

Prem Chandra Vs. State of U.P.

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Court : Allahabad

Decided On : Nov-01-2012

Judge : Vinod Prasad & Surendra Kumar

Appeal No. : Criminal Appeal No. 1709 of 1982

Appellant : Prem Chandra

Respondent : State of U.P.

Judgement :

Surendra Kumar, J.

1. This is a criminal appeal, filed under Section 374(2) of the Code of Criminal Procedure 1973, by accused Prem Chandra, son of Ram Suhawan, resident of village Dewauapur, H/o Sawant, Police Station Khaga, District Fatehpur, challenging his conviction and sentence under Section 302 I.P.C. read with Section 34 I.P.C. and Section 307 I.P.C. read with Section 34 I.P.C., relating to Crime No. 208 of 1980, Police Station Khaga, District Fatehpur, recorded by the IInd Additional Sessions Judge, Fatehpur, in Sessions Trial No. 16 of 1981-State Vs. Prem Chandra, vide impugned judgment and order dated 30.4.1982, whereby the appellant Prem Chandra has been convicted under Section 302 I.P.C. read with Section 34 I.P.C. and sentenced to imprisonment for life thereunder. He has been further convicted under Section 307 I.P.C. read with Section 34 I.P.C. and sentenced to seven years Rigorous Imprisonment. Both the sentences were

directed to run concurrently.

2. The accused Prem Chandra was tried by the Sessions Court for committing murders of his own uncle Ram Kumar aged about 34 years (real brother of his own father) and Sughar aged about 6 years, son of Ram Kumar (his real cousin brother) and for inflicting serious injuries to Smt. Sundari, wife of Ram Kumar, (aunt of the accused) by inflicting blows with a Gandasa (a heavy sharp edged cutting weapon) in the mid night of 10/11.9.1980 when both the deceased persons and injured lady were sleeping in the courtyard of their house.

3. The facts of the prosecution case, briefly stated, are that Ram Suhawan and Ram Kumar (deceased) were real brothers being sons of Sri Raj Aheer. The deceased Ram Kumar was younger brother of Ram Suhawan and deceased Sughar, a boy aged about six years, was son of deceased Ram Kumar. Smt. Sundari (injured) PW-1 is the wife of deceased Ram Kumar and real aunt (Chachi) of the accused Prem Chandra. The mother of the accused Prem Chandra had already died. Ram Suhawan was not satisfied with the habits of his son accused Prem Chandra and he had separated the accused from him, giving him two bighas of land and a portion of dwelling house to the accused. The accused Prem Chandra used to quarrel with his uncle (Chacha) deceased Ram Kumar, demanding his full share in the agricultural land of his father Ram Suhawan. Since Ram Suhawan was quite unhappy with the bad activities of his son Prem Chandra, Ram Suhawan used to live and take meal with the family of the deceased brother Ram Kumar. Since Ram Suhawan had given the land of his share to his deceased brother Ram Kumar, the accused had a grudge with his own father and his uncle Ram Kumar. About 3-4 months prior to this incident of double murders, the deceased Ram Kumar, in the Hindi month of Jeth, had cut a Acacia (Babool) tree when the accused had a quarrel with him and since then the accused was on the look out to murder his uncle Ram Kumar but on the intervention of the villagers, the accused could not do anything at that time. In the year of the incident, a portion of the house and walls of the house of the accused and deceased Ram Kumar had fallen in the rainy season. About 3-4 days prior to present occurrence, when the deceased Ram Kumar was repairing the wall of his portion, then the accused objected, saying that unless partition was done, he would not let Ram

Kumar raise the said wall. Ram Kumar told the accused that he was raising wall of his portion. The accused again quarrelled with him and threatened that he would wipe out his entire family. In the night of the occurrence namely, 10/11.9.1980, the deceased Ram Kumar and his son Sughar were sleeping on one cot and Smt. Sundari (injured) PW-1, wife of Ram Kumar and her daughter Km. Siyakali PW-4, were sleeping on the other cot in the courtyard of their house. Around mid night, the accused Prem Chandra armed with a Gandasa and co-accused Sukhai Pasi also armed with Gandasa, assaulted Ram Kumar and his son Sughar with their respective Gandasas when the third accused Bhuluwa overpowered the deceased Ram Kumar. A Dibiya was burning in the courtyard. Dhanraj PW-6, brother of Smt. Sundari, was sleeping outside the house at the time of the incident. Smt. Sundari and her daughter Km. Siyakali got up on hearing some commotion and seeing the incident, they raised alarm and noise when the accused Prem Chandra and Sukhai Pasi started attacking Smt. Sundari with Gandasas and as a result of attack, Smt. Sundari sustained injuries. Km. Siyakali, a girl aged about 10 years at that time, in order to save her life, ran outside the house. The witnesses Mewa Lal PW-2, Mahesh, Thakur Deen PW-3 rushed to the scene of the incident and challenged the accused persons/assailants, who ran away. As a result of assault by the accused, Ram Kumar and Sughar died at the spot. Smt. Sundari PW-1 went to the police station Khaga to lodge the F.I.R. of the incident and on 11.9.1980 at 8.00 A.M. she lodged verbal report. Chik F.I.R. Ext. Ka-1 was scribed by Head Constable Sukhpal Singh PW-9, who registered the case in G.D. at serial No. 11 (Ext. Ka-28). The investigation of the case was entrusted to S.I. Sri Lal Singh Chandel PW-7 in whose presence the case was registered at the police station.

