
(2007) 07 AHC CK 0237
In the Allahabad High Court

The State of U.P.	Vs	APPELLANT
Radhey Shyam, Komil and Sudama		RESPONDENT

Date of Decision : 20-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2007) 07 AHC CK 0237

Hon'ble Judges : Vijay Kumar Verma, J; R.C. Deepak, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Vijay Kumar Verma, J.—Challenge in this government appeal is to the judgment and order dated 21.12.1981, passed by Sri K.K. Verma, the then 2nd Additional Sessions Judge Farrukhabad, in ST. No. 287 of 1980, whereby the respondents-accused Radhey Shyam, Sudama and Komil have been acquitted of the offence punishable u/s 302 read with Section 34 IPC in case Crime No. 101/80 of P.S. Kayam Ganj, District Farrukhabad.

2. Respondent-accused Komil has died during pendency of the appeal. Hence, the appeal against him has been abated vide order dated 20.07.2005.

3. The incident resulting in the death of Gaya Din occurred on 27.02.1980 at about 7.00 p.m. The case of the prosecution which emerges from the First Information Report (Ext. Ka 3) and statement of complainant Mewa Ram (P.W. 1) S/o Khivraj, r/o village Lalai P.S. Kayamganj, District Farrukhabad in brief, is that the deceased Gaya Din was the son of complainant. The accused Sudama is the resident of village Bahora, while other two accused Radhey Shyam and Komil reside in village Lalai. On 27.02.1980 Gaya Din, Shyamlal (P.W. 2) and Sher Mohammad (P.W. 3) were coming back to their houses from Kasba Kayamganj after making purchases. When at the time of sun-set at about 7.00 p.m., they reached near Naudha tree in northern side of village pond, the accused Radhey Shyam and Komil armed with country made tamancha and accused Sudama

having lathi came out from arahar field. Radhey Shyam and Komil fired shots from tamancha on Gaya Din, due to which he sustained injury. At the same time Sudama assaulted him by lathi. Shyam Lal and Sher Mohammad raised noise, which attracted Rafiq (C.W. 1) and Haji Mulli (C.W. 2). The complainant Mewa Ram and other village people also rushed towards the place of occurrence on hearing hue and cry and when they challenged the accused-respondents, they fled away towards eastern side in arhar field. The complainant arranged bullock-cart and when Gaya Din in injured condition was being carried to police station, he succumbed to the injuries near railway station Kayamganj. Thereafter, his dead body was carried to P.S. Kayamganj, where the complainant handed over written report (Ext. Ka 1), which was scribed by Abdul Razak.

4. On the basis of written report (Ext. Ka 1), the then Head Moharrir Chotey Lal Verma prepared chik FIR (Ext. Ka 3) and registered a case u/s 302 IPC at Crime No. 101/80 on 27.02.1980 at 9.10 p.m. against Radhey Shyam, Sudama and Komil, entry of which was made in G.D. No. 38 vide Ext. Ka 4.

5. Investigation was entrusted to S.I. Santosh Kumar Dubey (P.W. 5), who conducted inquest proceedings on the dead body, which was kept out side P.S. Kayamganj. After preparing inquest report (Ext. Ka 5) and connected papers (Ext. Ka 6 to Ext. Ka 9), the dead body in sealed condition was sent for post mortem examination through constables Mahavir and Balvir Singh (P.W. 6).

6. Post mortem examination on the dead body was conducted by Dr. B.P. Bhatnagar (P.W. 4) on 28.02.1980 at 4.35 p.m. According to the post-mortem report (Ext. Ka 2) the following ante mortem injuries were found on the person of deceased:

1. Lacerated wound 2 1/2" x 1 1/2" x scalp deep on the left side skull 3 " above left eyebrow.
2. Abrasion 1 1/2" x 3/4" on the right cheek.
3. Multiple G.S.W. Of entry 1/8" diameter skin to muscles & chest cavity deep in an area of 6 1/2" x 6" on the upper part of right side chest & shoulder.
4. A contusion of 2 1/2" x 1 1/2" on the dorsum of left forearm with fracture both bones.
5. A contusion 4 1/2" x 1" on the left side chest lower part.
6. A contusion 2" x 1 1/2" on left side chest lateral aspect 4" below Axilla.
7. A contusion 3 1/2" on the left side abdomen lateral aspect.
8. Lacerated wound 1/2" x 1/4" on the left index finger middle part.
9. Abrasion 2" x 1/4" right leg lower part inner side.

