
(2010) 05 AHC CK 0165
In the Allahabad High Court
Case No : Criminal Appeal No. 4809 of 2005

Saleem Pahalwan and others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 14-05-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2010) 05 AHC CK 0165

Hon'ble Judges : Poonam Srivastava, J and Subhash Chandra Agarwal, J

Final Decision : Dismissed

Judgement

S.C. Agarwal, J.—This criminal appeal has been filed against the judgment and order dated 28.10.2005 passed by Additional Sessions Judge, Court No.2, Allahabad in Sessions Trial No.232 of 1991. The four appellants and one Raees Ahmad were the accused at the trial. Accused Raees Ahmad died during pendency of the trial and the case against him stood abated. By impugned judgment, Saleem Pahalwan, Kamaruzama @ Bhallu and Mukhtar Ahmad were found guilty for the offences under Sections 147, 302 read with 149 and 323 read with 149 I.P.C. and Nizamuddin was found guilty for the offences under Sections 148, 302 read with 149 and 323 read with 149 I.P.C. The appellants were awarded life imprisonment with a fine of Rs.5000/, in default S.I. for one year under Sections 302 read with 149 I.P.C., S.I. for three months under Sections 323 read with 149 I.P.C. Nizamuddin was awarded R.I. for one year under Section 148 I.P.C. and remaining three appellants were awarded R.I. for one year under Section 147 I.P.C. The appellants were, however, acquitted for the charge under Sections 307 read with 149 I.P.C. All the substantive sentences were directed to be run concurrently.

2. The incident took place on 28.12.1990 at about 10:00 a.m. in front of the house of Ameer Mohammad (P.W.2) in village Markha Mau, P.S. Mau Aaima, District Allahabad. The F.I.R. was lodged by the complainant Mohammad Waris (P.W.1) on the same day at P.S. Mau Aaima at 10:35 a.m. The distance of police

station from the place of occurrence is two kilometers.

The prosecution story, as unfolded in the F.I.R., is that on 28.12.1990 a Panchayat was held in front of the house of Kanhai Lal Pasi on account of dispute between Ram Autar Pasi and Kanhai Lal Pasi. The deceased Mohammad Amin, father of the complainant, presided the Panchayat. In the Panchayat, the accused assaulted Mohammad Amin, village pradhan with kicks and fists saying that they would not obey any decision given by Mohammad Amin. Mohammad Amin came home and proceeded along with his son Mohammad Waris (complainant) to the police station on a scooter. At about 10:00 a.m., as they reached in front of the house of Ameer Mohammad (P.W.2), accused Saleem Pahalwan, Raees Ahmad, Mukhtar Ahmad all armed with lathis, Nizamuddin armed with farsa and Kamaruzama @ Bhallu armed with iron saria were already there. On the exhortation of Saleem Pahalwan, all the accused surrounded the scooter and assaulted Mohammad Amin with their respective weapons. Mohammad Amin was seriously injured. The complainant also sustained minor injuries. Mohammad Amin was sent to Mau Aaima Government Hospital along with another brother of the complainant. The incident was witnessed by Ameer Mohammad (P.W.2), Noor Mohammad, Abdul Qadir, Abdul Hadi and Abdulla besides the complainant.

3. On the basis of written report exhibit ka1, case crime no.333 of 1990 under Sections 147, 148, 149, 307 I.P.C. was registered against the appellants by head moharrir Mewa Lal.

Station Officer Anil Kumar (P.W.5) of P.S. Mau Aaima commenced the investigation. He proceeded to the place of occurrence, interrogated Ameer Mohammad, inspected the place of occurrence, prepared site plan at the instance of Ameer Mohammad (P.W.2) and sample of blood stained and plain earth were lifted. Thereafter he interrogated other witnesses of fact. In the meantime, information regarding death of Mohammad Amin was received. On the same day at 13:10 hours, the case was converted under Section 302 I.P.C. On 15.2.1991 he was transferred and the investigation was taken over by new Station Officer J.P. Yadav, who submitted chargesheet against the accused.

