

(2011) 11 UK CK 0029

In the Uttarakhand High Court

Case No : Criminal Reference No. 01 of 2011 and Criminal Appeal No. 75 of 2011

State of Uttarakhand

APPELLANT

Vs

Imtiyaz alias Raj Singh alias Rahul Verma and others

Israel alias Gudda Vs State of Uttarakhand

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 313, 366, 367(1), 368
Penal Code, 1860 (IPC) — Section 120B, 216A, 224, 225, 225B

Citation : (2011) 11 UK CK 0029

Hon'ble Judges : Barin Ghosh, C.J;U.C. Dhyani, J

Bench : Division Bench

Judgement

U.C. Dhyani, J.—These two references have been made u/s 366 of the Code of Criminal Procedure, 1973 by the Sessions Judge, Almora, for affirmation of the sentence of death awarded by said court against the convicts / appellants Imtiyaz, Rajendra Singh, Kailash Singh and Harish Singh u/s 302 read with Section 120-B of the Indian Penal Code, 1860. Aforesaid convicts / appellants along with Naushad and Israel have been further convicted u/s 394 of I.P.C. and sentenced to rigorous imprisonment for a period of seven years and also directed to pay fine of Rs. 5,000/- each. Convicts / appellants Imtiyaz, Rajendra Singh, Naushad and Harish Singh are also convicted u/s 25 of the Arms Act and sentenced to rigorous imprisonment for a period of three months and directed to pay fine of Rs. 1,000/- each. Convicts / appellants Imtiyaz, Rajendra Singh, Kailash Singh, Harish Singh, Naushad and Israel are further convicted u/s 224 of I.P.C. and sentenced to rigorous imprisonment for a period of one year. All the six have also been convicted u/s 225 of I.P.C. and sentenced to rigorous imprisonment for a period of five years and directed to pay fine of Rs. 5,000/- each. They have been further convicted u/s 225-B of I.P.C. and sentenced to rigorous imprisonment for a period of three months vide impugned judgment and order dated 31.03.2011, passed by Sessions Judge, Almora, in Sessions Trial No.

33 of 2005. All the sentences are directed to run concurrently by the trial court. Against said order, appeals have also been filed by the convicts.

2. Heard learned counsel for the parties and perused the lower court record.

3. It is a case of murder of three police constables. Prosecution story, in brief, is that convicts / appellants Rajendra Singh and Harish Singh were lodged in District Jail, Almora. On 15.01.2005, the two were on transit remand in connection with their date fixed in the court of Judicial Magistrate, Ranikhet and were being escorted by Constables Girish Chandra, Mahesh Singh, Sanjay Kumar and Paras Singh. The three constables were having two service rifles, two handcuffs, one rope and a stick with them. As Constable Paras Singh was not feeling well, he alighted from the vehicle before they could reach the court. After returning from the court, they hired a taxi, two other persons who were known to convict Rajendra Singh also boarded the same taxi and they proceeded for Almora. Inside the taxi, in the first seat driver and 2-3 other passengers were there, in the middle seat the three constables boarded, and in the back seat, convict / appellants Rajendra Singh, Harish Singh and two other persons were sitting. On his way to Almora, near Kosi at Querali, four persons who were sitting on the rear seat fired shots on the constables. Two of the constables got injuries. When the third constable noticed shots being fired, he tried to apprehend them, but he too received gunshot injuries in said incident. In the meantime, the driver stopped the vehicle. In the scuffle the pistol of one of the accused fell down in the vehicle. The accused threatened the driver and forced him to search for the missing pistol. While he was searching for the pistol, the accused picked up the keys of the vehicle along with two rifles, and fled from the scene of occurrence boarding another vehicle which was following the hired taxi. Driver of the taxi immediately took the vehicle to the Base Hospital at Almora, where two of the constables were declared brought dead, and the third breathed his last in the hospital. On receiving the information, Station House Officer, Almora rushed to the hospital and took the vehicle in his possession. P.W. 15 Sr. Sub Inspector Rami Ram prepared the inquest report and recovered one 9 mm. pistol from underneath the seat. He also prepared the recovery memo in this regard. Driver of the vehicle Devendra Singh lodged the FIR of said incident on the very day i.e. 15.01.2005. In the FIR, he stated that he is driver of Tata Sumo bearing Registration No. U.P. 28-01 / 790. On 15.01.2005, when he was standing on Ranikhet Taxi Stand, waiting for the passengers to be ferried from Ranikhet to Almora, three police constables carrying two rifles, and two persons in private dress came there. The two were introduced as accused. Meanwhile, two other persons came there and boarded the vehicle. The three police constables boarded in the middle seat. Accused and two other persons boarded on the back seat. Three passengers along with driver boarded the front seat. At about 02:00 P.M., 4 kms. ahead of Querali towards Kosi, he heard sound of shots being fired in the vehicle. He immediately stopped the vehicle and saw two constables in pool of blood. The persons sitting on back seat were trying to snatch the rifles of the constables and the third constable was jostling with them. In the scuffle,

pistol from the hands of a person whom the others were addressing as Rajendra, fell down. Meanwhile, the third constable was also shot at by them. They also took the driver on gunpoint and asked him to search for the missing pistol. At the time of alighting from the vehicle, they took the service rifles of the constables with them along with keys of the vehicle. According to the driver he immediately took the vehicle to base hospital, where two constables were declared brought dead and the third was on deathbed. The scribe of the FIR has stated that he can recognize the persons who fired at the police constables, as he has seen them. The pistol was also recovered on his disclosure underneath the seat of the vehicle. On the basis of said report, Patwari of patwari circle Querali, initially registered Crime No. Nil of 2005, relating to offences punishable u/s 302, 307 and 394 of I.P.C. on 15.01.2005 against Rajendra and three unknown person. A separate Crime was also registered by Patwari Querali, relating to offences punishable u/s 224, 225, 225-B of I.P.C., on 15.01.2005, against Rajendra Singh, Harish Singh and others. The investigation of the case also proceeded. The police took the dead bodies of the three constables in their possession, and prepared inquest reports of Girish Chandra, Mahesh Singh and Sanjay Kumar Ext. Ka-16, Ext. Ka-21 and Ext. Ka-25 respectively. The police further got prepared other necessary papers and sent the three dead bodies for postmortem examination. After recovery of a 9 mm. pistol with magazine and six live cartridges with three empty cartridges from the vehicle, recovery memo in this regard was prepared on 15.01.2005. On the same day i.e. 15.01.2005, the service rifle 303 bore No. Z04065 was recovered by Inspector K.S. Hyanki from the possession of driver of taxi No. U.P. 01 / 4302, and recovery memo of the same was prepared on the same day. The other rifle No. 09264 butt No. 173 was recovered from the possession of Patwari circle Querali. The accused namely Kailash Singh, Naushad, Imtiyaz, Israel, Rajendra Singh were arrested separately from different places. A country made revolver 315 bore with two cartridges of 315 bore were recovered from the possession of accused Naushad. From accused Imtiyaz one pistol, two magazine automatic with 20 cartridges were recovered. Total 26 cartridges were recovered from his possession. Accused Israel was arrested in connection with Crime No. 707 of 2004 u/s 394/395/397/120-B and 216-A of I.P.C. by Jabalpur police. During his arrest at Jabalpur he confessed before police about crime committed by him at Almora with the help of his associates. On receiving said information from Jabalpur police he was brought to Almora to face trial. Accused Harish Singh was arrested by Delhi police. He made a confessional statement before the Delhi police about crime committed by him at Almora along with other accused. On his disclosure statement on 18.02.2005, Delhi police recovered two pistols with magazines and a third pistol, all from two different places. According to his disclosure statement, the pistols have been used in the crime of murder. The Delhi police handed accused Harish Singh to the Uttarakhand police. On 28.02.2005 on his disclosure handcuffs, cotton rope and blade were also recovered. After getting forensic report, and on completion of investigation, prosecution submitted charge sheet relating to offences punishable u/s 302/120-B and 394 of I.P.C. A separate charge sheet was filed relating to offences

