
(2000) 09 AHC CK 0029
In the Allahabad High Court
Case No : Criminal Appeal No. 2226 of 1980

Shamsher Singh alias Nanahakji and Others	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 27-09-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 201, 302

Citation : (2000) 3 ACR 2502

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

Bench : Division Bench

Advocate : Gajendra Pratap, Surendra Prasad, Kamleshwar Singh and P.N. Mishra, for the Appellant; A.G.A., for the Respondent

Judgement

S.K. Agarwal, J.—This appeal was preferred by Appellants Shamsher Singh alias Nanahakji, Ram Chandra Singh, Nanhaku Mali, Devendra Singh and Nagesar Singh alias Lallu against their conviction under Sections 302/149, 201 and 148, I.P.C. All of them were sentenced to undergo R.I. for life under the first count and R.I. for 5 years and 2 years respectively under subsequent counts. All the sentences were to run concurrently. They were convicted and sentenced under the above charges by II Ird Addl. Sessions Judge, Ballia on 30.9.1980 in Session Trial No. 174 of 1979.

2. The allegations contained in the first information report are that Smt. Kamlawati is daughter of Smt. Deorati Kunwar and was living in Sheopur Diar with her to look after her as she had no male issue. Other sister was also married and was living with her husband at other place. The deceased was a widow being wife of late Harihar Singh. The Appellants Shamsher Singh and Devendra Singh were neighbours of the deceased and the informant. They manipulated some sikmi entries of land of the deceased in their names and also in the names of their family members causing fracture in their relations. On the date of occurrence, i.e., 28.10.1979, Deorati Kunwari alongwith her sister-in-law (Bhabhi) Kaushalya Kunwari, wife of Triyugi Narain were present in the dera of

Raghav Saran Singh. They were intending to stay there during night. At about 9 p.m. after taking their meals, they were lying on their cots. A lantern was burning in the southern palani. Ram Lakhan Yadav and Ayodhya Singh were also present in another palani with Raghav Saran Singh. No light was there. The Appellants came in the dera at this hour. Out of them, Ram Chandra and Nageshar were armed with guns, Shamsheer Singh and Devendra Singh were armed with country-made pistols and Appellant Nanhaku was armed with spear. Some oral altercation between the deceased and the Appellants ensued regarding possession and allotment of her agricultural land. The deceased required the Appellants to vacate her fields and threatened that otherwise it would be bad for them. Devendra exhorted his companions in the following words "Budhia would not allow them to live in peace, let she be killed, it will benefit them." Thereupon Nageshar alias Lallu fired from his gun. An alarm was raised by Smt. Kaushalya Kunwari which attracted several persons to the spot of occurrence Shamsheer Singh asked his colleagues to remove the dead body so that evidence of her murder can be liquidated. The accused persons had removed the dead body of Smt. Deorati Kunwari. Smt. Kaushalya Devi, P.W. 2 and Ram Lachan in order to save themselves ran away and concealed in the bushes. On the next day, i.e., 29.10.1979 Ram Lachan Yadav, P.W. 3, managed to reach the informant Smt. Kamlawati Singh in the evening and revealed the entire incident to her. On this information, she visited the spot on the same evening to ascertain the facts and thereafter prepared the report on the next day and lodged the same at police out post Shivpur Diar of police station Kotwali at 4.15 p.m. on 30.10.1978. Written report is Ex. Ka. 1. On the basis of the said report check report Ex. Ka. 13 was prepared. It was thereafter sent to police station Kotwali on that very day at about 5 p.m. Copy of General Diary is Ex. Ka. 15. This case was investigated by P.W. 10, Deena Nath Mishra, S.H.O., P.S. Kotwali.

3. Defence has denied the charges. Shamsheer Bahadur Singh has stated that Udai Narain is son-in-law of Mst. Deorati. He had removed his mother-in-law Deorati so that he can use the whole property. Devendra, Nageshar and Ram Chandra Singh, they have all pleaded their involvement due to enmity. Nanhaku has stated that Udai Narain Singh, son-in-law of the deceased, has asked him to appear as a witness but he denied so he has been involved in the present case. They have not given any oral evidence.

