Rajesh, Sachin, Subhash, Chandraveer, Virendra, Kunwarpal Satyapal, Harbir, Parvinder and Satyendra got down of the two cars and motor cycle. Bittu alias Dharmendra and Subhash were having rifles. Sahdeo, Chandraveer and Satyapal were having guns. Satyendra and Parvinder were having country made pistols and remaining accused persons were having lathis. The above Appellants and accused persons started abusing and were talking to take revenge of the murder of Anandpal. They boarded the bus and started firing. Jaibir, Padam Singh, Ashok, Prad Pal, Sonu and Rajpal died on the spot. He and other passengers ran to save their lives. The Appellants and other accused chased them. He took shelter in the house of Hukum Singh at village Munauwarpur. The Appellants and other accused entered into the house of Hukum Singh and killed Rakesh and Prem Singh deceased, sons of his uncle. All the Appellants and other accused also looted ten tolas golden and silver ornaments, 2,000 silver coins, double barrel gun and cash amounting to Rs. 20,000 from the house of Hukum Singh. They also threatened that in case any person gave evidence or informed the police, he would also be murdered. After going of the Appellants and accused he called the villagers, but none came out of their house. He along with Anil went to police station where he handed over written report (Ext. Ka-1).

35. Raj Bahadur (P.W. 2) stated that on 12.1.2000, he had gone to the Court of Manju Gupta, Additional District and Sessions Judge, Muzaffarnagar in connection with the date fixed in the Anandpal's murder case. On the evening at about 3.30 or 4 p.m. he came to Jansadh bus stop for boarding a bus to go to his village. From there he boarded the bus, Jaibir, Padam Singh, Ashok, Sonu, Prad Pal, Rakesh, Prem Singh and Rajpal (all deceased), Brijesh Kumar (P.W. 1) and Anil were also with him. When the bus reached at a distance of half km. from village

Bahadurpur near field of Chandra, two Maruti cars and one motor cycle reached there. Maruti car was being driven by Bittu. Subhash, Chandraveer, Rajesh and Sachin were sitting in it. The second car was being driven by Sahdeo, Satpal, Kunwarpal, Harbir and Virendra were sitting in said car. Satyendra and Parvinder were on motor cycle. Bittu alias Dharmendra and Subhash were having rifles, Chandraveer, Sahdeo and Satpal were having guns, Satyendra and Parvinder were having country made pistols and other accused were having dandas. Getting down of the cars and motor cycle, the Appellants and other accused abusing him and his associates were saying that revenge of murder of Anandpal would be taken. Saying it they entered into the bus. It was 5 or 5.30 p.m. He was sitting on front seat of the bus. The above persons started firing on the deceased. Padam Singh, Jaibir Singh, Ashok, Sonu, Prad Pal and Rajpal sustained fire arm injuries. He and Brijesh Kumar (P.W. 1) ran towards village Fahimpur. The Appellants and other accused were running behind them. They entered into the house of Hukum Singh. The Appellants and other accused also entered into the house of Hukum Singh and there they murdered Rakesh and Prem Singh, his brothers. He and Brijesh Kumar hid themselves on the roof of houses of harijan. The Appellants and other accused looted double barrel gun, 10 tolas gold, 2,000 silver coins from the house of Hukum Singh and went away saying that in case any one informed the police or gave evidence would meet the same fate. No other person of the village came to the spot.

36. The learned Counsel for the Appellants challenged the presence of above ocular witnesses firstly on the ground that those witnesses were neither accused, nor having any concern with the murder case of Anandpal and, therefore, they had no occasion to go to Courts on 12.1.2000, the date of occurrence, and to return in the company of deceased through the ill-fated bus. It is true that Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) were not accused in the murder case of Anandpal. The learned Sessions Judge after perusing the record of Sessions Trial No. 842 of 1999, (Anandpal's murder case) held that 12.1.2000 was a date fixed in the said case, which was pending in the Court of Manju Gupta, the then VII Ith Additional Sessions Judge, Muzaffarnagar and this fact is not disputed. It is also not disputed that Jaibir Singh, Padam Singh, Sonu (all deceased), Chhote, Hukum Singh, Krishnabir, Gulbir, Chandraveer and Lokesh were accused in the Anandpal's murder case and they had to attend the Court. Krishnabir, Gulbir and Chandraveer were in jail in said murder case and remaining accused named above were on bail. Brijesh Kumar (P.W. 1) is admittedly son of Jaibir Singh and Raj Bahadur (P.W. 2) is son of Chhote who were accused in the said murder case. Therefore, it was but natural for Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) to have accompanied their father to the Court to observe the proceeding of the case. There is no hard and fast rule that only accused or the parties of the case alone attend the case. The relatives and well-wishers of the accused and parties of the case often attend the Court to see the proceeding. It is also clear from the evidence that Rajpal Singh who was not accused in Anandpal's murder case was one of the deceased of this case and he

was also returning along with Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2), after attending the Court in connection with said case. The dead body of Rajpal Singh was found inside the ill-fated bus and, therefore, the presence of Rajpal, who was brother-in-law (sala) of Jaibir cannot be doubted. If a relative of Jaibir could attend the Court, why Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2), who were sons of Jaibir and Chhote accused of the said case would not attend the Court along with their father. Therefore, the presence of Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) in the ill-fated bus at the time of occurrence cannot be doubted on this ground.