punishable u/s 224/225 and 225-B of I.P.C. Also, a separate charge sheet was filed in respect of offence punishable u/s 25 of Arms Act. The accused Kailash Singh, Naushad, Imtiyaz, Israel and Rajendra Singh were charged for the offences punishable u/s 302/120-B/394/224/225/225-B of I.P.C. Accused Rajendra Singh, Imtiyaz, Naushad were further charged for the offence punishable u/s 25 of the Arms act. All of them pleaded not guilty and claimed to be tried. After completion of investigation, prosecution submitted charge sheet relating to offences punishable u/s 302/120-B and 394 of I.P.C. against accused Harish Singh. A separate charge sheet was filed relating to offences punishable u/s 224/225 and 225-B of I.P.C. against him. Also, a separate charge sheet was also filed in respect of offence punishable u/s 25 of Arms Act against accused Harish Singh. Accused Harish Singh was charged for the offences punishable u/s 302/120-B/394/224/225/225-B of I.P.C. He was further charged for the offence punishable u/s 25 of the Arms act. He also pleaded not guilty and claimed to be tried.

4. When proceedings of trial started, evidence was recorded in Sessions Trial No. 33 of 2005 State vs. Harish Singh. He was granted pardon and he accepted to be an approver in the case, but when he resiled from the conditions laid down in his pardon, his file was separated and file of other accused Rajendra Singh, Naushad, Imtiyaz and Kailash Singh was consolidated and evidence was recorded in Sessions Trial No. 36 of 2005, while the evidence against accused Harish Singh was recorded in Sessions Trial No. 33 of 2005 after separation of his trial. In the file of Sessions Trial No. 33 of 2005, when accused Harish Singh was examined as approver, his evidence was recorded as P.W.2, but when he resiled his evidence was excluded.

5. To prove its case, prosecution got examined P.W. 1 Rajendra Singh (examined as P.W.4 in S.T. No. 33 of 2005), P.W.2 Dr. Pradeep Kumar Upreti (examined as P.W.3 in S.T. No. 33 of 2005); P.W.3 Dhurav Prakash Tripathi (examined as P.W.1 in S.T. No. 33 of 2005); P.W.4 Vinod Vaishnav (examined as P.W.2 in S.T. No. 33 of 2005); P.W.5 S.I. Trilok Ram (in both S.T.); P.W.6 Amar Chand Sharma; P.W.7 Suresh Chandra; P.W.8 Chandra Singh Bisht; P.W.9 Suresh Chandra; P.W.10 Constable Dalip Kumar; P.W.11 S.I. Uttam Singh; P.W.12 Head Constable Tej Singh (examined as P.W.8 in S.T. No. 33 of 2005); P.W.13 Constable Hem Chandra Tiwari (examined as P.W.9 in S.T. No. 33 of 2005); P.W.14 Devendra Singh (examined as P.W.10 in S.T. No. 33 of 2005); P.W.15 Rami Ram (examined as P.W.11 in S.T. No. 33 of 2005); P.W.16 Prakash Chandra; P.W.17 Devendra Prasad (examined as P.W.13 in S.T. No. 33 of 2005); P.W.18 S.I. Girish Chandra (examined as P.W. 14 in S.T. No. 33 of 2005); P.W.19 Constable Paras Singh (examined as P.W.15 in S.T. No. 33 of 2005); P.W.20 Amar Chandra Sharma; P.W.21 Kundan Ram; P.W.22 Prakash Chandra Tamta; P.W.23 Inspector Kishan Singh Hyanki (examined as P.W.13 in S.T. No. 33 of 2005); P.W.24 S.O. Rashid and P.W.25 Prakash Chandra Tamta. Besides this, in Sessions Trial No. 33 of 2005, prosecution also got examined P.W.6 Head Constable Jitendra Singh; P.W.7 Sushil Kumar; P.W.16 Naresh Kumar and P.W.17 Arvind Dangwal.

6. The oral and documentary evidence was put to the accused u/s 313 of Cr.P.C., in reply to which they alleged the same to be false and stated that they have been falsely implicated in the crime. They also denied the prosecution version relating to murder of three constables. About the evidence of approver Harish Singh, the accused told that they have no knowledge and his statement is not correct, and denied the allegations in the evidence of accused Harish Singh. Accused Harish Singh was also examined u/s 313 of Cr.P.C. He admitted that pardon was granted to him on 15.04.2006. He accepted the entire prosecution story, but denied the recovery made on his behalf by Delhi police. However, he admitted that on his disclosure on 28.02.2005, handcuff, rope, blade and wrapper were recovered. Showing his innocence he stated that the other persons committed the offence and he was bound to run away with them. He also stated that Rajendra Singh, Kailash and Imtiyaz were the persons who committed murder. Narrating entire scene of occurrence he told which of the accused killed whom. However, no evidence in defense was adduced on behalf of the accused. The trial court, after hearing the parties, found that prosecution has successfully proved charges, as mentioned above, against the accused and after conviction, sentenced them accordingly.

7. Learned Sessions Judge, Almora has submitted these two references to this Court u/s 366 of the Cr.P.C. We have heard learned counsel for the convicts / appellants at length, and have gone through the entire evidence on record. At the very outset, we do not think that a fresh enquiry should be made into or additional evidence taken upon any point bearing upon the guilt or innocence of the convicts, as desired u/s 367(1) of Cr.P.C.

8. Proviso to Section 368 of Cr.P.C. stipulates that no order of confirmation shall be made under this Section until the period allowed for preferring an appeal has expired, or if an appeal is presented within such period, until such appeal is disposed of.