4. S.I. Lal Singh Chandel recorded the statement of Smt. Sundari PW-1 and Head Constable Sukhpal Singh PW-9 at the police station itself. Smt. Sundari was sent for medical examination of her injuries to Primary Health Centre, Khaga where Dr. Dinesh Chandra Rai PW-8 examined her injuries on 11.9.1980 at 9.10 A.M. Dr. Rai prepared her injury report, Ext. Ka-26, and found the following injuries on her person:-

- (1) Incised wound 11 cm. x 1 cm. x full neck, right cheek, 4cm. upper lip, sharp edged, bleeding from effected part. Medium size artery legated. Injury kept under observation.
- (2) Incised wound 10 cm. x 2 cm., tailing towards right side neck, gaping 1 cm. x cm. Injury kept under observation. Clotting present.
- (3) Incised wound 5 cm. x 1 cm. on right lower part of cheek, extended from lower lip to the border of neck, mandible bone deep. Injury kept under observation.
- (4) Incised wound 2 cm. x 1/2 cm. on left side of lower lip, superficial.
- (5) Incised wound 1 cm. x 1/2 cm. on lower part of middle of chin.
- (6) Incised wound 14 cm. x 6 cm. x bone deep, right elbow joint. Bleeding from effected part of bone on elbow joint on lateral side, extended towards the elbow. Injury kept under observation.
- (7) Incised wound 8 cm. x 1/2 cm., right forearm, 6 cm. above from wrist joint.
- (8) Incised wound 10 cm. x 4 cm. right forearm x bone deep, extended, right forearm to right hand. Injury kept under observation.
- (9) Incised wound 8 cm. x 1/2 cm. on left dorsum of hand.
- (10) Incised wound on little finger 1 cm. x 1/4 cm. on same side.
- (11) Incised wound 5 cm. x 1/2 cm. on left index finger to middle finger.
- (12) Incised wound 1 cm. x 1/2 cm. on right index finger.
- (13) Incised wound 8 cm. x 1/4 cm. x 5 cm. deep on left side of upper chest, 7 cm. above from left nipple.
- (14) Abrasion 6 cm. x 5 cm., right upper shoulder.

Dr. Dinesh Chandra Rai found some injuries as grievous and advised X-ray of the effected parts for medico legal purposes. The injuries were half day old and all the

injuries were caused by sharp edged cutting weapon. Dr. Rai referred the injured to the District Hospital, Fatehpur. According to the evidence of Dr. Rai, the injuries caused to her could be caused in the night between 10/11.9.1980 by Gandasa, a sharp edged cutting weapon (Ext. 1).

5. S.I. Lal Singh Chandel (Investigating Officer) proceeded for the place of occurrence with S.I. Phool Singh Sachan and other police personnel by making an entry of their departure in G.D. No. 12, time 8.30 A.M. The Investigating Officer on reaching the place of the incident/house of the first informant Smt. Sundari, appointed Panches and inspected the dead bodies of her husband Ram Kumar and her son Sughar and prepared inquest reports, photo nash, challan nash in respect of the two dead bodies. These are Ext. Ka-4 to Ka-6 and Ext. Ka-9 to Ka-11. He also prepared letters to Chief Medical Officer, Fatehpur for getting the postmortem conducted on the two dead bodies, which are Exts. Ka-8 and Ka-12. He prepared memo Ext. Ka-7 for removing the clothes from the dead body of the deceased Ram Kumar. After conducting inquest on the dead bodies of the deceased persons, the Investigating Officer sealed two dead bodies, each in a piece of cloth separately and sample seals Exts. Ka-13 and Ka-14 were prepared. He handed over the dead bodies to constables Hari Shanker and Chowkidar Devi Din along with relevant papers.

6. After sending the dead bodies of the deceased persons Ram Kumar and Sughar for postmortem examination, the PW-7 recorded the statements of the witnesses Km. Siyakali, Dhanraj, Thakur Deen and others. He examined the torches of the witnesses Dhanraj and Thakur Deen, found them in proper working condition and gave them in the custody of the respective owners/witnesses, by preparing memo Ext. Ka-15. The Investigating Officer PW-7 made inspection of the place of occurrence at the pointing out of the witnesses and prepared site plan Ext. Ka-16. He also examined the 'Dibiya' kept in the Niche (Ala) of the courtyard, found in proper working condition and gave it in the custody of Km. Siyakali, by preparing memo Ext. Ka-17. PW-7 took some bloodstained earth and plain earth and put them in separate tin containers and prepared its recovery memo Ext. Ka-18. He found the quilt of the cot of the deceased Ram Kumar bloodstained and got the bloodstained portion thereof cut and took into his possession. He also found

blood lying on the weaving material (Bandh) of the cot of the deceased Ram Kumar and cut the portion of the weaving material and took it into his possession vide recovery memo Ext. Ka-19. He found eight pieces of broken bangles on the place of occurrence and took them in his possession by preparing recovery memo Ext. Ka-21. The Investigating Officer also recorded the statements of the Panches and witnesses of the aforesaid recovery memos. The Investigating Officer recorded the statements of the eye witnesses Mahesh and Suraj Pal on 12.9.1980 and searched for the accused Prem Chandra but the accused was not available at his house. PW-7 sealed bundles of the aforesaid articles for being deposited at the police station through constable Ramanand PW-11 and raided the house of named accused persons Sukhai Pasi and Bhuluwa Pasi but they could not be traced out. The Investigating Officer recorded the statement of Mewa Lal who used the torch at the time of the incident and on finding torch in working condition, gave it back to the witness Mewa Lal, by preparing recovery memo Ext. Ka-22.

7. The Investigating Officer on 13.9.1980 recorded the statement of Ram Suhawan, father of the accused. He learnt through some informer that the accused Prem Chandra was present at the house of Bhuluwa Pasi, then the Investigating Officer took the witnesses Ram Khelawan and Raja Ram, went to the house of Bhuluwa Pasi, resident of village Sadiyapur and then arrested the accused Prem Chandra but the accused Bhuluwa succeeded in escaping from his arrest.

8. The Investigating Officer PW-7 recorded the statement of accused Prem Chandra who got recovered the weapon of offence namely, Gandasa used in the offence. When the accused Prem Chandra was taken by the police party accompanied with public witnesses to his house, he opened the door of his house and went inside the house from where he took out a Gandasa (Ext. Ka-1) from Niche of his room in the presence of the witnesses. The Gandasa was wrapped in a piece of cloth and its recovery memo was prepared as Ext. Ka-2. The Investigating Officer inspected the room of the accused and prepared site plan Ext. Ka-23, showing the place of recovery of the Gandasa. The Investigating Officer after recovery of the said Gandasa, also sealed the lock and key of the room of the accused. After completion of the investigation, PW-7 submitted charge

sheet against the accused Prem Chandra (Ext. Ka-24). Since remaining two accused persons Bhuluwa Pasi and Sukhai Pasi, residents of village Sadiyapur, Police Station Khaga, District Fatehpur were not available, the process under Sections 82/83 Cr.P.C. were initiated against them and after service of the process, the Investigating Officer submitted charge sheet against them showing them as absconders.

