

Devendra Singh Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jun-21-2012

Appellant : Devendra Singh

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. S.K.Pathak

Judgement :

(1) Cr.A.No.2253/2007 Cr.A.No.2330/2007 HIGH COURT OF MADHYA PRADESH: JABALPUR Division Bench: Hon'ble Shri Justice Rakesh Saxena Hon'ble Shri Justice S.C.Sinho CRIMINAL APPEAL NO.2253/2007 1. Devendra Singh, son of Jagannath Singh Yadav, aged 36 years, r/o Rajendra Nagar, Gali No.5, Satna, District Satna, M.P.

2. Ramkaran, son of Ramrudra Yadav, aged 26 years, resident of village Pahra, Police Station Karvi, District Chitrakoot, at present resident of Atarra, Laxmi Guest House, District Banda (U.P.)Appellants -Versus- State of Madhya Pradesh Through Police Station City Kotwali, District Satna, M.P. .Respondent

----- For
the appellants: Shri S.C.Datt, Senior Advocate with Shri Puspendra Dubey,
Advocate. For the respondent: Shri Amit Pandey, Panel Lawyer.

CRIMINAL APPEAL NO.2330/2007 Upendra Khare S/o Shri Madan Mohan Khare,
aged 32 years, R/o Gali No.2, Jawahar Nagar, Satna (M.P.)Appellant -Versus-

State of Madhya Pradesh Through Police Station City Kotwali, District Satna, M.P.
.Respondent

----- For
the appellant: Shri S.K.Pathak with Shri Abhishek Soni, Advocates. For the
respondent: Shri Amit Pandey, Panel Lawyer.
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Cr.A.No.2253/2007 Cr.A.No.2330/2007 Date of hearing:

03. 05/2012 Date of Judgment :

21. 06/2012 *****

JUDGMENT

Per: Rakesh Saksena,J.Since both the above appeals arise out of the common impugned judgment, this judgment shall govern the disposal of both the appeals.

2. Appellants have filed the above appeals against the judgment dated 15.10.2007 passed by I Additional Judge to the Court of I Additional Sessions Judge, Satna in Sessions Trial No.405/2002 convicting and sentencing the appellants as follows: Devendra Singh and Upendra Khare Conviction Sentence U/s 302 r/w 149 IPC for Imprisonment for life, fine of murder of Rajesh Shukla Rs.1000/- in default, R.I. for one year. U/s 302 r/w 149 IPC for Imprisonment for life, fine of murder of Madhu Shukla Rs.1000/- in default, R.I. for one year. U/s 302 r/w 149 IPC for Imprisonment for life, fine of murder of Vinita Shukla Rs.1000/- in default, R.I. for one year. U/s 302 r/w 149 I.P.C. for Imprisonment for life, fine of murder of Prabhanshu Shukla Rs.1000/- in default, R.I. for one year. Devendra Singh U/s 382 r/w 149 I.P.C. R.I. for 10 years, fine of (3) Cr.A.No.2253/2007 Cr.A.No.2330/2007 Rs.1000/- in default R.I. for one year. U/s 404 I.P.C. R.I. for 3 years, fine of Rs.1000/- in default R.I. for one year. U/s 25(1-B) (a) r/w R.I. for 3 years, fine of Rs.500/- 27 Arms Act in default R.I. for six months. Ramkaran U/s 25(1-B)(a) r/w R.I. for 3 years, fine of Rs.500/- 27 Arms Act. in default R.I. for one month.

3. Prosecution case is that on 20.7.2002 in the morning at 6:05 a.m. Anupam Shukla (PW-2) lodged first information report in police station City Kotwali, district

Satna that his cousin brother Rajesh Shukla, who lived in Street No.5 of Rajendra Nagar, did not meet him after 18.7.2002. Again in the morning when he went to see him at his house, the back door of his house was lying open. On going inside the house, he found Rajesh Shukla, his wife Madhu Shukla, his son Prabhanshu Shukla and sister Vinita Shukla lying dead having injuries on their bodies. Police registered the offence against the unknown persons under section 302 I.P.C. and started investigation.

4. During investigation, investigating officer conducted inquest proceeding of the dead bodies and seized various articles like broken bangles, blood stained clothes, bed sheet etc. from the spot. Empty phials of calmpose injection were also seized from the toilet seats of the house. All the seized articles were sealed. Bodies of all the four deceased persons were sent for postmortem examination to District Hospital, Satna. Dr. B.L.Gupta (PW-17) along with Dr.B.G.Hinduja, Dr.H.K. Pandey and Dr. Rekha Tripathi (4) Cr.A.No.2253/2007 Cr.A.No.2330/2007 conducted postmortem examination of the bodies. In the opinion of doctors, injuries of all the persons were caused by some sharp edged weapon. The death was caused due to excessive haemorrhage.

5. On inspection by brother and sister of deceased Rajesh, it was revealed that the ornaments worn by deceased persons and kept in almirah were stolen. Accordingly, offences under sections 382,404 I.P.C. were added. On investigation, it was further revealed that accused Devendra Singh, a neighbour of deceased Rajesh Shukla, used to tease Vinita. He used to throw bottles, blood and pieces of flesh in their house. He was often seen in the company of accused Upendra Khare. Police found that accused Devendra Singh, Upendra Khare, Gyanchandra @ Chunni, Niraj Kumar and Babua @ Abhishek Singh entered the house of Rajesh Shukla armed with Katta, Gupti etc. and after administering calmpose injections to deceased persons caused their death by causing injuries to them, and stole away the ornaments worn by them and kept in almirah.

6. Accused Devendra Singh was arrested and on his information, a 315 bore Katta, 3 cartridges, stolen Mangalsutra, Bichchiya, tops, silver Payal, pearl studded gold locket, silver coins and gold Churis were recovered from an under-

construction house kept buried under earth. It was also disclosed by Devendra that he handed over a Katta and cartridges to accused Ramkaran Yadav. On this information, Ramkaran was apprehended and a 315 bore and a 12 bore Katta was seized from his possession.

7. On arrest, accused Upendra Khare disclosed about empty phial of calmpose injection, used syringes and the clothes (5) Cr.A.No.2253/2007 Cr.A.No.2330/2007 worn by him at the time of occurrence. These articles were recovered from his house. A Gupti was seized from the possession of accused Gyan Chandra. Similarly at the instance of accused Omprakash and Niraj, chain, ring and clothes were seized. Seized ornaments were identified by Sangita Shukla (PW-18). Other articles were sent to Forensic Science Laboratory for chemical examination. After investigation, charge sheet was filed and the case was committed for trial.