In internal examination 4th, 5th, and 6th ribs of left side were fractured. Pleura and right lung were lacerated. Left lung at lower part was also lacerated. Semi

digested food about 8 oz was found in stomach. Small and large intestines were full of gases and faecal matter. Bladder was empty. 8 small pellets were recovered from right side chest.

According to Dr. Bhatnagar, death was caused due to shock & haemorrhage as a result of gun shot injuries. Probable time since death was about one day.

7. During investigation, S.1. Santosh Kumar Dubey recorded the statements of witnesses. Bloodstained shirt, Baniyan, chadara, angochha from the dead body and piece of quilt from the cot were taken into possession and memo Ext. Ka 10 was prepared. He made spot inspection on 28.02.1980 and prepared site plan (Ext. Ka 11). Two empty cartridges (Ext. 1 and Ext. 2) were found lying near the place of occurrence, which were taken into possession and memo (Ext. Ka 12) was prepared. Blood stained and simple earth were also collected from the place of incident and memo (Ext. Ka 13) was prepared. After completion of the investigation, charge-sheet (Ext. Ka 14) was submitted against the respondents-accused on 08.03.1980.

8. On the case being committed to the court of session for trial, charge u/s 302 read with Section 34 IPC was framed against the accused-respondents, to which they pleaded not guilty and claimed to be tried.

9. The prosecution in order to prove its case, examined six witnesses in all. Rafiq and Haji Mulli have been examined as Court Witnesses. P.W. 1 Mewa Ram is the complainant, who has proved written report Ext. Ka 1. He is not the eye witness of the incident. P.W. 2 Syam Lal and P.W. 3 Sher Mohammad are the eye witnesses, who were coming with the deceased from kasba Kayamganj after making purchases. P.W. 4 Dr. B.B. Bhatnagar, conducted post mortem examination on the dead body. Post mortem report (Ext. Ka 2) has been proved by him. It is opined by Dr. Bhatnagar that ante mortem injuries were sufficient to cause of death in ordinary course. It is also opined by him that death of the deceased was possible to be caused on 27.02.1980 at about 8.45 p.m. or 9.00 p.m. P.W. 5 Santosh Kumar Dubey is the investigating Officer. He has proved chik FIR (Ext. Ka 3) and copy of G.D. No. 38 (Ext. Ka 4) by recognizing the hand writing and signature of head constable Chhotey Lal, who was scribe of these papers. Other documents mentioned above, have also been proved by this witness. P.W. 6 Balvir Singh is the dead body carrier. C.W. 1 Rafiq and C.W. 2 Haji Mulli are the eye witnesses.

10. In their statements recorded u/s 313 Cr.P.C., the respondents-accused denied their participation in the alleged incident and they have stated that due to enmity they have been falsely implicated in this case.

11. After taking entire evidence into consideration, the learned Trial Court finding the accused-respondents not guilty of any offence, acquitted them vide impugned judgment. Feeling aggrieved, the State of U.P. has preferred this government appeal after seeking leave of the Court.

12. We have heard Mrs. N. A. Monis learned AGA for the appellant-state, Sri J.S. Audichya learned Counsel for the accused-respondents Radhey Shyam and Sri V.K. Srivastava learned Counsel for the accused-respondents Sudama and perused the impugned judgment and entire evidence on record carefully.