9. It may be noted here that no appeals have been preferred by the convicts Rajendra Singh and Kailash Singh, whereas appeals have been preferred by rest of the convicts.

10. Therefore, no order of confirmation should be made until the appeals are disposed of. We will be dealing with the appeals preferred by the convicts in the second part of the judgment. In this first part, we are confronted with the vital question whether it is one of the rarest of rare cases in which death penalty should be imposed?

11. We proceed on the premise as if Kailash Singh and Rajendra Singh have also preferred appeal. We have heard their learned counsel on REFERENCE made by learned Sessions Judge, Almora.

12. Whether death penalty should be imposed or imprisonment for life is an adequate sentence has triggered a debate throughout the globe all these years. Human Right Activists have been for imprisonment for life and abolition of death

penalty, whereas the protagonists of those who have lost their sole bread earners have been propagating and advocating for death penalty. These are two swings of the pendulum which are to be measured by the courts while imposing sentence. We have tried to encapsulate the decisions which have been rendered by the Supreme Court of India and Indian High Courts after independence in this regard. A summary of the same is being forwarded hereunder:

An accused found guilty of murder can be punished only in one of two ways namely (i) by death, (ii) by imprisonment for life. Life imprisonment is the minimum substantive sentence and the peremptory provision of section 302 of I.P.C. cannot be disregarded. The question of punishment under this section is really not one of the adequacy of the punishment, but is one of alternative punishment. The normal rules of adequacy of sentence will not apply because there is no latitude given by this section in regard to adequacy of sentence.

While murder in its aggravated form and in absence of any extenuating factors connecting with crime, criminal or legal process, still is condignly visited with death penalty, a compassionate alternative of life imprisonment in all the other circumstances is gaining judicial ground.

The proper exercise of the discretion in respect of the punishment, as in all cases of exercise of discretion, is exercised judicially on a proper consideration of all the relevant facts and circumstances of the case keeping in view the broad objective of the sentence. A sentence of imprisonment for life can only be substituted if the facts justify the non-imposition of the extreme penalty of the law.

The rule that normal sentence for the offence of murder is life imprisonment should be observed both in letter and spirit. Death sentence should be imposed in very extreme cases.

Extreme Penalty of death sentence need not be inflicted except in grave or cases of extreme penalty. The Court is required to take notice of the manner, the nature of allegation and the magnitude of crime. Imposition of death penalty is exception rather than a rule, and further special reasons must be given.

On the conviction with the help of Section 34 of I.P.C. for murder the liability being a constructive one, a sentence of death would not be appropriate.

The extreme penalty of death is to be awarded to a convict only in those discerning few cases where the murder committed by him is shocking, brutal diabolical and revolting; the tremors of which are felt not only in the family of whose member is killed but are felt far and wide. The said murder should create not only a problem of law and order but a problem of public order where the even tempo of life is disturbed and the entire machinery of the society is thrown out of gear.

The sentence of death should be reserved for the rarest of rare cases after a due consideration of both mitigating and aggravating circumstances. What

circumstances bring a particular case under the category of rarest of rare cases vary from case to case depending upon the nature of the crime, weapon used and the manner in which it is perpetrated etc.

The number of persons murdered is a consideration but that is not the only consideration for imposing death penalty unless the case falls in the category of "rarest of the rare cases". The courts must keep in view the nature of the crime, the brutality with which it was executed, the antecedents of the criminal, the weapons used etc. It is neither possible nor desirable to catalogue all such factors and they depend upon case to case.

The murder of Smt. Indira Gandhi, the then Prime Minister, by Security Guards was a rarest of rare case and awarding of death sentence to assassin and his conspirator was found just and proper.

13. The following cases may also be cited for the purpose of elucidating whether a particular case falls under rarest of rare case so as to attract death penalty, or is it otherwise:

a) Subhash Ram Kumar Bina alias Vakil vs. State of Maharashtra, AIR 2003 SC 249.

b) Kehar Singh and Others Vs. State (Delhi Administration), .

c) State of Tamil Nadu, through Superintendent of Police (CBI / SIT) vs. Nalani, AIR 1999 (5) SC 2640.

14. In the instant case no proper security was provided by the administration. On the fateful day, the police personnel took the accused persons for production before the court at Ranikhet in a private jeep, which was carrying persons from public also. Either a jail vehicle or a police van should have been provided to the police personnel or the police personnel should have hired a vehicle exclusively for them and the accused persons, who were required to be produced before the court at Ranikhet. Unfortunately, this was not done. Hence, we are of the considered opinion that the instant case does not fall under the category of rarest of rare cases, and therefore, the death sentence awarded to Imtiyaz, Rajendra Singh, Kailash Singh and Harish Singh should not be confirmed. Whether the prosecution has been able to prove the cases against the convicts / appellants under these sections, that aspect of the matter will be dealt with by this court in the following part of judgment. We have simply expressed our opinion on the point whether it is a fit case in which death sentence should be confirmed or not, in case the conviction against the convicts / appellants sustains.

We, accordingly, refuse to confirm the death sentences u/s 368(a) of the Code of Criminal Procedure, 1973.

15. Appeals have been filed by the convicts Imtiyaz alias Raj Singh alias Rahul Verma, Harish Singh, Naushad alias Rinku alias Rohit and Israel alias Gudda. Convicts Rajendra Singh and Kailash Singh have not preferred any appeal till

date. We have however perused the entire record and considered the arguments which have been advanced on behalf of these convicts Rajendra Singh and Kailash Singh for commutation of death penalty into life imprisonment [in Criminal Reference]. This Court has dealt with this aspect of the matter in the first part of this judgment. This Court has come to the conclusion that it is not a fit case in which death sentence should be confirmed. Accordingly, we pass the following sentence in respect of convicts Rajendra Singh and Kailash Singh u/s 368(a) Cr.P.C. :

Accused / convicts Rajendra Singh and Kailash Singh are sentenced to undergo imprisonment for life. They are also directed to pay a fine of Rs. 5,000/- (five thousand), in default of which each one of them shall further undergo rigorous imprisonment for a period of one year.

16. The matter relating to the accused Rajendra Singh and Kailash Singh is thus disposed of with the observation that since they have not preferred any appeal against their conviction in respect of offences proved against them, we need not comment on the legality of those convictions in the absence of any appeal. We have given our findings only in respect of the Reference of Death Sentence, which has been negated by us and substituted by another sentence warranted under law.

17. Now we take up the case of convict Harish Singh who has been convicted for the offence punishable u/s 302 read with section 120-B IPC; for the offence punishable u/s 25 Arms Act, sections 394, 224, 225 & 225B IPC (in S.T. Nos. 33 of 2005, 34 of 2005 and 35 of 2005).

Let us see what is in store for him?