8. During trial, accused Devendra Yadav, Upendra Khare, Gyan chandra @ Chunni Yadav were charged under sections 302, 302/149 on four counts, 382 and 404/149 I.P.C. Devendra Yadav was further charged under section 25 (1-B)(a) read with section 27 of the Arms Act. Accused Ramkaran was charged only under section 25(1- B)(a) read with section 27 of the Arms Act. Accused Omprakash Soni was charged for offence under section 411 I.P.C. Accused Niraj Kumar was sent to Juvenile Court. Accused Kishan Singh was discharged and accused Babua @ Abhishek Singh remained absconding.

9. Accused persons abjured their guilt and pleaded false implication. According to accused Devendra Singh on 15.7.2002 he had gone to Bhopal for attending a political party conference. Thereafter on 19.7.2002 he had gone to Rajkot, Baroda (Gujarat), Dwarika and Somnath. He then went to Ahmadabad and Kanpur. When he came to knot that police was searching for him he surrendered in City Kotwali, Satna where he was kept in confinement. He was produced in the Court on 21.9.2002. Nothing (6) Cr.A.No.2253/2007 Cr.A.No.2330/2007 was recovered on his information, but false recoveries were made for political reasons. As stated by him under section 313 Cr.P.C. statement, the relations between the family members of deceased Rajesh and his family members got embittered because his

father, who was a Counsellor, got the encroachment of the boundary wall of deceased Rajesh removed.

10. In the trial, prosecution examined 26 witnesses to establish the charges against the accused persons. Accused persons also examined 7 witnesses in their defence. Learned trial Judge relying on the prosecution evidence held the appellants/accused persons guilty, convicted and sentenced them as aforesaid, however, finding the evidence insufficient against accused Gyan Chandra @ Chunni and Omprakash, acquitted them of the charges. Aggrieved by their conviction, appellants have filed these appeals.

11. Shri S.C.Datt, learned Senior Counsel and Shri S.K.Pathak, Advocate for the appellants, submitted that the learned trial Judge mis-appreciated the evidence adduced by the prosecution. Since there was no direct evidence in the case, the case rested on the circumstantial evidence of recoveries of incriminating articles. Independent witnesses of the recoveries did not support the prosecution case still learned trial Judge held the appellants guilty on the suspicious evidence of interested witnesses. The recovery as well as identification of the ornaments allegedly belonging to deceased persons was suspicious. The manner in which the investigation was conducted was not fair and the chain of circumstances sought to be proved by the prosecution was No.(7) Cr.A.No.2253/2007 Cr.A.No.2330/2007 complete. On the other hand, Shri Amit Pandey, learned Panel Lawyer for the State, submitted that it was proved by the circumstantial evidence that appellants Devendra and Upendra Khare were the perpetrators of the crime. On the information given by Devendra Singh, the ornaments stolen from the house of deceased were recovered and were duly identified by Sangita Shukla (PW-18). Merely because there were minor discrepancies or inconsistencies in the evidence of prosecution witnesses, it cannot be held that charge of murder against appellants Devendra Singh and Upendra Khare was not established. He supported and justified the impugned judgment of conviction of appellants.

12. We have heard the learned counsel for the parties, perused the impugned judgment and the evidence on record carefully.

13. It has not been disputed that Rajesh Shukla, his wife Madhu Shukla, son Prabhanshu Shukla and sister Vinita Shukla have died. It was deposed by Kamta Prasad Shukla (PW-1), Anupam Shukla (PW-2) and Sangita Shukla (PW-18) that on 20th July, 2002 when they went to the house of Rajesh Shukla they saw dead bodies of all the four deceased persons. There were injuries on their bodies. Investigating Officer Arun Singh (PW-24) went to the spot and conducted inquest proceeding in respect of death of aforesaid persons. He recorded inquest memoranda Ex.P/3,P/4,P/5 & P/6. The proceeding was conducted in presence of Anupam Shukla (PW-2) and Upendra Prasad Gupta (PW-7). Dead bodies of deceased persons were sent to District Hospital, Satna where Dr. B.L.Gupta along with (8) Cr.A.No.2253/2007 Cr.A.No.2330/2007 Dr. B.G.Hinduja, Dr. H.K.Pandey and lady Dr. Rekha Tripathi conducted postmortem examination of the bodies. On the body of Vinita Shukla, he found following injuries: (i) Cut wound on right wrist 7cm x 2.5cm x bone deep. Skin and blood vessels were cut. (ii) Penetrating wound on right chest 1/2cm x 1cm x bone deep. (iii) Penetrating wound below 2nd injury 1/2cm x 1cm x bone deep. (iv) Penetrating wound on epigastric region 1/2cm x 1cm x abdominal cavity deep. (v) Penetrating wound on epigastrium 1cm x 3cm x abdominal cavity deep. (vi) Penetrating wound on epigastrium 2cm x 1cm x abdominal cavity deep. (vii) Penetrating wound above umbilicus 1.5cm x 1cm x abdominal cavity deep. (viii) Penetrating wound above umbilicus 1.5cm x 1cm x abdominal cavity deep. (ix) Penetrating wound on right umbilicus region 2.5cm x 1.5cm x bone deep. (x) Penetrating wound on right umbilicus region 1.5cm x 1cm x abdominal cavity. (xi) Penetrating wound on right umbilicus region 1.5 x 1cm x abdominal cavity deep. (xii) Penetrating wound on left side of umbilicus region 1cm x 1cm x bone deep. (xiii) Penetrating wound on left abdominal cavity 1cm x 1cm x cavity deep. On internal examination, he found many cut injuries on liver and intestines. Peritoneum was filled with blood. Hymen was old torn. Cause of death of Vinita was shock due to excessive haemorrhage. Dr. B.L.Gupta (PW-17) found following injuries on the body of Madhu, wife of Rajesh Shukla: (9) Cr.A.No.2253/2007 Cr.A.No.2330/2007 (i) Cut wound on left wrist 7cm x 3cm x bone deep. Blood vessels and tendon cut. (ii) Penetrating wound on the joint of right hand 10cm x 4cm x bone deep. Blood vessels cut. (iii) Penetrating wound on right hand 7cm x 1/2cm x muscle deep. (iv) Penetrating wound (above injury No.3)

8cm x 1/2cm x muscle deep. (v) Penetrating wound on right arm 11cm x 3cm x muscle deep. (vi) Stab wound on mid of chest 1.5cm x 1/2cm x bone deep. (vii) Penetrating wound on left side of chest 1cm x 1/2cm x bone deep. (viii) Penetrating wound on right side of epigastrium 4cm x 2cm x cavity deep. (ix) Penetrating wound on epigastric region 1 x 3/4cm x abdominal cavity deep. (x) Penetrating wound on right epigastrium 1.5cm x 1/2cm x cavity deep. (xi) Stab wound on right epigastrium 2cm x 1/2cm x cavity deep. (xii) Penetrating wound on mid epigastrium 1/2cm x 1/2cm x cavity deep. (xiii) Penetrating wound on right side of chest 1/2cm x 1cm x cavity deep. (xiv) Penetrating wound on left side of epigastrium 2cm x 1/2cm x cavity deep. (xv) Penetrating wound on left chest 1cm x 1/2cm x chest cavity deep. On internal examination, liver was found cut at many places. There was blood in peritoneum. Blood vessels and lungs were cut. Death of Madhu was caused due to shock and excessive haemorrhage from the injuries.

