

Kaloo Vs. State of U.P.

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SooperKanoon Citation : sooperkanoon.com/1115588

Court : Allahabad

Decided On : Sep-11-2012

Judge : Vinod Prasad & Surendra Kumar

Appeal No. : Criminal Appeal No. 1313 of 1982

Advocate for Pet/Ap. : Sri. R.C. Yadav

Judgement :

Surendra Kumar, J.

1. Six accused persons namely, Kaloo (appellant No. 1), Jagdish (appellant No.2), Sheo Narain alias Baredi (appellant No. 3), Lala Ram (appellant No.4), Moti Lal (appellant No. 5) and Bhagwat (appellant No. 6), preferred this appeal challenging their conviction and sentence recorded vide judgment and order dated 17.5.1982 passed by the Additional Sessions Judge, Hamirpur, in Sessions Trial No. 48 of 1981-State Vs. Kaloo and five others, by which all the six accused persons (appellants herein) were convicted under Section 302 I.P.C. read with Section 149 I.P.C. and sentenced to imprisonment for life. Four appellants namely, Kaloo, Jagdish, Sheo Narain and Lala Ram were also convicted under Section 307 I.P.C. read with Section 149 I.P.C. and each of them was sentenced to four years Rigorous Imprisonment thereunder, and two years Rigorous Imprisonment on being convicted under Section 148 I.P.C. Two accused persons namely, Bhagwat and Moti Lal were also convicted under Section 147 I.P.C. and sentenced to undergo Rigorous Imprisonment for a period of one year. All the sentences were

directed to run concurrently.

2. The appellant No. 2 Jagdish and appellant No. 6 Bhagwat have died pending consideration of their appeal and on account of their deaths, their appeal has been abated vide order dated 19.3.2012. The appellant No. 4 Lala Ram claimed his juvenility and report regarding his juvenility has been received.

3. The prosecution case against the accused persons/appellants is that on 24.6.1980 at 6.00 A.M. deceased Ram Narain, son of Chunbaddi, resident of Village Parehta, Police Station Maudaha, was going to feed his cattle in the cattle-shed. When he reached in front of the door of the said house, accused Jagdish and Kalloo both armed with guns, accused Sheo Narain armed with Pharsa, accused Lala Ram armed with Barchhi and accused Moti Lal and Bhagwat armed with Lathis met him. They all challenged him saying that he had tried to falsely implicate them in a theft case and, therefore, they would not spare him. Accused Jagdish and Kalloo then fired two separate shots from the guns possessed by them. Deceased Ram Narain received gun shot injuries and fell down on the ground. He died at the spot. Witnesses Ram Sajiwan, Ram Asrey and Ram Sanehi had seen this incident from their houses which was just near the place of the incident. They immediately reached there and intervened to rescue Ram Narain but the said accused persons had bet the witnesses also with the arms possessed by them. All the three witnesses received injuries. The other witnesses Raj Bahadur and Kamtu were also present there. They intervened and then the accused persons fled away leaving the deceased and the other injured witnesses. The aforesaid injured witnesses, with the help of other two witnesses Raj Bahadur and Kamtu picked up the dead body of Ram Narain from there and placed it on the door of the house so that the accused persons later on could not remove it from there. Injured witness Ram Sajiwan, who is nephew of the deceased, then got a report written by Ambika Prasad, resident of village Sisolar and then went to the Police Outpost Sisolar of Police Station Maudaha. The written report is Ext. Ka-1. A formal F.I.R. Ext. Ka-6 was recorded at Police Outpost Sisolar at 8.30 A.M. A case under Sections 147, 148, 149, 302, 307, 323 and 324 I.P.C. was registered against the accused persons at Rapat No. 6 the same day i.e. on 24.6.1980 at 8.30 A.M. Copy of the G.D. is Ext. Ka-9.

4. The other injured witnesses Ram Sanehi and Ram Asrey had also gone with Ram Sajiwan to Police Outpost Sisolar. All the three injured witnesses were sent to Primary Health Centre, Maudaha for examination of their injuries. Dr. R.D. Misra examined the injuries of Ram Asrey, Ram Sanehi and Ram Sajiwan on 24.6.1980 at 10.10 P.M., 10.20 P.M. and 10.30 P.M. respectively.