13. Assailing the impugned judgment it was strenuously contended by the learned AGA that on the basis of reliable testimony of the eye witnesses Shyam Lal, Sher Mohammad, Rafiq and Haji Mulli, it is fully proved beyond reasonable doubt that murder of the deceased Gaya Din was committed by the respondents-accused on the alleged date, time and place, but the learned Trial Court recording perverse and unreasonable findings has acquitted the respondents-accused on insufficient grounds. Hence, the impugned judgment, being wholly illegal should be set aside. It was further submitted by learned AGA that ocular evidence finds corroboration from medical evidence, but the learned Trial Court has not properly appreciated the evidence.

14. Supporting the impugned judgment, it was submitted by the learned Counsel for the accused-respondents that interference by this Court in the impugned judgment is not warranted, because the findings of acquittal recorded by learned Trial Court are neither perverse nor against the evidence. Next submission made by learned Counsel for the accused-respondents was that if two views on the evidence led by the prosecution are possible, then the view which is favourable to the accused has to be accepted by the appellate court in appeal against acquittal.

15. Before coming to the grounds on the basis of which findings of acquittal have been recorded by the learned Trial Court, let us scrutinise the evidence led by the prosecution. Regarding the incident in which the deceased Gaya Din sustained injuries, on the alleged date, time and place, the prosecution examined two eye witnesses Shyam Lal (P.W. 2) and Sher Mohammad (P.W. 3). Other two eye witnesses namely Rafiq and Haji Mulli have been examined as court-witnesses 1 & 2 respectively. The witnesses Shyam Lal and Sher Mohammad had gone with the deceased for making purchases from the market of kasba Kayamganj. In his statement recorded on 14.08.1981, P.W. 2 Shyam Lal has stated that on 27.02.1980 he and Gaya Din had gone to purchase the goods from Kayamganj market and after making purchase, he along with Gaya Din and Sher Mohammad was coming to their village and when at about sun set Gaya Din reached near Naudha tree, the accused Radhey Shyam and Komil armed with tamancha and accused Sudama having lathi came out from arhar field and Radhey Shyam fired on Gaya Din. Immediately thereafter, the accused Komil also fired on him, due to which he sat down catching his stomach at a distance of about 2-3 paces. At the same time, the accused Sudama assaulted Gaya Din by lathi. When Gaya Din wanted to run, Sudama began to wield lathi blows on him, due to which he fell down. It is further stated by this witness that when he and Sher Mohammad raised cry, Haji Mulli and Rafiq gave call from the side of pond. At that time Radhey Shyam fired another shot in air with a view to cause terror. Thereafter,

accused-respondents fled away through arahar field of Puttu. It is also stated by the witness Shyam Lal that after going away of the accused, the complainant Mewa Ram and other persons came there and they carried injured Gaya Din to P.S. Kayamganj keeping him on the cot in the bullock cart. It is further stated by this witness that in the way Gaya Din told his father Mewa Ram about the incident and when they reached near railway station, Gaya Din succumbed to the injuries.

16. Statement of witness Shyam Lal has been corroborated by P.W. 3 Sher Mohammad, who also had gone to Kayam Ganj Market for making purchases and was coming with the deceased and shyam Lal at the time of incident. Lengthy cross-examination has been made from these witnesses by the learned Counsel for the accused-respondents, but nothing material adversely affecting their testimony has been elicited from them in cross-examination. There is no reason to disbelieve the testimony of these witnesses and on the basis of their testimony, it is fully proved beyond reasonable doubt that when they and deceased Gaya Din were coming from Kayamganj market to their houses at about sun set and when Gaya Din reached near Naudha tree, the accused-respondents caused injuries to him due to which he died near Kayamganj railway station while he was being carried to P.S. Kayamganj by his father Mewa Ram and other persons.