37. The next contention of the learned Counsel for the Appellants for challenging the presence of above two witnesses was that those witnesses were equally inimical with the Appellants and other accused, but no attempt was made on their lives, as they have not sustained any injury, which rules out their presence on the spot. It was also pointed out that in case the above witnesses were present on the spot, they would have come forward to rescue of the deceased, and would have sustained some sort of injury. Reliance was also placed on Apex Court decision in *Hasan Murtza v. State of Haryana* 2002 (1) ACR 741 (SC) : 2002 SCC (Cri) 498, wherein it was held that the fact that P.W. 4 suffered no injury in the process of protecting her daughter from burning to death, further enhances the suspicion as to her presence at the time of the incident. In such a situation it is not safe to rely upon sole testimony of P.W. 4 to base conviction of Appellant. The facts of the said case were that at the time of occurrence, the Appellant came home and called the deceased to the bath room where he splashed petrol on her which he had kept in a mug and lit the deceased with a candle consequent to which the deceased was engulfed in flames and she ran out of the house into the street and within minutes she was charred to death. Smt. Nisha (P.W. 4) was mother of the deceased was visiting the deceased and the Appellant and on the date of incident when she and her daughter were present in the house at about 6.30 p.m. the Appellant called the deceased and sprinkled petrol on her. In the said case, the Appellant was not armed with deadly weapon and deceased after catching fire ran out of the house to the streets and there was occasion for her mother and another person to extinguish fire. In the present case, the position is different and there is explanation for the absence of injury on the above witnesses.

38. It was held by the Apex Court in the case of *Sucha Singh and Anr. v. State of Punjab* 2003 (3) SC 1017 : AIR 2003 SCW 3984, as below:

So far as inaction of P. Ws. 9 and 10 in not coming to rescue of deceased is concerned, it has been noted by the trial court and the High Court that both of them were unarmed and bare handed and the accused persons were armed with deadly weapons. How a person would react in a situation like this cannot be encompassed by any rigid formula. It would depend on many factors, like in the present case where witnesses are unarmed, but the assailants are armed with deadly weapons. In a given case instinct of self-preservation can be the

dominant instinct. That being the position, their inaction in not coming to rescue of the deceased cannot be a ground for discarding their evidence.

39. In *Rana Partap and Others Vs. State of Haryana*, , the Apex Court pointed as under:

Yet another reason given by learned Sessions Judge to doubt the presence of witnesses was that their conduct in not going to the rescue of the deceased when he was in the clutches of the assailants was unnatural. We must say that the comment is most unreal. 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 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 assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in a particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.

40. In *Bachhitar Singh and Another Vs. State of Punjab*, , the Apex Court held on human behaviour as below:

Human behaviour vary from man to man. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each given case. How a man would behave in particular situation, can never be predicted....

Relying on above decisions, it was further held by the Apex Court in the case of *State of Punjab v. Hardan Singh* AIR 2003 SCW 5131, that by now it is well-settled principle of law that there is no set rule of natural reaction. Everyone reacts in his own special way and in what way, the witness should react, cannot be predicted.

41. In the instant case, the above two witnesses have clearly explained the absence of injury on their person. Brijesh Kumar (P.W. 1) has clarified in his evidence that he was sitting in the bus besides the seat of the driver. Padam Singh, Jaibir and Ashok deceased were sitting on the three seater seat behind driver's seat. Prad Pal Singh, Rajpal Singh and Sonu deceased were sitting on another three seater seat after 3-4 seats. That the Appellants and other accused entered into the bus from the two gates and observing the Appellants and other accused firing on the deceased, the witness got down of the bus by jumping from driver's gate. Therefore, in such a situation the witnesses could easily escape the injury. Raj Bahadur (P.W. 2) also stated that he was sitting along with Brijesh Kumar (P.W. 1) and got down of the bus along with him. The above witnesses have further stated that the moment they got down of the bus, they started running to their heels towards their village and took shelter in the house of Hukum Singh. The above conduct of the witnesses was, therefore, natural. It is also evident from the evidence on record that as many as 5 Appellants, Bittu

alias Dharmendra and Satyendra accused were having rifles, guns and country made pistols, the deadly weapons and these two witnesses were unarmed. Therefore, their instinct of self-preservation would naturally have prevailed and they could not come to rescue of deceased and did not sustain injury. Therefore, if the above two witnesses reacted in the above manner to save their lives, it was their natural conduct and the absence of injury on their person have been fully explained and it cannot be a ground to doubt their presence on the spot. The facts of the case of Hasan Murtza (supra) are clearly distinguishable from the facts of the present case.

42. The testimony of above two witnesses was further challenged on the ground that they were close relatives of the deceased as well as highly inimical with the Appellants and other accused and in the absence of other independent witnesses, they being interested and partisan their testimony cannot be relied on. Having considered the facts and circumstances of the case, we find that the testimony of above two witnesses cannot be discarded simply because they are close relatives and consequently partisan witnesses. The Apex Court in the case of Dalip Singh and Others Vs. State of Punjab, , repelled the theory that relative and partisan witnesses should not be relied on and surprise was expressed over the impression which prevailed in the mind of members of bar that relatives were not independent witnesses. It was observed as below:

We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in Rameshwar Vs. The State of Rajasthan, We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.