4. We have heard Sri Gajendra Pratap, learned Counsel for the Appellants and also learned A.G.A. for the State.

5. Learned Counsel for the Appellants made following submissions before us in this case. Firstly, the evidence produced by the prosecution is wholly unreliable. The conduct of the witnesses is highly unnatural and lacks reliability. Secondly, no independent witness was produced in the case in corroboration of the evidence of interested witnesses. Presence of Smt. Kaushalya Devi was also highly doubtful. She accompanied the deceased is incredible and unbelievable.

Lastly, the learned Counsel for the defence submitted that the F.I.R in this case was lodged with an abnormal delay and the explanation for the same is per se false.

6. We propose to take up first question of delay in lodging the F.I.R. and its impact upon the case. In this regard, the evidence of 3 witnesses, the informant, P.W. 1, Smt. Kaushalya Devi, P.W. 2 and Ram Lachan, P.W. 3, is of relevance.

7. The informant in the first information report itself stated that she had received information of the murder of her mother from Ram Lachan on the evening of 29.10.1978. As per the prosecution case, the incident took place at about 9 p.m. on 28.10.1978 in Raghav Sharan Singh's dera where the deceased and Smt. Kaushalya were to stay during night of this incident. The motive behind the present incident is, as alleged by P.W. 1, that some piece of land belonging to her mother was entered into the revenue records by Shamser Singh and Devendra Singh in their and their collaterals names with the help of patwari. On coming to know of this fact, her mother raised objections and was prepared to file cases against the said persons. Some litigation was already initiated by her. This resulted into bad blood between her mother and Appellants Shamsher Singh and Devendra Singh. They had extended threats to kill her mother. The deceased had submitted an application before the Superintendent of Police, Ballia and its copy was also sent to I.G., D.I.G. and the Chief Minister. She had further stated that the deceased alongwith Smt. Kaushalya, P.W. 2, had gone for making proper arrangement of her land which was in the south of the river in the afternoon on 28.10.1978. She stated that at about 3.30 p.m. on 19.10.1978, Ram Lachan reached her house in mohalla Nai Basti and told her that he alongwith Ayodhya Singh, r/o Chakki had gone to her mother for demanding some land on bataai at the above dera. At about 9 p.m. when her mother and Smt. Kaushalya Devi, P.W. 2, were taking their meals, the Appellants named above arrived there with their respective weapons. Some exchange of hot words took place between her mother and the accused-Appellants. Her mother told them that she will not leave her fields. Upon this, Devendra Singh exhorted his companions to kill her so that they can freely enjoy her land. Negeshar Sing opened fire from the gun. The gunshot hit her mother. She fell down crying "hay Raam maar dala". She died immediately. She had stated further that Kaushalya Kunwari, Ragho Sharan Singh, Ayodhya Singh and Ram Lachan raised alarm. People from the neighbourhood started coming. Shamser Singh said that dead body should be removed so that it could not be traced. The assailants took away her dead body towards north-east. The witnesses P.W. 2 and P.W. 3 hid themselves in the patalon. She further stated that on learning the facts from Ram Lachan, she started crying. She continued to cry until the evening. Since the darkness had already settled and there was no availability of any source to cross the river to verify these facts, she did not go there that night. On 30.10.1978, she claimed that she had visited Ragho Sharan's dera alongwith Ram Lachan. Kaushalya Kunwari was called there. She made enquiries from Ragho Saran Singh, Ayodhya Singh and Ram Lachan at the spot and thereafter written report, Ex. Ka. 1, was