5. Dr. R.D. Misra examined the injuries of the injured Ram Asrey (PW-3) and found the following injuries on his person:-

1. Incised wound 7 cm. x cm. on the middle of left parietal region of scalp, 10 cm. above the left eye-brow. The wound was seen by magnifying glass. Margins were clear cut. Wound was deeper, muscle deep at middle and skin deep at the ends. There was oozing of serous material and clotted blood was present there.

2. Contusion 2 cm. x 1 cm. on the frontal portion of scalp, left side, just connected with left eye-brow, red in colour.

3. Contusion 2 cm. x 1 cm. on the left side of cheek 1 cm. below the left ear, reddish in colour.

4. Contusion 6 cm. x 2 cm. on the left shoulder, tender skin, reddish in colour.

5. Contusion 6 cm. x 6 cm. swelling 6 cm. x 6 cm. on the palmer aspect of left side of thinner eminence, tender, regular, skin was red in colour.

6. Contusion 8 cm. x 2 cm. on the medial border of left scapula, 10 cm. below left shoulder, tender, skin was red.

7. Swelling 7 cm. x 4 cm. on the middle of lateral aspect of right leg, 4 cm. below the right knee joint, tender, regular, skin was reddish in colour.

All the above injuries were simple caused by any blunt object except injury No. 1 which was caused by any sharp object. Duration was about one day. The injury report is Ext. Ka-4.

6. Dr. Misra examined Ram Sanehi (PW-2) and found the following injuries on his person:-

1. Stab wound 1 cm. x 0.5 cm. on the left side of middle axillary line, 2 cm. below the axilla. Wound was 3 cm. deep, directed anteriorly towards the left chest oozing with serous material, tender.
2. Contusion 8 cm. x 4 cm. on the middle of back obliquely placed on the left side, tender, skin was red in colour.
3. Contusion 5 cm. x 2 cm. on the middle of right side of scapula, tender, red.
4. Swelling 6 cm. x 2 cm. on the palmer aspect of lower part of left side of forearm, tender, regular. There was lack of movement. Therefore advised X-ray A.P. and lateral view of lower part of left forearm.
5. Swelling 3 cm. x 2 cm. on the dorsal aspect of right little finger, tender, skin over it was red in colour, swelling was regular.
6. Black red lining tender on the anterior aspect of lower part of left side of thigh.

All the above described injuries were simple in nature except Injury No. 4 which was under observation till X-ray. Injury No. 1 was caused by any pointed object and the rest were caused by blunt object. Duration was about one day. The injury report is Ext. Ka-3.

7. Dr. Misra also examined Ram Sajiwan (PW-1) and found the following injuries on his person:-

1. Incised wound 5 cm. x cm. on the posterior part of right side of parietal region of scalp, wound was placed obliquely, 9 cm above from the right ear, tender, seen by magnifying glass. There was oozing of serous material and clotted blood was there.
2. Lacerated wound 4 cm. x 1 cm. on the posterior part of parietal region of scalp, placed 11 cm. above the left side of ear, tender, there was oozing of serous material and clotted blood was there.
3. Contusion 8 cm. x 2 cm. on the supra scapula region of right side tender, skin was reddish in colour.

