

(2000) 01 AHC CK 0011
In the Allahabad High Court
Case No : Criminal Appeal No. 2123 of 1980

Richh Pal and Others (in jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 11-01-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 148, 149, 302, 307

Citation : (2000) 1 ACR 872

Hon'ble Judges : S.K. Agarwal, J;J.C. Gupta, J

Bench : Division Bench

Advocate : B.P. Gupta, S.N. Mulla and S.K. Pundir, for the Appellant; B. Dayal and D.G.A., for the Respondent

Judgement

S.K. Agarwal, J.—This criminal appeal has been preferred by five Appellants, viz. Richh Pal, Krishan Pal, Nanak, Chaman and Aman, against the judgment and order dated 20.9.1980 passed by Sri M. H. Khan, Vth Additional Sessions Judge, Muzaffarnagar, in S.T. No. A-106 of 1980. By the aforesaid judgment and order Appellant Nos. 1 and 2 Richh Pal and Krishan Pal were sentenced u/s 148, I.P.C. to undergo R.I. for a period of two years and each of them were further sentenced u/s 302, I.P.C. to undergo imprisonment for life. The other three Appellants Nos. 3 to 5, Nanak, Chaman and Aman, were sentenced u/s 148, I.P.C. to undergo R.I. for two years and each of them were further sentenced u/s 302 read with Section 149, I.P.C. to undergo imprisonment for life. All the sentences were directed to run concurrently. However, Appellant Nos. 3 and 5, Aman and Nanak, have been acquitted by the learned Addl. Sessions Judge of the charge u/s 307, I.P.C.

2. Out of five Appellants, Richh Pal and Krishan Pal have died during the pendency of this appeal. Hence their appeal abates.

3. Now we have to deal with only the appeals of Nanak, Chaman and Aman. All these three Appellants are inter se brothers being sons of Babu. Krishan Pal

(since deceased) was son of Nanak. Thus, four of the Appellants belong to one family and Richh Pal is their close relation. All of them are residents of village Biral, P.S. Kandhla, district Muzaffarnagar.

4. The case of the prosecution is that P.W. 1 Gajraj Singh, who is also resident of village Biral, P.S. Kandhla came to his field along with his brother Yash Pal at about 7.00 a.m. on 27.11.1979 for sowing of wheat. He placed the bag containing wheat seeds in the middle of his field. Yash Pal yoked the bullocks and placed the bag of wheat seeds on his shoulder. At that very moment Nanak, Aman and Chaman sons of Babu, Krishan Pal son of Nanak and Richh Pal son of Braham Chand emerged, along with three unknown persons, out of their sugarcane field. Richh Pal, Krishan Pal and one of the unknown were armed with guns. Aman, Nanak and another unknown were having country made pistols, Chaman was armed with a Tabal, and the last unknown man was armed with a lathi. Nanak exhorted others by saying that they will not get a better chance to kill them. On this Richh Pal and Krishan Pal opened fire from their respective guns upon Yash Pal. Aman and Nanak are said to have opened fire from the country-made pistols upon Gajraj Singh, the informant, but by using better skills and lying down on the ground, the informant managed to avoid those shots. His brother fell on the ground. The informant shouted "save-save". The gunshot report and the alarm raised by the informant attracted passers-by including Bhagirath, Jagpal, Jal Singh and Richh Pal to the spot. Seeing these witnesses arriving at the spot the assailants left firing upon his brother. They also used Tabal and lathi and finally withdrew towards east. The witnesses dared not to chase the assailants for fear of guns. The enmity was going on between Krishan Pal and Nanak on the one hand and the informant side on the other on account of some deal of land. This was the motive behind the murder of his brother. It is alleged that these persons earlier had also assaulted them. They claimed that they had also identified the three unknown persons.

5. The complainant has not sustained any injury in the entire incident. This he claims to the better use of his skills. The autopsy on the person of the victim Yash Pal was conducted by P.W. 2 Dr. Suresh Chand on 28.11.1979 at 1.15 p.m. The incident had occurred on 27.11.1979 at 7.00 a.m. The report of this incident was lodged on the same day at about 12.05 p.m. by P.W. 1 Gajraj Singh at P.S. Kandhla. The written report is marked as Ext. Ka-1.