17. C.W. 1 Rafiq and C.W. 2 Haji Mulli had gone to ease themselves at about sun set on the day of occurrence and when they were entering into the field of Sambhu for the purpose of attending natural call, they heard sound of fire from the side of Naudha tree. They came out from the field immediately without easing themselves and saw the accused Radhey Shyam, Komil and Sudama standing near Naudha tree and Gaya Din at a distance of 2-4 paces. It is stated by these witnesses that in their presence the accused Komil fired second shot on Gaya Din and Sudama gave lathi blow to him due to which he fell down and thereafter, Sudama assaulted him by lathi. It is also stated by these witnesses that at the distance of about 10-15 paces, Sher Mohammad and Shyam Lal were standing and when they raised noise, Radhey Shyam fired one shot in the air with a view to create terror and thereafter, all the three accused fled away in arhar field. These witnesses have further stated that on hearing hue and cry, Mewa Ram father of deceased and many village people came there, who carried Gaya Din in bullock cart to police station. Both these witnesses also have been cross examined at length by the learned Counsel for the accused-respondents but nothing material has been elicited from them also in their cross-examination. These witnesses have fully supported the case of prosecution and on the basis of their testimony also, it is proved beyond reasonable doubt that injuries to the deceased were caused by the respondents-accused on the alleged date, time and place.

18. According to the post mortem report Ext. Ka 2, nine ante mortem injuries were found on the person of deceased at the time of post mortem examination.

According to Dr. B.B. Bhatnagar (P.W. 4), ante-mortem injury No. 3 may be caused by fire arm and other injuries may be caused by the blunt object like by lathi. As such, medical evidence in this case is supporting the evidence of eye witnesses. Although Dr. Bhatnagar has stated in his cross-examination that injury No. 3 may be caused by one fire, whereas according to the eye witnesses, two shots were fired on the deceased by respondents-accused Radhey Shyam and Komil, but in our view, there is no inconsistency in ocular and medical evidence, because Dr. Bhatnagar has nowhere stated that ante-mortem injury No. 3 cannot be caused by two fires. In ante-mortem injury No. 3 multiple gun shot wound of entry in an area of 6 1/2" x 6" on the upper part of right chest & shoulder were found. In our view, if two shots are fired by two persons from 12 bore tamanchas using the cartridges containing similar size pellets, then by such shots ante mortem injury No. 3 can be caused, because in this injury, there were multiple gun shot wound of entry in an area of 6 1/2" x 6 ". According to the eye witnesses, the accused-respondent Sudama had assaulted the deceased by lathi. As opined by Dr. Bhatnagar, ante-mortem injuries No. 1, 2 and 4 to 9 may be caused by lathi. In this way, the medical evidence has fully corroborated oral evidence in this case.

19. The evidence of eye witnesses named above, find corroboration from the site plan (Ext. Ka 11), which was prepared by S.1. Santosh Kumar Dubey on 28.02.1980. Two live cartridges were found lying on the place of incident, which were taken into possession vide memo (Ext. Ka 12). Blood stained and simple earth were also collected by the Investigating Officer from the place of incident vide memo (Ext. Ka 13). In this way, on the basis of the site plan as well as the evidence of above named eye witnesses, this fact is established beyond reasonable doubt that incident had occurred on the place mentioned in the FIR, which was promptly lodged by the complainant Mewa Ram, father of the deceased. According to FIR, the incident had s in northern side of pond near Naudha tree on the road. In site plan (Ext. Ka 11) pond has been shown in southern side of the field of Sambhu Pal. The place on which shots were fired on the deceased and injuries were caused to him have been shown in site plan on the Allapur-Lalai road in front of the field of Dev Singh, which is situated in northern side of pond. As such, the place of incident is fixed on the basis of testimony of eye witnesses and site plan Ext. Ka 11.