9. The postmortem on the dead body of deceased Ram Kumar was conducted by Dr. S.N. Misra, Medical Officer, District Hospital, Fatehpur on 13.9.1980 at 3.00 P.M. at Fatehpur mortuary. Dr. Misra assessed the age of the deceased Ram Kumar as 34 years. He assessed the period of death as 1 days from the time of the post mortem examination. Rigor mortis was found absent. The abdomen was found distended. He found the following ante-mortem injuries on the dead body of Ram Kumar:-

- (1) Lacerated wound right side of the cheek 1" x 5"
- (2) Incised wound lower part of the right side of the cheek 6" x 3" going to the mandible and to the neck.
- (3) Incised wound right side of the face from the lower end of the ear going to the neck 5" x 1".
- (4) Incised wound right side of the neck 5" x 1" cutting the right carotid vessels, oesophagus and the trachea.
- (5) Lacerated wound left side of the abdomen 2" x 0.5".
- (6) Incised wound on the dorsal aspect of the left little finger, ring finger and the middle finger, mid part skin deep.

Dr. Mishra, on internal examination found trachea and carotid vessels cut. Lungs were found congested. Clotted blood was found in the buccal cavity. Oesophagus was found cut through and through. Stomach was found empty and small intestine was also found empty. The large intestine was found containing faecal matter. The death was caused due to shock and haemorrhage as a result of ante-mortem

injuries. Dr. Misra prepared postmortem examination report (Ext. Ka-30).

10. The postmortem on the dead body of deceased Sughar was conducted by Dr. S.N. Misra, Medical Officer, District Hospital, Fatehpur on 13.9.1980 at 5.00 P.M. Dr. S.N. Misra assessed the age of Sughar about 6 years and his death had taken place about 1 days prior to the postmortem examination. The body was of healthy built child. The rigor mortis was found present in the upper limbs. He found the following ante-mortem injuries on the dead body of Sughar:-

(1) Incised wound at the right side of the face from the maxilla going back to the back of the ear cutting the lower part of the ear 6" x 2" x muscle deep.

(2) Incised wound right parietal region of the scalp, obliquely going back to the occipital region 5 " x 2" bone deep, membranes of the brain also cut and seen through the wound.

(3) Distal 2/3rd of the right index finger not present, incised margins of the wound seen.

On internal examination, Dr. Misra found parietal, occipital bones fractured and cut. Brain was found congested. Blood clots were present in the skull cavity. Large vessels of the right side of the face were found cut. About 2 ozs of digested food was found present in the stomach. Small intestine was found empty and faecal matter was found present in the large intestine. The death was caused due to shock and haemorrhage due to ante-mortem injuries. Dr. Misra prepared the post-mortem examination report (Ext. Ka-31).

11. The submission of charge sheet against the accused resulted in the registration of the criminal case before the Chief Judicial Magistrate, Fatehpur, who committed the case to the court of Sessions, where it was registered as Session Trial No. 16 of 1981-State Vs. Prem Chandra.

12. The accused was charged under Section 302 I.P.C. read with Section 34 I.P.C. and Section 307 I.P.C. read with Section 34 I.P.C. The charges were read over and explained to the accused who pleaded not guilty and claimed to be tried.

13. At the trial, the prosecution examined Smt. Sundari (injured) PW-1, Mewa Lal PW-2, Thakur Deen PW-3, Km. Siyakali PW-4, daughter of the deceased, Ram Khelawan PW-5 and Dhanraj PW-6 as witnesses of fact.

14. In the formal evidence, the prosecution examined S.I. Lal Singh Chandel PW-7, Dr. Dinesh Chandra Rai PW-8, who prepared injury report and the then S.I. Sukhpal Singh PW-9 to prove chik F.I.R. and G.D. The prosecution also examined Chowkidar Devi Deen PW-10 who was a Panch of inquest, constable Sri Ramanand PW-11 and constable Mukhtar Ahmad PW-12 as formal witnesses.

15. The prosecution tendered the reports of chemical examiner and serologist and affidavits of Maqsood Arif, Sadar Malkhana, Sheo Ratan Lal, Junior Clerk of District Hospital and proved the seven materials (1) Gandasa Ext. I, (2) Tin container containing blood stained earth. Ext. II, (3) Tin container containing plain earth Ext. III, (4) Bangle pieces of broken bangles of green colour Ext. IV (5) Bloodstained piece of quilt Ext. V (6) Bloodstained piece of Bandh Ext. VI and (7) Lock and key Ext. VII.

16. The accused in the statement recorded under Section 313 Cr.P.C. denied his participation in the occurrence. He also denied recovery of Gandasa Ext.-1 from his house and alleged his enmity with one Shital and stated that due to this enmity, he has been falsely implicated in this case.

17. The learned trial court after perusing the evidence recorded in the trial and after hearing submissions of both sides, convicted and sentenced the appellant Prem Chandra by aforesaid impugned judgment and order dated 30.4.1982, which is under challenge before us in this criminal appeal.

18. We have heard Miss Ibha Sinha, learned Amicus Curiae for the appellant and Sri Rama Shanker Yadav, learned A.G.A. for the State respondent and perused the evidence available on record, in the light of the arguments advanced by learned counsel for both sides.

19. Before proceeding further, it is essential to scrutinize the evidence of the eye witnesses examined in this case. As stated above, Smt. Sundari PW-1, who is wife

of the deceased Ram Kumar, Mewa Lal PW-2, Thakur Deen PW-3 and Km. Siyakali PW-4, minor girl of the deceased, Ram Khelawan PW-5 and Dhanraj PW-6, real brother of Smt. Sundari PW-1, were examined by the prosecution as eye witnesses.

20. Mewa Lal PW-2 and Thakur Deen PW-3 were declared hostile since they did not support the prosecution case. According to their evidence, they had not seen the deceased persons and assailants at the time of the incident. They further deposed that they had not seen the accused Prem Chandra committing the said murders of Ram Kumar and Sughar. When the prosecution was permitted to cross examine, they simply stated that their interrogatory statements under Section 161 Cr.P.C. were not recorded by the Investigating Officer and they could not tell how their such statements were recorded by the Investigating Officer. Mewa Lal PW-2 further deposed that in the night of the incident namely, the intervening night of 10/11.9.1980 he was lying at the door of his house and was sleeping.

