
(2016) 12 AHC CK 0181
In the Allahabad High Court
Case No : Criminal Appeal No. 2884 of 1983

Rama Shanker Giri	Vs	APPELLANT
State of Uttar Pradesh		RESPONDENT

Date of Decision : 23-12-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, Section 161
Penal Code, 1860 (IPC) — Section 302

Citation : (2017) 4 ADJ 63

Hon'ble Judges : Krishna Murari and Ravindra Nath Kakkar, JJ.

Bench : Division Bench

Advocate : A.D. Giri, Kshitij Shailendra, Pawan Kumar singh and Jitendra Kumar Upadhyay, Counsel, for the Appellant; A.G.A, for the Respondent

Final Decision : Dismissed

Judgement

Ravindra Nath Kakkar, J.—We have heard Shri Kshitij Shailendra, learned counsel for the appellants and Shri Anurag Mishra, learned A.G.A. representing the State.

2. The present criminal appeal has been filed against the judgment and order dated 22.11.1983 passed by Ist Additional Sessions Judge, Ghazipur in Sessions Trial No.125 of 1983 convicting the appellants under Section 302 read with 34 IPC and sentencing them to undergo life imprisonment.

3. The prosecution case in brief is that on the fateful night intervening 23/24.3.1982 deceased Ganesh Ram had gone to his field to guard his wheat crop, when accused appellants Rama Shankar and Raj Narain armed with lathis, Vijai Shankar with a knife and Paramhans with a spear took him by surprise and started assaulting with their weapons. On alarm being raised by victim Ganesh Ram, his son Ganga Bishun who was in the house and was awoke rushed to the field. Some other persons of the village, namely, Kamta Singh, Shyam Narain, Jagroop and Budhiram who too had also gone to their agricultural fields situate nearby also rushed to the place of occurrence. All these persons, including Ganga

Bishun, the son of the deceased, on reaching near the place of occurrence, lit their torches and in torch light the accused-appellants were seen beating Ganesh Ram with the weapons they were armed with. These witnesses tried to apprehend the accused appellants but they fled away. They found injured Ganesh Ram was badly injured and lying on the ground in unconscious state. Ganga Bishun took his father to a nearby dispensary but he succumbed to his injuries. The dead body of the deceased was brought to village Khara and kept beneath a neem tree of Kailash Kushwaha in front of the house of the informant who then prepared a report of the incident and gave it to Baijnath, Chaukidar of the village to be taken to the police station Baresar which was at a distance of 7 km. for lodging a first information report. Baijnath in turn reached to the police station and made it over to head moharir Vijay Bahadur Singh who drew a check report (Ext. Ka-3) and registered the case against the accused-appellants vide G.D. No.6 at 6.10 a.m. on 24.3.1982. The copy of the relevant G.D. is Ext. Ka-4 on record. After registration of the case, Sub Inspector Shukrullah Khan, the then Incharge of police station swung into action and took investigation of the case in his hand. He along with police force reached village Khara and went to the place where dead body of Ganesh Ram was kept on a cot beneath neem tree of Kailash Kushwaha. The Investigating Officer took the dead body in his custody and after inspection prepared inquest report (Ext. Ka-6). He also prepared photo laash, challan laash and letter to Chief Medical Officer (Ext. Ka-6 to Ka-9) and thereafter sealed the dead body of the deceased and handed it over to constables Deen Dayal Pandey and Banarasi Yadav along with necessary papers to be taken to mortuary at Ghazipur for post mortem examination. The constables brought the dead body to the mortuary at Ghazipur and at about 3 p.m. on 25.3.1982 produced it before Dr. K.K. Srivastava, who on identification of the dead body by these two constables, held autopsy on the dead body of Ganesh Ram and found as under :

"The deceased was aged about 65 years. He had died one and a half day before the post mortem. The deceased was average built. Blood was oozing out from his mouth and nose. Rigor mortis had passed from upper extremity but was still present in both the legs. The doctor found the following ante mortem injuries on the dead body of the deceased:

Ante-mortem injuries:

1- Post-mortem abrasion 1.5 cm x 0.5 cm on outer surface of right arm, 4 cm below the right shoulder joint.