(10) Cr.A.No.2253/2007 Cr.A.No.2330/2007 Dr. B.L.Gupta (PW-17) found following injury on the body of Rajesh Shukla: (i) Cut wound 10cm x 1cm x bone deep on left hand wrist. Muscles and blood vessels were cut. Chest and face of the deceased was swollen and was under putrefaction. Death of Rajesh was caused due to excessive haemorrhage from the injuries. On the body of Prabhanshu Shukla, aged 6 years, Dr. B.L.Gupta (PW-17) found: (i) Cut injury on left wrist 7cm x 3cm x bone deep. Muscles and blood vessels were cut. (ii) Penetrating wound on epigastrium 2.5cm x 1cm x abdominal cavity deep. (iii) Penetrating wound on epigastrium below second injury 1cm x 1cm x abdominal cavity deep. (iv) Penetrating wound on right side of hypochondrium 1.5cm x cavity deep. Omentum coming out from the wound. (v) Penetrating wound on umbilicus 2cm x 2cm x abdominal cavity deep. Omentum coming out from the wound. (vi) Penetrating wound on left side of chest 2.5cm x 1cm x bone deep. (vii) Penetrating wound on left hypochondrium 2cm x 1cm x abdominal cavity deep. Omentum coming out from the wound. On internal examination, Dr. Gupta found liver, lungs and intestines of deceased cut. Pleural and abdominal cavity was full of blood. Death of Prabhanshu was caused due to shock and excessive haemorrhage due to injuries. Postmortem reports of the deceased persons Ex.P/36, P/37, P/38 & P/39 were written and signed by him. In his opinion, deaths of deceased persons were homicidal in nature. (11) Cr.A.No.2253/2007 Cr.A.No.2330/2007 14. From

the aforesaid evidence, it is amply established that all the four deceased persons died of homicidal deaths.

15. not the question is whether accused/appellants Devendra Singh and Upendra Khare have been rightly convicted under section 302/149 I.P.C. for the murders of aforesaid deceased persons. Admittedly there is no direct evidence in the case and the case rests on the circumstantial evidence. Prosecution came with the story that accused Devendra Singh was obsessed to have love relationship with deceased Vinita, the sister of deceased Rajesh Shukla. Since he remained unsuccessful in it, with a view to take revenge, he committed the said offence with the assistance of other accused persons, and with a view to mislead, dishonestly removed the ornaments of deceased persons.

16. Kamta Prasad Shukla (PW-1) stated that his children had told to him that accused Devendra Yadav used to tease her daughter Vinita. He kept animus with his family members. He used to throw liquor bottles, blood etc. on the door of Rajesh. Sangita Shukla (PW-18), the sister of deceased Vinita, stated that she lived with her father at Jaisingh Nagar, but she used to visit the house of her brother Rajesh Shukla where her sister Vinita also resided. Accused Devendra Yadav used to harass Vinita and throw blood in front of her. He also threw bottles in front of her house. Sangita produced a letter Ex.P/41 allegedly written by Devendra Singh craving for love from Vinita. This letter was produced by Sangita during her examination in the Court. Though she stated that she had shown this letter to Investigating Officer, but it was not seized. Trial Court, (12) Cr.A.No.2253/2007 Cr.A.No.2330/2007 however, disbelieved this letter because it was not seized during investigation. In para 51 of the impugned judgment, one more reason assigned by the trial Court for ignoring this letter was that no question in regard to it was put to accused Devendra under section 313 of the Code of Criminal Procedure. No doubt, had this letter been produced during investigation, its handwriting could have been proved by the evidence of some expert, but we find learned Judge lost sight of the fact that in question no.48 letter Ex.P/41 was put to accused for explanation. Be that as it may, the evidence of Kamta Prasad (PW-1) and Sangita (PW-18) in respect of alleged motive speaks volumes.

17. Another piece of evidence against Devendra Singh is in respect to the recovery of blood stained clothes worn by him at the time of occurrence, and the ornaments belonging to deceased persons.

18. Investigating Officer Arun Singh (PW-24) deposed that on 21.9.2002 accused Devendra Yadav in front of Koushlendra Tiwari (PW-12) and Mohan Tiwari (PW-13) gave information about a shirt, full pants and an iron Katar. Memorandum Ex.P/26 was recorded and in consequence of that information vide memorandum Ex.P/30, the aforesaid articles were seized. On the same day, on the information furnished by accused Upendra Khare, a baniyan, full pants, 3 injection syringes, a broken phial of calmpose injection and a thin cotton thread were seized. Information memorandum Ex.P/27 and seizure memo Ex.P/31 was recorded before the same witnesses. Investigating Officer Arun Singh (PW-24) further deposed that on (13) Cr.A.No.2253/2007 Cr.A.No.2330/2007 25.9.2002 at about 4:00 a.m. accused Devendra Singh Yadav further disclosed about the ornaments belonging to deceased persons. Information memorandum Ex.P/11 was recorded before the attesting witnesses viz. Anupam (PW-2) and Sankatha Prasad. At about 7:15 a.m. he along with witnesses reached village Sitpura, where from his house Devendra took out 315 bore Katta, 3 live cartridges, one bangle 22 carat, a Mangalsutra 23 carat, locket 23 carat with pearls, a set of tops 23 carat, a pair of ear rings 23 carat, silver payal, bichchiya, 2 Ganesh Laxmi silver coins, old Victoria silver coin and silver coin of George 5th. These articles were seized vide memorandum Ex.P/14. Memorandums were signed by him, the accused and the witnesses.

19. On 25.9.2002, Arun Singh (PW-24) recorded memorandum Ex.P/13 on the basis of information furnished by accused Ramkaran at Laxmi Guest House, Atarra District Banda. This information was recorded in presence of Anupam (PW-2) and Mahesh Prasad (PW-14). On the same day, at about 13:30, from room no.2 from Laxmi Guest House, 315 bore country made black colour Katta was recovered and seizure was recorded in memorandum Ex.P/16 which was signed by the aforesaid witnesses.