prepared. She had gone to police out post Sheopur Diyar and handed over her written report to the Head Moharrir there. She stayed during the night in Shivpur in the dera of Ram Bilas Singh. Two constables were sent with her to stay at the place of occurrence. She visited the dera of Ragho Sharan Singh on 31.10.1978. She found two constables and the Head Constable there. Investigating Officer came to the spot at 3-3.30 p.m., her statement was recorded. Lantern was examined by him. Investigating Officer had recovered spent cartridge and sealed it. The Investigating Officer stayed throughout the night since nothing was possible due to darkness. On the next morning i.e. 1.11.1978 Investigating Officer had managed to search the river by getting the net thrown therein but her mother's dead body could not be traced. Last rites of her mother was performed by her by using putlas (dummies). She further stated that Ragho Sharan Singh, colluded with the accused persons. She claimed that her mother and Kaushalya Kunwari had left for the dera in her presence. She further stated that after hearing the information, she decided to go to the spot first before going to lodge the first information report. This is why no F.I.R. was lodged on the day when information was communicated to her. The other explanation she offered for the delay in lodging F.I.R. was that after making arrangement for the proper stay of her children, she had left for the place of occurrence during the noon hours and had reached the dera at about 3.30 p.m. She stated that she did not remember the time when she had written the report. The report was prepared by her after 15-20 minutes of her reaching at the dera. She admitted that Ram Lachan had informed her at her house in Nai Basti on 29.10.1978 itself that he had left Kaushalya Kunwari at the house of Dadan Pandey in Pandey's dera. On reaching the dera, she became emotional and started crying. She lost her self-control and, therefore, could not see any spent cartridge on 30.10.1978. The neighbours told her about the murder of her mother. She further admitted that these people had not informed her who were the assailants that is why she had not disclosed their names in the F.I.R. She further admitted that she had not gone to Pandey's dera. She admitted that Kaushalya Kunwari, P.W. 3, met her at the dera of Ragho Sharan Singh before she prepared the report. She was present there before she reached. When she reached this dera some 8-10 persons were already there. She further stated that Ayodhya Singh had informed her before she transcribed her F.I.R. that he was having a torch at the time of occurrence but she had not disclosed this fact in her F.I.R. She had also not disclosed that any person had told her that the Appellants came back and had scratched the blood. She further admitted that neither Ram Lachan nor Kaushalya Kunwari informed her that they had concealed themselves in the bushes. They had not shown her where they had hidden. She further admitted that she did not remember whether Investigating Officer noticed any thhali, lota or ash inside the marhai (hut) to indicate that any food was prepared there on the night of occurrence. The Investigating Officer did not arrive at the scene of occurrence on 30th, the date of F.I.R. She further stated that from her house i.e. Nai Basti, Sheopur, Diyar river is about 4-5 miles away. From the river, dera of Ragho Sharan Singh is about 1-1/2 miles. She admitted that she had taken away the lantern

from that very hut. She had taken the same lantern in the dera of Ram Bilas where she stayed in the night of 30th and 31st October, 1978. She admitted that she had come back to her house at Nai Basti on 1st November, 1978. She further claimed that the net was thrown in the river in the morning of 1.11.1978 in her absence.

8. Thus, from her testimony, it is apparent that despite receiving the information at about 3.30 p.m. on 29.10.1978, no effort to lodge any first information report at P.S. Kotwali was made by her. P.S. Kotwali was near her house. The explanation offered by her for going to the place of occurrence before lodging the F.I.R. is falsified by her own statement. It does not stand to reason that when Kaushalya Kunwari was already kept in Pandey's dera by Ram Lachan, there was no need for her to go the spot of occurrence to trace her before going to lodge the F.I.R. Admittedly the F.I.R. was lodged at about 4.15 p.m. on 30.10.1978, i.e., nearly 24 hours after she received the information. No proper explanation for such abnormal delay is available from her evidence. The laches shown by Investigating Officer in coming to the spot, according to her statement, is also very intriguing and creates serious doubt in the truthfulness of her version. Performance of last rites by using putlas (dummies) further raises serious doubts about the deceased meeting a homicidal death. Till 1.11.1978, no search of the body was undertaken by anyone including the police. Unusual haste in the performance of last rites thus is beyond our comprehension. Her leaving the place of occurrence before any search for her mother's corpse was undertaken further raises our eye brows.