2- Oblique penetrating wound 2 cm x 0.5 cm x muscle deep (4 cm) on the back surface of right arm, 12 cm above right elbow. Directions-downwards and forwards and medially. No tailing.

3- Oblique penetrating wound 3 cm x 1 cm x bone deep (4.5 cm) on the back surface of right arm, 6 cm above right elbow. Directions-downwards, forwards and medially. No tailing.

4-Oblique penetrating wound 4 cm x 1.5 cm x bone deep (4.5 cm) on the back surface of right forearm, 7cm above the right wrist joint. Directions-downwards, forwards and medially. No tailing.

5-Oblique contusion with abrasion 2cm x 1cm on the back of left arms, 2cm above the left elbow. Lower end of left humerus fractured.

6-Oblique contusion 15 cm x 3cm on back of left arms, 2cm below the left axilla.

7-Oblique contusion 30cm x 5cm on left side of chest, 1cm below left axilla and 16 cm outer to left nipple.

8-Oblique contusion 7cm x 3cm on right shoulder blade 3cm above the medial angle of right scapula.

9-Oblique contusion 6 cm x 2.5 cm on the right side of back 1cm below lower angle of shoulder blade.

10-Oblique contusion 8 cm x 2cm on right side back, 2cm below the injury no.9 and parallel to it.

11- Oblique contusion 10 cm x 2cm on right side of back, 3 cm below the injury no.10.

On dissection he found 6th to 12th ribs of right chest and 8th to 12th ribs of left chest fractured. Pleura and lower lobe were lacerated. He found dark fluid blood in the cavity and about 5 oz. of undigested rice and daal in the stomach. According to him, the deceased had died as a result of shock and haemorrhage due to his ante-mortem injuries. In his opinion the ante-mortem injuries found on the person of the deceased were sufficient in the ordinary course of nature to cause his death."

4. The prosecution in support of its case has examined PW-1 Ganga Bishun, the informant, PW-2 Kamta Singh, PW-4 Shyam Narain all witnesses of fact, PW-3 Dr. K.K. Srivastava who had conducted post-mortem examination on the dead body of Ganesh Ram and PW-5 Sub Inspector Shukrullah Khan, the Investigation Officer. Besides, the prosecution has also filed an affidavit of Constable Deen Dayal Pandey, who is a formal witness.

5. PW-1 Ganga Bishun is the informant of the incident. He in his statement has stated that his father Ganesh Ram, on the fateful night intervening 23/24.3.1982, had gone to the agricultural field to guard his wheat crop from theft and damages where all the accused appellants appeared and assaulted him with their respective weapons. When Ganga Bishun heard the shriek and noise of his father, he along with other persons rushed to his field and found the accused appellants assaulting his father Ganesh Ram and on seeing them the accused appellants ran away. PW-1 has lodged the first information report and supported the entire prosecution case. He went on to state that at the time of occurrence he was present in his home which is situated at a distance of 200 yards from the agricultural field where his father had been to guard the wheat crop which was

ripe for being harvested. He further stated that his another field lies towards south in which wheat and sugarcane crops were standing. These fields come within the territory of village Lakhnauli at a distance of 250 yards from the habitation of village Khara. These two villages are quite adjacent and their boundaries are connected.

6. PW-2 Kamta Singh stated that he had gone to guard his crops and on hearing the noise and shriek of the victim Ganesh Ram, rushed towards the place of incident. He was having torch and lathi in his hand and on reaching the place of occurrence he saw in torch light that all the accused appellant armed with lathi, spear and knife, were assaulting deceased Ganesh Ram in his wheat field.