18. When the trial against the accused Harish Singh began, he was granted pardon and he was approver. But when he resiled from the conditions laid down in his pardon his file was separated from the file of other accused. As many as 18 witnesses were got examined on behalf of the prosecution against the present accused Harish Singh.

19. P.W.1 Dhruv Prakash has stated in his statement that he had handed over his photocopy of his ID and his two photographs to Varun Bisht, who in turn, handed over a new SIM. That SIM was not activated. In the month of January, 2005 he came to know that the SIM which was being used by him was not actually his SIM. Varun Bisht provided his SIM to some other persons. He came to know at the Police Station that his SIM was being used by some other persons.

In the cross examination P.W.1 Dhruv Prakash has said that his SIM card was being used by the accused Harish Singh.

20. P.W.2 Vinod Vaishnav has said that Panchayatnama of Mahesh Singh and Sanjay Kumar were prepared in his presence. He has signed over the Panchayatnama.

21. P.W.3 Doctor Pradeep Kumar Upreti has conducted the post mortem of all the three deceased.

He has proved the post mortem report of Constable Sanjay Kumar (Ext. Ka-1). Post mortem report of Constable Girish Chandra as Ext. Ka-2 and that of Constable Mahesh Singh as Ext. Ka-3.

22. P.W.4 Rajendra Singh was the driver of Jeep No. UP 02D / 6339 on the fateful day. He said that on 15.01.2005 at 9:30 he went to Ranikhet from Almora. 3 police personnel boarded in his Jeep. Two were having rifles. There were two accused (and 2-3 other passengers). He said that they were talking to each other in such a way that they were known to each other. A person who was with the accused paid him the fare which was Rs. 210/-, although he had asked for Rs. 350/-.

In his cross-examination P.W.4 Rajendra Singh stated that when he went from Almora to Ranikhet on 15.01.2005, apart from Police personnel and accused, two other passengers were also there but he does not recognize anybody.

23. P.W. 5 SI Trilok Ram in his examination in chief has said that on 15.01.2005 he was posted as Line Moharrir at Police Lines, Almora. Accused Rajendra Singh and Harish Singh were to be produced before Judicial Magistrate, Ranikhet. On that day four constables were sent on duty. Later on he got the information that the Police personnel who brought the accused to Ranikhet had been killed by miscreants. It is to be noted here that he has not seen the occurrence.

24. P.W.6 Head Constable Jitendra Singh is the witness of recovery of a country-made pistol and two cartridges from the possession of the accused. He has proved chik FIR (Ext. Ka-4), country-made pistol (Ext. 1) and three cartridges (Ext. 2). The accused Harish Singh was arrested and he confessed that on 15.01.2005 when he was going from court to jail, accused Rajendra Singh was with him in handcuffs and they killed three police personnel. He disclosed that he can get the weapon recovered which was used in the murder of three police constables. After that they went to the court. Police remand was obtained. He was brought back to Almora.

In his cross-examination he has said that the accused Harish Singh was apprehended near Haryana Paneer Bhandar. The country made pistol, at the time of recovery, was loaded. He has however, admitted that no public witness was called.

25. P.W.7 Head Constable Sushil Kumar is also the witness of recovery of country made pistol and two cartridges from the possession of accused Harish Singh. S.I. Ritesh Kumar also joined them in the meantime.

26. P.W.8 Tej Singh was posted at Police Line, Almora on 15.01.2005. He handed over riffles, cartridges and rope to the constables who were to take the accused to the court of Judicial Magistrate, Ranikhet. He entered the same in the G.D.

27. P.W.9 Hem Chandra Tiwari was posted as Clerk-Constable at Police Station, Almora on 15.01.2005. He prepared chik FIR (Ext. Ka-8) on the basis of a written report handed over by Devender Singh. He has also proved corresponding entry in the G.D. (Ext. Ka-9). He also proved written complaint (Ext. Ka-5) given by Head Constable Trilok Ram and FIR (Ext. Ka-10) lodged on this basis along with a copy of G.D. (Ext. Ka-11).

28. P.W.10 Devendra Singh was the driver of the vehicle No. UP 28 / 0719 which was hired by police constables alongwith two accused on 15.01.2005 at Ranikhet and which proceeded from Ranikhet to Almora on the fateful day. Two accused were Rajendra Singh and Harish Singh. They were addressing two other persons Kailash and Imtiyaz. Three police personnel boarded in the middle seat, two accused and their companions boarded in the back seat. Driver along with other passengers were sitting in the first row. When he reached Quarali on way from Ranikhet to Almora, police personnel were shot. There was scuffle between Rajendra Singh and police personnel. When a woman who was sitting in the front seat cried, he stopped the vehicle. All the four persons who were sitting in the back seat were having small mousers in their hands. They ran away after snatching the riffles of police personnel and keys of the vehicle. He brought the injured constables to Base Hospital, Almora and got scribed a report (Ext. Ka-12).

This witness was subjected to cross-examination but nothing has come out in it in favour of the accused. His testimony is worth believing. He being the star witness, the entire prosecution story revolved around him. He has no enmity with the accused persons, nor any affinity with the police personnel. Nothing unnatural has come in the cross-examination of this witness. His testimony lends great credence to the prosecution story.

29. P.W.11 SI Ramiram was reader of S.P., Almora on 15.01.2005. He has prepared inquest report of constable Girish Chandra and signed panchayatnama (Ext. Ka-13), inquest report of constable Mahesh Singh & panchayatnama (Ext. Ka-18) and inquest report of constable Sanjay Kumar and his panchayatnama (Ext. Ka-23). He has proved some other documents also.

30. P.W.12 Prakash Chandra was posted as Munsarim Reader in the court of Judicial Magistrate, Ranikhet. On 15.01.2005 the accused were present in the court and obtained their signatures on the file. Remand was granted to the accused Harish Singh and Rajendra Singh. There is no dispute about the judicial custody of these two under trials.

31. P.W.13 Devendra Prasad was posted as Jail Warden in District Jail, Almora. On 15.01.2005, three constables came to jail and signed in the entry register. Their rawangi was entered on the same day at 9:45 pm but the accused Harish Singh and Rajendra Singh were not produced in the evening at District Jail, Almora because they ran away from the custody.

32. P.W.14 Girish Chandra was posted as malkhana moharrir at Malkhana Ranikhet who was also doing duty of court moharrir on 15.01.2005. He had seen

the friends of accused in the court compound and they were Kailash, Imtiyaz and Naushad.

33. P.W.15 constable Paras Singh has deposed that he was posted at Police Line, Almora. On 15.01.2005, three constables were deputed to take the accused Harish Singh and Rajendra Singh for remand at Ranikhet. Friends of Harish Singh and Rajendra Singh met him outside the jail. They were introduced as Kailash Singh, Naushad, Imtiyaz and Israel. This witness backed out on way to Ranikhet, as he was suffering from severe stomachache.