9. On taking up the statement of Kaushalya Devi, P.W. 2, we have to remember the statement of P.W. 1 that the Appellants had also usurped to themselves some landed property of Kaushalya Kunwari. She had corroborated the statement of P.W. 1 and P.W. 3 in her examination-in-chief. She stated that the incident was witnessed by P.W. 3 and P.W. 5 apart from Ragho Sharan Singh. She claimed that after the departure of the assailants, she alongwith Ram Lachan had run away from the dera and concealed themselves in the patal (bushes). She further admitted that she had apprehended that she might also be killed. She disclosed that after removing the dead body, assailant returned to the dera again after 1-1-1/2 hours. She could only hear the noise of their foot steps. They had removed the blood from the spot. She had very clearly admitted that she could not see their faces. She continued to hide behind patal throughout that night. In the morning, it started raining. Rain stopped during the noon hours and thereafter she had sent Ram Lachan, P.W. 3, to Smt. Kamlawati Singh, for communicating the information to her. She stated that she stayed in the house of some Pandey in Pandey's dera. She further admitted that Ram Lachan and Kamlawati came to the place of occurrence on the next day in the morning. She had disclosed entire facts to Kamlawati. According to her admission, the place where the report was prepared was 4-5 steps north to Ragho Saran Singh's palani. She claimed that her father-in-law had executed a sale-deed of his property in favour of his son-in-law Subedar Singh but added further that Ragho

Saran Singh and Brij Nandan Singh filed a suit for cancellation of the said sale-deed. She stated that she had not made any application that sale-deed was correct nor she had compromised with Subedar Singh. She admitted that for the fear of the Appellants she had executed a sale-deed of her property in favour of Subedar Singh. She stated that she did not know the extent of her land which the Appellants had got entered in their names in revenue records as Sikami. She admitted that she had not instituted any suit regarding such property which is in Ballia. She was unable to give out the name of the clerk of the advocate from whom she had got prepared her application against the Appellants. She was also unable to tell the date and month on which the last application was sent. She claimed that only she and Deorati were going for making such application. She stated that she and Deorati were living in separate houses. She had admitted that some 2 or 4 months before the murder of Deorati she had taken a house in mohalla Nai Basti. For the fear of the Appellants she had started living with her parents or with some other persons. She further admitted that the Appellants had never beaten them but only threatened. She also admitted that in the Kothari, in which Ragho Saran Singh was sitting, there was no light. The light from her hut was also reaching to the hut of Ragho Saran Singh. Ragho Saran Singh had not taken any steps to lodge any report. She further admitted that none of her asami had given any lagaan on the date of occurrence. She very clearly admitted that the night was dark and the darkness supervened from evening itself. The incident had taken place just 4 days before Diwali. She further stated that only Nageshar Singh entered the hut and rest of the accused had stayed outside. She further stated that she raised no alarm on seeing weapons in the hands of the Appellants. She further claimed that Deorati was sitting in front of the door and she was sitting further west to Deorati. She further stated that the dead body was taken away by all the 5 accused but she did not remember how it was taken away. She further admitted that she remembers that her statement was recorded on the 4th day of the incident by the Investigating Officer. She further stated she had disclosed to the Investigating Officer that Ayodhya Singh had a torch and he flashed the same. She stated that she did not come out of her hut immediately on coming of the accused but left as soon as the assailants withdrew. She concealed herself in patal. She further stated that she came out of the hut after Ram Lachan, P.W. 3, informed her that the assailants had withdrawn. She did not notice any people of the vicinity at the spot due to paucity of light. She came out from the patal on the next morning. She did not go to the dera of Ragho Saran Singh again. She did not see any crowd assembled at the dera of Ragho Saran Singh. In the morning she also did not see Ram Lachan, son of Ram Dhani, P.W. 5, Ragho Saran Singh or Ayodhya Singh at the spot. She had gone to the house of Dadan Pandey. She was unable to disclose the distance of dera of Dadan Pandey from the place of her hiding. She further admitted that she had not talked with any body at the dera of Dadan Pandey about this murder. She claimed that she had disclosed to the Investigating Officer about rain. She again stated that she did not remember whether she disclosed this fact or not to the Investigating Officer. She admitted