7. PW-4, Shyam Narain in his statement stated that at the time of incident he had gone to guard his wheat crop. He stated that he had a torch and lathi in his hand. Suddenly he heard noise of shrieks of victim Ganesh Ram and he rushed towards the agricultural field of the victim and on reaching near the place of occurrence he saw in the light of the torch accused Rama Shankar, Raj Narain, Vijay Shankar and Param Hans assaulting the victim with lathi, spear and knife as a result of which the victim Ganesh fell down and became unconscious.

8. PW-3, Dr. K.K. Srivastava who had conducted post-mortem examination on the dead body of the deceased stated there were as many as 11 ante mortem injuries on the person of the deceased of which injury no.6 and 8 were fatal and resulted in death of the victim. According to the opinion of the doctor, Ganesh Ram died on account of these two injuries. He has also opined that Ganesh Ram died one and a half day prior to the post-mortem of his dead body. He went on to state that on 25.3.1982 he was posted as Medical Officer in District Hospital Ghazipur when at about 3:00 p.m. Constable Deen Dayal Pandey C.P. No.314 and Constable Banarasi Yadav, C.P. No.416 of Police Station Baresar, Ghaziapur brought dead body of deceased Ganesh Ram of village Khara, P.S. Baresar, District Ghazipur for post mortem. On identification of the dead body by the above two constables, he conducted post mortem of the deceased. He proved the post-mortem report Ext. Ka-2.

9. PW-5 Sukrullah Khan, the investigating officer of the case stated in his testimony that on 24.3.1982 he was Incharge of Police Station Baresar and soon after registration of first information report he started investigation. He stated that on reaching village Khara along with necessary police force immediately took in custody the dead body of Ganesh Ram that was beneath a neem tree. After making inspection thereof panchanama in presence of witnesses was prepared by him in his own handwring and after reading it out to the witnesses, their signatures were obtained. Panchanama is proved as Exhibit Ka-5. He further stated that dead body was sealed and handed over to Constables Deen Dayal Pandey and Banarasi yadav to be taken to the mortuary for post mortem examination. The Investigating Officer also recorded statements of witnesses Budhiram, Shyam Narain, Jadunath Singh, Ganga Bishun and Jagroop as also of panchnama witnesses and thereafter went to the place of occurrence, i.e., wheat

field of informant Ganga Bishun situated in village Lakhnauli, Police Station Baresar, Ghazipur. He made a thorough inspection of the spot and found pool of blood lying on the spot. He also collected samples of blood, soiled and ordinary earth (Exts. I & II) from the place of occurrence and found the wheat crop of that place trampled. Recovery memo of blood-stained and plain earth was prepared and the same is Ext. Ka-11. He went on to state that witnesses Ganga Bishun, Budhiram, Jagroop, Kamta Singh and Shyam Narain also showed their torches which were in working condition and after inspecting the same, a joint supurdaginama was prepared and torches were handed over to them. Supurdaginama is Ext. Ka-12. After completion of investigation, the Investigating Officer submitted a charge sheet (Ext. Ka-13) on 5.4.1982 against the accused appellants.

10. After close of evidence of the prosecution witnesses, statements of accused appellants under Section 313 Cr.P.C. were recorded. The appellants pleaded not guilty and stated to have been falsely implicated on account of enmity.

11. The appellants in their defence examined DW-1, Faujdar Singh, Lekhpal of village Khara and DW-2 Hirdya Narain Singh, a resident of village Lakhnauli. DW-1 Faujdar Singh deposed about discrepancies of prosecution witnesses, whereas DW-2 Hirdyanarain Singh has stated that PW-4 Shyam Narain, prior to the date of the incident, had exchanged his fields situate to the east of the village Khara with one Kedar Singh and was not in possession of his field which exist towards the east of village Khara.

12. After hearing both the parties, learned Additional Sessions Judge Ghazipur convicted the accused-appellants under Sections 302 read with 34 IPC and sentenced them to life imprisonment. Being aggrieved by the conviction and sentence, the accused appellants have come up before this Court in the present criminal appeal.