Autopsy on the body of deceased Mohammad Amin was performed on 29.12.1990 at 2:30 p.m. by Dr. Siddharth (P.W.4). The deceased was about 25 years of age. Death was caused about one day earlier. Rigor mortis was present all over. No decomposition. The following ante mortem injuries were noted by the doctor in postmortem report exhibit ka3 :

- (i) Lacerated wound 1 cm. x 0.3 cm. x muscle deep on right side face 3 cm. in front of right ear.
- (ii) Incised wound 5 cm. x 0.5 cm. x muscle deep on right eyebrow. Tapering downwards towards outer contour of left eye.
- (iii) Contusion 4 cm. x 2 cm. on left side face 2.5 cm. below left eye.
- (iv) Contusion 2 cm. x 1 cm. on left side of bridge of nose.

- (v) Incised wound 9 cm. x 0.5 cm. x cranial cavity deep transversely placed on back of head 8 cm. above posterior hairline. Fracture of underline bone present.
- (vi) Incised wound 6 cm. x 0.5 cm. x cranial cavity deep on head. Lower end of wound transecting injury no. (v). Fracture of bone underneath.
- (vii) Incised wound 3 cm. x 0.5 cm. x bone deep on back of head obliquely placed 1 cm. above injury no. (v) and 1 cm. left to injury no. (vi).
- (viii) Incised wound 4 cm. x 0.5 cm. x brain cavity deep on right side had obliquely placed 9 cm. above right mastoid. Fracture of bone underneath.
- (ix) Incised wound 3 cm. x 1 cm. x bone deep on right side of head obliquely placed 2 cm. behind and parallel to injury no. (viii).
- (x) Abrasion 3 cm. x 2 cm. on lateral aspect of left shoulder.
- (xi) Abrasion 1 cm. x 0.5 cm. on back of left elbow.
- (xii) Lacerated wound 2.5 cm. x 1.5 cm. x bone deep on dorsum of left great toe. Fracture of proximal phalanx of great toe.
- (xiii) Lacerated wound 1 cm. x 0.5 cm. x bone deep on dorsum of left second toe. Fracture of proximal underneath.
- (xiv) Lacerated wound 1 cm. x 0.5 cm. x bone deep on dorsum of left third toe. Fracture of proximal phalanx underneath.
- (xv) Lacerated wound 1 cm. x 0.5 cm. x bone deep on the dorsum of left fourth toe. Fracture of proximal phalanx underneath.
- (xvi) Lacerated wound 0.5 cm. x 0.5 cm. x muscle deep on dorsum of left foot at base of second toe.
- (xvii) Lacerated wound 0.5 cm. x 0.5 cm. x skin deep on dorsum of right great toe.

In the opinion of the doctor, the death was caused on account of shock and haemorrhage due to ante mortem injuries. Postmortem report is exhibit ka3. Death could have been caused on 28.12.1990 at 10:00 a.m. The injuries could be caused by iron saria, farsa and lathis.

Dr. Sultan Hasan, Medical Officer, P.H.C., Mau Aaima, Allahabad had medically examined Mohammad Waris (P.W.1) on 29.12.1990 at 11:00 a.m. and found the following injuries on his person :

- (i) Abrasion 2 cm. x 0.5 cm. on outer side of left knee joint.
- (ii) Abrasion 5 cm. x 3 cm. on left upper side of foot 5 cm. away from ankle joint.
- (iii) Swelling 3 cm. x 2 cm. on left foot.

In the opinion of Dr. Sultan Hasan, injuries of Mohammad Waris were simple in

nature, were caused by friction and hard object. Duration was about 24 hours.

Learned Sessions Judge framed charges under Sections 148, 302 read with 149 and 307 read with 149 I.P.C. The appellants pleaded not guilty to the charge and claimed to be tried.

4. The prosecution examined five witnesses in this case. The complainant Mohammad Waris (P.W.1) and Ameer Mohammad (P.W.2) are the witnesses of fact. Dr. Sultan Hasan (P.W.3) had examined the complainant Mohammad Waris on 29.12.1990 and had proved injury report exhibit ka2. Dr. Siddharth (P.W.4) had performed the autopsy on the body of deceased Mohammad Amin and Anil Kumar (P.W.5) is the investigating officer. S.I. Vijay Raj Singh Azad, who had performed the inquest, was examined as court witness.