that on the 3rd day, when Kamlawati called her, she went to the dera of Ragho Saran Singh. A large crowd had assembled there and every one was trying to ask about the incident. She did not ask Dadan Pandey to lodge any report at the police out post. She did not ask even Ragho Saran and Ayodhya Singh to lodge any report. She admitted that none of the assailants had said that Kaushalya is also here to kill her. She admitted that she was not living with Deorati regularly.

10. From her testimony, it is apparent to us that she was not living permanently with Deorati. She had already left her husband's house and was living in some other village or with some other people at some different place. Previously she lived with her parents. For the first time, she made an attempt to explain the delay in sending Ram Lachan to P.W. 1, Kamlawati Singh, by introducing theory of rain from the morning of 29.10.1978, although this fact does not find place in her statement to the Investigating Officer. She had made no attempt whatsoever to get a first information report lodged at the police out post Sheopur Diar. This police out post is only 2 miles from the place of occurrence. She had services of P. Ws. 3 and 5 and Ragho Saran Singh and Ayodhya Singh available for this purpose. Yet failure to get the report lodged is a circumstance which renders not only her presence at the relevant time but also her version wholly doubtful. Her complete silence at the dera of Dadan Pandey regarding the incident also fortifies our conclusion. If the incident had taken place in her presence in such a high handed manner especially when the dera of Dadan Pandey comprised large number of houses, she would not have kept mum. Had she been there and had her property been usurped by the Appellants, she could not have been spared. It is her admission that none of Appellants told to kill her. Entire property of her stood transferred to her son-in-law is also an admitted fact. There was apparently no reason for her to be present at the scene of occurrence with Deorati deceased. Presence of any light at her hut was also doubtful. Non-recovery of any utensils and blood from the spot is also an important circumstance. Explanation that assailants returned to remove any trace of blood is wholly false. It appears to us an ingenuity of the prosecutor.

11. Now coming to the evidence of P.W. 3, we find that admittedly this witness was sitting in the hut of Ragho Saran Singh. He claimed that he heard the alarm at about 9 p.m. He further stated that he suffers from myopia and, therefore, he could not see who arrived there. He further admitted in examination-in-chief that he could not give the number of persons who arrived there. He further stated that some sounds were heard before the alarm, then he heard the report of gun shot. On the alarm, people started running away and he also ran away. Since he ran away, therefore, he had not seen anything. He stated that he alongwith the wife of Triyugi Singh, Kaushalya Devi, P.W. 2, concealed himself behind the bushes at some distance. In the morning, Kaushalya had gone to the dera of Dadan Pandey and he had gone to inform Kamlawati. He started at about 10 a.m. He could not go earlier because it was raining. On this point, he is contradicted by the testimony of P.W. 2. According to her it rained till the afternoon and this witness was sent to Kamlawati at about 3.30 p.m. He stated