43. Again in Masalti Vs. State of U.P., , the Apex Court observed as below:

But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses..... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence ; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

To the same effect is the decision in The State of Punjab Vs. Jagir Singh, Baljit Singh and Karam Singh, and Lehna Vs. State of Haryana,

44. The next ground advanced by the learned Counsel for the Appellants, to impeach the testimony of the above two witnesses was that their evidence is full

of subsequent developments, embellishments and improbabilities and, therefore, their testimony should not be relied on. It was pointed out that Brijesh Kumar (P.W. 1) was informant, but he had omitted to mention in the F.I.R. the weapons possessed by each of the Appellants, the number of ill-fated bus, the colour of maruti cars and motor cycle, the Appellants and accused boarding the maruti cars and motor cycle, seating arrangement of the deceased and specific role of each of the Appellants in causing injury to particular deceased. But in their evidence, they became wise enough to state such details. We find that the omission of above details in the F.I.R. is not a ground to discard and disbelieve the testimony of above ocular witnesses. We should not forget the situation in which the informant Brijesh Kumar (P.W. 1) was placed at the time of preparing F.I.R. Father (Jaibir), brother (Ashok), cousin brothers Prem Singh, Rajesh, Prad Pal Singh, nephew (Sonu) and maternal uncle (Rajpal Singh), total eight close relatives of the witness were murdered in his presence in a ghastly manner and on his cries, none of the villager dared to come forward to his help. Embarrassed in such a situation, the witness was not expected to mention each and every minute details of the occurrence in F.I.R. Moreover, F.I.R. is not an encyclopaedia of the prosecution case and does not require to contain every minute details including those which would be questioned in the cross-examination of the witness. Only, salient features of the case are required to be mentioned in the F.I.R. Therefore, the omission of above facts in the F.I.R. in no way rules out the presence of the ocular witnesses, specially when the above alleged improvements do not change the initial case set up in the F.I.R.

45. The learned Counsel for the Appellants next contended that the evidence of above two ocular witnesses is full of improbabilities, which make their evidence unreliable. It was pointed out that according to evidence of above witnesses, the Appellants and other accused started firing without making passengers of the bus got down. As many as 14-15 shots were fired, but none of the passengers sustained any injury. 8-10 persons of the village of the witnesses were also sitting in the bus, but they could not name them. The two witnesses were being chased by the Appellants and other accused having rifles, guns and country made pistols and fired on them from a distance of 200-300 yards, yet none of them sustained any injury. The Appellants and other persons were chasing the above two witnesses by cars and motor cycle even then they could not be caught and that those witnesses shifted their place of hiding, at the time of later part of incident.

46. Having considered the above points, we again find that the evidence of ocular witnesses do not suffer from above improbabilities. The evidence on record shows that only the deceased with whom the Appellants and other accused had to take revenge were their targets. There is nothing in the evidence on record to show that the Appellants and other accused started indiscriminate firing in the bus, but the evidence is to the effect that the Appellants and other accused fired from their respective weapons aiming the deceased sitting in the bus. The medical evidence shows that injuries of some of the deceased contained

blackening and tattooing and bullets, wadding pieces, metallic pellets and bullets were also recovered from the bodies of some of deceased. This shows that shots on the deceased were fired from close range, aiming the deceased. As many as six persons were gunned down inside the bus and there were as many as seven assailants having fire arms, like rifles, guns and country made pistols. As such in the situation, in which the shots were fired aiming the deceased, there was no occasion for the other passengers to sustain injury. Moreover, it has also come in the evidence of the two witnesses that the moment the Appellants and other accused started firing on the deceased, the other passengers got down of the bus and ran away. The name of passengers was also not known and in case some of the passengers sustained minor injuries, they were not expected to come forward to give evidence against the Appellants and other accused, who were so dare devil.

47. The next ground on which the credibility of above ocular witnesses was challenged was that the mode of firing on the deceased sitting in the bus does not tally with the medical evidence. It was pointed out that Brijesh Kumar (P.W. 1) stated in his cross-examination that Padam Singh deceased was sitting on three seater seat, back of the driver's seat and Jaibir was also sitting besides him. That Dharmendra alias Bittu fired on Padam Singh and Subhash fired on Jaibir by entering into the bus from front door. But the injuries on the above persons were on back side of head, chest and front of head right side and Jaibir sustained injuries on right side. That in case the shots were fired on the above two deceased in the manner stated by Brijesh Kumar (P.W. 1), they would have not sustained injuries on back side and right side. This argument appears presumptive one as it was not expected from the above deceased that they would remain like a statue. The above two deceased must have turned their faces or body to save themselves and in this attempt shots would have come into contact with their back and right portion of their bodies. Therefore, the seat of injuries of the above two deceased does not make the mode of firing stated by Brijesh Kumar (P.W. 1), improbable.

48. It was further contended by the learned Counsel for the Appellants that the modes of hiding of Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) in the house of Hukum Singh at the time of later part of incident have been changed and developed during the evidence, as according to F.I.R. version these two witnesses took shelter in the house of Hukum Singh, but in their evidence they stated that they took shelter in the house of a harijan adjacent to the house of Hukum Singh. Brijesh Kumar (P.W. 1) stated in his cross-examination that he took shelter in the house adjacent to the house of Hukum Singh and that house belonged to a harijan. The house of Ram Swaroop Harijan is adjacent to the house of Hukum Singh as shown in the site plan (Ext. Ka-70). Brijesh Kumar (P.W. 1) clarified that he was hiding besides the wall of the house of harijan from where the internal portion of house of Hukum Singh was visible Raj Bahadur (P.W. 2) stated that roof of houses of Hukum Singh and Ram Swaroop Harijan are adjacent to each other. Firstly he entered into the house of Hukum Singh and

thereafter climbed the roof of the house and saved him. That he climbed roof from inside the house. Having considered the version contained in the F.I.R. and the evidence of above two ocular witnesses, we find that there is no material discrepancy in their place of hiding, as the houses of Hukum Singh and Ram Swaroop Harijan are adjacent to each other and roofs of both the houses are in the same continuation. It is also clear from the evidence of above ocular witnesses that when the above two witnesses entered into the house of Hukum Singh, the Appellants and other accused also entered into the said house after 8-10 minutes, where they murdered Prem Singh and Rakesh deceased. In these circumstances the possibility that when the Appellants and other accused were firing on Prem Singh and Rakesh, the two witnesses apprehending danger to their lives climbed the roof of the house of Hukum Singh from inner side and took shelter besides the wall of house of Ram Swaroop Harijan, cannot be easily ruled out.