20. Now we come to the grounds on the basis of which, findings of acquittal have been recorded by the learned Trial Court. The first ground of acquittal, which finds favour with the learned Trial Court is that due to darkness, recognizing the assailants was not possible, because according to the FIR, incident is said to have occurred at 7.00 p.m. Although the time of incident is mentioned as 7.00 p.m. in the FIR, but at the same time it is also mentioned therein that it was the time of sun set. From the statements of witnesses also, this fact is born out that the incident had occurred at the time when the sun was about to set and there was visibility. P.W. 2 Shyam Lal has stated in his cross-examination that he, Gaya Din and Sher Mohammad had started from Kayamganj after making purchases at

about 4.30 or 4.35 p.m. and they had reached on the place of incident at about 6.30 and 6.45 or 7.00 p.m. The accused-respondents were known to the witnesses Presence of witnesses Shyam Lal and Sher Mohammad at the time of incident is not doubtful, because they were coming back with the deceased from Kayamganj market. According to the witness Shyam Lal, he had seen the incident from the distance of about 15-16 paces. P.W. 3 Sher Mohammad has stated in his statement that the incident of firing shot and causing mar-peat had taken place at the time of sun set. It has come in the statements of witnesses Shyam Lal and Sher Mohammad that Gaya Din was going ahead at some distance at the time of incident. The place from which these witnesses had seen the occurrence is marked by letters "A B" in the site plan (Ext. Ka 11), which is in northern side from the place where incident had occurred. Although the distance of the place A B and place of incident has not been shown in the site plan, but from the statement of Shyam Lal it is born out that he and Sher Mohammad had seen the incident from the distance of about 15-16 paces. As stated above, according to the witness Sher Mohammad, there was visibility at the time of incident. That being so, there was no difficulty in recognizing the accused-respondents by the witnesses Shyam Lal and Sher Mohammad at the time of incident. Therefore, the finding of learned Trial Court to the contrary is most unreasonable.

21. The testimony of the witness Shyam Lal has been disbelieved by the learned Trial Court on the ground that he is relative of the deceased. It is true that the deceased Gaya Din was the son of cousin brother of the father of witness Shyam Lal as admitted by him in his statement, but on this ground, the testimony of this witness cannot be discarded. It is well settled principle of law that the testimony of any witness cannot be discarded merely on the ground that he is related to the victim or deceased. In *Dalip Singh and Others Vs. State of Punjab*, it has been laid down as under:

A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true when feelings run high and there is personal cause from enmity, that there is tendency to drag in an innocent person against whom a witness has a grudge along with the guilt, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

22. The above decision has been followed in *Guli Chand and Others Vs. State of Rajasthan*, in which *Vadivelu Thevar Vs. The State of Madras*, was also relied

upon. Again in Masalti Vs. State of U.P., the Hon"ble Apex Court observed:

But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

23. Therefore, in instant case also, the testimony of the witness Shyam Lal cannot be disbelieved merely on the ground that the deceased was related to him, because the testimony of this witness is wholly reliable and his presence on the place of incident is also not doubtful. Finding recorded by the learned Trial Court on this point is perverse, which cannot be sustained.

24. Reliance on the testimony of the witness Sher Mohammad has not been placed by the learned Trial Court on the ground that he is inimical to the accused-respondents. It is mentioned by learned Trial Court in the impugned judgment that uterine brother Ahmad Sher of P.W. 3 Sher Mohammad had appeared as witness against the accused in a case of mar-peat instituted by Dhanpal. In our view, disbelieving the testimony of witness Sher Mohammad by the learned Trial Court on the ground that his uterine brother Ahmad Sher had some time deposed in a case of mar-peat against the accused is not justified and on this ground it cannot be said that the witness Sher Mohammad was inimical to the accused persons. There is nothing on record to show that the witness Sher Mohammad was having any direct enmity with the accused-respondents. Therefore, his testimony cannot be discarded merely on the ground that his uterine brother Ahmad Sher had deposed in some case against the accused Radhey Shyam and Komil. In our view, the finding of learned Trial Court on this point is also perverse and unreasonable.