6. The medical report of Yash Pal Singh shows presence of two lacerated wounds, 1" $\times$ 1/4" $\times$ bone deep on right side head 3" above right ear and 1-1/2" $\times$ 1/4" $\times$ bone deep on left side of head 4" above the left ear, two abrasions, two contusions and four gunshot wounds of entries. In the gunshot wounds of entry Nos. 7, 8 and 9 blackening and tattooing were found present, but no tattooing or blackening was found in injury No. 10. One large gunshot metallic piece and 39 small pellets as also two cardboard wadding pieces were recovered from the right plural cavity. 24 small metallic shots and 2 cardboard wadding pieces were recovered from left plural cavity. 22 small metallic shots and two cardboard

wadding pieces were recovered from the muscle of right buttock. They were sealed in a packet and handed over to the constable who had brought the body for post-mortem. Fracture on 3rd, 4th and 5th ribs on right side were noted down. Fracture of 5th and 6th ribs on the left side was also noted. 7 oz. of blood clotted as well as fluid blood was present in one left side. Both the lungs were found lacerated. Heart was also found lacerated. The aorta was found ruptured. Cavity was found containing about 6 oz. of clotted blood. Stomach was found empty and small intestine was found normal. No abnormality was detected therein. Gall bladder was found full. In the opinion of the doctor, the death was due to shock and haemorrhage due to gunshot injuries. The gunshot injuries were attributed very clearly to the two Appellants, viz. Richh Pal and Krishan Pal, who are now dead.

7. The prosecution, in support of its case, has examined two eye-witnesses, Gajraj Singh as P.W. 1 and Rishi Pal Singh as P.W. 3. The Section 161, Cr. P.C. statement of Rishi Pal Singh was recorded very belatedly, i.e., on 14.2.1980 and no appropriate explanation has been offered by the Investigating Officer for such delayed examination of this witness. As has earlier been stated, Dr. Suresh Chand conducted the autopsy. P.W. 4 Kaptan Singh prepared the inquest memo. P.W. 5 is Jai Pal Singh, who escorted the dead body to the mortuary. Sri Niwas Agarwal is the I.O. He is P.W. 6, P.W. 7 is Raj Pal Singh, Head Moharrir of the concerned police station. He prepared the chick F.I.R. and other papers pertaining to the registration of the case. R. S. Sedhana is P.W. 8. He is the second I.O., who has submitted the charge-sheet.

8. We have heard the learned Counsel for the Appellants and learned A.G.A. for the State.

9. Learned Counsel for the Appellants had argued that the F.I.R. in this case is ante-timed. The version of the F.I.R. is incompatible with the medical evidence. Material improvements have been introduced during the trial in evidence by witnesses. Presence of informant is highly doubtful. Witnesses are not reliable, specially P.W. 2. His evidence u/s 161, Cr. P.C. having been recorded after three and half months. In between this period he maintained complete silence about the incident and no explanation by him for this typical conduct.

10. In order to appreciate the various arguments advanced for the Appellants, we have to examine the statements of the two witnesses, specially the statement of informant, Gajraj Singh, who happens to be the brother of deceased Yash Pal very closely. This witness had admitted that the field where they had gone to sow wheat seeds stand in the name of his father. That field is of about 7 bighas. Yash Pal had yoked the bullocks and thereafter he was about to start the sowing. He has stated initially that two of the unknown assailants had a gun and a pistol. Chaman had a Tabal, and the two dead Appellants, viz., Krishan Pal and Richh Pal, were also holding guns. In the next breath, in the examination-in-chief itself this witness has stated that all the three unknown persons (assailants) were holding lathis. All of them started assaulting the victim on the exhortation of