49. It was also pointed out that in case the Appellants and other accused were chasing Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) and came to know that they had taken shelter in the house of Hukum Singh, where they murdered two persons, namely, Prem Singh and Rakesh, they could have also shot at two witnesses whom they were chasing from the place of earlier part of incident. As mentioned above these witnesses have explained that the moment the Appellants and other accused entered into the house of Hukum Singh, they climbed on the roof and took shelter behind the wall of house of Ram Swaroop Harijan. Therefore, there is sufficient explanation for not sustaining injuries by these two witnesses in the house of Hukum Singh.

50. Another improbability in the conduct of Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) pointed out by the learned Counsel for the Appellants was that police out post is situate in the other house of Brijesh Kumar at village Fahimpur, which is in the way to the house of Hukum Singh and if the two witnesses were running to save their lives, it was natural for them to have taken shelter in the police out post. But it cannot be expected as to what impulse was going on in the mind of witness when they were running to save their lives. If the witnesses thought that they would be safe in the house of Hukum Singh, they cannot be blamed for not taking shelter in the police out post. In the above tension packed situation, there could be hardly any opportunity to take a thoughtful decision by weighing pros and cons. Therefore, the above conduct of above two witnesses was most natural.

51. It was further contended that Raj Bahadur (P.W. 2) was interrogated by the Investigating Officer after 15 days, which creates doubt in his presence at the place of occurrence. But name of witness finds place in the F.I.R., which was promptly lodged on the date of occurrence and, therefore, it cannot be said that Raj Bahadur (P.W. 2) was introduced subsequently specially when the presence of the witnesses on the spot at the time of occurrence has been established. Moreover, no question was put to Investigating Officer as to why he interrogated

the witness with delay and the Investigating Officer was not given opportunity to explain the same.

52. It was pointed out that according to evidence of Brijesh Kumar (P.W. 1), the dead bodies of the victims of the later part of incident were sent from the spot at about 4 a.m., while according to evidence of Investigating Officer last inquest was conducted at 6.30 a.m. This discrepancy is not material, as the witness has given above time from his speculation and that too relates to the fact after the occurrence.

53. Learned Counsel for the Appellants then contended that the evidence of above witnesses is full of discrepancies, which make their evidence unbelievable. We have gone through the discrepancies pointed out in the statement of above two witnesses and find that those discrepancies are not material and such discrepancies do not mitigate against their trustworthiness. Unless variation can be held abnormal and unnatural as would not occur if the witness had really witnessed what he was narrating, the discrepancies are immaterial.

54. From the above discussions, we find that the presence of Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) on the spot has been fully established and their evidence is worthy of credence.

55. The next contention of the learned Counsel for the Appellants was that the report was ante-timed. The earlier part of occurrence of the case took place at 5.15-5.30 p.m. and the later part took place in continuation thereafter. The report of the occurrence was lodged at 7.15 p.m., while the distance of police station was 9 kms. The informant Brijesh Kumar (P.W. 1) stated that he started for the police station at about 6.45 p.m. by a tractor and reached police station within half an hour. Head constable Asarpal Singh (P.W. 6) stated that Brijesh Kumar (P.W. 1) handed over report to him at 7.15 p.m. on the basis of which he prepared chik report (Ext. Ka-82). In this way, there appears no delay in lodging the report.

56. The learned Counsel for the Appellants pointed out that the copy of F.I.R. reached the C.J.M. on 18.1.2000, which shows that it was sent there with inordinate delay and report was not lodged at time claimed by informant but later on. Reliance was also placed on Apex Court decision in *Jung Singh and Ors. v. State of Rajasthan* 2002 SCC (Cri) 1027. But the evidence of Investigating Officer Sri Vinod Kumar Tevtia (P.W. 4) shows that after registration of the case, he reached the spot in the night of occurrence and conducted inquest of the dead bodies and made certain recoveries from the spot. Moreover, the chik F.I.R. was signed by the C.J.M. on 18.1.2000 and it was not shown on which date it reached the office of C.J.M., nor it was enquired from head constable Asarpal Singh (P.W. 6) as to when it was dispatched from the police station. Therefore, from the above statement of Asarpal Singh (P.W. 6), it cannot be said that report was actually dispatched from the police station on 18.1.2000.

57. Much emphasis was laid by the learned Counsel for the Appellants on non-

production of independent witnesses while the independent witnesses were available. We find from the evidence of Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) that besides them, Anil had also seen the occurrence. But Anil was not examined. The name of passengers of the bus has not come on record. We have already discussed that non-disclosure of name of passengers of the bus does not make the evidence of above ocular witnesses unbelievable and non-examination of Anil is not fatal to the prosecution story, as he also happened to be one of the close relative of the deceased. There was no necessity to multiply the number of witnesses. So far non-examination of other independent witness is concerned, no other independent witness of the first incident was available and the said incident was witnessed only by the passengers of the bus. According to evidence of Brijesh Kumar (P.W. 1) at the time of later part of incident in the house of Hukum Singh, he raised alarm, but none of the villagers dared to come. It has also come in the evidence of Brijesh Kumar (P.W. 1) that the assailants, who were armed with deadly weapons had also threatened that in case any body dared to come forward or gave evidence, he would meet the same fate. As such there is explanation for non-examination of other witnesses.

58. It is true that prosecution has not produced any independent witness, but the prosecution case cannot be thrown out or doubted on that ground alone, Civilized people are generally insensitive when a crime is committed even in their presence. It is a matter of common experience that they withdraw both from the victim and the vigilant. They keep themselves away from the Court, unless it is inevitable. They think that crime like civil dispute is between the two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in the village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The Court, therefore, instead of doubting the prosecution case for want of independent witness must consider the spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witness at a dastardly crime or an act of egregious nature may react differently. Their, course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner (vide Appabhai and Another Vs. State of Gujarat, .