25. Evidence of C.W. 1 Rafiq and C.W. 2 Haji Mulli has also been disbelieved by the learned Trial Court and reasoning given in the impugned judgment is that they were inimical towards the accused and their presence at the place of incident is doubtful. On carefully scrutiny of the testimony of these witnesses, we come to the conclusion that their presence at the place of incident is not doubtful and they are natural witnesses, because in villages the people generally go to ease themselves in morning and evening in fields out side village abadi near the place where water is available. Therefore, the finding recorded by the learned Trial Court to the contrary is unreasonable. The witness Haji Mulli (C.W. 2) was not having any enmity with the accused-respondents. No cross-examination regarding any enmity has been made from this witness. On the basis of the documents (Ext. Kha 2 to Ext. Kha 5) filed by the accused in Trial Court, enmity between Haji Mulli and accused-respondents is not established. Therefore, the learned Trial Court was not at all justified in discarding the testimony of C.W. 2

Haji Mulli, because, as mentioned above, his testimony is worth relying. If due to some enmity between accused-respondents and witness Rafiq (C.W. 1), reliance on his testimony is not placed, even then it will not make any difference, because the case of prosecution has been proved beyond reasonable doubt on the basis of the testimony of other witnesses.

26. The learned Trial Court has held in impugned judgment that there is inconsistency in ocular and medical evidence, because according to the post-mortem report Ext. Ka 2 and statement of Dr. B.B. Bhatnagar, the deceased had suffered one gun shot injury whereas according to the witnesses, two shots are said to have been fired. We have already considered this matter and as stated above, there is no inconsistency in ocular and medical evidence in this case, because ante-mortem injury No. 3 can be caused by firing two shots also, if the cartridges containing similar size pellets are used. On the basis of availability of semi digested food in stomach of the deceased, it cannot be said that there is any inconsistency in ocular and medical evidence. The deceased Gaya Din along with the witnesses Shyam Lal and Sher Mohammad had gone to make purchases in Kayamganj market. He might have eaten something in the market, due to which, semi-digested food about 8 oz was found; in his stomach at the time of post mortem examination. No question has been asked from the witnesses Shyam Lal and Sher Mohammad as to whether the deceased Gaya din had eaten something in the market or not. Therefore, merely due to availability of 8 oz semi-digested food in stomach of the deceased, it cannot be said that there is any inconsistency in ocular and medical evidence regarding time of incident. In our considered view, the finding recorded by the learned Trial Court on this point is perverse and unreasonable.

27. One of the grounds for acquittal of the accused-respondents is that no blackening, tattooing or charring were found present on the person of deceased in ante-mortem injury No. 3, whereas according to the witnesses, shot on the deceased was fired from close range. In the opinion of learned Trial Court, absence of blackening and tattooing or charring on the person of deceased negatives the prosecution version. In our view, this finding of the learned Trial Court is also unreasonable. Although the witness Sher Mohammad has stated in his cross-examination that the deceased was standing at a distance of about 2-3 paces at the time of firing the shots by Radhey Shyam and Komil and there was distance of about 1-1 1/2 hand between the weapons and Gaya Din, but in our view, undue importance cannot be given this statement, because the distances are told by the witnesses by guess, in which the possibility of error cannot be ruled out. According to the witness Shyam Lal shots were fired on Gaya Din from a distance of about 5-6 paces. Therefore, due to absence of blackening and tattooing or charring in ante-mortem injury No. 3, it cannot be said that there is any material inconsistency in ocular and medical evidence.

28. Non-sending the blood stained and simple earth for chemical analysis has also been made the basis of acquittal of respondents-accused by learned Trial

Court. In our view, this finding of learned Trial Court is also unjustified. In the case of State of U.P. v. Harban Sahai and Ors. (XXXVII)1998 ACC 14, the Hon''ble Apex Court has held that "if the blood stained earth collected by the Investigating Officer has not been sent for chemical examination, then this omission would not vitiate the investigation". In our view, in the instant case also, due to non-sending of blood-stained earth for chemical examination to the Serologist, neither the place of occurrence can be doubted, nor the testimony of eye-witnesses can be discarded.