Nanak. On the exhortation of Nanak, Krishan Pal, Richh Pal and one of the unknown persons opened fire upon Yash Pal. He claimed that Aman and Nanak opened fire upon him apart from the second unknown person, but none of these three fires hit him because he sat down by the side of wheat bag. No pellet marks were noticed by I.O. on wheat bag. He had further stated that Chaman with Tabal and the third unknown person with lathi struck him. Yash Pal sustained the injury of firearm. Tabal and lathi, Tabal was hit on the head. He claimed that he had moved aside to some distance from the place of occurrence. The report of this incident was got transcribed by Raj Kumar. He had admitted that the family of Richh Pal is not connected with the family of other Appellants. He had absolutely no concern with the dispute about the land. He denied, as incorrect, the suggestion that in 1977 Richh Pal and his uncle Bhim Singh had given some application against him. He further admitted that he had never any quarrel with Bhim Singh, uncle of Appellant Richh Pal. He had admitted that Richh Pal had assaulted his brother some 2/3 months before. A report for that incident was lodged by Ajab Singh at the police station. No complaint was filed for that incident because the people of the village asked them to desist from doing so. He admitted that in the present incident he had not reported about that incident, but he had admitted that he had informed the I.O. that this very Richh Pal and others had assaulted his brother. His statement was read over to him. It was not there in this manner. He had admitted that Nanak was not an accused in the assault upon his brother, but in the statement u/s 161, Cr. P.C. this fact is there. He has admitted that Raj Kumar, who has transcribed his report, is a police constable. He further admitted that at the time of occurrence he also was a constable. The defence counsel's suggestion is that this witness was not present because he is a constable and he must have been at the concerned police station at the time of occurrence. He has not claimed that he was on leave on the date of occurrence. He has further admitted that the field of witness Rishi Pal is at a distance of 5-6 fields from his field towards south-west. He has been subjected to cross-examination with regard to the actual distance of the field of Rishi Pal from his field and from his cross-examination it appears that the field of Rishi Pal was at a considerable distance, which may render his presence at the spot highly doubtful. In the circumstances, coupled with the fact that the statement was transcribed u/s 161, Cr. P.C. after 3-1/2 months, he has to admit that the field of Jagmal and other two witnesses is about half a mile away from his field. He denied the fact that his brother Ajab Singh had any sister-in-law. He denied knowledge about the name of the wife of Richh Pal. He admitted that Ajab Singh was married in village Simlan and Richh Pal is also married in the same village, but not married in the same family. Litigation was going on between the family of Appellants and the informant. He had to admit that some litigation was contested between other people and his father. The land for which the dispute between these two families persist initially belong to Yogi. His father had launched a civil case to claim the land as his. He won the litigation but he feigned ignorance about the Court from where the litigation was won. He claimed that since then he and his father were in possession. He further stated that the

Appellants were trying to purchase this land from them for the last two years, but they were not ready to sell it. No report or any application on this issue was ever made by him. He admitted that in 1979 in the murder of Birbal he and his two brothers, Ajab Singh and Yash Pal were challaned. He denied that Chatre was brother-in-law of his brother Ajab Singh, but he admitted that Chatre's daughter, resident of village Simlana, is married to P.W. Richh Pal. He is educated upto 6th-7th standard. He admitted that he stayed at the spot for half an hour before going to lodge the F.I.R. The police did not arrive at the spot till he was present. Two policemen came to the spot after 30-40 minutes. They were constables. His father did not arrive at the spot in his presence. He was suggested that he went to the police station leaving his father at the spot. He said that his father was in village Durgapur at the relevant moment, which is several miles away from the spot. He was further suggested that his father was at the tubewell and came to the spot after hearing the gunshot report. He stated that it is wrong that the police constables reached the scene of occurrence on hearing gunshot report. He denied the statement made to I.O. that his father arrived at the scene of occurrence on hearing the gunshot report and villagers and two constables present in his village also reached the spot simultaneously. He went to the police station leaving his brother and father at the spot. This statement was read over to him. His reply was that he did not know as to how this was written. He claimed that he had gone to his house half an hour after the incident and from there he had sent a person to fetch his father from village Durgapur. That man did not return in his presence with his father and he claimed that he had gone to the police station from his house. He denied that he had seen any constable at the spot before leaving for the police station. He admitted that his brother Ajab Singh was at the tubewell. He arrived at the spot of occurrence on hearing his alarm. The tubewell was about 200 yards away from the place of incident. Ajab Singh was not examined. He admitted that when he had gone to his house he had left Ajab Singh at the spot. The dead body left the village at about 10.30 in the night for Muzaffarnagar. Two constables and one Tractorwala carried the dead body on the tractor. Kham Singh's son drove the tractor. None of the family members had accompanied the dead body. He further admitted that it took several hours in preparing the inquest and also sealing the dead body. The injuries of the deceased were examined by the I.O. immediately on his arrival. He belonged to a different police station. After sending the dead bodies that inspector had left the place. No other S.I. visited the spot on that night. Another S.I. reached the spot the third day. No S.I. made any enquiries from him. The Circle Officer did enquire from him, but he had not recorded his statement. He volunteered that the S.I. belonging to P.S. Bhawan had recorded his statement. Why he had not transcribed the report, his reply to this question was that because of the murder of his brother, he was trembling and his hands were shaking, therefore, he did not transcribe the report himself. He was given a suggestion that after the incident an oral message was sent to the police station and the report was transcribed after the arrival of S.I. with his consultation in the night. It was transcribed by Raj Kumar in the village. He is in service somewhere