20. Articles/ornaments seized from the possession of accused Devendra Yadav were put up for test identification which was conducted by Naib Tehsildar Munnawar Khan (PW-23). Sangita Shukla (PW-18), the sister of deceased Rajesh and Vinita, on 11.12.2002, identified the ornaments as belonging to deceased persons. According to investigating officer, the articles seized from (14) Cr.A.No.2253/2007 Cr.A.No.2330/2007 the spot were sent for examination to Forensic Science Laboratory, Sagar on 8.8.2002 along with letter of Superintendent of Police Ex.P/50. The rest of the articles seized from accused persons were also sent to Forensic Science Laboratory on 11.12.2002 and 15.11.2002 accompanied with the letters of Superintendent of Police Ex.P/51 and Ex.P/53. In respect of said articles, F.S.L. Reports Ex. P/52, 53 & 54 were obtained. Vide F.S.L. Report Ex.P/42, articles 'B', 'G-1' & 'I-2' were found to contain blood stains of 'B' Group. The aforesaid articles are, respectively, bed sheet of deceased Rajesh, pants of deceased Rajesh and full pants of accused Devendra Singh. Thus, the blood group of deceased Rajesh Shukla matched with the blood stains found on the full pants recovered from the possession of accused Devendra Singh. Articles K-1 & K-2, respectively, the T-shirt and full pants seized from the possession of accused Upendra Khare were found to contain only human blood.

21. Learned counsel for the appellants placing reliance on Apex Court decisions rendered in Hanumant Govind, Nargundkar and another v. State of M.P.- AIR 195.SC 343.State of Goa v. Sanjay Thakran and another - J.2007 (5) SC 146.Kashmira Singh v. State of M.P.-AIR 195.SC 15.and Ashish Batham v. State of M.P.- AIR 200.SC 3206.submitted that the circumstantial evidence adduced by the prosecution about alleged recoveries of incriminating articles and the identification of property recovered from accused is doubtful. Learned trial Judge has not appreciated the circumstantial evidence in proper perspective, therefore, it was not established beyond doubt that the accused (15) Cr.A.No.2253/2007 Cr.A.No.2330/2007 persons were guilty of committing murders of deceased persons. In case of Hanumant Govind (supra), Apex Court observed that in dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is also the danger that conjecture or suspicion may take the place of legal proof and therefore in cases

where the evidence is of circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. Reiterating the principles enunciated in case of Hanumant Govind (supra), Apex Court in case of Ashish Batham (supra) observed that mere suspicion, however, strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and grave the charge is greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between 'may be true' and 'must be true' and this basic and golden rule only helps to maintain the vital distinction. Similar observations were made by the Apex Court about the (16) Cr.A.No.2253/2007 Cr.A.No.2330/2007 appreciation of the circumstantial evidence in the decision of State of Goa v. Sanjay Thakran (supra). In case of Kashmira Singh (supra), Apex Court emphasized that where the murder was particularly cruel and revolting one, for that reason it will be necessary to examine the evidence with more than ordinary care lest the shocking nature of the crime induce an instinctive reaction against a dispassionate judicial scrutiny of the facts and law.

22. Learned counsel for the appellants on the strength of Shiv Charan v. State of Madhya Pradesh-1968 CAR 26.(SC) further argued that it was unnatural and suspicious that accused was subjected to interrogation twice and twice information memorandums were recorded. On 21.9.2002 when he had already disclosed about shirt, pants and Katar and a memorandum Ex.P/26 was recorded and the consequent alleged recovery was made vide memorandum Ex.P/13, there was no reason for interrogation on 25.9.2002 during which he allegedly disclosed about the ornaments belonging to deceased persons. Thus, according to him, the memorandum Ex.P/11 and the recoveries of the ornaments vide seizure memo Ex.P/14 were forged and fabricated. The discoveries made under the information

memo Ex.P/11 were extorted after applying third degree measure to accused Devendra. He submitted that accused Devendra was tortured is apparent from the evidence of Dr.N.K.Nema (DW-2) who stated that on 9.11.2002 he found a fracture in the ulna bone of right hand of Devendra Yadav when he was in Central Jail Satna. We are unable to accept the submissions made by learned counsel for the appellants for the reason that it is (17) Cr.A.No.2253/2007 Cr.A.No.2330/2007 not possible to lay down any strict formula that even in a case of serious nature the accused cannot be interrogated more than once. It is quite possible that on first interrogation accused may not disclose all the facts and may after sometime, on a second thought, disclose more facts. Evidence of defence witness of Dr.Nema does not give any indication that third degree treatment was meted out to accused for extorting information, since his injury was examined on 9.11.2002 whereas the second recovery was made from him on 25.9.2002 and no complaint was made by Devendra at or about the time when the said recovery was made. The facts of the case of Shiv Charan (supra) were different. In that case it was doubtful whether the accused was taken into custody on the date on which he made statement of disclosure of the weapons. Though the accused was suspected of having committed murder of his wife and son, but he was not subjected to any restraint and was kept free to go anywhere. In these circumstances, it was found that if accused was unwilling to make a statement about the weapons at an earlier stage, it was doubtful that he would have made such statement on a subsequent date before the witness.

23. Learned counsel for the appellants Shri S.C.Datt argued that the investigating officer Arun Singh (PW-24) did not say in the Court as to what accused said while making disclosure, therefore, his evidence in respect to the information furnished by the accused was not reliable. He placed reliance on a Single Bench decision of this Court rendered in Bhagirath and others (Accused) v. State of Madhya Pradesh - 1958 MPLJ 74 wherein it has been (18) Cr.A.No.2253/2007 Cr.A.No.2330/2007 observed that : There seems to be a general impression among the subordinate Courts and the Public Prosecutors that lists of discoveries or memoranda or panchanamas exhibited in criminal cases are themselves evidence. This is an erroneous view of the law. These lists or memoranda or panchnamas can only be used by persons who signed them or prepared them to refresh their memory within

the meaning of Section 27 of the Evidence Act. Whatever statement is attributed to an accused person in police custody giving information leading to the discovery must be proved by witnesses like any other fact. It is also observed that difference between "I have kept the ornaments inside that bush. and the ornaments are kept or will be found inside that bush. can well be realised. While the first sentence connotes that accused had exclusive possession of the ornaments, at least for some time, after the theft, so that he was in a position to keep those ornaments inside 'that bush;' the second sentence would only imply that the accused person somehow acquired the knowledge about their whereabouts.