29. Although oral dying declaration of the deceased has been set up in the statement of the complainant Mewa Ram (P.W. 1), who has stated that when he was carrying his son Gaya Din in injured condition to P.S. Kayamganj, he had told about the incident in the way, but so called dying declaration has been rightly rejected by the learned Trial Court, because it is not mentioned in the FIR that the deceased Gaya Din had narrated the incident to the complainant Mewa Ram, in the way to P.S. Kayam Ganj Omission of this fact in FIR is very material, due to which no reliance can be placed on the alleged dying declaration.

30. In concluding part of the impugned judgment the learned Trial Court has held that "the prosecution at best has been able to cast a suspicion on the accused persons, but suspicion, howsoever strong cannot take place of positive proof. The positive proof unfortunately is palpably lacking in this case. With this finding the learned Trial Court has acquitted the accused-respondents of the offence with which they were charged. In our view, aforesaid finding of the learned Trial Court is unreasonable, perverse and unjustified, because as we have stated above, the prosecution in this case has fully proved beyond reasonable doubt that murder of deceased Gaya Din was committed by the respondents-accused on the alleged date, time and place.

31. It was submitted by learned Counsel for the respondents-accused that the motive for committing murder of Gaya Din as alleged by complainant Mewa Ram (P.W. 1) in his statement is very weak and due to some minor disputes as mentioned in the statement of complainant, the accused persons will not go to the extent of committing murder of the deceased. Although from the statement of P.W, 1 Mewa Ram this fact is borne out that there was enmity between the parties, but assuming for the sake of argument that motive as alleged was not very strong, even then this cannot be the basis of acquittal, because on the basis of direct testimony of eye-witnesses named above, it is established beyond reasonable doubt that the respondents-accused had committed murder of Gaya Din on the alleged date, time and place. It is well settled principle of law that where prosecution has led cogent and trustworthy evidence to prove the crime, matter of motive loses significance. In the case of Thaman Kumar Vs. State of Union Territory of Chandigarh, the Hon''ble Apex Court has observed as under:

There is no such principle or rule of law that where the prosecution fails to prove the motive for commission of the crime, it must necessarily result in acquittal of the accused. Where the ocular evidence is found to be trustworthy and reliable

and finds corroboration from the medical evidence, a finding of guilt can safely be recorded even if the motive for the commission of the crime has not been proved.

The following observations have been made in the case of State of Himachal Pradesh Vs. Jeet Singh, by the Hon"ble Apex Court:

No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended.

Having regard to the law laid down by the Hon"ble Apex Court in aforesaid cases and in catena of other decisions, no benefit can be extended to the respondents-accused due to weakness of motive.

32. On the basis of foregoing discussion, we come to the conclusion that the learned Trial Court was not justified in recording finding of acquittal in favour of the accused-respondents. Hence the impugned judgment is liable to be set aside. We are well aware that if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted and in cases where the Court entertains reasonable doubt regarding the guilt of the accused, the benefit of such doubt should go in favour of the accused, but it is equally well settled that the Court must not reject the evidence of the prosecution taking it as false and untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. In this case, the learned Trial Court has not properly appreciated the evidence led by the prosecution and on the basis of surmises and conjectures, the evidence of eye-witnesses has been disbelieved. Therefore, after setting-aside the impugned judgment, the respondents accused have to be convicted of the offence with which they have been charged.

33. Consequently, this government appeal is hereby allowed. Impugned judgment and order are set aside and the respondents-accused Radhey Shyam and Sudama are hereby convicted u/s 302 read with Section 34 IPC in Case Crime No. 101 of 1980, P.S. Kayamganj District Farrukhabad and sentenced to undergo imprisonment for life and to pay a fine of Rs. 5000/- each. In default of payment of fine, they shall further undergo rigorous imprisonment for one year.

The Trial Court concerned is directed to get the aforesaid respondents-accused arrested and sent them to jail to serve out the sentence. Compliance report be submitted within a period of two months.

Trial Court record be returned immediately along with a copy of this judgment for necessary action.