outside the village. He admitted that Kandhla is about seven miles from his village. People from his village used to go to Parsauli all the time. Parsauli is three miles away. Some part of the road is brick laid and the rest is metalled. From Parsauli for Kandhla buses ply at every half an hour to an hour's interval. He claimed that he had reached the village vehicle stand at about 8.00 a.m. He got a tonga after half an hour. The tongas, according to him, start from the stand only when they had full load of passengers. It took him half an hour to reach Neemkher. He got a bus after half an hour. He claimed that he reached P.S. Kandhla in between 11.30 to 12.15 p.m. He admitted that no fire was made on him, although in the F.I.R. he did say that one of the strangers had opened fire on him. He claimed that he had not stated in the report also that Nanak, Aman and one stranger had also fired on him. When the F.I.R. was read over to him, the reply was in the negative. His reply shows his inability to explain. He volunteered that the policemen are in collusion with the accused persons. He was again questioned about the omission in the F.I.R. of the fact that he had moved behind and sat down. He further stated that he never fell unconscious when fires were made on him. He was read over his statement recorded by the I.O. u/s 161, Cr. P.C. This fact was mentioned therein that he fell unconscious. He failed to explain this anomaly. He admitted that the I.O. had examined the site and he had shown him the place from where fires were made on him and also the place from where Yash Pal was fired upon. He is completely at a loss to explain the omission in the site plan. He had admitted that Yash Pal was just behind the plough and he was about 50-55 steps towards east-north. He had gone through the water course. He has admitted that his brother was about 150 steps from the drain when the assailants came out, meaning thereby that he was also at a considerable distance from his brother when the assault was launched on his brother. He admitted that the field in which he had placed that bag of seeds, which he brought from his house, was sown by him a day before. He admitted that in his F.I.R. he has stated that the third stranger had also fired upon Yash Pal and this fact was disclosed by him to the I.O. also. When the statement was read over, he was unable to offer any explanation for the omission. According to his statement now in the Court, Yash Pal was fired first by the person who were behind him. He fell down and then the third man fired on him. He admitted that no pellets struck the plough or the bullocks. He claimed that at that time, four fires were discharged upon deceased Yash Pal. Two fires were made when he was standing and subsequently two more were made when he fell down. He further stated that the third man, meaning thereby the stranger, fired upon Yash Pal when he fell down. Krishan Pal also fired. He admitted that fires on him were made from a distance of 50 steps. He further admitted that only one fire was made on him. He further explained it by saying that all the three fired upon him, but two shots missed and only one came out of the barrel. This fact was stated by him for the first time, admittedly. He withdrew towards Kamali after the fire was made on him. He was thus at a considerable distance from the assailants. He further added when he was withdrawing no shots were fired on him. The bullocks were not on the field is admitted to him, but his explanation is that

these bullocks were removed to the chak road. He did not sign the recovery memos or the bloodstained earth and simple earth. These memos were signed by Radha, Bhim Singh, Bhopal, Jaidharth and Gopal. This blood was taken at about 5.00-6.00 p.m. in the evening. The sun had already set out it was not dark. He admitted that when the I.O. reached the spot, his father, brother and he himself were there.