34. P.W.16 S.H.O Naresh Kumar is the investigating officer of case u/s 25 Arms Act against accused Harish Singh. Accused Harish Singh confessed his crime before S.H.O. Naresh Kumar and narrated the entire story to him. He is an important witness to the recovery of incriminating articles on the disclosure of accused Harish Singh. It makes an interesting reading. He was cross-examined on behalf of the accused Harish Singh but nothing has come out in it which may upset the prosecution story.

35. P.W.17 Arvind Dangwal is also an important witness to the recovery of the incriminating articles on the disclosure and at the pointing of accused Harish Singh.

36. P.W.18 Inspector K.S. Hyanki has deposed many an important facts relating to this gruesome murder. He is the investigating officer who has submitted charge sheet u/s 302 /394/ 120 B IPC against the accused Harish Singh (Ext. Ka-16). He has also proved site plan (Ext. Ka-62) and charge sheet u/s 224, 225 as Ext. Ka-63. He has also proved permission obtained from District Magistrate for prosecution as Ext. Ka - 64. Inspector K.S. Hyanki has also proved charge sheet u/s 25 Arms Act against accused Harish Singh as Ext. Ka - 65.

37. We are satisfied with the reasons given by the learned trial court to infer that the accused persons hatched a criminal conspiracy to free the accused Rajendra Singh (& Harish Singh) from judicial custody. We are, however, unable to persuade ourselves whether there is sufficient evidence on record to convict accused Israel. P.W.23 Inspector K.S. Hayanki, I.O. has admitted that the name of Israel did not figure when he took the statement of prosecution witness Paras Singh. [The case of Israel has been dealt with separately by us]. Prosecution case as against the other accused is proved. This is a dare devil murder. Accused Kailash is the real brother of accused Rajendra Singh. The motive to commit the crime was to free him from judicial custody. Accused Harish Singh had earlier appeared as a prosecution witness in trial against him (but later on resiled from the condition of pardon), and therefore, there is change in the sequencing of prosecution witness in different files. So far as the lapses in the investigation are concerned, it has been observed by the Hon"ble Supreme Court time and again that the prosecution cannot be faulted for the mistakes committed by the investigating agency. In the post mortem report, bullets were found in the heads of all the three deceased policemen. Tattooing and blackening were found

present. It means that they were fired from a very close range, and so is the case of the prosecution, which gets complete corroboration from the medical evidence.

38. There is one and the only logical conclusion on the basis of the testimony of prosecution witnesses - and that is, accused Harish Singh has committed heinous crime. Initially he became approver but later on resiled and was again made accused. The entire conspiracy and the entire offence were committed in order to free accused Harish Singh and Rajendra Singh from custody. They were the beneficiaries to the crime. The driver who was carrying the accused persons, their friends and police constables in his vehicle has given a vivid description of these seven people. Normally the matter would have concluded soon after the evidence of driver was over, but for the legal intricacies involved in any trial. The crime committed by the accused has been established beyond reasonable doubt on the basis of prosecution evidence coupled with the statement of the accused recorded u/s 313 of Cr.P.C.

39. Many a facts central to the prosecution story are admitted (or if not admitted then they are proved by the prosecution). The witnesses who have been examined by the prosecution have been able to prove its story up to hilt. There is no reason to suspect the said story. Everything has been narrated by the prosecution witnesses in most natural way. There is consistency in the testimony of prosecution witnesses. There are no material contradictions so as to create suspicion in prosecution story. The learned trial court, in its elaborate judgment, has touched every aspect of the case. We need not repeat the same. We are inclined to agree with the findings of learned trial court (except the death sentence which has been awarded to the accused Harish Singh and others). We need not interfere in the judgment rendered against accused Harish Singh whereby he has been found guilty for the offences punishable under sections 302/120B IPC, 394 IPC, 224 IPC, 225 IPC and 225B IPC and section 25 Arms Act.

40. Now we take up the case of convict Imtiyaz alias Raj Singh alias Rahul Verma who has been convicted for the offence punishable u/s 302 IPC read with section 120B IPC; for the offence punishable u/s 25 Arms Act, sections 224, 225 & 225 B IPC (in S.T. nos. 36 of 2005, 37 of 2005 and 38 of 2005).

41. Let us see what evidence has been led by the prosecution against the accused -convict Imtiyaz ? The role assigned to accused Imtiyaz is that on 15.01.2005 when, accused Rajendra Singh and Harish Singh were lodged in District Jail, Almora and their date was fixed in the court of Judicial Magistrate, Ranikhet, four constables were given the duty of producing them before the court concerned and bringing them back to District Jail, Almora. Accused Imtiyaz along with three others met them at the gate of District Jail, Almora. One constable was known to them and he introduced these to the fellow constables. They hired a taxi up to Ranikhet. Two other persons who were known to one of the accused also boarded in the same taxi to Ranikhet. After their production before the court concerned at Ranikhet, they all were returning to District Jail, Almora. Two

persons who had boarded with the accused persons from Almora also accompanied them to their return journey. In the return journey in the vehicle carrying the accused, there were three compartments for the passengers. In the front line driver and 2-3 other passengers were sitting. In the middle row three constables boarded (one being unwell, got skipped) and in the back sheet accused Rajendra Singh, Harish Singh and two other persons boarded while coming back to Almora, near Koshi at Querali (4 persons, Rajendra Singh, Harish Singh and two others) sitting on the back sheet, fired on the constables. Two constables got injured. When the 3rd constable noticed firing and when he tried to apprehend the accused, they also fired on him. Noticing firing, driver stopped the vehicle. The accused threatened the driver to search the pistol which fell on the vehicle. When the driver tried to search that pistol, the accused took away the keys of the vehicle and Rifles of two constables. They left the scene of occurrence. All the four persons sitting in the back, alighted from the vehicle with the Rifles of the constables. Another vehicle was following them, they boarded on that vehicle and ran away. Driver of the vehicle came along with the vehicle to Base Hospital, Almora where two constables were found dead. One was breathing his last and ultimately died. SSI Ramiram prepared the inquest report and found one pistol of 9 mm under the sheet, prepared the recovery memo. While preparing inquest report SSI Ramiram also found 40 cartridges with the constables and also prepared recovery memo for 40 bullets. Driver Devendra Singh lodged the first information report. Thereafter the police also tried to chase the accused and search was made for the rifles looted from the constables. Accused Imtiyaz was arrested on 21.03.2005 near the Quarab Bridge, Almora. From his possession one pistol, two magazine automatic along with 20 cartridges were recovered. He was arrested under the Arms Act.