4. Contusion 5 cm. x 2 cm. on the upper part of supra scapula region of right scalp, 1 cm. above the injury no. 3.
5. Contusion 5 cm. x 2 cm. on the anterior aspect of right shoulder, tender, skin over it was red in colour.
6. Swelling 10 cm. x 7 cm. on the posterior aspect of right side of right forearm, tender, skin over swelling was red in colour, swelling was regular.
7. Contusion 4 cm. x 3 cm. on the posterior aspect of middle of right forearm, 10 cm above the right wrist joint, tender, skin over it was red in colour.
8. Abrasion 2 cm. x 1 cm. on the posterior aspect of left elbow joint, tender, skin over it was red in colour.
9. Contusion 12 cm. x 2 cm. on the left side of lateral border of scapula, 7 cm. below the left clavico aeromial joint-tender, skin was red in colour.
10. Contusion 8 cm. x 2 cm. on the supra scapula region of left side, 4 cm. below the left clavico aeromial joint, tender, skin over it was red in colour.
11. Contusion 13 cm. x 2 cm. on the left side of upper part of back, obliquely placed, tender, skin over it was red in colour.
12. Contusion 19 cm. x 2 cm. obliquely placed on the medial border of right side of scapula, tender, skin over it was red in colour.
13. Contusion 16 cm. x 2 cm. on the right side of back, 8 cm. below the root of neck of right side, tender, skin over it was red in colour.
14. Contusion 14 cm. x 2 cm. on the right side of back from the anterior angle of right scapula to right deltoid muscle, tender, skin over it was red in colour.
15. Contusion 12 cm. x 2 cm. on the right side of shoulder, 2 cm. above the injury No. 14.
16. Contusion 10 cm. x 2 cm. on the anterior aspect of middle of left side of leg, tender, skin over it was red in colour.

All the above described injuries were simple in nature, caused by any blunt object except injury no. 1 which was caused by any sharp weapon. Duration was about one day. The injury report is Ext. Ka-2.

8. The Investigating Officer, Sri Sheo Shankar Sachan (PW-9) of Police Station, Maudaha, started investigation on receipt of copy of the F.I.R. and G.D. through constable Bhuwaneshwar Prasad of Police Outpost Sisolar. He first went to Police Outpost Sisolar and then proceeded to the spot where he found two constables Radharaman and Drig Pal Singh near the dead body. These constables belonged to Police Outpost Sisolar. The Investigating Officer found the dead body lying on a cot in front of the door of deceased. He appointed Panches and thereafter inspected the dead body and prepared inquest report, Ext. Ka-11. He then got the dead body sealed at the spot in presence of the Panches and sent it for post-mortem examination with the Khaka Nash Ext. Ka-12 and Challan Nash Ext. Ka-13. He also recovered one blood-stained Baniyan from the dead body. He sealed it at the spot and prepared recovery memo, Ext. Ka-14. The dead body was sent through constables Radharaman and Drig Pal Singh for post-mortem examination. The letter written to the Medical Officer is Ext. Ka-16. The Investigating Officer then recorded the statements of the witnesses and prepared site plan, Ext. Ka-17. He also collected blood-stained and simple earth from the place of the incident and sealed it in two small tins vide memo Ext. Ka-18. The Investigating Officer also found a can filled with oat materials and one basket filled with grain materials meant for feeding cattle. He recovered the same and thereafter gave it in the Supurdagi of Ram Kumar vide memo Ext. Ka-19. He then tried to search out the accused persons but they were not available. This investigation was continued by another S.I. Sri Laxmi Narain (PW-8) of Police Outpost Sisolar. PW-8 received the injury reports of Ram Sajiwan, Ram Asrey and Ram Sanehi. PW-8 also made search of the accused persons. He came to know later on that the accused persons surrendered in court and were sent to jail. He recorded the statements of the witnesses and recovered their blood-stained clothes also vide memo Ext. Ka-8. PW-8 recorded the statements of the accused persons in District Jail on 8.7.1980.

9. The dead body of the deceased Ram Narain was examined by Dr. V.K. Nigam (PW-6) of District Hospital, Hamirpur on 25.6.1980 at 2.45 P.M. He found the body in sealed condition. It was identified by constables Radharaman and Drig Pal Singh. The deceased was about 42 years old. The body was of average built. Rigor mortis passed off from upper and lower limbs. Blisters present all over the body, greenish discoloration present on the lower part of abdomen. Scrotum and penis swollen, faecal matter with gases, abdomen distended, face blotted, eyes closed, mouth half open, skin peeled off from several places.

10. Dr. Nigam found the following ante-mortem injuries on the dead body of the deceased :-

1. Contusion 9 cm. x 2 cm. on the front of chest upper part right side extending from middle of clavicle to sternum, obliquely placed.

2. Contusion 7 cm. x 2 cm. on the front of right chest parallel to injury no. 1 and 1 cm. below the injury no. 1.

3. Incised wound 3 cm. x 0.5 cm. x bone deep just behind the right ear transversely placed.

4. Eight gun shot wounds in an area of 12 cm. x 6 cm. on the front of right chest upper part, 12 cm above the nipple and 3 cm. below the clavicle, each wound was 1 cm. x 1 cm. x cavity (chest) deep. Blackening and scorching present, margins inverted, blood fluid coming out from the wound. Direction of wound was right to left and downward.

5. Gun shot wound of entrance 5 cm. x 4 cm. x bone deep just above the left clavicle middle part, underlying bone was fractured, 16 cm. above the nipple. Blackening and scorching present, margins irregular and inverted.

6. Gun shot wounds of exit in an area of 5 cm. x 2 cm. just above the left scapula upper border, 4 cm. lateral to mid line back side, each wound was 1.5 cm. x 1 cm., margins everted. Direction of wound was front to back and downwards.

On the internal examination, Dr. Nigam found fracture of ribs No. 2, 3 and 4 of right side and ribs No. 1, 2 and 3 of left side, pleura lacerated, both lungs lacerated, 200 ml. Blood fluid present in left chest cavity and 250 ml. blood fluid in right chest cavity. Seven pellets recovered from the right lung and one pellet from the left lung. Three pellets and wadding material recovered from the left scapula region. Back side scapula bone was fractured. Small intestine contained pasty food material and the large intestine faecal matter and gases. Stomach was empty. Gall bladder was half filled.

In the opinion of Dr. Nigam, the death of the deceased was caused about one and a half day before due to shock and haemorrhage resulting from gun shot injuries. The post-mortem report is Ext. Ka-5.

11. After completing the investigation, the Investigating Officer, Sri Laxmi Narain PW-8 submitted charge-sheet, Ext. Ka-9, against the accused persons/appellants.

12. The appellants were charged for the offences punishable under Section 302 I.P.C. read with Section 149 I.P.C. and under Section 307 I.P.C. read with Section 149 I.P.C. Four appellants namely, Jagdish, Kalloo, Sheo Narain alias Baredi and Lala Ram were also charged under Section 148 I.P.C. and remaining two appellants namely, Moti Lal and Bhagwat were also charged under Section 147 I.P.C. The charges were read over and explained to the appellants who pleaded not guilty and claimed to be tried.

13. To prove the charges levelled against the appellants, the prosecution examined the first informant as well as injured Ram Sajiwan PW-1, injured Ram Sanehi PW-2 and injured Ram Asrey PW-3 as the eye witnesses. The prosecution also examined Ambika Prasad (scribe) PW-4 to prove the written report having been prepared by him at the dictation of Ram Sajiwan PW-1.

14. The prosecution also examined Dr. R.D. Misra PW-5, who had prepared the injury reports of the injured persons namely, Ram Sajiwan, Ram Sanehi and Ram Asrey and proved their injury reports, which are Exts. Ka-2, Ka-3 and Ka-4 respectively. According to evidence of Dr. R.D. Misra PW-5, the injuries of the injured persons were simple except injury No. 4 of Ram Sanehi, which was not on

vital part but on forearm. Dr. Misra's estimation is that the condition of the injured Ram Sajiwan would have been serious keeping in view the number and nature of the injuries suffered by him and injury No. 1 of incised wound was on his vital part. The remaining two injured Ram Sanehi and Ram Asrey each had injury No. 1 on vital part.

15. The prosecution also examined Dr. V.K. Nigam, PW-6 to prove that dead body of the deceased Ram Narain brought by constables Radharaman Pandey and Drig Pal Singh in a sealed condition, was handed over to the doctor and then he conducted post-mortem examination on the dead body on 25.6.1980 at 2.45 P.M. and found the injuries mentioned in the post-mortem examination report, Ext. Ka-5. The presence of the injuries found on the dead body as well as post-mortem examination report Ext. Ka-5, has been proved by Dr. Nigam.

16. Constable Chhandi Lal PW-7 was also examined by the prosecution. This constable proved the chik F.I.R., which was prepared on the basis of written report and he also proved G.D. entry, Ext. Ka-7. According to him, he had seen the injuries of all the injured persons and sent them to Primary Health Centre, Maudaha through constable Bhagwan Das. He also proved written report, Ext. Ka-1, which was given to him at the Police Outpost and the same had been scribed by Ambika Prasad. This constable clearly denied that written report, Ext. Ka-1, was written at the Police Outpost with the police consultation. The testimony of this PW-7 establishes that all the three injured persons came to the Police Outpost where the first informant PW-1 handed over written report to this PW-7 and PW-7 had examined the injuries on the persons of three injured persons and sent them to Primary Health Centre, Maudaha through constable.

17. The prosecution also examined S.I. Sri Laxmi Narain PW-8, the first Investigating Officer and S.I. Sri Sheo Shankar Sachan PW-9, the second Investigating Officer, who proved the papers prepared during investigation.

18. It appears from the testimony of the Investigating Officers that the statements of the injured persons were recorded under Section 161 Cr.P.C. on 3.7.1980 and their bloodstained clothes were taken vide memo Ext. Ka-8 and thereafter clothes were given back. One appellant surrendered in the court on 28.6.1980 and

remaining surrendered in the court on the previous day namely, 27.6.1980. The appellants were interrogated by the Investigating Officer on 8.7.1980 in jail where they were lodged after surrender, with the permission of the court.

19. The appellants while examined under Section 313 Cr.P.C., denied the prosecution story and alleged their false implication due to animosity. The accused persons were called upon to enter into defence but they produced no evidence in defence.

20. We have heard Sri R.C. Yadav, learned counsel for the appellants, Sri Sangam Lal Kesharwani, 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. Since emphasis has been laid by learned counsel for the appellants that the most important witness namely, Ram Sajiwan, PW-1, who is informant and injured witness, has become hostile, it is necessary to go through testimony of this PW-1 before considering this point.

21. Ram Sajiwan PW-1, is the first informant and injured witness of this case. As stated above, three persons namely, Ram Sajiwan, his maternal uncle Ram Sanehi (injured) PW-2 and Ram Asrey (injured) PW-3 (maternal brother of PW-1) sustained injuries. Ram Sajiwan PW-1 sustained as many as 16 injuries, Ram Sanehi PW-2 sustained six injuries and Ram Asrey PW-3 sustained seven injuries in the said incident. According to testimony of Ram Sajiwan PW-1, he knew all the appellants prior to this incident, who belonged to village Parehta. Two appellants namely, Moti Lal and Bhagwat belonged to one family and rest of the appellants belonged to their party. The deceased Ram Narain was his maternal uncle (Mama). The deceased Ram Narain was murdered on 24.6.1980 at about 6.00 A.M. when this witness along with both injured witnesses Ram Sanehi and Ram Asrey were lying in the Atari. The deceased Ram Narain was going to cattle-shed/cattle-house to feed cattle. When the deceased reached in front of Enclosure/Bada of Siddha Ahir, the incident took place. This PW-1 deposed that none of the appellants had killed his Mama Ram Narain. The witness had seen the appellants there at the time of incident but could not state what arms the appellants were possessing at that time. The witness further deposed that he

could not recognize the persons who had beaten him (witness) and caused injuries to other witnesses Ram Sanehi and Ram Asrey. The report of this incident was written by Ambika Prasad PW-4 as per dictation of this PW-1. On the point of dictating the report of the incident, PW-1 stated that he dictated the report to Ambika Prasad as he (PW-1) had thought it proper at that time. The witness proved the report Ext. Ka-1 which he had signed when he went to the Police Outpost Sisolar with this report and delivered to the Head Constable present on duty at the said outpost. The witness further stated that Head Constable had seen the injuries of all the three injured persons including him. The witness was declared hostile by the Public Prosecutor, when he was permitted to be cross examined by the Public Prosecutor. During cross examination, this PW-1 stated that he had mentioned the names of the appellants in the report Ext. Ka-1 but could not say whether the names were correctly written or falsely mentioned. Later on, the witness stated that names were wrongly written in the report but the witness could not satisfactorily explain why the names of the appellants were wrongly written in the report.

22. During cross examination of this witness by the Public Prosecutor, the witness stated that he had not knowingly got the wrong names written in the report Ext. Ka-1. The witness also denied the fact that the witness mentioned the names of the appellants in Ext. Ka-1 at the instance of the police. The witness also denied the suggestion of the Public Prosecutor that he was won over by the appellants. The witness also denied that he received money from the appellants. The witness also denied that the Investigating Officer had recorded his statement under Section 161 Cr.P.C. The witness could not explain or clarify how the Investigating Officer had recorded the names of the appellants as assailants in his statement under Section 161 Cr.P.C. This PW-1 during cross examination by defence counsel, admitted that the appellant Jagdish had prosecuted the witness under Sections 324/326 I.P.C. and witness was convicted in that case but acquitted in appeal. The incident of the case under Sections 324/326 I.P.C. took place before the murder of the deceased Ram Narain (case in hand). The injured witness Ram Asrey and two other persons namely, Santosh and Badri were also accused in that case. The appellant Kalloo was the witness of the prosecution in that case. The injured Ram Sanehi PW-2 is the real brother of the deceased Ram Narain. The

injured Ram Sanehi (real brother of the deceased Ram Narain) and injured Ram Asrey PW-3 (son of sister of the deceased) in their testimony further supported the prosecution story in toto as narrated in the F.I.R. lodged within two and half hours of the incident of murder.

23. It is evident from their testimonies that PW-2 and PW-3 were residents of village Parehta, Police Station Maudaha and the appellants were also residents of the same village Parehta. These witnesses previously knew the appellants being residents of the same village. The appellants Moti Lal and Bhagwat were the members of one family and rest of the appellants belonged to their party. On 24.6.1980 at about 6.00 A.M. Ram Narain was murdered while he was going to feed cattle in the cattle-house. When the deceased reached in front the Siddha's Gadi Khana, the appellants namely, Jagdish and Kalloo each armed with guns, Sheo Narain alias Baredi armed with Pharsa, Moti Lal and Bhagwat each armed with lathi and Lala Ram armed with Barchhi, met the deceased. The appellants were hiding themselves in the said Gadi Khana from where they immediately came out and assaulted upon the deceased. Both these injured witnesses and injured PW-1 were in the Atari from where they immediately rushed to the place of incident. The appellants challenged the deceased and said that the deceased had falsely implicated them in the theft case, they would not spare him. The appellants Jagdish and Kalloo each fired one shot with their guns and the deceased Ram Narain sustained two gun shot injuries and immediately fell down. When three injured witnesses PW-1, PW-2 and PW-3 reached near Ram Narain to his rescue, they were also attacked with Barchhi, Pharsa and lathi by the appellants, causing several injuries to them including fracture of left arm of the injured Ram Sanehi PW-2. This incident was witnessed by Raj Bahadur and Kamtu, who were going to attend the nature's call. Smt. Prema Devi, wife of Ram Kumar Dwivedi, elder brother of PW-2, was also present at the time of incident and on the intervention of the witnesses, the accused persons fled away towards river. Since the appellants wanted to remove the dead body of the deceased, the witnesses picked up the dead body of the deceased Ram Narain and kept on a cot in front of the door of the deceased. The appellants tried to take away the dead body of the deceased but due to timely arrival of the several persons, they could not do so. Hence, there was genuine need to take the dead body from the place of occurrence to the

house of the deceased. All the injured persons went to the Police Outpost Sisolar where PW-1 handed over the written report to the constable present on the duty. All the three injured witnesses were sent to the Primary Health Centre, Maudaha for examination of their injuries by the doctor, where their injuries were examined and injury reports were prepared by the doctor.

24. It is also evident from the testimony of the injured witnesses namely PW-2 and PW-3 that blood had trickled down at the place of incident of murder of the deceased Ram Narain. The clothes namely, Tahmad, Baniyan and underwear (Ext. 1 to 3) of the deceased were also stained with blood. There was old litigation between the deceased and appellants over some land, that led to deep rooted enmity between them. PW-2 stated that cattle, that are milked in the morning, are fed fodder about 2-3 hours before the milking time.

25. It emerges from the testimony of PW-2 that Ambika Prasad, scribe of the F.I.R., was brother-in-law of the deceased Ram Narain and at the time of this incident, the witnesses were not sleeping but were lying on the Atari quite awakened for about one hour and none of the witnesses had gone to attend the nature's call by time of the incident. Ram Sanehi PW-2 was busy in Ram Bhajan at that time and was to go to attend the nature's call after sufficient day light. He was waiting some more time to proceed to attend nature's call. PW-2 suddenly heard the sound of Marpit and got down from the Atari but he immediately turned his face towards the appellants as well, as they challenged the deceased Ram Narain. When PW-2 got down and reached near the deceased Ram Narain, the appellants also assaulted PW-2, PW-1 and PW-3, badly injuring them. The injured witnesses had gone to the place of incident barehanded because they rushed in a hurry. The injured witnesses had to remove the dead body of the deceased from the place of incident and placed the same on a cot in front of house of the deceased Ram Narain, which was at a distance of 70-75 paces from the place of incident to frustrate the evil design of the appellants, who were trying to take away the dead body of the deceased by force from the place of incident.

26. Ram Sanehi PW-2 denied defence suggestion that the incident had taken place in the dark night and he could not see the assailants due to darkness. The

witness replied that it was quite day light and all the appellants were quite visible. PW-2 also testified that he was beaten on the same place where the deceased Ram Narain was murdered by the appellants.

27. The same is the testimony of the third injured witness Ram Asrey PW-3 as narrated by the injured Ram Sanehi PW-2. These injured witnesses supported the prosecution story giving details about the role played by each of the appellants and weapons used in the said incident of murder of Ram Narain and act of causing injuries to the injured witnesses namely, PW-1, PW-2 and PW-3. All the three injured witnesses reached at the place of occurrence from Atari where they were lying awakened, on hearing cries, when they tried to intervene, they were also thrashed by the appellants. The injured witnesses were interrogated by the Investigating Officer either in the hospital where they had gone for their treatment or in the village when they came back after treatment from the hospital. All the injured witnesses were interrogated on one and the same day and their statements under Section 161 Cr.P.C. were recorded on 3.7.1980. PW-3 also denied the defence suggestion that he was beaten somewhere else and murder of Ram Narain was committed in the darkness of the morning.

28. Ambika Prasad PW-4, who is scribe of the F.I.R., also testified that all the three injured witnesses had visited his house at about 8.00 A.M. on the day of the incident and got written report dictated. According to dictation given by Ram Sajiwan PW-1, scribe had written the report, read over the written report to Ram Sajiwan PW-1 and then Ram Sajiwan had signed it, thereafter the written report was signed by scribe and scribe also proved this report as Ext. Ka-1 in the trial court. After signing the written report, the scribe gave it to Ram Sajiwan PW-1. The scribe was educated up to 8th standard at that time and he had no relation with any of the injured but they were known to him. The police outpost was about 100-120 paces away from the house of the scribe. This scribe had denied to have accompanied Ram Sajiwan to the Police Outpost Sisolar. The scribe denied defence suggestion that the injured persons had reached his house early in the morning before sun light but stated that they reached to his house at 8.15 A.M. or 8.30 A.M. This scribe is real brother-in-law (Sala) of deceased Ram Narain.

29. Now we consider the merit of the contentions or submissions made by learned counsel for the appellants and learned A.G.A. in the light of the evidence as stated above, available on record.

30. So far as the contention of the learned counsel for the appellants that a most important eye witness and injured witness Ram Sajiwan has become hostile is concerned, the same causes no dent in the prosecution case. This incident occurred on 24.6.1980 at 6.00 A.M. This PW-1 after the said occurrence reached the house of Ambika Prasad PW-4 (scribe) along with two other injured persons namely Ram Sanehi PW-2 and Ram Asrey PW-3 at about 8.15 or 8.30 A.M. where he dictated the written report of the incident through scribe PW-4, who was real brother-in-law of the deceased Ram Narain. After getting the report of the incident written at the house of the scribe PW-4, the first informant Ram Sanehi PW-1 had taken the written report along with remaining two injured persons (PW-2 and PW-3) to the Police Outpost Sisolar and handed over at 8.30 A.M. On the basis of the written report, the F.I.R. was registered in which names of all the appellants as murderers were mentioned giving details of the weapons held and used by them in the incident. This written report Ext. Ka-1 was proved by Ram Sajiwan PW-1 in his evidence deposing that he got the same written through Ambika Prasad and written report was written by Ambika Prasad according to dictation of PW-1. PW-1 clearly admitted his signatures on the written report Ext. Ka-1. The constable present on duty at Police Outpost Sisolar inspected the injuries found on the persons of three injured witnesses, from where they were sent to the hospital for preparing their medical examination reports. Thus, it is evident from the evidence of this PW-1, written report Ext. Ka-1 and chik F.I.R. of the incident that the prosecution version was clearly mentioned by this PW-1 which he has supported in his evidence in the material particulars. This PW-1 also sustained injuries in this incident at the same time when PW-2 and PW-3 also sustained injuries at the same place where the appellants are alleged to have murdered Ram Narain.