24. Investigating officer, in the instant case, stated that memoranda Ex.P/26 and Ex.P/11 of accused Devendra Singh were recorded by him as disclosed by him, but merely by that, in our opinion, it cannot be held that the information was not given by the accused. On perusal of memorandum Ex.P/11, it is revealed that accused stated that J.Makan Sitpura Me Ban Raha Hai Usi Ke Hathe Uttar Paschim Ke Kone Me Samne taraf Jamin Me Gad Kar Diya Hoon Chalkar Baramad Karaye Deta Hoon.. Similarly in Ex.P/26, in respect of Katar, shirt and pants, he stated that Dinank (19) Cr.A.No.2253/2007 Cr.A.No.2330/2007 20.7.2002 Ko Apne Ghar Sitpura Ke Ek Kamre Me Rakh Diya Tha Chalkar Baramad Karaya Deta Hoon.. No doubt that the substantial evidence is what is stated by the witnesses before the Court, but at the same time when the investigating officer states that he recorded the memorandum in accordance with the statement made by accused, his evidence in that regard, cannot altogether be discarded. It is not practically possible for each and every police officer to knot niceties of law or as to how his evidence will be interpreted by the Courts. It is expected from higher officers to impart training to them how to depose in the Court according to legal requirements. Police officers are loaded with heavy duties of law and order problems and are also busy with investigations of daily increasing number of crimes. Courts are expected to take pragmatic view rather than a hyper technical view which may result in a serious crime go unpunished. Prosecutors and Courts are also expected to be vigilant while the evidence is recorded in a trial. They are not supposed to sit as silent spectators oblivious of their responsibility in the quest of the truth/justice. Apart from it, attesting witness Anupam (PW-2) before whom disclosure was made by accused Devendra,

categorically stated that Devendra told to police that he had kept the ornaments buried in a polythene in the Northwest side of his new house in Sitpura. This memorandum Ex.P/11 was signed by him. In our opinion, the evidence of this witness lends sufficient corroboration to the evidence of investigating officer Arun Singh (PW-24) about the disclosure of the facts by accused Devendra. (20) Cr.A.No.2253/2007 Cr.A.No.2330/2007 25. Koushlendra Tiwari (PW-12) and Mohan Tiwari (PW-13), the attesting witnesses of memorandum Ex.P/26 and seizure memo Ex.P/30 in respect of clothes and Katta from the possession of Devendra, did not support the prosecution version. But, there appears no reason for investigating officer Arun Singh to have forged false recoveries from him.

26. Learned counsel for appellant Devendra argued that on the memorandum Ex.P/26 in respect of Katta, shirt and pants, there were no signatures of attesting witnesses viz. Mohan Tiwari and Kaushlendra Tiwari, therefore, the recording of said memorandum was doubtful. On perusal of Ex.P/26, we find that signatures of the aforesaid witnesses are not present though their names as witnesses have been mentioned in the memorandum. This memorandum was recorded on 21.9.2002 at 11:00 a.m. Signatures of accused Devendra and investigating officer are present. In pursuance to aforesaid information, the properties were recovered on the same day at 3:00 p.m. Signatures of witnesses viz. Mohan Tiwari and Koushlendra Tiwari are present on seizure memo Ex.P/30. Investigating Officer Arun Singh (PW-24) admitted his mistake and stated that due to oversight signatures of witnesses could not be obtained on Ex.P/26. In our opinion, no fault can be found if due to oversight the signatures of witnesses could not be obtained on the memorandum.

27. Learned counsel for the appellant argued that the articles seized in pursuance of the information given by accused must be proved to have connection with the crime. He submitted (21) Cr.A.No.2253/2007 Cr.A.No.2330/2007 that it has not been proved in this case that the seized articles were connected with the crime. He placed reliance on *Prabhoo v. State of U.P.*-AIR 196.SC 111, wherein it has been observed that the statement of accused that the blood stained shirt and dhoti belonged to him is not a statement which leads to any discovery within the meaning of section 27. It is fallacious to treat the 'fact discovered' within S.27 as

equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of accused as to this, and the information given must relate distinctly to the fact. Learned counsel submitted that it is doubtful that accused Devendra would keep the ornaments and the blood stained clothes in the house at village Sitpura where anybody could have approached. He placed reliance on Babudas v. State of M.P.-2004(1) J.L.J. 191(SC). In this case, Apex Court observed that the manner in which the alleged recovery is made also creates a lot of doubt in our mind. It is seen from the evidence led by the prosecution that at every place where the accused took the Panchayatdars and the Police, according to the prosecution witnesses themselves, there were thousands of people present witnessing the recovery. We find it extremely difficult that such a large gathering would be present at the recovery unless people in the village had already come to know that there is going to be such a recovery. Then the manner in which the currency notes were allegedly kept in a damp area under a rock also creates doubt in our mind since no prudent man would conceal currency notes in such a place. Then there is a very serious doubt about the recovery of the (22) Cr.A.No.2253/2007 Cr.A.No.2330/2007 wrist watch. It is stated that on 28.5.1988 the wrist watch in question was recovered from the place where it was hidden and was seized and sealed in an envelope to which PWs.10, 17 and 19 appended their signatures. But surprisingly, when the sealed packet was opened in the court, it was found that the watch was wrapped in a newspaper dated 3.6.1988 --- a newspaper published about 6 days after the date of seizure.

. On examining the facts of the instant case, we find that on the basis of disclosure statement made by accused Devendra in memorandum Ex.P/26 a full sleeve shirt, full pants and a Katar were recovered and seized vide seizure memorandum Ex.P/30 on 21.9.2002. These seized articles were sent to Forensic Science Laboratory for chemical examination. It is true that neither investigating officer nor any other witness said that these clothes belonged to accused, but, in our opinion, since these articles were recovered on the information of accused Devendra, they have to be deemed to be the 'fact discovered' within section 27 of the Evidence Act. The fact discovered embraces the place from which the object is produced and the knowledge of accused as to this. As far as ornaments or other articles

belonging to victims are concerned, the matter would be different and the possession or title of the deceased of those articles would have to be proved independently before accepting them as a piece of incriminating evidence. Similarly, in case of other articles, not belonging to victim, a connection with the scene of crime and the articles discovered has to be established. In the instant case, in our opinion, it was not necessary for prosecution to prove that the pants and shirt discovered on the information of (23) Cr.A.No.2253/2007 Cr.A.No.2330/2007 Devendra Yadav belonged to him, but it was necessary to establish the connection of these clothes with the crime. The possession of these clothes is attributable to him because of his exclusive knowledge of the place from which they were recovered. His connection with these clothes is established from the F.S.L. Report Ex.P/42 whereby it was established that the bed sheet item 'B' and 'G1' which were seized from the body of deceased Rajesh were stained with human blood having blood group 'B', and similarly item 'I-2' the full pants recovered from the possession of accused Devendra Singh also contained the same blood group 'B'. In case of appellant Upendra Khare, however, the T-shirt and full pants, items No.'K-1' and 'K-2', recovered on his information were only found to have contained human blood.