11. Thus, from a close examination of the evidence of this witness what comes out is that he has made some material changes in his statement. He had admitted that all the strangers were armed with lathi. This fact has occurred in his examination-in-chief. No doubt he had attributed the role of shooting to one of these strangers also, but in view of his above statement, this fact appears clearly to be an embellishment which appears to have been made during the trial in order to make his testimony commensurate with the medical evidence as Dr. Suresh Chand (P.W. 2) has stated that the gun shot injuries of the deceased were of four independent gun shots. It also comes out that Richh Pal had been involved in this incident on account of animosity by this witness. Even his presence at the spot is rendered doubtful by the fact that in his Section 161, Cr. P.C. statement he had given out to the I.O. that after leaving his father and brother Ajab Singh at the spot, he had moved for the police station to lodge the report, but in his statement here in Court he has denied this fact being stated to the I.O. and he had subsequently added the presence of his brother Ajab Singh at the tube-well and also at the spot. Initially his statement is that he had gone to the police station from the spot itself for lodging the report, but subsequently he has stated that he had gone to his house after half an hour of the occurrence and had gone to the police station after getting this F.I.R. transcribed from Raj Kumar there. He was unable to give out time of Raj Kumar's coming back to the village. Admittedly, Raj Kumar is employed outside the village at some place. He did not disclose this place deliberately. He is a literate person. The explanation offered by him for not transcribing the report himself is beyond our comprehension. He had taken considerable time in preparing the report. His admission that he was at a distance of about 50 steps is yet another circumstance. His case is that he and his brother both started from the village to the field together. Then his statement that he had gone to the tube-well and from there he came alone from the side of the drain and was at a considerable distance from the drain in the other field, which was ploughed a day before where he had left that bag of wheat seeds. He has admitted that at that time the deceased was at about 150 steps away from him. The further fact that two constables had reached the site of occurrence immediately on hearing the gun shot report from village, as admitted to him in his statement u/s 161, Cr. P.C. and now the denial of it is yet another circumstance which creates serious doubt with regard to his presence at the spot. He is a constable and he ought to have been at the place of his posting. He did not say in his statement that he was on leave on the relevant date. Thus, his presence at the spot is rendered highly doubtful for the above reasons.

12. We also find substance in the suggestion that the F.I.R. was transcribed after the arrival of the I.O. on receiving some information from some villager from the spot and these persons, in our opinion, were none else than the two constables. This fact can be safely gathered from the fact that P.W. 4 S.I. Kaptan Singh, who had prepared the inquest memos, had received a message from the circle officer's office on R.T. Set that murder had taken place in village Biral and there is no one at the police station Kandhla, so he should go there for preparing inquest memos. We had gone there on the instruction of the circle officer. He had been suggested that the informant reached the spot when he was preparing the recovery memo of the spent cartridges. No doubt he had denied the suggestion, but he has admitted that he has not noted down in the case diary time or arrival of this witness. He had further to admit that in the case diary he had transcribed that the informant had arrived at the scene of occurrence at the time of preparation of the recovery memos. He admitted that he had put this note after noting down the recovery memos in the case diary. He had admitted that it is clearly noted in his case diary that the informant had reached the spot at the time of preparation of these memos. He admitted that Constable Jai Pal and Constable Raj Pal were present at the spot from before and he had not recorded their statement at all. This was an important fact and failure to record the statement of these constables, who were present thereon security purpose is an important circumstance going against the prosecution. He had admitted that he had not transcribed the time of his reaching the spot but it is transcribed in the inquest memo. There are several other omissions in the statement of this witness. He had admitted that the informant had told him that he became unconscious. He further admitted that the informant had not told him that the stranger had also fired on him. It is his statement further that the informant had not disclosed to him that the strangers had also fired upon Yash Pal, deceased. He further admitted that the informant has not disclosed to him that he had withdrawn from the spot. He admitted that neither in the case diary nor in the site plan he had shown the place where the bag of wheat was claimed to be lying. This omission is deliberate. In our opinion sowing of wheat is used as a ploy by I.O. Sowing must have been over a day before when the other plot is allegedly sown.