59. In the instant case, as narrated above, the prosecution has offered sufficient explanation for non-examination of the other so-called independent witnesses. Therefore, non-examination of other witnesses does not mitigate the evidence of Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2).

60. The evidence of above two witnesses also finds corroboration from medical evidence, F.I.R. and other circumstances of the case. These witnesses have also stood with the searching and lengthy cross-examination and their testimony

could not be shaken in any way. Therefore, they are natural and reliable and there is nothing to discredit their trustworthiness.

61. Besides, the above ocular evidence, there is evidence of recovery of gun and rifle on the pointing out of Appellants Chandraveer and Subhash. Sri Vinod Kumar Tevatia (P.W. 4) stated that on 18.1.2000, Appellants Chandraveer and Subhash surrendered in the Court. Their police remand was taken on 5.2.2000 and on their pointing out 315 bore rifle was recovered from sugarcane field and on the pointing out of Subhash a 12 bore gun was recovered on the pointing out of Chandraveer from the said field. He further stated that maruti car used in the occurrence was recovered on the pointing out of Appellant Sahdeo on 4.2.2000, the front screen of which was damaged and licensed gun of Satyapal Appellant was recovered from him on 13.1.2000 at the time of his arrest.

62. The learned Counsel for the Appellants contended that the witnesses of recovery, namely, Yashpal and Yogesh were not examined, disclosure memo was not prepared, the articles were allegedly recovered from sugarcane field, which was accessible to all and rifle and gun recovered on pointing out of above Appellants were not sent to ballistic expert for comparison with the cartridges found on the spot and bullet recovered from the dead bodies of some of the deceased and, therefore, it is not established that those weapons were actually used in the offence and therefore, the recovery of above arms had not been established and linked with the offence.

63. Sri Tevatia (P.W. 4) stated that during their interrogation, Appellants Chandraveer and Subhash told that they would get the weapons of assault recovered and on their pointing out the weapons were recovered. It is true that no separate disclosure memo was prepared, but as held by Apex Court in the case of State of Himachal Pradesh Vs. Jeet Singh, , when the disclosure is made during interrogation of the accused that he would have made the disclosure, it is not necessary that other witnesses should be present when the accused was interrogated by the Investigating Officer. On the contrary, Investigating Officer used to interrogate the accused persons without the presence of others. So the mere fact that any witness to the recovery did not overhear the disclosure statements of the accused is hardly sufficient to hold that no such disclosures were made by the accused.

64. It is true that the above weapons were recovered on the pointing out of Appellants Chandraveer and Subhash from sugarcane field, but it cannot be said that the evidence of recovery is inadmissible. The Apex Court held in Jeet Singh's case (supra) that there is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is "open or accessible to others". It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence u/s 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or

if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred, its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others. It is now well-settled that the discovery of fact referred to in Section 27 of the Evidence Act is not the object recovered but the fact embraces the places from which the object is recovered and the knowledge of the accused as to it. In the instant case, recovery was made from sugarcane field and, therefore, the weapon was not easily visible by others and the place where it was hidden and concealed was only in the knowledge of above two Appellants.

65. The learned Counsel for the Appellants contended that weapons recovered on the pointing out of Appellants and empties bullets were not sent to Ballistic Expert for comparison.

66. Relying on the Apex Court decision in Sukhwant Singh Vs. State of Punjab, , it was contended that failure to produce the expert opinion before the trial court affects the credit worthiness of the prosecution case to a great extent. The above decision of Sukhwant Singh's case (supra) was again considered by the Apex Court in the case of State of Punjab v. Jugraj Singh and Ors. 2002 (2) ACR 1107 (SC) : AIR 2002 SCW 823, and it was held as below:

In that Sukhwant Singh's case the evidence of two eye-witnesses was held inadmissible as they were not examined in terms of Section 138 of Evidence Act and the Court did not rely upon sole testimony of Gurumej Singh (P.W. 3). In that context the Court observed that failure to produce the expert opinion affected the credit worthiness of the prosecution case to a great extent. No where it was held that on account of failure to produce the expert opinion, the prosecution version in all cases should be disbelieved.

67. It was held by the Apex Court in the case of Amar Singh Vs. Balwinder Singh and Others, , that the failure of Investigating Officer in sending the fire arms and the empties for comparison cannot completely throw out the prosecution case when the same is fully established from the testimony of eye-witnesses whose presence on the spot cannot be doubted.

68. Therefore, failure to produce the expert opinion before the trial court does not affect the credit-worthiness of the prosecution case in all cases. Where the ocular witnesses are believable, failure to produce expert opinion alone does not affect the credit-worthiness of the prosecution case.

69. Reliance was also placed on the Apex Court decision in State of M.P. v. Surpa 2003 SCC (Cri) 1221, wherein it was held that failure to send the bullet recovered from chest cavity of the deceased and gun seized by the Investigating Officer to send to ballistic expert for expert examination and no explanation

given by prosecution for the same was a serious infirmity in the prosecution case. But the fact of above decision shows that there were other infirmities in the said case such as P.W. 1 Sonibi widow of the deceased, who claimed to be eye-witness did not report the matter to any one after 6 p.m. She told to Tej Singh (P.W. 7) on the next morning that "some one" had shot dead her husband and she had not disclosed to him the name of Appellant. Bhanwar Singh (P.W. 2) son of deceased and Bhitru (P.W. 3) came out of their house after hearing the gun fire and they saw the accused running. It was found that these two witnesses cannot be said to be eye-witnesses of the actual occurrence and in these circumstances the failure to produce expert opinion was held fatal. But in the instant case, the evidence of two ocular witnesses is worthy of credence and in these circumstances, the failure to produce expert opinion cannot be treated fatal to the prosecution case.