The appellants in their statements recorded under Section 313 Cr.P.C. denied the prosecution allegations and claimed that the complainant had got a forged injury report prepared. Nizamuddin further stated that the deceased had many enemies and had received injuries somewhere else. It was claimed that the appellants have been falsely implicated on account of enmity.

One Naushad Ali @ Zibrael was examined on behalf of the appellants as a defence witness, who stated that he had a talk with Ameer Mohammad (P.W.2) in respect of murder of Mohammad Amin which was tape recorded and the tape (audio cassette) contains the voices of Ameer Mohammad and him. Ameer Mohammad had told him that Raees was not on the spot, but he was falsely implicated due to enmity.

Relying upon the prosecution version and the evidence adduced on behalf of the prosecution and disbelieving the defence evidence, learned trial court convicted and sentenced the appellants as aforesaid.

We have heard Sri G.S. Chaturvedi, learned senior advocate assisted by Sri Santosh Dwivedi and Ajat Shatru Pandey and also Sri Dilip Kumar, learned counsel for the appellants, learned A.G.A. for the State, Sri Brijesh Sahai, learned counsel for the complainant and perused the record.

5. Learned counsel for the appellants submitted that the two eyewitnesses Mohammad Waris and Ameer Mohammad are highly inimical and interested witnesses and can not be termed as wholly reliable witnesses. The presence of Mohammad Waris (P.W.1) on the spot is extremely doubtful, as he did not accompany his father to the hospital, but instead proceeded towards police station to lodge F.I.R. and the deceased Mohammad Amin was sent to the hospital with another person. It was submitted that this conduct of the complainant is highly unnatural that he would not himself accompany his father to the hospital and would go to police station to lodge F.I.R. It was further submitted that Mohammad Amin was seriously injured and had profuse bleeding and the story of Mohammad Amin, being sent to the hospital on a scooter, is unbelievable. The testimony of Mohammad Waris (P.W.1) has also been criticized

on the ground that though he himself claims to be injured in the incident, he did not get himself medically examined on the same day, but was later examined by the doctor on the next day. The brother of the complainant, who accompanied the deceased to the hospital, has not been examined. It was contended that P.W.1 was not present in the Panchayat held earlier on the same day yet he gave graphic details of the Panchayat. Ram Autar Pasi and Kanhai Lal Pasi, in respect of whom the Panchayat was held, were not examined at the trial. It was further submitted that as per the prosecution case, the deceased was taken to the hospital directly from the place of occurrence and did not go to the police station yet there is a chitthi majroobi on record showing that constable Mahengu Singh was deputed to get the deceased medically examined, but constable Mahengu Singh has not been produced by the prosecution. Much stress was laid on the inquest report wherein the names of the accused have been disclosed, but there is much difference in the names of the accused in the F.I.R. and the names of the persons responsible for the crime mentioned in the inquest memo. The name of Raees does not find place in the inquest. Learned counsel pointed out that Naushad Ali (D.W.1) had a talk with Ameer Mohammad (P.W.2) after the incident in which Ameer Mohammad admitted that Raees was falsely implicated in the case, but he would depose in court against Raees also. Allegedly the aforesaid conversation was tape recorded and the cassette was produced in trial court. Learned counsel submitted that the tape recording conclusively proves that some of the accused were falsely implicated in the case and this fact adversely affects the whole prosecution case and no reliance can be placed on the same.

Learned A.G.A. and learned counsel for the complainant submitted that place and time of incident has not been disputed by the defence. It was a broad daylight incident and F.I.R. was promptly lodged. Names of the accused along with respective weapons have been described in the F.I.R. Prosecution case is supported by medical evidence. There was no reason for the witnesses to falsely implicate the appellants. Ameer Mohammad (P.W.2) is an independent and natural witness at whose door the incident took place. He was not friendly to the complainant or the deceased nor was he inimical to the appellants. P.W.2 was present in morning Panchayat also. It was further submitted that the purpose of inquest is to ascertain the apparent cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. Eyewitnesses were not present at the time of inquest and it is not known at whose instance the names of certain persons were shown in the inquest as assailants.

6. First of all, we endeavour to consider the evidence of audio cassette exhibit 1 produced by Naushad Ali (D.W.1) before the trial court. He deposed that he had a talk with Ameer Mohammad (P.W.2) regarding murder wherein Ameer Mohammad had admitted that Raees was not present at the time of incident, but Raees would certainly be implicated because of enmity. He further stated that the cassette contains his voice and the voice of Ameer Mohammad. There is no

evidence on record to show by whom the conversation was recorded and audio cassette was prepared. The audio cassette has not been authenticated and proved according to law. It is a highly suspicious piece of evidence. Besides the absence of evidence of the person, who tape recorded the conversation, there is no evidence on record to show that the audio cassette was not tampered with. The transcript of the conversation recorded in the audio cassette has not been proved. In these circumstances, we are unable to place any reliance on the audio cassette and the testimony of Naushad Ali (D.W.1). Moreover, the alleged conversation between Naushad Ali (D.W.1) and Ameer Mohammad (P.W.2) relates to involvement of coaccused Raees, who is no more alive and is not the appellant before us. This conversation does not help the appellants in any manner.

Mohammad Waris (P.W.1) is the complainant and son of the deceased. He is an interested witness, but his testimony can not be rejected solely on the ground that he is related to the deceased, but being interested, his testimony should be looked into with caution. He was not present in the Panchayat held at 8 8:30 a.m. in front of the house of Kanhai. He stated that the incident, which took place at the Panchayat, was described to him by his father when he returned from Panchayat. He was taking his father to police station to lodge F.I.R. on a scooter. In front of the house of Ameer Mohammad (P.W.2), accused Kamaruzama armed with saria, Nizamuddin armed with farsa, Saleem, Raees and Mukhtar Ahmad armed with lathis stopped his scooter and assaulted Mohammad Amin. He raised alarm, but he was also beaten by the accused. On his call, Ameer Mohammad (P.W.2), Abdul Hadi and Abdulla also reached there, who intervened and the accused ran away. After a little while, his younger brother Mohammad Sajid also reached there and took his father to Government Hospital, Mau Aaima by scooter. He wrote F.I.R. exhibit ka1 and gave it at the police station. From police station he went to the hospital at Mau Aaima and came to know that his father had been referred to Beli Hospital, Allahabad. He went to Beli Hospital and found his father dead.

Mohammad Waris (P.W.1) is an injured witness. He was medically examined on the next day i.e. on 29.12.1990. The delay in medical examination has been properly explained by P.W.1 in his statement. He has specifically stated that he had shown his injuries to Deewan Ji, who asked him to get himself medically examined. Since he was in a hurry to know the welfare of his father, he told Deewan Ji that he would get himself medically examined next day. This fact is corroborated by copy of G.D. No.19, time 10:35 a.m. of 28.12.1990 exhibit ka8 whereby the crime was registered, which mentions that constable Mahengu Singh was sent with chitthi majroobi to get Mohammad Amin medically examined. It also mentions that the father of the complainant had already gone to hospital and the complainant would get himself medically examined later. The fact regarding complainant having received injuries is also mentioned in the G.D. In these circumstances, it can not be assumed that P.W.1 did not receive any injury or that he was not present at the time of incident.

The testimony of Mohammad Waris (P.W.1) has also been criticized on the ground that he did not accompany his father to the hospital, but was interested in lodging F.I.R. P.W.1 has stated that soon after the incident, his younger brother Mohammad Sajid reached at the place of occurrence and took his father to the hospital by scooter. Learned counsel for the appellants submitted that the deceased had sustained large number of injuries and must have been bleeding profusely and it was not possible for one person to carry a person so badly injured on the scooter unaided. We are not impressed by this argument. P.W.1, when crossexamined on this point, stated that there was a third person also on the scooter, but he does not remember his name. In this respect, his statement finds corroboration from the statement of Ameer Mohammad (P.W.2), who stated that scooter was driven by Sajid, Mohammad Amin was sitting in the middle and a third person Habibulla also sat on the scooter. Thus, there is no discrepancy in the manner in which the deceased was taken to the hospital in an injured condition.

Mohammad Waris (P.W.1) was crossexamined at length. His father Mohammad Amin was Village Pradhan, who was beaten by the appellants and Raees in the Panchayat held in the morning. The deceased was going to the police station to lodge F.I.R. P.W.1 was accompanying the deceased to the police station and was driving the scooter. His presence at the place of occurrence is natural and P.W.1 can not be said to be a chance witness. After a careful scrutiny, we have come to the conclusion that Mohammad Waris (P.W.1) is a wholly reliable witness.

Ameer Mohammad (P.W.2) is also a natural witness. The incident took place in front of his house. He was also present in the Panchayat held at 8:30 a.m. on the same day at the house of Kanhai Lal Pasi. The accused persons and the deceased were also there. There was a dispute between Ram Autar Pasi and Kanhai Lal Pasi, who were real brothers. Ameer Mohammad (P.W.2) had deposed that in the Panchayat, the deceased told Kanhai Lal Pasi that he should not make encroachment. Accused Saleem Pahalwan instigated Kanhai Lal Pasi not to follow the dictates of Pradhan. Saleem Pahalwan, Raees, Kamaruzama @ Bhallu, Nizamuddin and Mukhtar beat Mohammad Amin with kicks and fists. The Panchayat ended. The deceased told the accused that he was going to lodge F.I.R. against them. On the same day at 10:00 a.m. Ameer Mohammad (P.W.2) was sitting on the chabootra in front of his house. Nizamuddin armed with farsa, Kamaruzama @ Bhallu armed with saria, Saleem Pahalwan, Raees and Mukhtar armed with lathis were also there. The deceased accompanied by his son Mohammad Waris (P.W.1), while going to Mau Aaima, came there on scooter. On the exhortation of Saleem Pahalwan, all the five accused surrounded the scooter and assaulted Mohammad Amin with their weapons. Mohammad Waris was also beaten. Witnesses Abdul Hadi, Abdulla and later Abdul Qadir and Noor Mohammad also reached there and Mohammad Amin was taken to the hospital by his another son Sajid. He denied ever having talked with Naushad Ali (D.W.1) regarding murder of the deceased and specifically stated that the voice in the audio cassette does not belong to him. On the date of incident itself at 2 3:00

p.m., he came to know about death of Mohammad Amin. He has also been crossexamined at length, but much of the crossexamination related to audio cassette, which has not been proved. The presence of P.W.2 at the place of occurrence is natural, as the incident took place in front of his house. He has no enmity with the appellants and there is no reason why he would falsely implicate the appellants. No enmity was suggested to this witness in crossexamination. In our considered opinion, Ameer Mohammad (P.W.2) is also a wholly reliable witness and there is no reason to doubt his testimony.

7. Learned counsel for the appellants submitted that there was no motive for the crime and there was no reason why the appellants would assault the deceased. In the F.I.R., no enmity has been disclosed. In crossexamination of Mohammad Waris (P.W.1) it was revealed that a civil litigation was going on between the deceased and father of appellant Nizamuddin. About 1 1/2 years earlier, the election of village pradhan was held and the deceased had won the election. However, P.W.1 could not say that Mohammad Sharif, father of appellant Mukhtar Ahmad contested the election or not. Conduct of the appellants at the Panchayat goes to show that they did not relish the deceased being village pradhan. As deposed by Ameer Mohammad (P.W.2), Saleem Pahalwan told Kanhai Lal in Panchayat not to obey the pradhan. After being beaten by the accused persons the deceased told them that he was going to lodge F.I.R. against them. This could also be a motive for the appellants to assault the deceased in front of the house of P.W.2. What was the actual motive for the appellants to kill Mohammad Amin is known only to the accused persons. It is established law that if the eyewitnesses are wholly reliable, motive loses importance. In this view of the matter, we find that absence of any motive in the F.I.R. is of no consequence, as the testimony of Mohammad Waris (P.W.1) and Ameer Mohammad (P.W.2) is wholly reliable.

8. The conduct of Mohammad Waris (P.W.1) in going to the police station to lodge F.I.R. instead of going to the hospital with his father can not be termed to be unnatural. Soon after the incident, Sajid, another brother of the complainant, reached at the spot and the deceased was sent to the hospital on a scooter along with Sajid and Habibulla.

Much emphasis has been laid on the narration in the inquest memo wherein it was written that Saleem, Faiyaz, Bhallu, Nabbu, Mukhtar and Babbu had assaulted the deceased. This fact has been stated by S.I. Vijay Raj Singh Azad (C.W.1), who had prepared inquest at Beli Hospital Mortuary at Allahabad. Bhallu is the nick name of Kamaruzama. The names of appellants Saleem, Bhallu and Mukhtar are mentioned in the inquest also. There is no controversy regarding them. The names of Raees and Nizamuddin are not mentioned in the inquest. Learned counsel for the appellants submitted that Noor Mohammad and Abdul Qadir were witnesses of fact according to F.I.R. and were witnesses of inquest also and they disclosed the names of different persons at the time of inquest and for this reason they were deliberately withheld by the prosecution. It was also

submitted that different names in the F.I.R. and in the inquest memo creates doubt regarding truthfulness of the prosecution case. In this respect learned counsel for the complainant and learned A.G.A. submitted that Noor Mohammad and Abdul Qadir were not witnesses of fact. They reached the place of occurrence 1 2 minutes after the incident though they were described in the F.I.R. as eyewitnesses. It was further submitted that the purpose of inquest is to ascertain the nature of death and the mentioning of the names of the assailants in inquest memo was not required in law. Moreover, there is no evidence on record to show at whose instance the names of certain persons were mentioned in the inquest memo.

9. Reliance has been placed on a decision of the Apex Court in the case of Radha Mohan Singh @ Lal Saheb & others Versus State of U.P. reported in JT 2006 (1) SC 428 wherein the Apex Court, analyzing the provisions of Section 174 Cr.P.C., held

"The language of the aforesaid statutory provision is plain and simple and there is no ambiguity therein. An investigation under Section 174 is limited in scope and is confined to the ascertainment of the apparent cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. It is for this limited purpose that persons acquainted with the facts of the case are summoned and examined under Section 175. The details of the overt acts are not necessary to be recorded in the inquest report. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted or who are the witnesses of the assault is foreign to the ambit and scope of proceedings under Section 174. Neither in practice nor in law it is necessary for the person holding the inquest to mention all these details."

10. The inquest was held to ascertain the apparent cause of death and there was no requirement for the names of assailants being mentioned in the inquest memo. It is also not known at whose instance the names of certain persons were inserted in rai panchan in the inquest memo. In these circumstances, we are unable to place any reliance on the narration of names of the alleged assailants in the inquest memo. On the other hand, the prosecution case regarding involvement of appellants and Raees has been consistent right from the lodging of the F.I.R. and the testimony of witnesses in Court. The discrepancy regarding names in the inquest also came to notice of the investigating officer Anil Kumar (P.W.5), but he did not clarify it, as he was transferred. Subsequent investigating officer has also not made any efforts to clear the alleged discrepancy.

In the case of Gopal & others Versus State of U.P. [1991 (1) JIC 858 (All) (FB)], a full Bench of this Court observed that weakness of investigation can not be a ground to reject the direct testimony of prosecution witnesses.

F.I.R. was lodged at 10:35 a.m. at P.S. Mau Aaima naming the four appellants and Raees. After death of Mohammad Amin, the case was converted under Section 302 I.P.C. vide G.D. Ext. Ka8 at 1:10 p.m. on the same day. Inquest was held at Beli Hospital, Allahabad from 3:00 p.m. to 4:15 p.m. by S.I. Vijay Raj Singh Azad (C.W.1) of P.S. Civil Lines, Allahabad. There was no occasion or necessity to mention names of assailants in the inquest memo. C.W.1 was unable to specify at whose instance, names of assailants were mentioned in the inquest memo. Purpose of inquest is only to ascertain nature of death. If some one amongst the witnesses of inquest deliberately gave wrong information to C.W.1, it can not be a ground to reject the prosecution version which is well established by reliable evidence of P.W.1 and P.W.2.