in his testimony that he had informed Kamlawati that her mother was murdered. On receiving this information, Kamlawati started crying. Persons from the vicinity collected there. He came back to his house on that very day. Kamlawati told him that she will come next morning. Next day he had gone to the house of Kamlawati again then Kamlawati started with him in the afternoon for the dera of Ragho Saran Singh. This witness was declared hostile and was cross-examined by the prosecution. He claimed that the dead body of Deorati was searched by the Investigating Officer and the people of the vicinity but it could not be recovered. He admitted that in the year of occurrence, land was given to him in the month of Kartik. No land was allotted to him before the rains. He stated that about 1-1/2 hours after his talks with the deceased, he heard the gun shot report and after hearing gun shot report, they ran away. He admitted in cross-examination that he did not hold any talks with Kaushalya, P.W. 2, regarding lodging of the first information report. He further stated that he did not go to the dera of Ragho Saran Singh after murder. He further admitted that he had not talked to any person before speaking to Kamlawati. No one else was present when communication was made to Kamlawati. He did not speak to any one till the arrival of the Investigating Officer. He admitted that police out post from the dera of Ragho Saran Singh is about one mile. He admitted that a Sub-Inspector was also present at the police out post.

12. Thus from his testimony, following facts are revealed. Firstly that he did not identify the assailants. He was declared hostile on this point. He was admittedly sitting in the hut of Ragho Saran Singh. There was no light admittedly there. P.W. 2 also did not disclose presence of any light except torch of Ayodhya Singh outside her hut. He had further stated clearly that on hearing the gun shot report, persons present at Ragho Saran's dera ran away. He also ran away and concealed himself at some distance in the patal. He had not disclosed about the incident to any person either on the morning or at Nai Basti except to Smt. Kamlawati. These circumstances negative the presence of this witness. Admittedly he claimed that he was cultivating the land belonging to Deorati and also land belonging to Kaushalya. According to admission of Kaushalya, P.W. 2, she herself had executed a sale-deed in favour of her son-in-law before the incident. She had admitted that the dera of Ram Lachan is about 200-300 steps from the dera of Ragho Saran, therefore, also the presence of this witness in the hut of Ragho Saran at 9 p.m. after his talks with Deorati is rendered doubtful. He could rush to the spot from his dera also. He failed to disclose who were the assailants of Deorati. He had not even stated that Deorati was done to death. Thus his testimony is of no help to the prosecution and deserves to be discarded.

13. So far as Ayodhya Singh, P.W. 4, is concerned, he does not stand in any better position. He is a teacher in Gosaipur, district Bhojpur, Bihar. He has to travel 34-35 kms. in order to go to his school. There is no direct facility either by transport or by train for him from his residence. He has to go to Buxer. His statement with regard to the fact that his school on the day of occurrence was of morning shift is highly doubtful. His house is at some distance from the dera of

Ragho Saran. He claimed that on the date of occurrence, he came back to his house from his school. His presence on the spot on 28.10.1978 appears to us highly doubtful. There was no need for him to come back on 28.10.1978. From his cross-examination, para 3, it is very clear that he casually used to visit his house, otherwise he used to stay in the village where the school is. 30th and 31st October were going to be holidays as such his coming back on 28th cannot be accepted in the circumstances. He is unable to give out the boundaries of that field that he was cultivating belonging to deceased as well as Kaushalya. Although he claimed that he is cultivating northern part of plot No. 606. He was unable to give out the total area of this plot. He admitted that complete settlement in his favour had not taken place on the day of occurrence. Some talks alone were initiated. He further stated that neither lagaan was settled nor the field to be given to him. These talks were deferred for the next morning. He claimed that on 30th October he stayed at the house of Ram Bilas Singh. According to him Kaushalya and Ram Lachan ran away from the spot but Ors. remained at the dera. This is contrary to the statement of P.W. 3. They did not decide to lodge any report at the police out post. He had also gone to the dera of Ragho Saran Singh after 20-25 minutes. There is absolutely no corroboration from any source forthcoming that he stayed at the dera of Ram Bilas. He had not shown to Investigating Officer the place where he was sitting. He further stated that till he remained there, none of the assailants returned to the dera. He stated that he could not see where the shot hit Deorati. He did not remember whether any light was there in the hut of Deorati. He admitted that 5-6 persons assembled near the dera of Ram Bilas. He had told them about this incident but they too had not suggested for any F.I.R. at the police out post. He made no effort to trace out Kaushalya Kunwari. He did not speak to any witness before the arrival of the Investigating Officer. He claimed that he had left for his school on 1st November. According to P.W. 2, the Investigating Officer had recorded their statement on 1st November, therefore, he cannot go on 1.11.1978. He admitted that the dera of Ragho Saran Singh is about 4-5 miles from his house.