13. So far as P.W. 3 Rishi Pal is concerned, in our opinion, he is also not reliable. His presence at the spot is highly doubtful. He has very clearly admitted that his statement u/s 161, Cr. P.C. was recorded after about 3-1/2 months. He has further admitted that he remained in the village all along and the police had not approached him during the aforesaid period. He was summoned at the police station and his statement was recorded there. He left the place of incident to his house after 15/20 minutes of the incident. He has introduced a new thing in his statement that Tabal was used as a lathi. He stated that he had told this fact to the I.O. also. This has been introduced in the statement of this witness for the first time in order to explain the absence of any Tabal injury. When his statement was read over to him he was unable to explain the abovesaid omission. His

statement u/s 161, Cr. P.C. did not contain the statement made here in Court by him that upon Yash Pal, deceased, the stranger had also fired. There is contradiction with regard to firing upon Gajraj Singh also in his testimony and whether Gajraj sat down after the fires were made on him or he fell down. In his statement in the trial court he has stated that Yash Pal was fired upon with country made pistol after his fall, but no lathi or Tabal was plied on him after his fall. But in his Section 161, Cr. P.C. statement he had given out to the I.O. that the assailant went away by striking Tabal and lathi upon the deceased. The explanation is "I do not know how this has been transcribed." In the trial court he has given a statement that "when I had left the spot at that time Gajraj was standing on the water course". He further stated that he did not know as to when Gajraj left the site. He was confronted with his statement to the I.O. wherein he was stated that Gajraj had gone to the police station for lodging report leaving the dead body at the spot. His house is about 15 yards from the house of Gajraj. He stated that he had not visited the house of Gajraj during the evening of that day or in the night or even the next day. Even he did not visit his house when the dead body arrived at the house. He had not attended the funeral even. He further claimed that within three months from the date of incident he had never gone to the house of Gajraj. He further claimed that he could not know the arrival of the I.O. on the date of occurrence or next day in the village. According to him, the circle officer had visited the village of occurrence next day in the evening but he also did not contact him. He himself had never gone to the police, but he claimed that he had seen the incident and he can narrate it. He had further admitted that after seeing the incident for the first time he had disclosed the facts to the I.O. and none else. He has been suggested by the defence that he had become a witness on account of his relationship. He denied any relationship with Gajraj. He had to admit that he is married in the same village in which Ajab Singh is married, but he pleaded ignorance about the fact whether he is married in the same house in which Ajab Singh is married. In his statement to the I.O. he had stated that he was going to his field by the road, but in the trial court he had stated that he was going by the drain and not going through the road. When asked to explain the anomaly, his reply is that he cannot explain. He admitted that he has two chaks. One of them is near the village along the road at a distance of a furlong and a half. The other chak is about half a mile from the chak of Gajraj where the incident had taken place. He had not clearly explained as to which of the two chaks he was going to. From his statement it appears to us that his first chak is near the village outskirts and not near the chak of Gajraj. In this circumstance, it is unsafe to place any reliance on the testimony of this witness. No other eye-witness has been examined by the prosecution to spite the fact that in the F.I.R. Bhagirath son of Chaman, Jagpal son of Dhani and Jal Singh were also named. In the absence of any corroboration of the testimony of Gajraj, in our opinion it is not safe to act upon his solitary evidence, specially when that evidence also is not found by us reliable because his presence appears to us to be doubtful at the spot at the time of occurrence.

14. Having discarded the eye-witnesses, there is nothing on the basis of which the conviction and sentence awarded to the Appellants can be affirmed. Even the lodging of the F.I.R. at the alleged time is also rendered doubtful. A S.I. from P.S. Bhawan along with a constable and the Moharrir constable reached the place of occurrence and when that S.I. reached there, he did not find the informant, who is a constable himself. The presence of two constables is admitted to the prosecution. In the circumstances, communication to the police station concerned cannot be ruled out before registration of the F.I.R. Since there was no S.I. at the police station concerned, i.e., P.S. Kandhla, a message was sent by the police from P.S. Kandhla to circle officer which was received by him in the afternoon. This wireless information was received by the circle officer, according to P.W. 4 S.I. Kaptan Singh at about 12.15 p.m. and he had proceeded on the oral instruction of the circle officer and arrived at the place of occurrence at about 2.30 in the afternoon. According to him, the inquest were prepared and the dead body was sealed by 4.00 p.m. and the body was handed over to the constables. But he claimed that the dead body remained in the village until 8.00 p.m. for want of a conveyance. The tractor became available thereafter, but he has made no such entries in the case diary. He pleaded ignorance about the owner of the tractor. Even the case diary does not contain the fact that the dead body was sent by a tractor. This four hours' time apparently was utilised to prepare the F.I.R. Why Moharrir constable accompanied the S.I. is also important in the contest of this case. He had admitted that the informant was not present until preparation of the inquest. As has already been discussed earlier that Gajraj Singh is a constable and must have been posted at some police station. He had not stated that he was on leave on the date of occurrence. In the circumstances this F.I.R. appears to us transcribed after he was summoned in consultation with the I.O. This fact is further borne out from the fact that despite the dead bodies having been sealed and inquest memo prepared they were not despatched to the mortuary until 8.00 p.m. Moreover, implication of Richh Pal, on account of enmity, is writ large on the face. His enmity with informant is an admitted fact.