28. From the evidence of investigating officer Arun Singh (PW-24), attesting witness Anupam (PW-2) or any other evidence, it was not revealed that at the time of alleged recoveries any number of people were present. Merely because in the neighbourhood of the house from which the recovery was made, other houses were being constructed, no inference can be drawn that the presence of articles in the house was known to others. Anupam (PW-2) categorically stated that the ornaments were kept buried after wrapping in a polythene.

29. Learned counsel for appellant Devendra pointed out that there was discrepancy about the time when the information under section 27 was furnished by Devendra Singh on 25.9.2002. Arun Singh (PW-24) stated that he recorded the memorandum on (24) Cr.A.No.2253/2007 Cr.A.No.2330/2007 25.9.2002 at 4 o'clock in the morning whereas Anupam (PW-2) stated that the memorandum was recorded at 7:00 a.m. The recovery in pursuance of that information was made at 7:15 a.m., in our opinion, this discrepancy is not material. In para 29 of his

statement, Arun Singh (PW-24) admitted that memorandum Ex.P/11 was recorded in City Kotwali, Satna at 6:15 a.m. on 25.9.2002. This kind of minor discrepancy cannot be given weight to discard the evidence of investigating officer, especially when after such a grotesque incident there was big commotion and psychological pressure on the police. Arun Singh stated that the father of accused Devendra was a senior leader of a political party. He was Chairman of Mini P.S.C. There was also a political movement after the incident.

30. Learned counsel for the appellants next submitted that the fact that human blood stains were found on the clothes seized from the possession of accused persons was not put to them for explanation under section 313 Cr.P.C., therefore, it has to be excluded from consideration. On perusal of the statements recorded under section 313 Cr.P.C. of both the accused persons, we find that the fact that blood being found on the clothes recovered from their possession in F.S.L. Report Ex.P/42 was not put to them for explanation.

31. It is settled position of law that an incriminating circumstance not put to accused under section 313 Cr.P.C. for his explanation should not be considered. [See *Zwinglee Ariel v. State of M.P.*-AIR 195.SC 15(1) and *Sharad Biridhichand Sarda v. State* (25) Cr.A.No.2253/2007 Cr.A.No.2330/2007 of Maharashtra-AIR 198.SC 1622(1)]. Therefore, we hold that the fact that blood was found on the clothes recovered at the instance of accused persons cannot be taken into consideration.

32. Learned counsel for appellant Devendra Yadav argued that Anupam Shukla (PW-2) and Sankata Prasad (not examined), the attesting witnesses of memoranda Ex.P/11 and Ex.P/14, were not independent witnesses. Anupam Shukla was closely related to deceased persons. No independent witness was joined for recording the aforesaid memoranda. Therefore, the evidence of disclosure and seizure of ornaments was not reliable. He placed reliance on *Neeraj v. State of M.P.*-1991 J.L.J. 564(MP), *Lakhwinder Singh and others v. State of Punjab*-2003 C.R.I.L.J.3058 (SC) and *Hatti Singh v. State of Haryana*-(2207) 12 SCC 471.

33. In case of Neeraj Singh (supra), the recoveries of the articles were disbelieved since recovery memos were shown to have been prepared much prior to the arrest of the accused. These recoveries were not supported by independent witnesses. The only attesting witness examined in the Court was the stock witness of the police. Though he denied of having any association with the police, but later on being confronted with scores of summons and notices running into hundreds issued against him he had to admit that he was closely associated with the police in preparation of such seizure memos in almost 400 to 500 cases. Apparently in the instant case, this is not the situation. Anupam Shukla (PW-2) was though relative of deceased persons, but it was not even suggested that he was a stock witness of the police. In case of Lakhwinder Singh (supra), (26) Cr.A.No.2253/2007 Cr.A.No.2330/2007 recovery of incriminating material from the place of occurrence was witnessed by police inspector and an independent witness. Independent witness was not examined and the police inspector who stated to have accompanied the investigating officer and witnessed seizures was shown in duty register to have departed from police station a day prior to the day, Investigating Officer took up investigation and reported at police station on the next day. In these circumstances, the recovery and seizures were held doubtful. This case is clearly distinguishable on facts, since the situation in the present case is altogether different. In case of Hatti Singh (supra), while one accused was acquitted on recovery of the articles, on the basis of same, other was held guilty. This case also stands on a different footing and has no relevance with the situation occurring in the instant case.

34. As far as the question of Anupam Shukla (PW-2) being a relative witness to the recoveries made at the instance of accused Devendra is concerned, his evidence seems trustworthy since it finds corroboration with the evidence of investigating officer Arun Singh (PW-24). In State of A.P. v. S.Rayappa and others-(2006) 4 SCC 512.Apex Court held that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as an interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused persons being convicted somehow or the other either because of animosity or

some (27) Cr.A.No.2253/2007 Cr.A.No.2330/2007 other reasons. On the contrary, invariably the public is reluctant to appear and depose before the Court especially in criminal case because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are harassed a lot. They are being threatened, intimidated and at the top of all they are subjected to lengthy cross-examination. In such a situation, the only natural witness available to the prosecution would be the relative witness. The only requirement is that the testimony of the relative witnesses should be examined cautiously.

35. Defence of accused Devendra Yadav was that he was detained in police station for several days and subjected to torture, nothing was recovered at his instance and that he was falsely implicated for political reasons for defaming him. In his defence, he examined Biharilal Soni (DW-1), Dr. N.K.Nema (DW-2), Gita Singh (PW-3), Rudraprasad (PW-4) and Ashok (PW-5), Dr. Sanjay Singh (PW-6) and Prabhu Yadav (PW-7). Biharilal Soni (PW-1), Goldsmith, stated that at about 4-5 years ago police officers of City Kotwali, Satna had brought some melted gold and silver to him for weighing and they had also asked for making ornaments from it, but he had refused. By his evidence he attempted to show that police people were getting the ornaments made by gold and silver for creating some evidence, however, when this witness was called for re-cross examination, and was confronted with weighing slips Ex.P/68 and Ex.P/69 he admitted that on 25.9.2002 somebody had brought ornaments namely gold chudi, Mangalsutra, locket, tops, ear rings etc. for weighing. On the aforesaid documents, he had signed. He, (28) Cr.A.No.2253/2007 Cr.A.No.2330/2007 however, stated that he did not know who had brought these ornaments. His evidence, in our opinion, does not help accused Devendra.