42. Learned counsel for the accused Imtiyaz has submitted that there is no direct or indirect evidence against Imtiyaz. He has not been put to identification parade. The recovery is doubtful. He has not been named in the first information report. As such the evidence against him is not sufficient to convict him. It was also argued on behalf of accused Imtiyaz that statement of accused Harish Singh as an approver cannot be read in evidence. The pardon was tendered to Harish Singh. He backed out from the condition of pardon and a certificate to that effect was issued by the public prosecutor. The statement of Harish Singh cannot be read against accused Imtiyaz because he has been relegated to the position of the accused thereafter. The said witness has not been examined by Imtiyaz, against whom he tried to depose.

43. P.W.10 Devendra Singh who was driver of the vehicle on 15.01.2005, has stated that when he was standing on taxi stand Ranikhet three Police personnel along with two accused came to him. The two accused were Rajendra Singh and Harish Singh. They were talking with each other and referring to the name of Imtiyaz and Kailash Singh. At 1:15 pm three Police personnel boarded in middle seat, two accused and their companions boarded at the back seat. He has identified accused Harish Singh and Rajendra Singh saying that they boarded in

the vehicle. When he came near Querali, Police personnel were shot. There was scuffle between the accused Rajendra Singh and Police personnel when a lady who was sitting in the front seat cried, the driver stopped the vehicle. All the four persons who were sitting in the back seat were having small mousers in their hands. They snatched away the rifles of Police personnel and keys of the vehicle. In the scuffle mouser fell under the seat which was found by SSI Ramiram. He brought the constables to Base Hospital, Almora. In the cross examination he admitted that he does not know Imtiyaz and two others but he did tell the investigating officer that the two persons sitting behind were addressing them as Imtiyaz and Kailash. The driver is the sole surviving witness of the incident. It is nobody's case that somebody has fired from the road. If somebody would have fired from the front side it would have hit either the driver or the persons sitting in the front side. Had the firing taken from the back side it would have hit the accused and their acquaintances. The Police constables were sitting in the middle. The injuries to the constables are in the parietal region which indicates that they have been fired from the back side. So far as the presence of Imtiyaz is concerned the driver has stated that the accused were addressing them as Imtiyaz and Kailash. This driver has no connection either with the Police or with the accused. On careful scrutiny of his cross examination, nothing has come out in favour of the accused. He is a star witness. There appears no reason to discard or disbelieve the ocular testimony of the driver who is a most natural witness.

44. P.W.8 Girish Chandra has stated that on 15.01.2005 he was posted as Malkhana Moharrir of Malkhana, Ranikhet. On that day accused Rajendra Singh and Harish Singh were produced by him for remand before the Judicial Magistrate, Ranikhet as the Court Moharrir, Basant Ballabh Joshi was on leave. This witness had seen the friends of accused Rajendra Singh and Harish Singh in the court compound along with them. They were Imtiyaz, Naushad and Kailash. The next date fixed for the remand of the accused was 28.01.2005. This witness was not cross examined on behalf of Imtiyaz. He is an important witness in as much as he has seen Imtiyaz in the company of the accused Rajendra Singh and Harish Singh, therefore his testimony goes unchallenged and un rebutted. The presence and identify of Imtiyaz (and two others) is established.

45. P.W.19 constable Paras Singh has also deposed that when he went from Police line to Jail and received two accused Rajendra Singh and Harish Singh their friends Imtiyaz, Kailash Singh, Naushad and Israel met there, who were introduced to him by constable Mahesh Singh. In all four Police personnel were deputed to bring the accused and since he developed sudden pain in his stomach and went to emergency hospital, he could not go to Ranikhet because of sudden illness.

46. P.W.18 Chandra Singh Bisht in his statement has said that on 19.03.2005 he was posted as S.O. Bhatraunj Khan. On that day he along with other constables and police officials went for search of accused of Policemen's" murder. On receiving the information that accused Imtiyaz is near Quarab Bridge and is

trying to go to Almora, the Police personal apprehended him on 21.03.2005 at 4:40 pm. On his personal search a pistol (made in Italy) was recovered from his left pocket of his pant. In the magazine of pistol there were 6 cartridges of 7.65 bore and from the left pocket of his pant 20 cartridges were recovered. The words "no. 765" was engraved on the pistol which was functional. He could not show the license to keep it. They tried to take the public witnesses but nobody was ready. He confessed that he was involved in the murder of Police constables and the pistol was used in that crime.

47. P.W.10 Dilip Kumar has supported the testimony of P.W. 18 Chandra Singh Bisht deposing that on search of Imtiyaz, one pistol, two magazine, 26 cartridges, one purse with cash of Rs. 480/- and on gas lighter was recovered from his possession. Recovery memo is Ext. Ka-7. He could not show any license to keep such pistol. It was submitted on behalf of learned counsel for the accused Imtiyaz that he was arrested from his house at Faridabad, Haryana which appears to be not tenable in view of the testimony of prosecution witnesses. Charge sheet against Imtiyaz has been submitted for the offences punishable u/s 302/394/120B IPC (Ext. Ka-60). The statement of P.W. 18 Girish Chandra corroborates that when the accused Rajendra Singh and Harish Singh were being produced at Ranikhet court three persons Imtiyaz, Naushad and Kailash went up to the court compound of Ranikhet. He knew Imtiyaz, Naushad and Kailash before this incident. P.W.14 Devendra Singh who was driver of the vehicle has stated before the court that the accused persons Harish Singh and Rajendra Singh were addressing to other persons as Imtiyaz and Kailash. Further P.W.18 Girish Chandra has confirmed the identity of Imtiyaz. P.W. 1 Rajendra Singh has said that when he demanded Rs. 315 from them as fare then the persons accompanying the accused paid them Rs. 210/- it shows that Imtiyaz and Kailash wanted to free the accused from the custody of law. Imtiyaz was one of them to have hatched a conspiracy to free accused Rajendra Singh and Harish Singh from the judicial custody and hence he was convicted u/s 224, 225 and 225B of IPC apart from 302/120B/394 IPC. Accused Imtiyaz was also held guilty u/s 25 Arms Act. There seems to be no illegality in the order of learned trial court. We are not inclined to interfere with the impugned orders so far as it relates to accused / convict Imtiyaz except his death sentence which has been awarded to him by the trial court. We pass the order that the death sentence awarded to accused Imtiyaz shall be commuted to imprisonment for life. Accused / convict Imtiyaz is sentenced to undergo imprisonment for life. He is also directed to pay a fine of Rs. 5,000/- (five thousand) in default of which, he shall further undergo rigorous imprisonment for a period of one year.

48. Accused Naushad alias Rinku alias Rohit and Israel alias Gudda are said to have facilitated the execution of a conspiracy, hence, they are awarded life imprisonment and a fine of Rs. 5000/- u/s 302/120-B of Indian Penal Code. Naushad and Israel are also found guilty u/s 394 IPC and have been awarded seven years rigorous imprisonment and fine of Rs. 5000/- (in S.T. nos. 36 of 2005 and 37 of 2005). Naushad is also sentenced u/s 25 Arms Act to undergo

three years rigorous imprisonment and a fine of Rs. 1000/- (in S.T. no. 39 of 2005). Both Naushad and Israel are also convicted u/s 224, 225 and 225-B IPC and have been awarded rigorous imprisonment of one year, five years plus fine and three months rigorous imprisonment respectively. The role assigned to Naushad and Israel is that they met the constables at the gate of district jail, Almora. On 15.01.2005 when accused Rajendra Singh and Harish Singh were being sent from district jail, Almora to the Court of Judicial Magistrate, Ranikhet four persons met them who were later on identified as Naushad, Israel, Imtiyaz and Kailash Singh. Constable Mahesh Singh was known to them and he introduced them to constable Paras Singh. Police constables hired a taxi up to Ranikhet. While returning to Almora all of them boarded in a vehicle in which driver along with 2-3 passengers were sitting in the first row, the constables sat in the second row and accused Rajendra Singh, Harish Singh and two other persons sat in the last row. On way to Almora near Kosi, four persons who were sitting on the back seat fired on the constables, who got injured. When the third constable noticed firing he tried to apprehend the accused but they fired on him also. Driver stopped the vehicle. Accused threatened him to search the pistol, which fell in the vehicle. In the mean time the accused got hold of the keys and rifles of two constables. They ran away in a vehicle which was following them. The driver brought the vehicle to based hospital, Almora where two constables were found dead and the third one also died.

49. Search for the accused was on. Accused Kailash Singh was arrested from a rented house from Madhya Pradesh on 20.03.2005, accused Naushad was arrested from a triangular intersection of Baldoti near SSB Camp, Almora and a country made revolver 315 bore along with two cartridges of 315 bore were recovered from him.

50. Accused Israel was arrested in case crime no. 707/2004 u/s 394, 395, 397, 120-B and 216-A of IPC by Jabalpur police. When he was arrested at Jabalpur, he confessed before police that he has committed offence at Almora with his accomplice to commit the murder of three police constables. On information to Jabalpur police, he was brought to Almora to face the trial.

51. Many a prosecution witnesses were examined on behalf of the prosecution. We will be examining the evidence of those witnesses only who are specific to these two accused, namely Naushad and Israel, the other evidences being discussed earlier in relation to the other accused persons.

52. Accused Naushad, Israel, Kailash and Imtiyaz used to meet accused Rajendra Singh when he was detained in district jail, Almora. There is no denying the fact that accused Harish Singh and Rajendra Singh were lodged in district jail, Almora. Accused Harish Singh and Rajendra Singh were taken to the Court of Judicial Magistrate, Ranikhet. Two constables with rifles and one with cane boarded from Shikhar Hotel. They were talking to each other as if they knew each other. Rajendra Singh and Kailash Singh were brought to Court at Ranikhet. Rajendra Singh and Harish Singh were hand cuffed.

53. P.W.18 Girish Chandra handed over the warrant to police personnel. He saw the accused in the company of Naushad and others. They were known to this witness from before. While coming back to Almora, this incident took place. Devendra Singh was the driver. The injuries sustained by the police constables were fired from the back.

54. It has been argued on behalf of the accused Israel that there is no evidence against him. Only one constable Paras Singh has named him in the examination in chief whose role is doubtful. There is no reason as to why he has left the company of his colleagues. He has admitted in the cross examination that he did not mention the name of Israel to the investigating officer. Learned counsel for the accused Naushad has submitted that there is no direct or indirect evidence against these two accused. These accused have not been put to identification parade. The recovery from these two is doubtful. They are not named in the FIR. Learned counsel for Israel and Naushad have also submitted that statement of accused Harish Singh as approver cannot be read in evidence against them, because Harish Singh backed out from the condition of pardon, as certified by the public prosecutor. It may be made clear here that there was no requirement of test identification parade in this case, as the accused Naushad was not being seen by the witnesses for the first time. Police witnesses have seen the accused in the company of Rajendra Singh and Harish Singh very often and before this incident. Therefore, there appears to be no need to put them before TIP. Their names and their identity was quite well known to the police personnel doing the duty in jail, and in court, as they were constantly in touch with the accused Rajendra Singh and Harish Singh. There is no dispute about the identity of Naushad, Kailash and Imtiyaz. Israel's case may be a little different.

55. P.W.10 Devendra Singh is the most important witness who was driving the vehicle and carrying the passengers from Ranikhet to Almora. The two persons sitting on the back seat with Rajendra Singh and Harish Singh were Kailash and Imtiyaz (accused Naushad and Israel were not sitting in the vehicle). This witness P.W.10 Devendra Singh does not know Naushad but had told the Investigating Officer the two persons sitting at the back of the vehicle were being addressed as Kailash and Imtiyaz.

56. P.W.18 Sub Inspector Girish Chandra was posted as Malkhana Moharrir on 15.01.2005, since Court Moharrir Vasant Ballabh Joshi was on leave. The accused Rajendra Singh and Harish Singh were produced by him for remand. He had seen the friends of accused in court compound and one of them was Naushad (the other being Imtiyaz and Kailash). This witness knew Naushad and others before this incident took place. Naushad and two others were friends of accused Rajendra Singh and Harish Singh. Since nothing adverse has come out in the cross examination of this witness, therefore, presence and identity of Naushad in the Court compound in the company of accused Rajendra Singh and Harish Singh is proved.

57. P.W.19 Constable Paras Singh has also corroborated the fact that when he

came out from jail along with accused Rajendra Singh and Harish Singh, the friends of accused Rajendra Singh met there. These friends were - Naushad, Israel, Kailash Singh and Imtiyaz. They were introduced to him by Constable Mahesh Singh. But in the cross-examination he has admitted that he did not tell the Investigating Officer that Israel was introduced to him.