15. P.W. 5 Jai Pal Singh is the escort of the dead body. He also admits that when they reached the spot and until the handing over of the body to him, the informant was not there. He could not give out the name of the S.I., who prepared the inquest and sealed the body. According to him the dead body was handed over to him at 5.00 p.m., but since it took considerable time in obtaining the conveyance, he left the spot 3-4 hours after. He states that he had carried the dead body on a horse-driven cart. This part of his statement runs contrary to the statement of the I.O. (P.W. 4). He had stated that the dead body was sent on a tractor. This change in the statement has been introduced only to explain the delay. The body had to the headquarter. It is situated in Muzaffarnagar. The admitted distance of headquarter, as per this witness, from the village of occurrence is 45-50 kms. This witness (P.W. 5) had further stated that since the horse was tired, therefore, he was moving slowly and the time taken by the horse in taking the dead body to the mortuary, according to him, was 7 hours.

He further stated that he stopped in the midst for three hours. He stopped at Shahpur and Budhana and reached the mortuary at 5.00 p.m. This, in our opinion, is an explanation, which we are not ready to accept. The contradiction and the abnormal time taken in carrying the dead body to the mortuary certainly had been utilised by the prosecution to prepare the F.I.R. after deciphering the assailant to be named. This further leads us to the inference that no body had witnessed the incident.

16. The constable clerk P.W. 7 Raj Pal Singh has admitted in cross-examination that G.D. No. 14 dated 27.11.1979 contains that a wireless message was sent to the circle officer. He further admitted that if any message is transmitted on wireless then its substance is noted down in a register and if the message is oral then it is not entered into anywhere. He had to admit that no such entry with regard to the wireless message to the circle officer has been made in the Register. He further stated that the special report was sent on the date of occurrence itself at 15.05 hours through Constable Atahar Singh, but the return entry of Atahar Singh speaks otherwise. This Atahar Singh had returned exactly after 24 hours on the next day, i.e., 28.11.1979 at 3.30 p.m. Thus, no reliance can be placed with regard to these pieces of evidence of sending of special report. In G.D. No. 15 there is over-writing in the name and number of Constable Jai Pal, who is claimed to have been sent along with the first I.O. (P.W. 4) to the spot. The explanation is, this over-writing was deliberate. A suggestion was given to him that initially the names and numbers of different constables were there. The reply is that from examination the numbers appear to be different and there is over-writing on the names. He was suggested that the F.I.R. and the G.D. of this case were prepared next day. He was further suggested that there was no report on the first day and the general diary was kept open. This suggestion was denied by him no doubt, but in our opinion, the suggestion has substance. The second I.O. of P.S. Sudhana had taken over the investigation of the case from 4.12.1979 from Kaptan Singh (P.W. 4) and till 10.1.1980 the investigation remained with him. He admitted that during this period he had not visited the village of occurrence nor recorded any witness's statement. He further stated that since no witness during this period had visited him nor even the informant had contacted him, therefore no statement was recorded. He had taken Krishan Pal and Richh Pal on remand, but no weapons were recovered though they were taken on remand for the recovery of arms. All these facts taken cumulatively unerringly lead to the conclusion that the prosecution has failed to establish the participation of the Appellants in the offence beyond any reasonable doubt. In the circumstances, they are entitled to benefit of doubt.

17. In the result the appeal is allowed and the judgment and order dated 20.9.1980, passed by the Court below, is hereby set aside. The Appellants are acquitted of the charges for which they were convicted and consequently sentenced. They are on bail. They need not surrender. Their personal bonds and surety bonds are hereby discharged.