21. Ram Khelawan PW-5 is the witness in whose presence the weapon of the offence namely bloodstained Gandasa wrapped in a piece of cloth was given by the accused Prem Chandra having taken the same out from inside a pit made inside the wall around 5.00 P.M. The said Gandasa was got recovered by the accused in presence of Ram Khelawan PW-5 and Raja Ram. The accused while accompanied by police and these public witnesses arrived at his house after being arrested by the police, opened the lock of his house and then the said Gandasa was got recovered. Memo of recovery of the said Gandasa was prepared after putting signatures of this PW-5 thereon. The witness proved the Gandasa as Ext.-1. It is evident from the testimony of PW-5 that no outsider could get access into the house of Prem Chandra except by entering through the door and it was not possible for anyone to jump inside the house of the accused Prem Chandra. The house of this PW-5 was one furlong away from the house of the deceased Ram Kumar and at the time of the incident of double murders, the witness was in his Attic (Atari). The witness came to know about the incident of the double murders in that very night and just then he visited the house of injured Smt. Sundari.

22. There is ocular testimony of Smt. Sundari PW-1, Km. Siyakali PW-4 aged about 12 years and Dhanraj PW-6, who are wife, daughter and brother-in-law (Sala) respectively, of the deceased Ram Kumar in support of the prosecution version. According to testimony of Smt. Sundari, who is injured and first informant of this case, the accused Prem Chandra is the son of her Jeth Ram Suhawan. The deceased Ram Kumar and Sughar were her husband and son respectively, and Km. Siyakali PW-4 is her minor daughter. The accused Prem Chandra was a man of criminal proclivity and he was envious to her husband Ram Kumar. The accused was also not on good terms with his father Ram Suhawan, consequently Ram Suhawan had separated his son accused Prem Chandra five years prior to this incident by giving him two bighas agricultural land and a portion of the residential house. Ram Suhawan had given remaining agricultural land to his brother Ram Kumar and Ram Suhawan used to reside with his deceased brother Ram Kumar since he had separated his son Prem Chandra. In spite of the fact that Ram Suhawan had separated his son by giving some agricultural land and part of residential house, the accused Prem Chandra used to claim his complete share in agricultural land and dwelling house to which the deceased was not ready. 3-4 months prior to this incident of double murders, the accused Prem Chandra had cut Acacia tree which was growing behind the house and cutting of that tree resulted in giving abuses by accused to his real uncle deceased Ram Kumar and then the accused also threatened to kill Ram Kumar. Before the incident, the house of the witness and a portion of the house of the accused fell down in the rainy season. The deceased Ram Kumar was raising the damaged wall, dilapidated as a result of rain. The accused Prem Chandra opposed to the act of raising wall by the deceased on the pretext that first whole agricultural and residential property be divided between Ram Suhawan, father of the accused Prem Chandra, and Ram Kumar deceased in equal shares. Only after the partition, the wall be constructed. The deceased Ram Kumar told that the house belonged to him hence he would certainly raise the wall of the house and at that moment also the accused Prem Chandra hurled filthy abuses towards his uncle Ram Kumar and threatened to exterminate his whole family. This incident happened two days prior to the said murders. In the night of the incident, this PW-1 along with her daughter Siyakali PW-4 was sleeping on a cot and her husband

and son (deceased persons) were sleeping on the other cots in the courtyard of their house when the light was emanating from a Dibiya. Two days prior to the incident, Dhanraj, brother of this PW-1 had come to her house and at the time of the incident, Dhanraj was sleeping at the door of the house. Around mid night, some commotion was heard, then she woke up and saw that two accused persons Prem Chandra and Sukhai were assaulting her husband Ram Kumar with their respective Gandasas when third accused Bhuluwa was squeezing her husband. These two accused persons also inflicted Gandasa blows upon her son Sughar. This incident was witnessed by PW-1 and her minor daughter Km. Siyakali PW-4. When PW-1 raised cries, she was also overpowered by accused Bhuluwa and she was also attacked with Gandasas by two accused persons Prem Chandra and Sukhai Pasi. In this incident, her husband Ram Kumar and son Sughar were killed and she also sustained several injuries. On her cries, her brother Dhanraj PW-6, her neighbours Thakur Deen PW-3, Mewa Lal PW-2 and Mahesh came there running. Seeing the arrival of these witnesses, the accused Prem Chandra, Sukhai Pasi and Bhuluwa scampered and while scampering, they were seen by Dhanraj in the torch light.

23. Smt. Sundari PW-1 went to the police station along with Chowkidar Devi Deen PW-10, and her brother Dhanraj in the following morning for lodging the F.I.R. She orally dictated the report of the incident and the same was written by head constable Sukhpal Singh PW-9. The report was read over to her and her thumb impression was got affixed thereon. The witness had proved the F.I.R. as Ext. Ka-1. She was taken to the hospital for medical examination of her injuries and treatment and she was treated for the injuries in District Hospital, Fatehpur. According to her evidence, when the accused persons Prem Chandra and Sukhai Pasi were inflicting blows of Gandasa and third accused Bhuluwa was catching hold of her, glass bangles of the injured Smt. Sundari PW-1 were broken in the attempt to get herself released from their clutches. It is evident from the cross examination of the injured witness (PW-1) that after the murder of her husband and son in this incident, she started living at her parents' home in village Titihirpur and left her in-laws house situated in village Dewauapur. It further emerges from her testimony that consolidation operations were completed in the village five years prior to the incident and agricultural holding of her husband and her Jeth