14. From the evidence of this witness, it transpires that he is supporting the prosecution story on account of his being interested in getting their land. He is deposing on account of pressure of Udai Narain Singh as has already been admitted to P.W. 2, Kaushalya, that for the last 4-5 months from the occurrence, she is living with her parents. It indicates clearly that Udai Narain Singh had ousted her or she has withdrawn herself from the property affairs. Testimony of this witness, thus, cannot be relied upon regarding his presence and any talks with Kaushalya Devi, P.W. 2, and the deceased on the night of incident.

15. Even the statement of Ram Lachan, son of Ram Dhani, P.W. 5, also cannot be given any credence. This witness had also admitted that he did not have any talks with anybody in the vicinity of the place of occurrence or elsewhere about this incident. He stated that he had not seen any light with the assailants nor he entered into any talks with them. He claimed that they ran away from the spot soon after the coming of accused persons. They were having no conversation

though they were present in the hut of Ragho Saran. They were just sitting there. He claimed that no blood was lying there but a gunshot report was heard by him. They had removed the dead body. Ayodhya Singh ran away before the assailants removed the dead body. He did not say that blood had fallen on the earth. He stated that the assailants had not returned in his presence after taking away the dead body. According to him, Kaushalya Devi had shouted meekly. He also did not raise any alarm. According to him, no people from the vicinity reached the place of occurrence. He had gone to the dera of Ram Lachan, son of Raghuveer. The dera is near the dera of Ram Bilas in the east-south. There was no male person at his dera so he did not discuss the incident with anyone. Daughter-in-law of Ram Lachan was inside the house. According to him, the dera of Ram Bilas is about 400-500 lathas from Ragho Saran's dera. He had left for his house from the dera of Ram Lachan at about 8-9 a.m. on the next day. He did not disclose anything even at his house. His statement was recorded by the Investigating Officer after 20-25 days.

16. So far as witness of recovery, P.W. 6, Triloki Nath Singh, is concerned, he is a close relative of Kaushalya Devi. The deceased Deorati is his buwa. Place of occurrence is at a distance of 6-7 miles from his house. He had come to the dera of Ragho Saran on the day of Deepawali. He reached there at about 12 noon. Any recovery of cartridge was made on 31.10.1978 is highly doubtful. In the circumstances of the case, recovery is not acceptable to us. It is incomprehensible that the presence of it was not noticed by any witness in the last 3-4 days before it was recovered though a number of persons in the meantime had visited the place. According to the evidence of this witness, the spent cartridge was recovered from outside the hut. Thus, the recovery of the spent cartridge also cannot be accepted as true by us. It was planted to strengthen and make the sordid drama look spectacular and positive.

17. There is no entry in the General Diary of police outpost for despatch of the spent cartridge to P.S. Kotwali. Gun of Devendra Pal Singh was recovered on the same day but it had not been sent for the comparison with the recovered spent cartridge. The Investigating Officer had admitted that Kaushalya Devi has not disclosed to him that Ayodhya Singh was having a torch and that torch was flashed by him. The fact of rainfall was also not disclosed by her. No signature on the cover, in which the spent cartridge and gun were sealed, were made by any witness of recovery. He has admitted that the residential house of the Appellants are in Nai Basti and their dera is near the place of occurrence. He further admitted that he had not visited Nai Basti on 31.10.1979 nor he had searched the Appellants there. He admitted that he had gone to the place of occurrence via Nai Basti. It was suggested to him that recovery memo of cartridge was manufactured by him. He admitted that Ext. Ka. 22 does not bear signature of Kamlawati. It also does not bear signatures of the witnesses although their names are written there. Thus, in our opinion this memo for the recovery of gun of Devendra Pal Singh and spent cartridge, was positively manufactured by the Investigating Officer to bolster the prosecution case. In the circumstances we do