70. The learned Counsel for the Appellants again pointed out that the trial court has acquitted as many as six accused on the same evidence and this shows that the trial court has found the testimony of two ocular witnesses Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) regarding those accused not believable and, therefore, the testimony of above two witnesses can also not be relied on against the Appellants. It is true that some of the accused were acquitted by the trial court on the same evidence, but on that count the testimony of above ocular witnesses cannot be discarded. As held by the Apex Court in the case of Gangadhar Behera and Others Vs. State of Orissa, , even if major portion of evidence is bound to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of the Court to separate the grain from chaff. Where the chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance, nor has this maxim could occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded and not that it must be disregarded. The doctrine merely involves question of weight of evidence, which a Court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". Merely because some of the accused persons have been acquitted, though evidence against all of them so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate accused, who had been acquitted from those, who were convicted. The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected because, witness was speaking untruth in some aspect, it is to be feared that administration of criminal justice would come to a

dead-stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not sound rule for the reason that one hardly comes across a witness, whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment.

71. The State has also preferred Government Appeal against the acquittal of six accused and we will consider it while discussing in the above Government appeal, but in the instant case, the accusation of the Appellants have been fully established against the convicted accused Appellants. The trial court has categorically indicated the distinguishing features in the evidence so far as acquitted and convicted accused are concerned. Therefore, the acquittal of some of accused will not affect conviction of Appellants Parvinder, Subhash, Chandraveer, Satyapal and Sahdeo.

72. The learned Counsel for the Appellants again challenged conviction of Appellants on the ground that the investigation was defective, as the Investigating Officer did not find out the name of driver and conductor of bus, did not interrogate them and had also not found the name of persons who were travelling in the bus or had seen the accused chasing the witnesses and did not recover tickets from the pocket of deceased or witnesses. But defective investigation will not affect the prosecution case. In *Karnel Singh v. State of M.P.* 1995 ACR 831 (SC) : JT 1995 (4) SC 437, it was held that in cases of defective investigation, the Court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect and to do so would tantamount to playing into the hands of the Investigating Officer, if the investigation is designedly defective. In *Paras Yadav and others Vs. The State of Bihar*, while commenting upon certain omissions of the investigating agency, it was held that it may be that such lapse is committed designedly or because of negligence and hence the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. Similar view was taken in *Ram Bihari Yadav Vs. State of Bihar and Others*, , when the Apex Court observed that in such cases the story of the prosecution will have to be examined de hors such omission and contaminated conduct of the officials, otherwise, the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice. In the present case, the prosecution case is fully established by the direct testimony of the eye-witnesses, which is corroborated by the medical evidence and other circumstances of the case and, therefore, any failure or omission of the Investigating Officer cannot render the prosecution case doubtful or

unworthy of belief.

73. It was further pointed out that Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) have also stated that the Appellants and other accused looted ornaments, cash and double barrel gun in the house of Hukum Singh, but that evidence was not accepted by the trial court and there is also no evidence on record to prove that fact and this shows that two witnesses are not reliable. We find no force in the above contention, as the factum of dacoity was disbelieved on other grounds and, therefore, even if it is assumed that the two witnesses have exaggerated in their evidence regarding factum of dacoity by the Appellants and other accused in the house of Hukum Singh, that portion can be discarded, but it does not affect their credit-worthiness.

74. From our above discussions and observations, we find that the evidence of ocular witnesses, which is corroborated by medical evidence and other facts and circumstances of the case clearly established the complicity of Appellants Parvinder, Subhash, Chandraveer, Satyapal and Sahdeo and we find no ground to interfere with the conviction of above Appellants under Sections 148, 302 read with 149 and 452, I.P.C. as well as conviction of Appellants Subhash and Chandraveer u/s 27 Arms Act.

75. Now, we take up the Government appeal preferred by State of U.P. against the acquittal of accused Satyendra, Rajesh, Harbir, Kunwarpal, Virendra and Sachin and criminal revisions filed by complainant Brijesh Kumar.

76. The principle to be followed by appellate court considering the appeal against the order of acquittal is to interfere only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is compelling reason for interference (vide Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, The principle was elucidated in Ramesh Babulal Doshi Vs. State of Gujarat, , as below:

While sitting in judgment over acquittal, the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate court holds for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can then and then only, reappraise the evidence to arrive at its own conclusions.

77. The Apex Court further held in the case of Koli Chunilal Savji and Another Vs. State of Gujarat, , that the law is well-settled that the power of the High Court while sitting in appeal against an order of acquittal is the same, as the power while sitting in appeal against the conviction and the High Court, therefore, would be fully entitled to reappraise the materials on record and in coming to its own conclusion. The only compulsion on the part of the appellate court is to bear in mind the reasons advanced by the learned Sessions Judge, while acquitting

the accused and indicate as to why those reasons cannot be accepted. If the order of acquittal is based upon the ground not sustainable, the appellate court would be justified in interfering with the said order of acquittal.

78. Keeping in view the above settled principles, we would like to first discuss the Government appeal against Satyendra-accused.