The validity and correctness of the aforesaid judgment and order has been challenged by the appellants mainly on the ground that the trial court has illegally convicted and sentenced the appellants without properly considering the prosecution evidence which was totally unreliable and untrustworthy. No cogent and credible evidence was led by the prosecution to prove guilt of the accused appellants beyond a reasonable doubt. Learned counsel for the appellants submitted that the first information report of the incident was not prompt but has been lodged with inordinate delay after deliberation and concoction. Learned counsel for the appellants further assailed the judgement on the ground that the witnesses produced by the prosecution were interested witnesses and there was no independent prosecution witness to prove the prosecution case. The prosecution witnesses, namely PW-1 Ganga Bishun, PW-2 Kamta Singh and PW-4 Shyam Narain who are witnesses of fact, could not prove enmity of the deceased with accused appellants. Learned counsel further argued that although PW-1 Ganga Bishun had suggested that the accused appellants were inimical with the deceased as the latter had caught them chopping off his wheat crop

from the field, but no FIR was lodged of the incident. Learned counsel further contended that medical evidence does not support the ocular version of the prosecution witnesses. Learned counsel for the appellants has also contended that none of the witnesses of the prosecution have seen the incident. Had they themselves seen the accused appellants assaulting the deceased, they would have disclosed which appellant assaulted with which weapon. Learned counsel has lastly contended that the impugned judgment and order of conviction recorded by the learned trial court is not sustainable in law and is liable to be set aside and the appeal is liable to be allowed.

13. Per contra, learned A.G.A. contended that the judgment of conviction and order of sentence passed by the learned trial court is based on cogent and credible evidence, the witnesses of fact are reliable and trustworthy and the arguments raised by the learned counsel for the appellants are based on surmises and conjectures. The prosecution case rests on direct evidence and ocular testimony of the prosecution witnesses proved the involvement of the accused appellants in commission of the crime beyond a reasonable doubt and as such the appeal deserves to be dismissed and the judgment of the learned trial Judge deserved to be confirmed.

14. Before dealing with the case, we would like to refer to various legal propositions on arguments raised by the learned counsel for the accused appellants.

15. As regards argument of the learned counsel for the appellants on the point of FIR and Inquest report, in (2011) 2 SCC (Cri) 923 *Brahm Swaroop and another v. State of U.P.*, Hon'ble the Apex Court has held that every omission and discrepancy in inquest is not fatal to the prosecution as the whole purpose of preparing inquest report under section 174 Cr.P.C. is to investigate into and draw up a report of the apparent cause of death describing such wounds as found on body of the deceased and stating as in what manner or by what weapon or instrument such wounds appear to have been inflicted. Omissions in inquest report are not sufficient to put the prosecution out of court. The inquest report cannot be treated as substantive evidence but may be used for contradicting witnesses of the inquest.

16. The Apex Court also held that if the author of the report had not been diligent it does not mean that reliable and clinching evidence adduced by eye-witnesses should be discarded by the court. It was further held that if evidence available on record shows that F.I.R. of incident was lodged promptly and the name of accused had been mentioned in FIR and if FIR contains all essential features of prosecution case, including names of eye-witnesses, time and place of incident, name of victim, motive, name of accused persons, weapon in their hands and manner of assault, all these things lend a seal of assurance not only with regard to presence of eye-witnesses at the place of incident but also suggests participation of accused in crime. Any defect in preparation of inquest report by Investigating Officer cannot lead to an inference that FIR was not

registered at alleged time.

So far as the argument with regard to appraisal of evidence is concerned, in 2011(1) SCC (CrI) 381, *State of U.P. v. Krishan Master and others*, Hon''ble the Apex Court has held that while appreciating the evidence, court should read the evidence as a whole and so read, if it appears to have a ring of truth, then discrepancies, inconsistencies, infirmities or deficiencies of minor nature not touching the core of case, cannot be a ground for rejecting the evidence. Further it has been held that court should sift the evidence to separate falsehood from truth. It should not adopt a hyper technical approach.

17. In (2013) 1 SCC (CrI) *Kuriya and another v. State of Rajasthan*, the Hon''ble Apex Court has laid down that contradictions, inconsistencies, exaggerations or embellishments, discrepancies or improvements in statements of witnesses which do not materially affect case of prosecution and are insignificant, cannot be made basis for doubting the case of prosecution.