was separated in the consolidation process. It is, thus, clear that several days prior to this incident, the shares of her husband Ram Kumar and her Jeth Ram Suhawan in the agricultural holding were separated and separate khatas were recorded. There was no partition regarding residential property between her husband and her Jeth because her Jeth Ram Suhawan used to reside with the family of his brother Ram Kumar. It is further evident from the evidence that one month prior to this incident, some quarrel between Ram Suhawan and Prem Chandra and wife of Prem Chandra took place and 10-15 days prior to this incident, the wife and children of accused Prem Chandra had left for her parents' place and they did not come back till this incident occurred in village Dewauapur. Ram Suhawan was residing with the family of his deceased brother prior to marriage of the accused Prem Chandra and the marriage of the sister of Prem Chandra as well as Prem Chandra were got performed by her husband. The accused Prem Chandra started living along with wife and children separately after 3-4 years of his marriage from the family of the deceased. PW-1 also stated that since Ram Suhawan had kept some lady as a concubine, there were frequent quarrels between Prem Chandra and Ram Suhawan and that lady died one year prior to this incident. After death of that lady, Ram Suhawan and Prem Chandra developed good relations and started living together. Acacia (Babool) tree allegedly cut by accused Prem Chandra led to displeasure of the deceased Ram Kumar. Acacia tree did not belong to her husband but that tree was not fully grown. At that time, Prem Chandra had scolded his chacha Ram Kumar referring that Ram Kumar had no concern with that tree. The injured Smt. Sundari PW-1 after fully supporting the prosecution version as stated by her at the time of lodging of the F.I.R. and after withstanding the test of cross examination on important aspects, she in order to save her nephew accused Prem Chandra tried to resile from her evidence. In order to weaken the prosecution case, she had deposed that night of the incident was quite dark and 'Dibiya' which was burning in the night, had already been extinguished by her before her sleeping. Thus, she means to say that at the time of the incident, it was quite dark and there was no source of light namely Dibiya at the time of the incident of double murders in which she herself sustained several injuries. She did not stop even at this stage but further stated that it was dark in her courtyard and she could not see or identify the

murderers of her husband and son. She further stated that she had not seen her nephew Prem Chandra committing these two murders. When she was trying to give a death-knell to the prosecution case, the Public Prosecutor sought permission from the Court to cross examine her and the trial court permitted him to cross examine the witness. In her evidence, she denied the contents of the F.I.R., which was written at her dictation by Head Constable at the police station saying that she did not lodge the same at the police station. She in a surprising way changed her evidence saying that after sustaining injury, she became unconscious and she came to consciousness at District Hospital, Fatehpur. Since the beginning, the case of the prosecution as disclosed in the F.I.R., is that she had sustained injuries in the same incident in which her husband and son were murdered and in the following morning of the incident, she reached the police station and orally narrated the incident to the Head Constable Sukhpal Singh PW-9 and after lodging the F.I.R., she was sent to the hospital for examination of her injuries and for treatment. Her attention was drawn to her interrogatory statement recorded under Section 161 Cr.P.C. by the Investigating Officer, then she denied having given such statement to the Investigating Officer. When the learned Trial Judge made a query to this PW-1 about her earlier evidence in the court to the effect that at the time of the incident, there was light of 'Dibiya' and that she had seen the accused Prem Chandra and his companions had murdered her husband and son and she lodged the F.I.R. at the police station, the witness clearly told that all these facts were falsely deposed by her. When the learned trial judge asked PW-1 the reason of giving false evidence in the court, the witness remained reticent and adopted complete silence without giving any reply.

24. Now we come to the evidence of Km. Siyakali PW-4, who was aged about 10 years at the time of the incident, (daughter of the deceased Ram Kumar). Before recording her evidence, the learned Trial Judge tested her power of understanding the questions and giving reply and he ultimately found her competent to give evidence. She stated that both the deceased persons Ram Kumar and Sughar were her father and brother respectively. Smt. Sundari is her mother and Ram Suhawan is her elder father, to whom she calls grandfather. The accused Prem Chandra is son of Ram Suhawan and is her cousin brother. The murders of her father Ram Kumar and brother Sughar were committed inside the courtyard of her

house in the night in village Dewauapur, Police Station Khaga, District Fatehpur and her mother Smt. Sundari also sustained injuries in that very incident. In the night of the incident, the witness along with her mother was sleeping on a cot and on another nearby cot her father Ram Kumar and brother Sughar Singh were sleeping. At the time of the incident, one Dibiya was placed and light was coming out there from. Her maternal uncle Dhanraj PW-6 had already come to her house and he was sleeping at the time of the incident in Chaupal outside her house. Around mid night, she got up hearing the groaning cries of her mother and witnessed that one accused Bhuluwa was squeezing her father and brother whereas her cousin brother Prem Chandra and Sukhai were inflicting blows of Gandasa at her father and brother. Bhuluwa caught hold of her mother when blows of Gandasa by Prem Chandra and Sukhai were inflicted upon her mother Smt. Sundari. The witnesses Mewa Lal, Mahesh Babu and Dhanraj lighting their torches came inside the courtyard where these witnesses ran out of the house being scared. Her father and brother died at the spot and her mother was in critically injured predicament. She showed the 'Dibiya' to the Investigating Officer which was inspected by the Investigating Officer and given back to her. Ram Suhawan used to reside and take meals with her family. Prem Chandra resided separately having separate residence. PW-4 was extensively cross examined by the accused. According to her evidence, she had given the evidence whatsoever was witnessed by her. She clearly stated that she had not given evidence at the instance of the prosecution, Public Prosecutor or State counsel. The incident took place just before the mid night and at the time of the incident, there was moon light and it was not completely dark. The Dibiya which was burning in the courtyard at the time of the incident, was still burning and her mother did not put it out. The Dibiya was then kept in the Niche of the wall. The surrounding walls of the house were already demolished, hence the courtyard of the house was easily accessable. The accused Prem Chandra in the night of the incident was sleeping in his separate room which was situated outside the house. There were some rooms in the house and one room was already given to the accused several years, prior to the incident. Dhanraj, maternal uncle of the witness had come to her house three days prior to the incident. The witness did not buzz at all in her cross examination giving clear evidence that she had witnessed the murder of her

brother Sughar and she was very well awakened at the time of the incident of murders of her father and brother. First her father was murdered by the accused and thereafter her brother was murdered by inflicting repeated blows of Gandasa by the accused Prem Chandra and his companions. The witness had also seen the accused attacking her mother. When her mother was inflicted blows of Gandasa, just thereafter this witness, who was a girl of ten years at the time of the incident, feeling scared sneaked away.

25. Now we have occasion to peruse the evidence of Dhanraj PW-6, who is real brother of Smt. Sundari PW-1. Dhanraj PW-6 repeated the prosecution version as narrated by injured Smt. Sundari PW-1 in the F.I.R. and in her examination-in-chief and also narrated by Km. Siyakali PW-4 in her evidence in the trial. This PW-6 had reached Sasural of his sister three days prior to the incident and in the night of the incident, the witness was sleeping in verandah outside the house of his Behnoi Ram Kumar. Around mid night hearing groaning cries of Km. Siyakali, his maternal niece, the witness got up and entered in the courtyard flashing his torch along with Mewa Lal, Mahesh and Thakur Deen. According to testimony of PW-6, accused Bhuluwa was squeezing Ram Kumar whereas two accused persons Prem Chandra and Sukhai Pasi were assaulting Ram Kumar and Sughar by giving blows of Gandasa. As a result of sustaining injuries caused by blows of the Gandasa, Ram Kumar and Sughar Singh died at the spot and Smt. Sundari sustained injuries. The accused persons, ran away, seeing the witnesses arriving towards the scene of occurrence. At the time of the incident, the light of Dibiya was available in the courtyard. This PW-6 accompanied his sister Smt. Sundari to Fatehpur Hospital for treatment of her injuries. The witness was asked to stay near the dead bodies by the Investigating Officer, hence he did not accompany Smt. Sundari to the Police Station Khaga. According to evidence of Dhanraj PW-6, night of the incident was dark but the sufficient light of Dibiya was available in the courtyard at the time of the incident. No defence evidence was adduced on behalf of the accused appellant in the trial court.

26. Now we deal with the rival contentions raised by the learned counsel for the parties.

27. The first contention of the learned counsel for the appellant is that the injured and first informant Smt. Sundari is wife of the one deceased and mother of another deceased. PW-4 Km. Siyakali who was aged about 10 years at the time of the incident, is daughter of one deceased and sister of another deceased. PW-6 Dhanraj is the real brother of the injured Smt. Sundari PW-1 and real brother-in-law of the deceased Ram Kumar. All these eye witnesses examined by the prosecution are related and interested witnesses and their evidence cannot be relied upon. It is true that all the aforesaid eye witnesses are closely related to the deceased persons. It is settled by a catena of the judgments of the Hon'ble Apex Court that creditworthy and reliable testimony of the related, interested or partisan eye witnesses cannot be discarded just on the ground of their being related or interested witnesses but the same requires the cautious scrutiny before acceptance of their evidence.

28. Per contra, learned A.G.A. has submitted that in this case, one Ram Kumar and his son Sughar were murdered while they were sleeping in the courtyard of their house in the mid night. Smt. Sundari PW-1, who was also injured in this incident, and her minor daughter Km. Siyakali PW-4 were sleeping on the nearby cot in the same courtyard where the deceased Ram Kumar and his son Sughar were sleeping on the same cot. The presence of PW-1 and PW-4 being wife and daughter of one deceased Ram Kumar on the date, time and place of the incident is quite natural and probable and since Smt. Sundari PW-1 also sustained several grievous injuries in the same incident, their presence at the spot, can by no stretch of imagination, be doubted at the time of the incident. From their cross examination, nothing has been extracted to doubt their presence at that time. No major or substantial contradictions or discrepancies have been pointed out in their evidence by the learned counsel for the appellant. The evidences conform to each other. There is no cogent reason to disbelieve their presence at the time of the incident and it was quite probable for the family members of the deceased to sleep in the courtyard of the house in the month of September.

29. In this case, Smt. Sundari also sustained injuries in the same incident and her presence on the date, time and place of the incident is fully established and proved beyond any reasonable doubt. The testimony of PW-1 and PW-4 is further

corroborated by Dhanraj PW-6, who being brother-in-law of the deceased Ram Kumar was present nearby place of occurrence. PW-6 on hearing shrieks of his maternal niece (Bhanji) Km. Siyakali at the time of night incident, flashing torch immediately came to the place of occurrence and saw the whole incident, in which his Behnoi Ram Kumar and Bhanja Sughar had been murdered and his real sister Smt. Sundari received serious injuries. The presence of Dhanraj PW-6 at the time of the incident is also established. Since the presence of these eye witnesses on the date, time and place of incident is established, there is no cogent reason to disbelieve their testimony. Their statements are free from any major contradiction or discrepancy. Their testimony is truthfull, natural, trustworthy and reliable. It is evident from the close and cautious scrutiny of their evidence that the incident took place in their presence. Thus, the contention of the learned counsel for the appellant that their testimony being related or interested witnesses should be discarded, is without substance and hereby spurned.

30. The next contention of the learned counsel for the appellant is that the injured Smt. Sundari PW-1, at the last stage of her cross examination, had not supported the prosecution version and turned hostile, hence she is unreliable witness.

31. We have considered this aspect of the evidence of the injured Smt. Sundari PW-1. The factum of murder of Ram Kumar and his son Sughar and sustaining injuries by Smt. Sundari PW-1 in the same incident on the date, time and place of the incident, has not been challenged on behalf of the appellant. The prosecution has established that Ram Kumar and his son Sughar were murdered in the said incident and Smt. Sundari PW-1 also sustained grievous injuries in the same incident occurred around mid night in the courtyard of their house. PW-1 has supported the prosecution story in toto in her examination-in-chief and in her sustained cross examination but at the fag end of her cross examination, she tried to favour the accused appellant Prem Chandra as she was his real aunt (Chachi) and she wanted to help him in this case. When she was cross examined by the Public Prosecutor on getting her declared hostile, she stated that she did not lodge the said F.I.R. Ext. Ka-1 at the police station and after sustaining injuries, she became unconscious and came to consciousness in the hospital. She also dislodged her interrogatory statement recorded by the Investigating Officer. She

tried to further help the accused by stating that night of the incident was dark whereas according to her examination-in-chief and sustained cross examination, the night was dark but there was light of Dibiya kept in the Niche of the wall in the courtyard and there was sufficient light in the courtyard at the time of the incident. If she put out the Dibiya before sleeping in the night of the incident, this version is not supported by other witnesses. According to evidence of her own daughter Km. Siyakali PW-4 and her own brother Dhanraj PW-6, Dibiya was burning in the courtyard at the time of the incident and there was sufficient light of the Dibiya which enabled them to identify the accused appellant. The Investigating Officer inspected the said Dibiya and prepared the recovery memo of the Dibiya Ext. Ka-16. At the time of the incident, PW-6 flashed torch, light of torch was also available and memo of torch was prepared by the Investigating Officer, which is Ext. Ka-15. The statement of the injured Smt. Sundari PW-1 has been corroborated by testimony of PW-4 and PW-6 and from this evidence, the prosecution evidence is fully established and proved.