36. Gita Singh (DW-3) stated that her house is situated adjacent to the house of Devendra Singh in Sitpura. Police never went there with Devendra Yadav. In the house of Jagannath Singh, the father of accused, there were tenants. Prabhu Yadav (DW-7) stated that in the year 2002 he was residing in the house of Jagannath Singh Yadav as a tenant. He and his family members resided in all the rooms of the house. There was a boundary around the house. During his tenure as a tenant police never brought Devendra in the house and nothing was

recovered from the house. It appears that due to natural affection of being neighbour and tenant these witnesses were giving a negative evidence which in view of the positive evidence of Anupam Shukla (PW-2) and investigating officer Arun Singh (PW-24) does not inspire confidence.

37. Learned counsel for appellant Devendra Yadav submitted that identification of the ornaments allegedly seized from the possession of accused Devendra was doubtful. These ornaments were allegedly seized on 25.9.2002, but they were put up for test identification on 11.12.2002. This delay of three months was not explained in the Court. Apart from it, Sangita (PW-18) in her cross-examination admitted that some of the ornaments viz. Bichchiya, Mangalsutra, locket and silver coins were new. She was not able to give any details about the weight of the ornaments. Since these ornaments were of common use and were available in the market, (29) Cr.A.No.2253/2007 Cr.A.No.2330/2007 the evidence of identification was liable to be discarded. He further submitted that there was no evidence that any of the deceased persons was wearing these ornaments at the time of offence. Sangita (PW-18) stated that she used to see the ornaments with her Bhabi Madhu, therefore, she knew about the ornaments she possessed. Since she had seen almirah of the house lying open and the ornaments missing, she could give information about those ornaments. After seeing the ornaments in the Court, she stated that gold bangles, Mangalsutra, pearl studded locket and gold tops were of Madhu Shukla. Silver payal, a set of Bichchiya and silver coins also belonged to Madhu Shukla. Art.'N' gold chain belonged to her brother Rajesh. He used to wear the said chain in his neck. Similarly the gold ring of Topaz also belonged to her brother. She could not say as to which of the ornaments Madhu Shukla was wearing at the time of offence since on that day she was not present in the house. Though Sangita (PW-18) admitted that Bichchiya, Mangalsutra, locket and silver coins were looking new, but she explained since silver coins etc. were kept in the almirah and used to be taken out only at the time of worship, they were new. This could be true in respect of Mangalsutra, Bichchiya and locket also. Since all ornaments are not usually worn daily in day to day life, therefore, there was nothing unnatural if they appeared new. We are unable to accept the submissions made by the learned counsel for the appellants that the evidence of identification should be discarded on the ground that some of the articles were appearing new.

(30) Cr.A.No.2253/2007 Cr.A.No.2330/2007 38. Placing reliance on *Bharat v. State of M.P.-AIR 200.SC 1433(1)*, learned counsel for the appellants submitted that ornaments like Mangalsutra, Chudi, tops and locket were not of any particular design and similar ornaments were easily available in the market and were also with every family, therefore, the identification of the ornaments was of no use. In the case of *Bharat (supra)*, High Court despite coming to the conclusion that the ornaments had not been duly identified placed reliance on the evidence of recovery. In these circumstances, Apex Court held that recovery was of no use. Apart from it, some portion of the paper had been stuck with the recovered ornaments which was visible at the time of identification, therefore, the identification was not free from doubt. The case relied upon has no relevance to the facts of the present case.

39. As far as the delay in conducting the identification proceeding is concerned, admittedly the ornaments were seized on 25.9.2002 and the identification by Executive Magistrate was conducted on 11.12.2002 . Investigating Officer Arun Singh (PW-24) on being questioned about the delay stated that because of his remaining busy in other works, the identification proceeding could not be done earlier. He remained busy in search of other accused persons. In the peculiar facts and circumstances and the serious nature of the case, the explanation furnished by investigating officer appeared reasonable.

40. Learned counsel for appellant Devendra Yadav submitted that since the incident had taken place on 20.7.2002 and the ornaments were seized on 25.9.2002 i.e. after a gap of about 65 (31) Cr.A.No.2253/2007 Cr.A.No.2330/2007 days, the inference that appellant committed murder was not possible. The ornaments, in the course of time, might have changed hands. He placed reliance on *Sheo Nath v. The State of U.P.- AIR 197.SC 53*. wherein the recovery of clothes stolen in dacoity from accused, a cloth merchant, three days after the occurrence, was held to be of no evidence of dacoity and the accused was found liable to be convicted only under section 411 I.P.C. In our opinion, the facts of the instant case are different. Appellant Devendra was not a businessman or dealing in business of ornaments etc. Similarly, the facts of the case of *Nagappa Dondiba Kalal v. State of Karnataka-AIR 198.SC 175*.are also not attracted in the circumstances of the

instant case. In case of Nagappa (supra), a few ornaments which the deceased was wearing were recovered from the possession of accused, but in the instant case, number of ornaments were taken away from the house of deceased persons and at the same place, four persons were brutally killed. The facts of the case of Shabad Pulla Reddy and others v. State of A.P.- (1997) 8 SCC 49.were also different. In that case, Apex Court found the evidence about the recovery of the ornaments and other articles too artificial to be believed. Apex Court observed that it cannot be believed that even after three months of the incident accused persons would be carrying a stolen article each including a torchlight. If really they had stolen such articles, at the time of murder, it was expected in the fitness of things that they would dispose of them as early as possible; more so when the nature of articles was such that they could pass hands quickly. In such (32) Cr.A.No.2253/2007 Cr.A.No.2330/2007 circumstances, it was held that no presumption could be drawn that the accused persons were party to murder itself. In the instant case, the stolen ornaments were kept buried by the accused in his house. In the facts and circumstances of the case, we are unable to hold that appellant Devendra from whom the ornaments were recovered was not perpetrator of the murders. It was established from the evidence of Sangita (PW-18) that the ornaments were in possession of deceased Madhu. Therefore, the only possible conclusion in respect of accused Devendra Yadav was that he committed the murders of deceased persons and took away the ornaments. After considering the evidence in respect of accused Devendra Yadav carefully, we find that prosecution has established its case beyond doubt that he committed murders of deceased persons. His conviction for charge of murders is upheld.

41. Since it has been established that appellant Devendra had dishonestly taken away the ornaments from the possession of deceased persons, therefore, trial Court was justified in convicting him for the offence under section 382 I.P.C., and similarly since he dishonestly converted the properties of deceased to his own use, he was rightly convicted under section 404 I.P.C. From the evidence of investigating officer Arun Singh (PW-24) and Anupam Shukla (PW-2), it was further proved that a 315 bore Katta of black colour was also recovered from his possession.