18. So far as contention of the learned counsel for the appellants with regard to motive is concerned, in (2010) 6 SCJ 662 Hon''ble the Apex Court held that it will not be correct to say as an absolute proposition of law that the existence of a strong and definite motive is a sine qua non to hold an accused guilty of a criminal offence. In *State of U.P. v. Krishna Master and others*, (2010) 6 ACJ 232, the Hon''ble Apex Court has held that it is well settled that the prosecution is not supposed to prove motive when the prosecution relies on direct evidence, i.e., evidence of eye-witnesses. In (2012) 10 SCC 464 *Munish Bhaver v. State of Haryana*, the Hon''ble Apex Court held that if evidence indicates proper and necessary motive then presumption against accused is established. In (2013) 81 A.C.C. 302 *Sanaullah Khan v. State of Bihar*, the Hon''ble Court held that proof of motive cannot be made a basis to disbelieve the prosecution case.

As regards defective investigation, in *Akeel Ahmad v. State of U.P.* (2008) 16 S.C.C. (CrI) 372, the Hon''ble Apex Court held that if there had been some lapses on the part of Investigating Officer that would not affect the credibility of prosecution witnesses. Further, in *State of Karnataka v. K. Yarappa Reddy* (1999) 8 S.C.C. 715 the Hon''ble Apex Court held that even if the investigation is illegal or suspicious, the rest of the evidence must be scrutinized independently otherwise the criminal trial will plummet to the level of the investigation officer ruling the roost. The criminal justice should not be made a casualty for the wrong committed by Investigating Officer. In other words, if the court is convinced that the testimony of witnesses in respect of the occurrence is true, the court is free to act on it albeit the Investigating Officer's suspicious role in the case.

19. With regard to the submissions raised by the learned counsel for the appellants on the point of delay in FIR and deficiencies in inquest report and other relevant papers, a perusal of the record shows that police station Baresar, is at a distance of 7 Km. The incident is said to have occurred on the intervening night of 23/24.3.1982 at 11 P.M. The report has been lodged in the morning of

24.3.1982 at 6.10 a.m. The informant/PW-1 Ganga Bishun explained the delay which seems to be proper. Further from the evidence of fact witnesses it comes out that after the occurrence they took the victim to a nearby hospital and on reaching there they found that victim Ganesh Ram had already died. It transpires from the evidence of PW-1 Ganga Bishun that after he brought his deceased father to village Khara around 1 a.m. a first information report was prepared by him and was handed over to the chaukidar of the village to take it to the police station Baresar for lodging of the FIR. It has also come in his evidence that he is the only son of deceased Ganesh Ram and the only male member of the family. Thus mental agony of a person who is the only male member of the family and whose father has died can well be imagined. In such a circumstance, if the informant himself has not gone to the police station to lodge the first information report, it is easily understandable. It is but natural that in such circumstances some delay has occasioned in lodging of the first information report. Thus FIR was lodged on 24.3.1982 in the early morning at 6.10 a.m. which cannot and could not be treated as unreasonable and delayed.

20. We find no substance in the arguments of the learned counsel for the appellants on the point of delay in lodging the first information report.

Learned counsel for the appellants also contended that the first information report was prepared after the visit of the investigating officer at the place of occurrence and as such it is a result of deliberation and concoction. Learned counsel for the appellants further argued that in panchayatnama the injury inflicted on the corpus of deceased Ganesh Ram is shown to have been caused by spear and lathis and there is no mention of knife although two factual witnesses, namely, Shyam Narain and Budhi Ram, who were made witness of inquest have seen the incident with their own eyes and have stated that injuries have been caused by lathi, spear and knife. On this ground the veracity of testimony of eye witnesses is challenged. Learned counsel further argued that the documents which had been sent along with the dead body for post mortem examination, have no mention of crime number or name of the accused. We are not inclined to accept this contention because it transpires from the prosecution evidence that police station Baresar was a newly created police station at that time and its notification was made subsequent to the date of the incident. The crime number in this case was allotted by Qasimabad police station as is clear from Ext. Kha-1, after a copy of the FIR was sent to it. More so, non-mentioning of crime number or name of the accused in the relevant papers which were sent along with dead body for post-mortem has no substance and are insignificant due to the fact that except the check FIR and the G.D. none of the documents mandatorily required mention of these informations.