32. The evidence of the eye witnesses is also corroborated by prompt and quick recovery of the weapon of offence namely, bloodstained Gandasa from the accused appellant Prem Chandra. The bloodstained Gandasa was recovered by the police in the presence of public witness Ram Khelawan PW-5. Apart from it, the blood was found on the clothes and quilt of the deceased and the blood was human blood, leaving no chance of any suspicion of the complicity of the accused in this incident of double murders and murderous assault upon the injured Smt. Sundari. Thus, the contention of the learned counsel for the appellant that there was no light of Dibiya in the courtyard of the house is not substantiated by evidence on record and this contention also fails.

33. The injured Smt. Sundari PW-1 admitted in her evidence that after the murder of her husband and son in this very incident, her relations with her 'Jeth' Ram Suhawan were still good. Thus, it appears that Smt. Sundari PW-1 was having good relations with her Jeth Ram Suhawan, father of the accused Prem Chandra and this appears to be the possible reason that she changed her statement at the instance of Ram Suhawan, whose only son Prem Chandra is facing trial of double murders and murderous assault in this case. When she was queried by the trial

court as to why she made false statement, she remained quite silent and did not respond to the said query. Her silence on the query of the trial court, is clear indication of the fact that she was feeling helpless at the hand of her Jeth Ram Suhawan and she had to change her statement at the last one or two pages of her cross examination. She remained intact supporting the prosecution case in toto. Since her husband and son had already been murdered in this incident and she sustained serious injuries at the hands of her nephew accused Prem Chandra, she felt helpless and when she withstood her extensive cross examination, she, in the end, tried to favour her nephew accused unsuccessfully.

34. This incident of double murder occurred around mid night of 10/11.9.1980 and the F.I.R. of the incident was lodged according to her oral information given at the police station in the following morning namely 11.9.1980 at 8.00 A.M. after covering a distance of 8 kilometers. The incident occurred more than thirty years back when means of transport were hardly or scanty available. She was fully scared by the incident of murders of her husband and son. She also explained the reason of lodging the F.I.R. after about 8 hours of the incident, by saying that when Chowkidar of the village came to her house, she left for the police station along with chowkidar Devi Deen PW-10. Thus, the F.I.R. in this case was lodged without any extra-ordinary delay by injured Smt. Sundari PW-1 after covering a distance of 8 kilometers from the place of the incident to the Police Station Khaga. The F.I.R. was lodged without any consultation or deliberation and whatever happened in her presence, the same was orally told by her to the Head Constable Sukhpal Singh PW-9, who prepared chik F.I.R. Ext. Ka-1 according to her dictation. We may also mention here that special report of the incident, as is required under Section 157 Cr.P.C., was sent on 12.9.1980. All the details of the incident including names of the accused persons and weapons used by them in this incident of double murders and role assigned to them were clearly mentioned. PW-1 sustained 14 injuries in all on her person in the same incident. Four injuries were noted as grievous by doctor. The number and nature of the injuries found on the person of the injured Smt. Sundari PW-1 go to show that the accused had committed murderous assault on her but she was lucky to survive the said injuries due to timely arrival of her brother Dhanraj PW-6 and other witnesses when her daughter Km. Siyakali rushed outside the house and escaped unhurt. Though it is

a case of murders of two persons and murderous assault upon the injured Smt. Sundari, motive has no significance. The prosecution has successfully proved the motive for this incident. There was sufficient motive for the accused appellant to have committed the murders of his own uncle (chacha) Ram Kumar and cousin brother Sughar aged about six years and murderous assault on his real aunt (chachi) Smt. Sundari. Thus, the motive is also established in this case. Though the learned counsel for the appellant has not contended about any kind of discrepancy or variance between ocular testimony and medical evidence but we have, as a precautionary measure, collated the ocular testimony with the medical evidence and find that there is no discrepancy or any kind of contravention in between the two.

35. On the point of interested witnesses, the Hon'ble Supreme Court in State of U.P. Vs. Jagdeo, 2003 Cri.L.J. 844 (S.C.) observed that only on the ground of interested or related witnesses, their evidence cannot be discarded. Most of the times eye witnesses happen to be family members or close associates because unless a crime is committed near a public place, strangers are not likely to be present at the time of occurrence.

36. In Mst. Dalbir Kaur Vs. State of Punjab, 1976 Cr.L.J. 418 (S.C.) following observations were made:-

(i) Interested witness:- Relatives who are natural witnesses are not interested witnesses and their testimony can be relied upon.

The term 'interested' postulates that the person concerned must have some direct interest in seeing that the accused is somehow or the other is convicted either because he had some animus with the accused or for some other reason. In the reported case the incident took place at mid night inside the house, the only natural witnesses who could be present to see the assault were the persons present in the house at that time. No outsider can be expected to have come at that time because the attack was sudden. Moreover a close relative who is a very natural witness cannot be regarded as an interested witness.

(ii) Witness gained over by accused not examined by the prosecution- held withholding or keeping back of witnesses is not unfair and adverse inference cannot be drawn. There is no duty on the prosecution to examine witnesses who might have been gained over by accused and even if those witnesses are not produced by the prosecution, there is nothing to stop accused from applying to the court for examining such witnesses.

(iii) witness who gives details with absolute accuracy is trustworthy.

37. In *State of Rajasthan Vs. Smt. Kalki*, 1981 Allahabad Criminal Rulings, 254 (S.C.) it was held that in the depositions of witnesses, there are always normal discrepancies however, honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory, due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence and the like material discrepancies are those which are not normal and not expected of a normal person.

38. Regarding evidentiary value of testimony of the interested or relatives witnesses, Hon'ble Supreme Court in *Mano Dutt and another Vs. State of U.P.* 2012 (77) ACC 209, has observed in paragraph no.19 referring to the case of *Namdeo Vs. State of Maharashtra* (2007) 14 SCC 150 that this Court drew a clear distinction between a chance witness and a natural witness. Both these witnesses have to be relied upon subject to their evidence being trustworthy and admissible in accordance with law.

39. In *Chand Khan Vs. State of U.P.*, AIR 1995 Supreme Court 2140, it was observed that minor discrepancies in evidence of eye witnesses who have given convincing and reliable evidence with regard to details and manner of assault will not affect their evidentiary value. Absence or insufficiency of motive is immaterial if the incident is proved by evidence of eye witnesses.

40. Hon'ble Supreme Court in *Waman and others Vs. State of Maharashtra* 2011 Cri.L.J. 4827 has observed in paragraph no.9 which reads as follows:

"In *Balraje @ Trimbak Vs. State of Maharashtra*, (2010) 6 SCC 673; (2010 AIR SCW 3707), this Court held that mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence. It was further held that when the eye-witnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically and the court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed toward the accused. After saying so, this Court held that if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same."

41. It has been further observed in *Waman* (supra) that relationship cannot be a factor to affect the credibility of a witness. The evidence of a witness cannot be discarded solely on the ground of his relationship with the victim of the offence. The plea relating to relatives' evidence remains without any substance in case the evidence has credence and it can be relied upon. In such a case the defence has to lay foundation if plea of false implication is made and the court has to analyse evidence of related witnesses carefully to find out whether it is cogent and credible. The same view has been reiterated in *State of U.P. Vs. Naresh and others* (2011) 4 SCC 324.

42. In the *State of U.P. Vs. Nawab Singh*, 1995 ACC 584 (D.B.) it was observed that in a murder case when there is direct evidence, motive loses its importance. Some omissions in the statement under Section 161 Cr.P.C. are not sufficient to discard the truthful and creditworthy evidence of the witness and also failure of the witness to give direction from which side the accused came caused due to illiteracy or lack of knowledge of the witness.

43. In *Thoti Manohar Vs. State of A.P.*, 2012 (78) ACC, 511 (S.C.) it has recently been observed by Hon'ble Supreme Court that in case the occurrence partly takes place inside the house and partly outside it, the family members and the close relatives are bound to be the natural witnesses. They cannot be said to be chance

witnesses but they are most natural witnesses. Further it has also been observed that the minor discrepancies on trivial matters not touching the core of the matter cannot bring discredit to the story of the prosecution.

44. The law is very settled about the value of the testimony of the injured witness. The Hon'ble Apex Court in the case of *Mano Dutt and another Vs. State of U.P.*, 2012 (77) ACC, 209 (S.C.) in paragraph 23 has recently observed as follows:-

" In our view, non-examination of Nankoo, to which the accused raised the objection, would not materially affect the case of the prosecution. Normally, an injured witness would enjoy greater credibility because he is the sufferer himself and thus, there will be no occasion for such a person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain, protect the real culprit. We need not discuss more elaborately the weightage that should be attached by the Court to the testimony of an injured witness. In fact, this aspect of criminal jurisprudence is no more *res integra*, as has been consistently stated by this Court in uniform language. We may merely refer to the case of *Abdul Sayeed v. State of Madhya Pradesh* [(2010) 10 SCC 259], where this Court held as under:

"28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh v. State of Bihar*, *Malkhan Singh v. State of U.P.*, *Machhi Singh v. State of Punjab*, *Appabhai v. State of Gujarat*, *Bonkya v. State of Maharashtra*, *Bhag Singh, Mohar v. State of U.P.* (SCC p. 606b-c), *Dinesh Kumar v. State of Rajasthan*, *Vishnu v. State of Rajasthan*, *Annareddy Sambasiva Reddy v. State of A.P.* and *Balraje v. State of Maharashtra*.]

29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab*, where this Court reiterated the special evidentiary status accorded to the

testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

"28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa v. State of Karnataka* this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In *State of U.P. v. Kishan Chand* a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana*). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below."

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

45. Hon'ble Apex Court in *Nathuni Yadav Vs. State of Bihar*, 1997 (1) Crimes (81) SC, observed that if the assailants are not stranger, the victims having enough visibility are able to correctly identify the assailants. When eyewitnesses are well acquainted with physiognomy of which one of the killers and assailants have enough light to identify the victims, there is no difficulty for the eyewitnesses to

correctly identify the assailants. In the reported case, the victims and appellants were close relative, a man and his wife were shot dead at terrace of their residential building due to family feud and their neighbour was also shot dead as he woke up hearing sound of fire. Hon'ble Apex Court held that the victims/eyewitnesses being acquainted with physiognomy of each of the killers had enough visibility to correctly identify them as assailants were not stranger. Hon'ble Apex Court further held that "what is sauce for the goose is sauce for the gander" means that even assailants had enough light to identify the victims whom they targeted without any mistake from among those who were sleeping on the terrace. The light then available, though meagre, was enough for the assailants, why should we think that same light was not enough for the injured who would have certainly focussed their eyes on the face of the intruders standing in front of them.

46. The presence of the eye witnesses on the date, time and place of the incident is fully established and proved by their evidences and further corroborated by medical evidence. Ocular testimony is further corroborated by medical evidence and by reports of Chemical Examiner and Serologist. The prosecution has absolutely succeeded to prove its case against the appellant beyond any shadow of reasonable doubt by the evidence of truthful and reliable eye witnesses and corroborated by medical evidence. The charges of double murders and murderous assault on the person of Smt. Sundari PW-1 levelled against the appellant are proved from the evidence on record. After analysing the evidence discussed above, we affirm and confirm the findings recorded by the learned trial Judge vide impugned judgment and order dated 30.4.1982 and there appears to be no reason to deviate from those findings. The conviction and sentence of the appellant as ordered by the trial court is hereby confirmed. The appeal is devoid of merits and is accordingly dismissed.

47. Since the appeal of the appellant Prem Chandra is dismissed, his bail bonds and surety bonds are cancelled. He is directed to surrender before the trial court immediately to serve out remaining part of the sentence awarded to him. If he fails to surrender, the trial court is directed to get the appellant arrested and send him to jail for serving out the remaining part of the sentence awarded by the trial court by means of the impugned judgment and order dated 30.4.1982.

48. Let a copy of this judgment be certified to the trial court for its intimation.

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