42. Armorer Shriram Singh (PW-10) stated that he examined the country made 315 bore Katta sent to him by police Kotwali, Satna along with letter Ex.P/22 dated 2.11.2002. The said Katta was (33) Cr.A.No.2253/2007 Cr.A.No.2330/2007 in working condition. Premlal (PW-15), the arms clerk posted under District Magistrate, Satna proved the sanction (Ex.P/34) given by District Magistrate for prosecution of appellant Devendra for his possession of Katta without licence. In our opinion, on the basis of above evidence, trial Court rightly convicted Devendra Singh under section 25(1-B)(a) of the Arms Act.

43. As far as appellant Upendra Khare is concerned, investigating officer Arun Singh (PW-24) deposed that he arrested him on 21.9.2002 and on the same day he recorded memorandum Ex.P/27 of the information given by him about clothes, three injection syringes, a broken phial of calmpose injection and a cotton rope. In pursuance of said information, at about 4:00 p.m. in presence of witnesses Mohan and Koushlendra, he seized the aforesaid articles from his possession vide seizure memo Ex.P/31. These articles were sent to Forensic Science Laboratory for examination. Though human blood was found on the pants of Upendra, but since no question in this regard was put to him for explanation under section 313 Cr.P.C., the evidence in that regard was ignored by the trial Court. However, vide F.S.L. Report Ex.P/42, in broken calmpose injection phial recovered from him diazepam tranquilizer was confirmed. It is also important to note that in the course of postmortem examination, viscera of the deceased persons was seized and sent for examination to Forensic Science Laboratory. In chemical examination of viscera of all the deceased persons vide F.S.L.Report Ex.P/52, diazepam was detected. The use of calmpose (diazepam) for making the deceased persons senseless was, (34) Cr.A.No.2253/2007 Cr.A.No.2330/2007 therefore, established. This is further corroborated by the fact that two empty phials of calmpose injection were recovered from the toilet seats in the house of deceased persons at the time of spot inspection by investigating officer on 20.7.2002.

44. Shri S.K.Pathak, learned counsel for appellant Upendra Khare, submitted that the recoveries of clothes, syringes and calmpose phials from Upendra were fabricated. It was improbable that the perpetrator of the crime would have kept these articles intact even after two months of the occurrence. We are unable to

accept his argument. A person after dumping useless things often forgets about them and such things may remain lying there for any period of time. Accused Upendra Khare was not a doctor or chemist who might have kept syringes and calmpose (diazepam) injection for medical purposes. He simply denied the recovery of these articles from his possession. Detection of diazepam tranquilizer in the viscera parts of the body of all deceased persons clearly establishes a link with the possession of diazepam phial of accused Upendra. In our opinion, it was clearly established that appellant Upendra Khare participated in commission of murders of deceased persons. We uphold his conviction.

45. As far as conviction of appellant Ramkaran under section 25(1-B)(a) of the Indian Arms Act for the possession of Katta is concerned, investigating officer Arun Singh (PW-24) deposed that he recorded a memorandum Ex.P/13 under section 27 of the Evidence Act of Ramkaran on 25.9.2002 at 13:00 hours in the presence of Anupam (PW-2) and Mahesh (PW-14) that he had kept (35) Cr.A.No.2253/2007 Cr.A.No.2330/2007 315 bore country made Katta in Laxmi Guest House in village Atarra district Banda (U.P.). This memorandum was recorded at Laxmi Guest House itself. In pursuance of that information at 13:30 hours from room no.2 of Laxmi Guest House Ramkaran produced the said Katta and two live cartridges which were seized vide seizure memo Ex.P/16. Shri Datt, learned senior counsel for appellant Ramkaran, contended that the said recovery was fabricated. He pointed out that attesting witness Anupam (PW-2) disclosed that police carried Ramkaran to Atarra from City Kotwali, Satna. He could not say how long Ramkaran was made to sit at police station. He did not know Ramkaran from before, but police people made him to state that the person present at police station was Ramkaran. Village Atarra was about 150 kms away from Satna. Anupam (PW-2) stated that they proceeded for Atarra with the police at about 8:30 a.m. whereas I.O. Arun Singh (PW-24) stated that they left Satna at about 10:00 a.m. Arun Singh admitted that he did not produce any Roznamcha entry regarding his departure for Atarra and his coming back to Satna. According to Anupam (PW-2), the disclosure memorandum was not recorded at Satna, it was recorded at Atarra where Katta was recovered. It appears strange; when appellant Ramkaran was present at police station, Satna, then unless he had given disclosure statement there, there was no question for police to proceed for Atarra which was

about 150 kms from Satna. Non-production of Roznamcha entry casts further doubt about the genuineness of the disclosure and recovery of Katta from the possession of Ramkaran. It is also significant to note that other attesting witness of the (36) Cr.A.No.2253/2007 Cr.A.No.2330/2007 memorandum and recovery viz. Mahesh (PW-14) did not support the prosecution case. In the above circumstances, disclosure and the consequent recovery of Katta from the possession of appellant Ramkaran does not inspire confidence. In our opinion, trial Court did not appreciate the evidence on record in this regard in correct manner.

46. After a careful and cautious scrutiny of the evidence on record, we find that the Court below has considered the evidence, oral and documentary, in proper perspective in regard to appellants Devendra Singh Yadav and Upendra Khare and has rightly recorded finding of guilt of these appellants. We see no error or illegality in the finding of their conviction under section 302/149 I.P.C. (on four counts). The conviction of appellant Devendra Singh under sections 382/149, 404 and 25(1-B)(a) of the Arms Act is also proper and does not call for any interference.

47. In the result:- (i) Criminal Appeal No.2253/2007 is partly allowed:- (a) Conviction and sentence of appellant Devendra Singh as awarded to him by the trial Court under sections 302/149 (on four counts), 382/149, 404 I.P.C. and S.25(1-B)(a) of Indian Arms Act is affirmed. Appeal in respect to him is dismissed. (b) Conviction of appellant Ramkaran under section 25(1-B)(a) read with 27 of the Indian Arms Act is set aside. He is acquitted of the charge. This appeal in respect to him is allowed. (37) Cr.A.No.2253/2007 Cr.A.No.2330/2007 (ii) Criminal Appeal No.2330/2007 filed by appellant Upendra Khare is dismissed. His conviction under section 302/149 (on four counts) and the sentence awarded to him is affirmed. It is made clear that sentence of imprisonment for life of appellants Devendra Singh and Upendra Khare awarded to them on all the four counts shall run concurrent. (Rakesh Saxena) (S.C.Sinho) b Judge Judge