21. Learned counsel for the appellants next contended that none of the three fact witnesses in their statements under Section 161 Cr.P.C. stated about the individual weapon of the accused appellants before the Investigating Officer. All the fact witnesses, namely, PW-1 Ganga Bishun, PW-2 Kamta Singh and PW-4

Shyam Narain are found to have stated that lathi, spear and knife weapons were used by the accused appellants at the time of assault. Based on the above, learned counsel for the appellants contended that had these witnesses actually seen the appellants assaulting the deceased, they must have stated about individual weapon being used by each accused appellant while assaulting the deceased Ganesh Ram. It is trite law that neither the FIR nor the statements of witnesses under Section 161 Cr.P.C. are a substantive piece of evidence. As per settled legal proposition, this cannot be allowed to outweigh the testimony of these factual witnesses who had consistently in a firm voice corroborated the case of the prosecution in material particulars before the trial court. So we are not inclined to give any benefit to the accused appellants on this score.

22. The next submission raised by the learned counsel for the appellants is with regard to motive of the incident. As per the prosecution version two days prior to the incident, victim Ganesh Ram had found two of the accused Vijai Shankar and Paramhans chopping off his wheat crop on which some altercation took place between them and the latter had threatened Ganesh Ram to face dire consequences. Informant Ganga Bishun during the trial has stated that his father had told him about this incident next morning. The argument on this point that the FIR of the said incident was never lodged and there is no direct evidence with regard to this incident, is not sustainable because the informant had deposed before the trial court that his father had told him about this incident the next morning. So far as non-lodging of the FIR is concerned, we would like to mention that it is a common practise in villages that trivial nature of incidents are often ignored and not reported to the police station and are taken to be a casual incident. It was case of defence that the accused appellants have been falsely implicated due to enmity with the deceased and there was no motive to commit such a crime. It is relevant to mention here that enmity is a double-edged weapon. One may commit an offence due to enmity or other may falsely implicate any person in any offence due to enmity. In such type of cases evidence adduced to prove guilt requires a close scrutiny and it should be taken with more care and caution. Generally, motive is a state of mind of a person which is difficult to be read out or to be proved by direct evidence. It is only the perpetrators of a crime who know what impelled them to commit the offence. In such circumstances it can be safely concluded that before the murder there had been some sort of enmity between the accused appellants and the family of the deceased. Thus in the case of direct evidence motive has got no relevance and only in the case of circumstantial evidence, motive is required to be essentially proved. Further, in this case the prosecution has come out with a specific motive which has been deposed by PW-1 Ganga Bishun to be the only reason for the murder of deceased Ganga Ram. There are ocular accounts of the witnesses who are said to have seen the accused appellant assaulting the victim as a result of which he died. Therefore, we find no substance in the arguments of the learned counsel for the appellants on the point of motive in view of settled legal proposition, on the question of motive, discussed herein above.

23. Learned counsel for the appellants also contended that the Investigating Officer has not recorded statements of chaukidar Baijnath who had taken the FIR of Ganga Bishun to the police station. Contention further is that statement of one of the important eyewitnesses, i.e., PW-2 Kamta Singh has been recorded after a long passage of time. In this regard PW-5 Sub Inspector Shukkrullah Khan has himself deposed before the trial court that he interrogated the chaukidar but omitted to record his statements in his case diary. He has also explained the reason for recording the statements of Kamta Singh PW-2 on 8.9.1982. It transpires from the evidence of PW-2 Kamta Singh that the Investigating Officer had made relevant enquiry from him in the following morning on the spot. It is also an admitted fact that Kamta Singh had shown his torch to the Investigating Officer on the following morning of the incident which is corroborated by Recovery Memo of Torch and Supurduginama (Ext. Ka-12) duly proved by the prosecution witnesses. We are, therefore, of the opinion that non-recording of statements of chaukiar or delayed recording of statements of PW-2 Kamta Singh alone cannot be said to be a sufficient ground to disbelieve the entire prosecution case. We are, therefore, not inclined to accept the submissions raised by the learned counsel for the appellants on this point.