79. The ocular testimony of Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) was that the accused Satyendra was armed with country made pistol and he along with other Appellants having rifles, guns and country made pistols entered into the bus and fired on the deceased. That after killing six persons in the bus, Satyendra along with other Appellants chased Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) and by entering into the house of Hukum Singh fired, along with other Appellants, on Rakesh and Prem Singh and killed them. The role assigned to accused Satyendra is the same as assigned to Appellant Parvinder and on the basis of evidence on record, the trial court has convicted him. The trial court acquitted the accused Satyendra on the ground that in view of testimony of Harpal Singh, advocate (D.W. 4) and Man Mohan Sharma, advocate (D.W. 5) coupled with the fact that the prosecution had not produced the alleged disclosure statement made by accused Satyendra, the recovery of country made revolver from the accused becomes doubtful and that the recovery of motor cycle on the pointing out of accused Satyendra is also doubtful in view of evidence of his wife, Smt. Pinki (D.W. 3) and the application dated 15.1.2000, moved to the National Human Right Commission, S.S.P., Muzaffarnagar and the fact that the above motor cycle was not produced before the C.J.M. at the time of production of the accused. The trial court on the above grounds held that the recovery of country made pistol and motor cycle was not made from this accused by the Investigating Officer and those have been falsely planted against him, which creates serious doubt on the theory of the prosecution, inasmuch as it is alleged by the prosecution that the accused Satyendra was armed with country made revolver. Since recovery of country made revolver and motor cycle was not made from this accused and those were planted, therefore, his presence becomes doubtful and it is the cardinal principle of criminal justice that every doubt will always benefit the accused. In these circumstances, the trial court accorded him benefit of doubt.

80. Sri Vinod Kumar Tevatia (P.W. 4) stated that accused Satyendra surrendered in the Court on 17.1.2000 and he took his police custody remand on 22.1.2000. That on said date (22.1.2000) on the pointing out of accused Satyendra, he recovered country made pistol and Hero Honda motor cycle bearing registration No. U.P. 12-9189 from sugarcane field. Recovery memo of above recovery (Ext. Ka-71) was prepared. In his cross-examination, he clarified that the sugarcane was existing in the field from which motor cycle was recovered. However, he stated that he had not sent the above country made pistol and cartridges recovered from the spot to the Ballistic Expert. Smt. Pinki (D.W. 3) stated that on 13.1.2000, the complainant of the case along with police came to her house and

they broke open her gate and damaged motor cycle kept in the house. She had sent an application to National Human Right Commission. In her cross-examination, she admitted that the application to Human Right Commission was sent on the advice of counsel. Sri Harpal Singh, advocate (D.W. 4) stated that he had gone with Satyendra Kumar when he was taken on police remand along with Man Mohan Sharma, Raju Mahle and Sanjiv Kumar, advocate. On 22.1.2000, he was sitting at the police station. The Station Officer, P. S. Sikhera, arranged a country made revolver and sealed it at the police station. When Satyendra Kumar was produced before C.J.M., he had made oral objection that revolver and motor cycle were not produced. Man Mohan Sharma, advocate (D.W. 5) also gave the same statement.

81. Non-production of the articles recovered on the pointing out of an accused at the time of his production in the Court is no doubt required under Cr. P.C. but its non-compliance is not an illegality, but simply an irregularity. The production of the articles in the Court along with the accused corroborates the factum of recovery, but its non-production does not falsify the factum of recovery. If the evidence of recovery officer is believable, non-production of article alone does not falsify the recovery. The trial court has adopted double standard as in the case of Chandraveer and Subhash Appellants, he had believed the evidence of Sri Vinod Kumar Tevatia (P.W. 4), but without assigning any reason he had doubted the evidence of Sri Tevatia (P.W. 4) so far the recovery of motor cycle and country made pistol on the pointing out of accused Satyendra was concerned. The trial court believing the testimony of ocular witnesses believed participation of Appellant Parvinder in the murder of eight deceased while no recovery was made on his pointing out or from his possession, but distinguished the case of Satyendra accused without assigning any plausible reason. The trial court appears to have given much weight to the evidence of Smt. Pinki (D.W. 3), Harpal Singh, advocate (D.W. 4), Man Mohan Sharma, advocate (D.W. 5). Smt. Pinki (D.W. 3) wife of Satyendra had given statement relating to alleged atrocities by police on 13.1.2000. She had not stated any thing about the recovery, which took place on 22.1.2000. However, she stated that she had made application to Human Right Commission, but she had admitted that above application was moved on the advice of the counsel and, therefore, her evidence is not concerned with the recovery, which allegedly took place on 22.1.2000. According to evidence of Harpal Singh, advocate (D.W. 4) and Man Mohan Sharma, advocate, Sri Vinod Kumar Tevatia (P.W. 4) planted country made pistol at the police station in their presence. Their evidence does not appear convincing because Station Officer would have not planted revolver in the presence of the two advocates, as he had every apprehensions that this fact may be reported against him. If he had to plant the revolver, he would have done it in some other way. Therefore, discarding the evidence of recovery of country made pistol and motor cycle on the pointing out of accused Satyendra was not based on sound reasons.

82. Assuming for the sake of argument that the recovery of country made pistol

and motor cycle on the pointing out of Appellant Satyendra was doubtful or unbelievable, the evidence of ocular witnesses Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) that accused Satyendra also participated in the murder of 8 deceased by causing country made pistol injuries on them has not been shaken in any way. As mentioned above, the trial court had not given any reasoning for discarding the evidence of above two ocular witnesses regarding participation of accused Satyendra in the murder of eight deceased.