58. P.W.6 Sub Inspector Amar Chandra Sharma said that the informer of the police informed that one person is sitting in parapet of road leading to Pithoragarh. The police party reached there. The accused was apprehended. One country made pistol and two cartridges of 315 bore were recovered from his pistol. When P.W. 22 Prakash Chandra, Sub-inspector was examined, he said that a Scorpio was used in the murder of 3 police constables but in the cross-examination he said that the papers were in the name of Ms. Sadhna Chaudhary. Learned counsel for Israel argued that he was picked up from Jabalpur and has been falsely implicated in the case. P.W.23 Inspector K.S. Hyanki as admitted in his cross-examination that he could not get direct evidence of criminal conspiracy against accused. Naushad was not named in the FIR. In the evidence of constable Paras Singh the name of Imtiyaz, Naushad and Kailash have come. When the accused Rajendra Singh and Harish Singh were being produced in the Court at Ranikhet they were there. Naushad was there in the Court compound, Ranikhet. The name of accused Israel was not as prominent as that of Naushad. Everywhere the names of Imtiyaz, Naushad and Kailash have appeared. Coupled with other facts, the arrest memo of the accused Israel was not prepared. The name of Israel has come in the ocular testimony of the police witnesses off and on. He is not a local resident. Although accused Naushad too is not a local resident but the police witnesses doing duty in jail and court have been consistent in identifying and naming accused Naushad that he was seen in the company of accused Rajendra Singh and Harish Singh while they were in judicial custody. Naushad may not be named in the FIR but his involvement in crime (criminal conspiracy) is well established. There is little doubt about the involvement of accused Israel. Mirza Naushad's involvement is culled out from his conduct. He was the person who has no business here. What was he doing in Uttarakhand? On the fateful day he was found in the close vicinity of people who were being taken on remand. Prosecution has proved the things brick-by-brick. One's name might not have been mentioned in the FIR but the incident has to be read in the background what is stated in the evidence. The court will cull out the meaning from the evidence that has been led by prosecution. The court has to look at the evidence with the eye of a normal prudent person that it is acceptable. Judged by this yardstick, the prosecution has been able to prove its case beyond reasonable doubt against all the accused but for Israel. The name of accused Israel has not come consistently in the testimony of prosecution witness hence, we are of the view that whereas the prosecution has been able to establish its case against accused Naushad, it has not been able to prove the case against accused Israel beyond reasonable doubt. We therefore, agree with the finding of learned Sessions Judge, Almora only to the extent that the case

against the accused Naushad is proved by the prosecution. The other part of the judgment in respect of accused Israel is interfered with.

59. Accordingly, this Court orders that since the prosecution has not been able to prove its case beyond reasonable doubt so far as it relates to accused Israel. Therefore, the conviction and punishment in respect of accused Israel is set aside.

60. The conviction and sentence awarded by the trial court in respect of accused Naushad is thus affirmed.

61(a) All Criminal Appeals filed on behalf of the accused Imtiyaz alias Raj Singh alias Rahul Verma, Harish Singh and Naushad alias Rinku alias Rohit are dismissed.

61(b) The Criminal Appeals filed on behalf of accused / appellant Israel alias Gudda are allowed.

62(a) Criminal Reference No. 1 of 2011 in respect of accused Imtiyaz alias Raj Singh alias Rahul Verma, Kailash Singh and Rajendra Singh and Criminal Reference No. 2 of 2011 in respect of accused Harish Singh made by the trial court so far as the confirmation of sentence of death to these accused is concerned, are answered in negative.

62(b) Instead of confirming the sentence of death awarded by the trial court, (in exercise of powers conferred u/s 368(a) Cr.P.C.) the sentence of death is commuted to imprisonment for life against the convicts Rajendra Singh, Harish Singh, Kailash Singh and Imtiyaz alias Raj Singh alias Rahul Verma. They are sentenced to undergo imprisonment for life and each one of them is also sentenced to pay a fine of Rs. 5,000/-, in default of payment of which each one of them shall undergo rigorous imprisonment for a period of one year.

62(c) The conviction recorded by the trial court in S.T. No. 36 of 2005, S.T. No. 22 of 2005, S.T. No. 24 of 2006, S.T. No. 37 of 2005 and S.T. Nos. 33 of 2005 & 34 of 2005, u/s 302 read with Section 120-B of I.P.C. against accused Imtiyaz alias Raj Singh alias Rahul Verma, Kailash Singh, Rajendra Singh and Harish Singh are affirmed. They are sentenced to undergo imprisonment for life and also to pay a fine as directed in sub-para (b) above.

62(d) The conviction recorded by the trial court in S.T. No. 36 of 2005, S.T. No. 37 of 2005, S.T. No. 24 of 2006, S.T. No. 39 of 2005 and S.T. Nos. 33 of 2005 & 34 of 2005, u/s 394, 224, 225 and 225-B of I.P.C. against accused Imtiyaz alias Raj Singh alias Rahul Verma, Kailash Singh, Rajendra Singh and Harish Singh are affirmed.

62(e) The sentences awarded against the accused Imtiyaz alias Raj Singh alias Rahul Verma, Kailash Singh, Rajendra Singh and Harish Singh in S.T. No. 36 of 2005, S.T. No. 37 of 2005, S.T. No. 24 of 2006, S.T. No. 39 of 2005 and S.T. Nos. 33 & 34 of 2005 are accordingly affirmed.

62(f) The conviction and sentence awarded by the trial court in S.T. No. 38 of

2005 and S.T. No. 35 of 2005 against accused Imtiyaz alias Raj Singh alias Rahul Verma and Harish Singh in respect of offence punishable u/s 25 of Arms Act is affirmed.

62(g) The Criminal Appeals filed by the accused Imtiyaz alias Raj Singh alias Rahul Verma and Harish Singh against the conviction and sentences awarded by the trial court in S.T. No. 36 of 2005, S.T. No. 37 of 2005, S.T. No. 38 of 2005 and S.T. No. 33 of 2005, S.T. No. 34 of 2005, S.T. No. 35 of 2005 in respect of offence punishable under Sections 302 read with Section 120-B of I.P.C., 394, 224, 225 and 225-B of I.P.C. and one punishable u/s 25 of Arms Act are thus dismissed.

62(h) The Criminal Appeals filed by accused Imtiyaz alias Raj Singh alias Rahul Verma and Harish Singh in respect of offence punishable u/s 302 read with Section 120-B of I.P.C. having been dismissed, their sentence is modified as directed in sub-para (b) above.

62(i) The Criminal Appeals filed by accused Naushad alias Rinku alias Rohit in respect of offences punishable u/s 302 read with Section 120-B, 394, 224, 225, 225-B of I.P.C. in S.T. No. 36 of 2005 and S.T. No. 37 of 2005, and one punishable u/s 25 of Arms Act in S.T. No. 39 of 2005 is also dismissed.

62(j) However, the Criminal Appeal nos. 75 of 2011 and 76 of 2011 filed by accused / appellant Israel alias Gudda are allowed. The judgment and order dated 31.03.2011 passed by Sessions Judge, Almora, in S.T. Nos. 36 and 37 of 2005 is set aside only in respect of said accused / appellant Israel alias Gudda. Consequently, the conviction and sentence recorded by the trial court against the accused / appellant Israel alias Gudda in respect of offences punishable u/s 302 read with Section 120-B, 394, 224, 225 and 225-B of I.P.C. are also set aside. He is acquitted of the said charges. He is in jail. He shall be set at liberty forthwith, if not required in any other crime.

62(k) Let a copy of this Judgment be sent to the trial court with reference to its letters no. 263 and 264 dated 31.03.2011, in S.T. nos. 36 of 2005 and S.T. no. 33 of 2005 respectively. A copy of this judgment is also sent to the Superintendents of Jail concerned where the accused-convicts are presently serving out their sentences, for ensuring compliance of this order. Lower court record is sent back.