11. It was submitted by the learned counsel for the appellants that Noor Mohammad, Abdul Qadir, Abdul Hadi and Abdulla were shown in the F.I.R. as witnesses of fact, but they have been withheld by the prosecution specially Noor Mohammad and Abdul Qadir have been withheld deliberately, as they were the witnesses of inquest also and gave a different version of the incident at the time of inquest. We do not find any substance in this contention. In the F.I.R., Noor Mohammad and Abdul Qadir were shown as the witnesses of the incident, but Mohammad Waris (P.W.1) and Ameer Mohammad (P.W.2) have stated in the crossexamination that Noor Mohammad and Abdul Qadir reached the spot soon after the incident and were not present during occurrence. Moreover, there is no evidence on record to show that the names of the accused in the inquest were recorded at the instance of Noor Mohammad and Abdul Qadir. Prosecution examined Mohammad Waris (P.W.1) and Ameer Mohammad (P.W.2) as the witnesses of fact. It is immaterial how many eyewitnesses are examined by the prosecution, what is material is the quality of witnesses examined. P.W.1 was accompanying the deceased while going to the police station and the incident took place in front of the house of P.W.2. These two witnesses are natural witnesses and their testimony is found to be wholly reliable. In these circumstances, nonexamination of other witnesses, mentioned in the F.I.R., is of no consequence.

12. It was also contended that Mohammad Sajid, Ram Autar Pasi and Kanhai Lal Pasi have also been withheld by the prosecution. Mohammad Sajid was not an eyewitness of the incident. He only took the deceased to the hospital in injured condition. Similarly, Ram Autar Pasi and Kanhai Lal Pasi were not witnesses of incident, but were witnesses of previous Panchayat held early in the morning. Ameer Mohammad (P.W.2) has already been given evidence regarding Panchayat and it was not necessary for the prosecution to examine Ram Autar Pasi and Kanhai Lal Pasi.

Learned counsel for the appellants submitted that according to prosecution version, the deceased was sent to the hospital directly from the place of occurrence, but the record also shows that constable Mahengu Singh was sent from the police station with a chitthi majroobi of the deceased. It was contended

that there is a mystery as to whether the deceased was first taken to the police station or was directly sent to the hospital. We do not find any force in this submission. Mohammad Waris (P.W.1) and Ameer Mohammad (P.W.2) have specifically stated that the deceased was directly sent to the hospital through Sajid, brother of the complainant on a scooter. G.D. exhibit ka8, whereby the F.I.R. was registered, is clear on this point and indicates that the deceased had already been sent to the hospital and constable Mahengu Singh was being sent with a chitthi majroobi.

13. In view of the aforesaid, we have come to the conclusion that the incident took place on 28.12.1990 at 10:00 a.m. in front of the house of Ameer Mohammad (P.W.2). At that time, the deceased was going to the police station along with his son Mohammad Waris (P.W.1) to lodge F.I.R. against the appellants in respect of the earlier incident, which took place that very morning in a dispute between Ram Autar Pasi and Kanhai Lal Pasi. The scooter was stopped by the appellants and Raees in front of the house of Ameer Mohammad (P.W.2) and the deceased was assaulted by the appellants and Raees Ahmad (since dead), who had formed an unlawful assembly and were armed with weapons. The F.I.R. was promptly lodged at 10:35 a.m. on the same day. Vivid description of the incident with names of the accused and weapons used by all the accused have been described in the F.I.R. Postmortem report of the deceased Mohammad Amin and injury report of the complainant Mohammad Waris corroborate the prosecution case. We have already found that both the witnesses of fact namely, Mohammad Waris (P.W.1) and Ameer Mohammad (P.W.2) are wholly reliable witnesses. They are not chance witnesses. There is no reason to disbelieve their testimony. In our considered opinion, the prosecution has succeeded in establishing its case against the appellants beyond reasonable doubt. We have no hesitation to agree with the findings of the trial court holding the appellants guilty of the charges leveled against them for committing murder of Mohammad Amin. We see no reason to interfere with the judgment of the trial court. Appeal is thus dismissed as well as the judgment and order passed by the trial court is affirmed.

14. The appellants are on bail. Their bail bonds are cancelled. Trial court is directed to get the appellants arrested and sent to jail to serve out the sentence.

The record of the trial court along with copy of the judgment be sent to the court concerned for immediate compliance. Compliance report be submitted within three months.