83. Even if, it is assumed that factum of recovery of country made pistol and motor cycle was exaggerated, the evidence of recovery is only a corroborative piece of evidence and it is not substantive piece of evidence. The benefit of doubt on this ground was thus, wrongly accorded to Satyendra accused. The Apex Court in the case of State of Punjab v. Karnail Singh 2003 (3) SC 1308 : 2003 (3) ACR 2961 (SC): AIR 2003 SCW 4065, held as below:

Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. (See Gurbachan Singh Vs. Satpal Singh and others, Prosecution is not required to meet any and every hypothesis put forward by the accused. (See State of U.P. v. Ashok Kumar Srivastava AIR 1992 SC 84) . A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial ; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. (See Inder Singh and Another Vs. The State (Delhi Administration), . Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. (See Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, ; State of U.P. Vs. Krishna Gopal and Another, and Gangadhar Behera and Others Vs. State of Orissa,

84. Keeping in view the legal principles and factum of scenario, in our view, the inevitable conclusion is that the trial court was not justified in directing acquittal of accused Satyendra because even if the evidence of recovery is not aboveboard, the evidence of ocular witnesses, which is supported by medical evidence, F.I.R. and other circumstances fully established his participation in the murder of eight deceased. We again find that the finding of the trial court in acquitting Satyendra by according him benefit of doubt is clearly unreasonable. It is also true that if two views are possible on the same evidence, the view favourable to the accused shall be taken and the appellate court in case of appeal against acquittal will not set aside the above view. But in this case, in view of ocular testimony of two witnesses, medical evidence and other

circumstances no other view than the participation of Appellant Satyendra in the murder of eight deceased is possible and, therefore, the trial court wrongly acquitted accused Satyendra. Therefore, accused Satyendra is also liable to be convicted under Sections 148, 302/149 and 452, I.P.C. as well as u/s 25, Arms Act.

85. So far the appeal against other accused, namely, Rajesh, Harbir, Kunwarpal, Virendra and Sachin are concerned, they have been assigned role of having lathis or dandas. The medical evidence shows that no lathi, danda injury was sustained by any of the deceased and according to ocular evidence, the eight deceased died on account of fire arm injuries on them caused by rifle, gun and country made pistols. Brijesh Kumar (P.W. 1) and Raj Bahadur (P.W. 2) have also not stated that the accused having lathis, dandas directly or indirectly caused any injury to the deceased or did any over act. In these circumstances, it was rightly concluded by the trial court that participation of above accused persons namely Rajesh, Harbir, Kunwarpal, Virendra and Sachin was not established and they were rightly acquitted.

86. We should now address ourselves to the question of sentence. Six accused (Parvinder, Subhash, Chandraveer, Satyapal and Sahdeo convicted by the trial court and Satyendra against whom we are allowing Government appeal) committed the horrendous crime of murdering as many as eight persons with planning and premeditation to avenge the earlier murder of Anandpal on their side. The trial for his (Anandpal's) murder was pending but the above accused had no regard for the system of law. Instead of waiting for the verdict of the Court in that regard, they retaliated in their own way by liquidating eight persons in revenge. The way in which the crime was committed is an insult to orderly society governed by rule of law, sending shock waves in general run of the people. Doubtless it is that the crime was committed in a dastardly manner arousing intense and extreme indignation of the community. The accused persons demonstrated total depravity. The evidence is on record that after committing six murders by shooting in the bus in earlier part of the incident, to derive sadistic pleasure by laughingly spat and kicked the dead bodies. They extended their diabolical mission further by committing two more murders by chasing the armless witnesses clearly exhibited that their criminality knew no bounds. The crime committed by them was also enormous in proportion, being multiple murders of eight persons. The existence of the guilty six accused is a menace to the society for all times to come.

87. In our considered view, according to the criteria laid down by the hon''ble Supreme Court and aggravating and mitigating circumstances of the case, because of its extraordinary features this case falls in the category of "rarest of rare cases" and calls for the extreme penalty of death against all six guilty accused.

88. In view of our foregoing discussions and observations, we partly allow Government Appeal No. 4026 of 2002 so far it is concerned with accused

Satyendra. Accordingly, the acquittal of accused Satyendra under Sections 148, I.P.C., 302/149, I.P.C., 452, I.P.C. and 25, Arms Act is set aside and he is convicted under said sections and he is sentenced to death penalty u/s 302/149, I.P.C. one year R.I. u/s 148, I.P.C., 2 years R.I. u/s 452, I.P.C. and two years R.I. u/s 25, Arms Act. All the substantive sentences shall run concurrently. The appeal against accused Rajesh, Harbir, Kunwarpal, Virendra and Sachin is dismissed. They are on bail. Their, bail bonds are cancelled and sureties are discharged. They need not surrender.

89. We hereby dismiss Criminal Appeal No. 1780 of 2002 preferred by Parvinder, Subhash and Chandraveer, Criminal Appeal No. 1805 of 2002 preferred by Satyapal and Criminal Appeal No. 1810 of 2002 preferred by Sahdeo. We, accordingly, confirm the conviction of above Appellants Parvinder, Subhash, Chandraveer, Satyapal and Sahdeo under Sections 148, 302/149, I.P.C. and 452, I.P.C. and sentence of death u/s 302/149, I.P.C. and also the sentences of one year R.I. u/s 148, I.P.C. and 2 years R.I. u/s 452, I.P.C. We also confirm conviction of Appellants Sahdeo and Chandraveer u/s 27, Arms Act and sentence of 3 years R.I. All the substantive sentences shall run concurrently. As a resultant effect each of the accused Appellants Parvinder, Subhash, Chandraveer, Satyapal, Sahdeo and Satyendra shall be hanged by neck till dead. Accordingly, the Reference No. 2 of 2002 made by Special Judge/ Additional Sessions Judge, Muzaffarnagar, is accepted. Criminal Revision Nos. 1240 of 2002 and 1241 of 2002 are disposed of accordingly.

90. The Appellants Parvinder, Subhash, Chandraveer, Satyapal and Sahdeo are already in jail and shall be kept there for further follow up action.

91. Accused Satyendra is on bail. He is directed to surrender before the C.J.M., Muzaffarnagar. The C.J.M., Muzaffarnagar, shall also procure arrest of Satyendra accused by adopting all process available under law.

92. Copy of the judgment along with record of trial court be immediately sent to the court below for compliance under intimation to this Court within two months.