24. Learned counsel for the appellants lastly contended that the entire evidence tendered by the prosecution during trial cannot be said to be independent testimony because both PW-2 Kamta Singh and PW-4 Shyam Narain belong to the informant's village and their presence on the spot was highly doubtful and they were interested witnesses and the learned trial court has erred in placing reliance upon the testimony of these witnesses. We have perused the statements of witnesses of fact. Firstly, nothing material has come in their cross-examination to support the contention of the learned counsel for the appellants. Neither enmity has been suggested by them nor any thing material which goes to discredit their testimony has been shown to us. We find presence of these witnesses on the spot is highly probable.

25. PW-1 Ganga Bishun specifically and categorically stated that at the time of incident he was present at his door at a distance of about 200 yards in the village and only fields existed between his house and the place of occurrence. He is stated to have rushed to the spot on hearing the alarm and shriek of his father. The incident took place at 11 p.m. in the night when atmosphere becomes calm and quiet and the noise travels to far places. It is quite natural that the alarm raised by the deceased on being assaulted could have easily reached upto his house where Ganga Bishun was present. Similarly, the other two witnesses of fact, namely, PW-2 Kamta Singh and PW-4 Shyam Narain who have stated in their deposition that they were at their field to guard their wheat crop when they heard the noise and alarm of victim Ganesh Ram and rushed to that place. It also transpires from the evidence that agricultural fields of Kamta Singh happened to be in the south and south-east of village Khara. It also transpires from the evidence that PW-4 Shyam Narain had two plots to the east of the village Khara and at the time of the incident it is but natural that these witnesses

were on round of their fields and they must have torches and lathis for safety and protection of crops. To disbelieve the evidence of PW-4 Shyam Narain, appellants have produced DW-2 Hiradya Narain Singh of village Lakhnauli who stated that much before the incident Shyam Narain had exchanged his said plot with plot of one Kedar Singh. However this defence evidence does not appear to be convincing and clinching as no such suggestion was made in the cross-examination of Shyam Narain. It also transpires from the above that field of Kamta Singh and Shyam Narain are adjacent to the field of the informant where the ghastly incident took place. The incident is said to be of 23/24 March 1982 at about 11 p.m. in the night. The wheat crop was ripe for harvesting. During this period the villagers normally take round of their fields in nights to guard the crop from theft and damages. Under these facts and circumstances, the presence of both these fact witnesses at their field near the place of occurrence appears to be very natural and probable.

26. It is trite law that evidence of a witness is to be evaluated after considering the entire evidence in to. A perusal of the statement recorded during the trial shows that all three fact witnesses are consistent on the point that they met each other at some distance from the place of occurrence and when they flashed their torches they found accused appellants assaulting deceased Ganesh Ram with their respective weapons. The presence of the witnesses along with torches and lathis are natural conduct during the season of March when wheat crops are ripe and only harvesting remains to be done. On close scrutiny and analysis of these fact witnesses we find that their testimonies appear to be reliable, believable and trustworthy and inspires credence. The accused appellants were seen in torch light and were identified by these fact witnesses. The intrinsic value of their evidence leads to one and only one inference that all the accused with common intention participated in the commission of crime under Section 302 IPC and committed murder of the deceased.

27. In view of the above discussions, this appeal lacks merit and is accordingly dismissed. The judgement and order dated 22.11.1983 of the learned trial court is hereby confirmed.

Let a copy of this judgment/order be sent to the court concerned for necessary information and follow up action.