not find any force in the submissions of the learned Counsel for the State that the delay in lodging the F.I.R. could not be used to the benefit of the Appellants as the delay has been reasonably explained by the witness, P.W. 1. We have already discussed above that the delay in lodging the F.I.R. was purposive and deliberate. The conduct of the witnesses, especially P.W. 1, is deplorable, most unnatural and unlike a daughter and it leaves no room for any doubt in our mind that they are deposing on account of their being partisan though they had no plausible reason to be present there. Kaushalya Devi, who has already executed a sale-deed in favour of Udai Narain Singh, her son-in-law could not be present there. After the sale-deed it was Udai Narain Singh who must be looking after the interest of this witness. Kaushalya Kunwari has also left her place of residence in Nai Basti and settled at her parents house for the last some months. This further proves that she had withdrawn completely from the affairs of her property. Kamlawati Devi's claim to be living with the deceased in order to look after her does not inspire any confidence. There is no evidence worth the name that she was looking after her mother's property or assisting her. She is living with her husband, who is a teacher and with her children independent of her mother it appears. She was apparently running a school to win her livelihood than looking after the mother. If Kaushalya Kunwari would have been there, the assailants would not have spared her as well. If the light would have been there, she would have easily been identified and killed. Enmity was equally existing against her also.

18. For the discussions made above, no reliance can be placed on the testimony of the witnesses. From the testimony of P. Ws. 1, 2 and 3, it becomes very clear that the first information report of this incident was lodged after due deliberation and consultation. The probability that the deceased being old lady may have died a natural death and her body was cremated quietly and stealthily. Her death was subsequently used to involve these accused persons to secure the land from their possession cannot be completely ruled out or that the lady is still alive and fake last rites were performed by preparing her putla. The unusual haste shown in the performance of her last rites without even waiting for any search of the body leads to such an inference. It was performed on 31.10.1978 and she left the dera for Nai Basti on the morning of 1.11.1978. Till then no search of her mother's body either in the river or in the fields or adjoining areas was held. There is no evidence that any message was sent from P.S. Kotwali to any neighbourhood police station to locate a dead body of an old woman bearing fire arm injury. Strange, lazy, and no urgency attitude of the police in starting the investigation is astounding. It was started almost 20 hours after the registration of the case. Why case was transferred to Kotwali despite Chauki Sheopur Diar being a reporting out post is not explained at all. A Sub-Inspector was also in posting there. It is apparently to explain this abnormal delay in investigation it had been transferred to P.S. Kotwali. Presence of a Head Constable and two constables at the spot and complete absence of any blood at the spot or anywhere else in the entire area is yet another missing link in the perfection of this drama of murder.

Total absence of any evidence that any combing of the area was made for the accused or deceased leaves the story shrouded in mystery. The investigation was commenced in the evening and after the inspection and recovery of a spent cartridge was closed for the day. Failure to examine a single witness of the locality including Ragho Saran is a very important circumstance sounding a death knell in the authenticity of this murder even having taken place. Raghav Saran is claimed to have colluded with accused persons but no evidence was brought on record in support of this. He is admittedly an inimical person, the ladies could not have stayed at his dera. Conduct of all the witnesses, in holding back the truth close to their chests, is most unnatural until the arrival of the Investigating Officer. It is such a thickly populated area that a murder of this magnitude must not have gone wholly unnoticed.

19. In these circumstances, it is wholly impossible to accept the testimony of these five witnesses against these Appellants as truthful, honest, reliable and confidence inspiring so as to uphold their convictions. As a matter of fact prosecution has not proved successfully even the factum of murder of Smt. Deorati.

20. In the above said circumstances, this appeal is allowed. The conviction of the Appellants and the sentences awarded to them for the charges for which they were tried and sentenced are hereby set aside and they are acquitted. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged.