

**Anis Vs. State of Up**

**Anis Vs. State of Up**

**SooperKanoon Citation :** [sooperkanoon.com/1115563](http://sooperkanoon.com/1115563)

**Court :** Allahabad

**Decided On :** Sep-17-2012

**Judge :** Surendra Kumar & Vinod Prasadthe

**Appeal No. :** Criminal Appeal No. 1514 of 1982

**Appellant :** Anis

**Respondent :** State of Up

**Advocate for Pet/Ap. :** Sri. Rahul Misra, Sri. P.N. Misra

**Judgement :**

Surendra Kumar, J.

1. HEARD Sri P.N. Misra, learned Senior Counsel assisted by Sri Rahul Misra, learned counsel for the appellant, Miss Usha Kiran, learned AGA for the State and perused the evidence on record.

2. CHALLENGE in this criminal appeal is to the judgment and order dated 31.5.1982 passed by II Additional Sessions Judge, Muzaffarnagar, in Session Trial No.538 of 1981, State of U.P. Vs. Anis under Section 302 read with Section 34 IPC arising out of Crime No.1148 of 1981, Police Station Kotwali, District Muzaffarnagar whereby the appellant Anis has been convicted under Section 302 read with Section 34 IPC for committing murder of Ram Kumar, aged about 40 years, son of Fateh Chand PW-2, resident of District Muzaffarnagar by making

fires from revolver along with his real brother co-accused Nafis on 14.10.1981 at 1:00 p.m. when the deceased Ram Kumar was going along with Pooran Singh PW-3 on the rickshaw which was being pulled by Shobha Ram PW-4, and was sentenced to undergo imprisonment for life.

The prosecution story as narrated in the first information report is that on 14.10.1981 at about 1:00 p.m., Ram Kumar son of Fateh Chand PW-2 and Pooran Singh PW-3 were going on the rickshaw on Ansari Road, within police circle Kotwali, Muzaffarnagar. They were near Bhoro Temple when all of a sudden, the appellant Anis and his brother Nafis came out from the market to the south and in furtherance of their common intention, both of them fired shots from their respective revolvers hitting Ram Kumar at several places on his body. Ram Kumar fell down from rickshaw and died at the spot. The rickshaw is said to have been pulled by Shobha Ram PW-4 at that time. Pooran Singh PW-3 at once went to Fateh Chand who worked as a clerk in the Collectorate Court at Muzaffarnagar and informed him about the incident. Fateh Chand went to the place of the occurrence and having seen his son Ram Kumar lying dead on the road, lodged a written report Ext. Ka-2 at Police Station Kotwali on the same day at 2:00 p.m. The case under Section 302 IPC was registered against Anis and his brother Nafis. Investigation was taken up by S.I. Todi Singh PW-7 who immediately went to the place of the occurrence, made inquest and after taking possession of the dead body of Ram Kumar, sent it for post mortem examination through Constable Ghanshyam Singh PW-5. Blood was found on the rickshaw of Shobha Ram as well as on the road. Some fired cartridges and certain articles were also recovered and were taken into possession. After having interrogated the witnesses, he filed charge sheet Ext. Ka-13 showing the appellant Anis and his brother Nafis as absconders.

Head Constable Brahma Singh PW-6 was posted at Police Station Kotwali on 14.10.1981 who registered the first information report on the basis of the written report Ext. Ka-2 given by Fateh Chand PW-2, father of the deceased and proved Chik report Ext. Ka-4. He also made entry thereof in the general diary, copy of which is Ext. Ka-5.

Sub Inspector Todi Singh PW-7, who was posted at Police Station Kotwali on 14.10.1981, was present at the time when the first information report was lodged at the concerned Police Station and started investigation into the case and 3 reached the place of the occurrence, Ansari Road at once. He also prepared inquest report of the dead body and connected papers (Ext. Ka-6 to Ext. Ka-8) and sent the dead body of Ram Kumar in a sealed condition for post mortem through Constable Nathu Singh and Ghanshyam Singh. The Investigating Officer collected samples of blood stained and simple earth from the place of the occurrence (Ext.1 and Ext.2) and prepared memo Ext. Ka-9. He also found five empty cartridges of 455 bore (Ext.4), three leads (Ext.5) and a handkerchief (Ext.3) having blood stains and sealed them by preparing memo Ext. Ka-10. He made a search of the dead body of the deceased Ram Kumar and found articles (Ext.6) and prepared memo Ext. Ka-11. He also took concerned rickshaw in possession vide memo Ext. Ka-3. The Investigating Officer interrogated the witnesses next day i.e. 15.10.1981. He searched for the accused Anis and Nafis on 14.10.1981 and 15.10.1981 but they could not be arrested as they were not available. The Investigating Officer made a report for proceeding under Sections 82 and 83 Cr.P.C. in the Court of the Chief Judicial Magistrate, Muzaffarnagar, on 16.10.1981 and after obtaining orders from the Court on 21.10.1981 attached the property on the same day and on completion of the investigation, filed charge sheet Ext. Ka-13 treating them as absconders. He also got the place of the occurrence photographed taking prints as Ext. 7/1 to 7/10 on 14.10.1981. All these facts were proved by the Investigating Officer PW-7 at trial.

Dr. T.N. Mathur PW-1 was posted as Medical Officer at District Hospital, Muzaffarnagar, on 14.10.1981. He performed post mortem examination on the dead body of Ram Kumar at 5:10 p.m. on that date. According to him, the deceased was about 40 years old and about quarter of a day had passed since his death. The body was of average built and rigor mortis was present in the neck and all the limbs. He found the following ante mortem injuries on the body of the deceased:

(i) Gun shot wound of entry 1/2 " x 1/2 " x through and through wound of exit on the outer part of right eye brow. No blackening and tattooing was present. Margins

were lacerated and inverted. Three metallic pellets were recovered from right side brain. There was laceration of right eye ball.

(ii) Gun shot wound of exit 3/4" x 3/4" x communicating with injury no.1 on the right side back of head, Margins lacerated and everted.

(iii) Gun shot wound of entry 1/2 " x 1/2 " x through and through wound of exit on the right side back of chest, just lateral to mid line, 13" below base and back of neck. Margins lacerated and inverted. No Blackening and tattooing present around the wound.

(iv) Gun shot wound of entry 1/2 " x 1/2 " x through and through wound of exit on the left side back of chest middle part, 3" lateral to mid line. Margins lacerated and inverted. Blackening and tattooing not present.

(v) Gun shot wound of exit 3/4" x 3/4" x communicating with injury no.3 on the right side front of chest 1 " below right nipple. Margins lacerated and everted.

(vi) Gun shot wound of exit 3/4" x 3/4" x communicating with injury no.4 on the left side front of chest, 1" medial to left nipple. Margins lacerated and everted.

(vii) Gun shot wound of entry 3/4" x 1/2" x muscle deep on the outer side, left side chest lower part. Bullet recovered from the left side front of chest wall at 4" medial from the wound. Margins lacerated and inverted. Blackening and tattooing not present. Direction was forward and medially.

(viii) Gun shot wound of entry 3/4" x 3/4" x muscle deep on the right side back lower part. Iliac crest 5" lateral to mid line. Four metallic pellets and one wadding recovered from the wound. Blackening present. Margins lacerated and inverted. On internal examination, he found the frontal, right parietal and occipital bones fractured. The membranes of the brain were lacerated beneath the injury. Right lobe of the brain was heavily lacerated. There was a fracture of the right and internal and posterior cranial fossa. There was a fracture of right 6th and left 5th ribs. The pleura was lacerated underneath the injury and there was about one and half pound blood present in the pleural cavity. Right lobe of the lung was lacerated through and through and the left lobe of the lung was also lacerated through and

through. The membranes covering heart were lacerated and the right ventricle of the heart was lacerated through and through. The stomach, small intestine, large intestines and rectum were empty. In his opinion, the death was caused due to shock and hemorrhage as a result of ante mortem injuries, which could have been caused the same day at about 1:00 p.m. The doctor proved his report as Ext. Ka-1.

3. AFTER submission of the charge sheet against the appellant Anis in the Court of the Chief Judicial Magistrate, Muzaffarnagar, the case was committed to the Court of Session for trial which was registered as Session Trial No.538 of 1981. Thereafter the trial proceeded in the Court of Session.

The appellant was charged for offence punishable under Section 302 read with Section 34 IPC and the same was read over and explained to the appellant who pleaded not guilty and claimed to be tried.

In order to prove charge levelled against the appellant, the prosecution examined seven witnesses. Dr. T.N. Mathur PW-1 was examined to prove post mortem report Ext. Ka-1 of the deceased Ram Kumar. Fateh Chand first informant, father of the deceased was examined by the prosecution to prove the written report Ext. Ka-2. Pooran Singh PW-3 who was accompanying the deceased at the time of the incident on the rickshaw and Shobha Ram PW-4 who was pulling the same rickshaw were also examined to prove the incident. Constable Ghanshyam Singh PW-5 was examined to verify that the dead body in a sealed condition was handed over to him on 14.10.1981 which he along with Constable Nathu Singh took to the mortuary for post mortem examination where the same was identified before the doctor and the seals of that cloth by which the dead body was wrapped were not allowed to be touched by any person. The prosecution also examined Head Constable Brahma Singh PW-6 who proved Chik report Ext. Ka-4 and G.D. entry Ext. Ka-5 at trial. The Investigating Officer S.I. Todi Singh PW-7 was also examined by the prosecution to prove inquest report prepared during investigation and the papers prepared therewith. In this case, Fateh Chand PW-2, Pooran Singh PW-3 and Shobha Ram PW- 4 were examined by the prosecution as the eyewitnesses.

4. FATEH Chand PW-2 stated that Ram Kumar deceased was his son. He is a clerk in the Collectorate Court. He stated that about 5 1/2 months ago i.e. on 14.10.1981, Pooran Singh PW-3 went to him in the Court and informed him that Nafis and Anis killed Ram Kumar on Ansari Road at about 1:00 p.m. He also stated to him the names of the witnesses. He, therefore, went to Ansari Road where the dead body of Ram Kumar was lying. He wrote a report Ext. Ka-2 himself and lodged the same at Police Station Kotwali.

Pooram Singh PW-3 stated that about six months ago he was returning home from Sadar Bazar. He found Ram Kumar sitting on a rickshaw near Anupam Hotel. He also sat in the same rickshaw and they proceeded on the rickshaw towards Sarwat Gate crossing viz Ansari Road. The rickshaw was being pulled by Shobha Ram. He also stated that when rickshaw had reached a little ahead of Bhoro Temple at about 1:00 p.m., the appellant Anis and his brother Nafis came out of market lying to the south. He heard sound of firing of a shot and at first he thought that tyre of the rickshaw had burst. The rickshaw wala (puller) applied brake. He turned his head towards the back and saw revolvers in the hands of the appellant Anis and Nafis. He got down from rickshaw at once and rickshaw wala (rickshaw puller) also got down. At that time, Anis and Nafis fired five to six shots from their revolvers hitting Ram Kumar. Ram Kumar first fell down on the rickshaw foot board and thereafter on the road. He (PW-3) ran to the Court and informed about the incident to Fateh Chand, father of Ram Kumar. According to him, Subhash Halwai, Murari Tyagi and others were present and on returning with Fateh Chand, he saw Ram Kumar lying dead.

Shobha Ram PW-4 stated that about six months ago, at about 12:45 p.m., he was pulling his rickshaw. Ram Kumar was sitting on his rickshaw. Pooran Singh PW-3 was passing near Anupam Hotel and Ram Kumar called him and made him sit on the same rickshaw. Thereafter, the rickshaw proceeded towards Ansari Road and while they were near Kriti Bhushan market, a little ahead of Bhoro Temple, he heard sound of firing a shot. First he thought that tyres of the rickshaw had burst and he applied brakes and turning back, saw Anis and Nafis firing shots from their revolvers upon Ram Kumar. Ram Kumar got down from rickshaw and Anis and Nafis fired five to six shots which all hit Ram Kumar. Ram Kumar had first fallen

down in the rickshaw and later on the road. He has further stated that apart from himself and Pooran Singh PW-3, the shop owners around the place of the occurrence including Subhash Halwai and Ramesh Chand Panwari besides Murari Tyagi saw the occurrence. Thereafter, the shops were closed. Ram Kumar died there and the accused fled away towards bus stand (Bhopa Adda). He also stated that blood had trickled on his rickshaw and the police took possession of his rickshaw on the same day. He has proved memo regarding the same as Ext. Ka-3 which contained his signature as well.

The appellant denied the occurrence and his participation in the same and pleaded ignorance about rest of the prosecution case. He stated that on 12.10.1981, he had gone to Meerut for making purchases and returned after three days and then he came to know about the report having been lodged against him. He again went out and on returning, came to know about the attachment. He stated that Pooran Singh PW-3 and Shobha Ram PW-4 are intimate to the first informant Fateh Chand. Pooran Singh also was a miscreant and was prosecuted for offence under Section 25 of Arms Act.

5. SRI Hukam Chand Geol, Advocate and Notary in the Court at Muzaffarnagar was examined as DW-1. On 11.3.1982, he verified an affidavit (Ext. Kha-1) of Shobha Ram son of Asha Ram, which was identified by SRI Promod Kumar, Advocate. According to DW-1, affidavit (Ext. Kha-1) was signed by deponent Shobha Ram before DW-1. The appellant also examined Munshi Akhtar Husain DW-2, clerk of SRI Bagesh Swarup Agrawal, Advocate, Collectorate, Muzaffarnagar, who proved affidavit Ext. Kha-3 of Pooran Singh PW-3. On 24.2.1982, DW-2 wrote an application and got the affidavit typed as per instructions of Pooran Singh PW-3. The application is Ext. Kha-2 and affidavit is Ext. Kha-3. The said affidavit of Pooran Singh was verified by SRI Ved Pal Singh, Notary. According to the testimony of DW-2, Pooran Singh did not object to the contents of the affidavit. This affidavit was got typed on 24.2.1981 at Kutchery, Muzaffarnagar at 8:10 a.m. It is evident from testimony of DW-2 that he did not take Pooran Singh PW-3 to Notary as Pooran Singh instructed DW-2 to bring his affidavit and notary in person to town Morna which was sixteen miles away from Muzaffarnagar. It further appears that Notary Ved Pal Singh was taken to the

place of Pooran Singh PW-3 at Morna by DW-2, clerk of an advocate in a car. The deponent Pooran Singh PW-3 refused to sign or get the affidavit verified at Muzaffarnagar and asked DW-2 to bring affidavit having typed on the stamp paper along with Notary to Morna.

Now we deal with the contention of the learned counsels for the rival parties. We have gone through evidence on record carefully and cautiously with the help of the learned counsel for the rival parties.

6. FIRST submission of the learned counsel for the appellant is that Fateh Chand first informant PW-2 who is father of the deceased, was not eyewitness to the incident. He is scribe of the written report Ext. Ka-2 relating to the incident. According to the information given to him by Pooran Singh PW-3, Pooran Singh PW-3 was sitting in the same rickshaw along with the deceased Ram Kumar at the time of the incident and whatever was narrated by Pooran Singh to Fateh Chand PW-2, the same was mentioned in the first information report Ext. Ka-4. Arguing on this point, learned counsel for the appellant contended that only Pooran Singh PW-3 and Shobha Ram PW- 4 (rickshaw puller) who was pulling rickshaw at the time of the incident in which the said incident occurred, were eyewitnesses and they filed affidavit Exts. Kha-1 and Kha-3 respectively in which they had deposed that the deceased Ram Kumar was not going in the rickshaw of PW-4 at the time of the incident and the said rickshaw was unoccupied at the time of the incident. Both these eyewitnesses denied to have seen the incident saying that when the fire shots were made upon the deceased Ram Kumar, gun men had covered their faces. On this basis, learned counsel for the appellant impressed upon the contention that the said eyewitnesses are not trustworthy and reliable and their evidences at the trial should not have been acted upon.

The first information report of the incident was lodged within one hour thereof by the first informant Fateh Chand PW-2, who was a clerk in the Collectorate Court at Muzaffarnagar at the relevant time, and was informed by Pooran Singh PW-3 in the Court about the incident that Nafis and Anis had killed Ram Kumar on Ansari Road at about 1:00 p.m. PW-2 on receipt of information of the death of his son went to Ansari Road (place of the occurrence) where the dead body of his son

Ram Kumar was lying. Blood was found on the foot rest as well as inside rickshaw and also on the road where dead body was lying.

According to the testimony of the Investigating Officer PW-7, all these facts find place in the report Ext. Ka-2. Names of the assailants, details of the incident and weapon used by the assailants were clearly mentioned in the promptly lodged first information report. Pooran Singh PW-3 was neighbour of PW-2 Fateh Chand and had partnership with Ram Kumar in some thresher. Pooran Singh PW-3 stated that he saw the incident and informed about it to Fateh Chand PW-2 in the Collectorate where PW-2 was a clerk. Fateh Chand PW-2 just on receiving the information reached to the place of murder and found the dead body of his son lying on Ansari Road. PW- 2 firstly verified veracity of the information given by Pooran Singh PW-3 and finding the dead body of his son, he prepared report Ext. Ka-2 of the incident and handed it over at Police Station within one hour at 2:00 p.m. clearly mentioning that both the accused persons Nafis and Anis named therein had murdered his son. In the promptly lodged first information report, it was clearly mentioned that Pooran Singh PW-3 was accompanying the deceased in the same rickshaw which was being pulled by Shobha Ram PW-4 on Ansari Road. The names of Pooran Singh PW-3, Ramesh Kumar Sharma, Muraril Lal Tyagi, Munna and Subhash Halwai as eyewitnesses were also mentioned. Since Fateh Chand PW-2 did not know the name of rickshaw puller at the time of the lodging of the first information report, the name of rickshaw puller as Shobha Ram was not specifically mentioned in the written report.

The testimony of Pooran Singh PW-3 recorded at trial has been challenged by the learned counsel for the appellant on the ground that Pooran Singh PW-3 had filed an affidavit Ext. Kha-3 before the Chief Judicial Magistrate, Muzaffarnagar to the effect that the assailants had covered their faces with clothes and he did not know them. Pooran Singh PW-3 admitted his signatures on the application Ext. Kha-2 as well as on the affidavit Ext. Kha-3. The version of Pooran Singh PW-3 was that he is not literate but could only sign and that affidavit was not read over to him before he signed it. Pooran Singh PW-3 also stated that after the occurrence, he was residing with his maternal cousin Balbira at Morna, District Muzaffarnagar because miscreants from side of the named accused persons Anis and Nafis, used to

compel him to sign on some papers. Pooran Singh PW-3 had signed both documents Ext. Kha-2 and Ext Kha-3. Pooran Singh PW-3 clearly admitted in his evidence that after having signed these papers, he did not institute any complaint with any officer about this fact. It emerges from testimony of Mushi Akhtar DW-2 that Pooran Singh PW-3 refused to sign the said application and affidavit at Muzaffarnagar and under duress he signed the said papers at town Morna which was sixteen miles away from Muzaffarnagar.

7. A close scrutiny of the testimony of Munshi Akhtar DW- 2 makes it evident that Ext. Kha-2 and Ext. Kha-3 were not executed by Pooran Singh PW-3 out of free will and the same were got prepared at Muzaffarnagar by DW-2 and then got the papers signed at town Morna. There was no reason for Pooran Singh PW-3 to have come forward and contact DW-2 to file such an affidavit out of his own accord. It is further evident from testimony of Pooran Singh PW-3 that when he signed Ext. Kha-2 and Ext. Kha-3, the documents were already typed and he was made to sign the same by five to six miscreants who came along with papers to him at Morna. The witness, after the incident, had shifted due to fear of the accused persons and had started to live with his maternal cousin. Pooran Singh PW-3 was further threatened by those miscreants to meet the same fate as that of the deceased Ram Kumar. PW- 3 was left with no option other than to sign the application Ext. Kha-2 and affidavit Ext. Kha-3.

It is pertinent to note here that stamp paper for preparing the affidavit of Pooran Singh PW-3 was purchased on 16.2.1982 and the same was got typed on 19.2.1982. The affidavit Ext. Kha-3 was signed and verified by Pooran Singh PW-3 on 24.2.1982 at Morna and verified by Notary at Morna. Notary had to travel to Morna for verifying the affidavit Ext. Kha-3 with DW-2 whereas there were several Notaries in the Court at Muzaffarnagar. Thus the dates of purchase of stamp paper, matter of typing, signature and verification of the affidavit Ext. Kha-3 are different. After purchasing the stamp, affidavit was finally verified on 8th day, which was not explained as to why the period of one week was taken in getting the said affidavit Ext. Kha-3 of PW-3 prepared, signed and verified.

So far as testimony of Shobha Ram PW-4 is concerned, he supported the prosecution version as narrated in the first information report in his evidence at trial. Blood was found in the rickshaw in which the said murder took place before PW-4. Shobha Ram PW-4 was rickshaw puller at the time of the incident and in his rickshaw, the deceased Ram Kumar and Pooran Singh PW-3 were travelling. After the incident, rickshaw was taken by the police vide memo Ext. Ka-3. The incident of murder took place when rickshaw reached Ansari Road in front of Bhoro Temple. Anis and Nafis each fired at Ram Kumar with their respective revolvers and in all five or six shots were fired and all the shots hit Ram Kumar. Ram Kumar after being hit by fire shots firstly fell down in the rickshaw and then fell down on the ground.

8. SHOBHA Ram PW-4 repeatedly deposed that both the accused persons Anis and Nafis fired shots at the deceased Ram Kumar and he could not tell as to who fired how many shots. SHOBHA Ram PW-4 could not clearly tell as to who fired first shot but second fire was made by Nafis and third time, both of them fired at the deceased. In all five to six shots were fired. PW-4 was cross examined at trial about his affidavit Ext. Kha-1. PW-4 admitted his signature thereon and stated that four miscreants came to him and threatened to kill him in case he denied to put his signature on the said paper (affidavit Ext. Kha-1). According to testimony of PW-4, he was not told about contents of the affidavit Ext. Kha-1 and he was fully unaware about the contents thereof. Affidavit was held back by those miscreants who came to compel him for signing the same. PW-4 clearly denied the fact that he signed the said affidavit Ext. Kha-1 of his own free will or without any compulsion. The witness clearly stated that due to fear, he could not give any application in regard to forcible signing of the said affidavit. Thus, contention of the learned counsel for the appellant that both eyewitnesses Pooran Singh PW-3 and SHOBHA Ram PW-4 are uncreditworthy and unreliable because they had filed their affidavits in favour of the accused persons in the trial Court, is not acceptable and is, accordingly, repelled. Both these eyewitnesses supported the prosecution version in toto and explained the circumstances under which they were compelled or forced to put their signatures on the said affidavits Ext. Kha-1 and Ext. Kha-3. Thus circumstances under which those affidavits were got prepared, were fully explained by these eyewitnesses at trial. There is no reason at all to disbelieve

their testimonies. Their presence at the spot at the date, time and place of the incident is established beyond reasonable doubt. Both of them were natural witnesses. Pooran Singh PW-3 was accompanying the deceased in the same rickshaw which was being pulled by SHOBHA Ram PW-4 at the time of the incident. Thus nothing could be elicited during their cross examination by the defence side at trial so as to disbelieve their well established and proved testimonies. The testimonies of PW-3 and PW-4 cannot be ignored just on the ground that they were interested witnesses. No such suggestion was given by the defence side to these witnesses at trial. Neither enmity of the witnesses with the appellant has been suggested nor established at trial. Even if Pooran Singh PW-3 is the interested eyewitness being partner of the deceased in some threshing work, his evidence cannot be thrown away because a close and careful scrutiny of his testimony fortifies his evidence.

Next contention of the learned counsel for the appellant is that the said rickshaw of PW-4 was not available on the spot as no bullet mark was found thereon and the Investigating Officer did not show in the site plan the place where rickshaw was standing. It has been established that five to six shots were made by the appellant Anis and his brother Nafis and all the fire shots hit the deceased, hence there was no question of any bullet mark in the said rickshaw. Merely because the Investigating Officer did not show the place of rickshaw in the site plan, it cannot create any dent in the well proved and established prosecution version.

It is a common experience that if one sits on the rickshaw, most of ones back remains exposed and is not covered by the back of rickshaw particularly when back of the rickshaw is quite low. According to the version given by the eyewitnesses, some shots were fired from behind the rickshaw. Naturally the assailants aimed the back of the deceased Ram Kumar, there was no chance of any bullet mark on the rickshaw. In the photographs of the place of the occurrence, vide Paper Nos. 7/2, 7/4 and 7/10, the rickshaw had been shown. The said rickshaw was sent to Police station Kotwali as soon as it was taken into possession by the police. There was no enmity of Shobha Ram PW-4 (rickshaw puller) with the appellant prior to this incident and his evidence is also truthful and fully reliable. Nothing could be extracted from him during cross examination by the

defence so as to create any doubt in the mind of the Court about truthfulness of his evidence.

Next contention of the learned counsel for the appellant is that injuries found on the corpse of the deceased could not be caused in the manner as alleged by the eyewitnesses. Out of eight injuries sustained by the deceased, injury nos.1 and 2 are wounds of entry and exit of the same shot. Injury nos.3 and 5 are wounds of entry and exit of the same shot and injury nos.4 and 6 are wounds of entry and exit of the same shot. There were three wound of entry found on the back of the deceased and two wound of entry on the front namely forehead and chest. Thus the deceased sustained five firearm shots, out of which three wound of entry were on the back and two wound of entry were on the front side. The ocular testimony is also to the effect that five to six shots in all were fired by Anis and Nafis (both named accused persons). It is also common experience that in the incident where shots were fired continuously, the state of confusion emanates. It was very difficult for the eyewitnesses to be able to see exactly in what manner shots were fired which hit the deceased. Thus considering the aforesaid evidence and analyzing the same, we are of the view that these eyewitnesses cannot be disbelieved merely due to that reason. The evidence of the eyewitnesses is corroborated by medical evidence and firearm injuries found on the corpse of the deceased were sufficient to cause instantaneous death. There is no discrepancy or contradiction between ocular evidence and medical evidence.

Learned counsel for the appellant contended next that other witnesses named in the first information report were not examined by the prosecution. The explanation was given by the eyewitnesses that other witnesses named in the first information report had already been won over by the accused persons. PW-3 and PW-4 had already been compelled to put their signatures on the affidavit by men of the accused persons. It was not mandatory for the prosecution to examine all the eyewitnesses named in the first information report. The Court is further required to see the quality of evidence adduced by the prosecution and not the quantity.

9. THE next contention of the learned counsel for the appellant is that the first information report of the incident was lodged ante timed. We have considered

deeply this contention as well. This suggestion was put to the Investigating Officer S.I. Todi Singh PW-7 who denied the same. As stated hereinabove, the first information report of the incident naming both the accused persons was lodged within one hour of the said incident by PW-2, father of the deceased after covering distance of three furlong and there was no chance of any deliberation or embellishment before lodging of the first information report.

THE first information report in this case was not ante timed. No such suggestion was given to the first informant Fateh Chand PW-2 who prepared the written report and promptly lodged the first information report against the accused persons. Thus suggestion regarding ante timed lodging of the first information report was not put by the defence to the eyewitnesses at trial.

THE first information report was promptly lodged and the same cannot be said to be lodged ante timed.

THE first information report was lodged by PW-2 promptly excluding every possibility of consultation, deliberation or embellishment. We do not accept this submission and repel the same.

10. THE last contention of Sri P.N. Misra, learned counsel for the appellant is that co-accused Nafis allegedly involved in the same incident was shown as absconder in the charge sheet submitted in this case.

THE co-accused Nafis has been acquitted of the said offence in separate trial by the Court of Session. Mere acquittal of the co-accused in separately conducted trial is not sufficient ground to confer the benefit of the same to the appellant Anis. Thus, the judgment of acquittal of the co-accused Nafis is of no help to the appellant.

Learned AGA taking us through the report of the Chief Judicial Magistrate, Muzaffarnagar, dated 17.4.2012 has submitted that the co-accused Nafis who is said to be acquitted by the Court of Session in this very offence in separately conducted trial, had been murdered by unknown miscreants on 10.8.2004 in District Kurukshetra, (Haryana).

In Gyasuddin Khan Vs. State of Bihar, AIR 2004 Supreme Court 210, it was observed by the Hon'ble Apex Court that when accused caused death by firing gun shots, it is not reasonable to expect from the eye witnesses that the scared eye witnesses would be able to give a meticulous and precise account of details of shots that landed on the deceased.

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."

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.

11. HON'ble Supreme Court in the case of Waman (supra) has reiterated that if evidence of eyewitnesses found to be trustworthy and corroborated, certain contradictions minor in nature and not related to major overt act attributed to each

accused would not discard their testimony more so when all prosecution witnesses hailing from agricultural family and are villagers, cannot be expected to state minute details in their earlier statements and before Court.

Hon'ble Apex Court in the case of Hiralal Pandey and others Vs. State of U.P. 2012 CrI.L.J. 2421 observed that we do not also think that the evidence of PW-2 could have been discarded on the ground that he was only a chance witness. The incident took place when the deceased were traveling on a motorcycle on the road and PW-2 was also coming on the same road on his cycle when he saw the incident. The Apex Court has held in Thangaiya v. State of T.N. (AIR 2005 SC 1142: 2005 AIR SCW 76) (supra) that if a murder is committed in a street, only passers-by will be witnesses and their evidence cannot be brushed aside or viewed with suspicion on the ground that they were mere chance witnesses. Moreover, PW-2 has been named in the FIR as one of the persons who were coming on a cycle from Dhata side and as one of the persons who shouted at the appellants not to fire. In State of U.P. v. Anil Singh (AIR 1988 SC 1998) (supra), The Apex Court has held that when a witness figures as an eyewitness in the FIR, he cannot be categorized as a chance witness. Once we accept that PW-1 and PW-2 were present at the place of occurrence and their evidence was reliable, the fact that other independent witnesses named in the FIR, such as Sunder Lal Singh, have not been examined before the Court, cannot be a ground for not believing the prosecution case. In State of U.P. v. Anil Singh (supra), the Apex Court has held that the prosecution case cannot be doubted for not examining the witnesses after taking note of the fact that the public are generally reluctant to come forward to depose before the Court. We, therefore, do not find any merit in the submission made by the learned counsel for the appellants that the prosecution story should not be believed because the independent witnesses have not been examined.

After a close and careful analysis of the above evidence, we agree with the findings recorded by the trial Court vide impugned judgment. There is no cogent reason to distract from them. The conviction of the appellant vide impugned judgment recorded by the trial Court is well merited and well founded leaving no doubt about false implication of the appellant in this case. The appellant took plea

of alibi but he failed to prove it by any evidence. No witness to support the plea of alibi of the appellant was examined on the behalf of the appellant at trial. The presence and participation of the appellant in this murder case on the day, time and place of the occurrence is established and proved beyond any shadow of reasonable doubt. The eyewitnesses have given truthful version of the prosecution story and their evidence is further strengthened by the medical evidence. It is a case of day light murder which enabled the eyewitnesses to see the incident. The statements of the eyewitnesses conform to each other, suffer from no major or minor contradictions. The presence of the eyewitnesses on the date, time and place of the incident is established beyond doubt and being natural witnesses, they were fully able to see the incident. The investigation in this case of murder was started promptly and statements of the witnesses under Section 161 Cr.P.C. were also recorded promptly. The first information report of the incident was lodged within one hour in which the names of the murderers were figured and the distance of Police Station from the place of the occurrence was about 3 furlong. Thus the first information report in this case was lodged without any consultation or deliberation and there is no chance of any false implication of the appellant Anis.

12. WE had been taken through the entire record by the learned counsel for the parties. In view of the above meticulous analysis of the whole evidence available on record, we do not find any ground, on the basis of which we may reach conclusion that any of the findings recorded by the trial court is improbable or does not require affirmation.

WE do not see any cogent reason to interfere with the judgment and order dated 31.5.1982 passed by II Additional Sessions Judge, Muzaffarnagar, recording conviction and sentence of the appellant. Consequently, the impugned judgment and order is hereby affirmed. The appeal filed by Anis lacks merit and is, accordingly dismissed.

Since the appeal is dismissed, the bail bonds and surety bonds of the appellant are cancelled. The appellant Anis is directed to surrender before the trial court immediately to serve out the remaining part of the sentence awarded to him. If he

fails to surrender, the trial court is directed to get the appellant Anis 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 31.5.1982.

Let a copy of this order be sent to the trial court forthwith for compliance.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**