31. 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."

32. In the case of *Sat Paul Vs. Delhi Administration* (1976) 1 SCC 727, Hon'ble Supreme Court observed in paragraph no.52 that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy

and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the judge should, as a matter of prudence, disregard his evidence in toto.

33. Hon'ble Supreme Court in the case of Bhagwan Dass Vs. State (NCT) of Delhi AIR 2011 Supreme Court 1863 has recently observed that prosecution witness who was mother of the accused told the Investigating Officer that her son has told her that he killed the deceased, but when she was confronted with her statement in the court she resiled from her earlier statement and was declared hostile, Hon'ble Apex Court held that in such circumstances, her subsequent denial in court is not believable because she obviously afterthought wanted to save her son (accused) from punishment. It has been further held that statement to the Police made by eyewitness can be taken into consideration in view of the proviso to Section 162 (1) Cr.P.C. It is duty of Court to separate grain from chaff because maxim "falsus in uno is falsus in omnibus" has no application in India. In the reported judgment of honour killing prosecution witnesses resiled from statement and became hostile, Hon'ble Apex Court has further observed that disclosure evidence namely statement given by the accused led to discovery of certain incriminating articles was admissible as evidence under Section 27 of Indian Evidence Act. The reported judgment of honour killing was based on circumstantial evidence where motive played very important role, the deceased daughter was living in adultery with her uncle when her father accused felt humiliated, he murdered her. The motive was to avenge family honour, omission by the accused to inform the police about death of his daughter depicts unnatural conduct on his part.

34. Hon'ble Apex Court in the case of Paramjeet Singh @ Pamma Vs. State of Uttarakhand (2010) 10 SCC 439 while dealing with case of murder of three persons and three injured persons with gun observed that the appellant of the case being denied his share in the immoveable property by his father committed murder of three persons and caused injuries to three others. All the prosecution witnesses turned hostile then it was held that the prosecution witnesses have no regard for truth and concealed material facts from court in order to protect the appellant by resiling from their original stand for the reasons best known to them,

such unwarranted attitude of the eyewitnesses disentitles any benefit to appellant who committed a serious crime. The conviction of appellant was upheld considering the said points, evidence and also recovery of gun used in the crime at the appellant's behest. In that judgment, certain questions were not put to the appellant under Section 313 Cr.P.C. then Hon'ble Apex Court further held that it did not materially prejudice the appellant because the first information report was lodged promptly naming the appellant as person who committed murder and inspite of extensive cross examination of the Investigating Officer, defence could not elicit anything to discredit his deposition, the same was supported with medical evidence. All eyewitnesses including the injured witnesses before turning hostile attributed commission of offence only to the appellant in their statements under Section 161 Cr.P.C. It has been further held that the complainant and eyewitnesses could not have falsely named the appellant as being responsible for offence at initial stage itself. Conviction was confirmed by Hon'ble Apex Court.

35. In the case in hand, the prosecution story to a great extent has been supported by Ram Sajiwan PW-1 which has further been corroborated by prompt lodging of the F.I.R. by this PW-1 and by testimonies of PW-2 and PW-3 and also by medical evidence. Thus, merely because PW-1 became hostile on a few aspects for the purpose of giving undoubted benefits to the appellants or any other reasons best known to him, same carries no adverse impact on the prosecution story. The presence of all these three injured witnesses (PW-1, PW-2 and PW-3) on the date, time and place of incident is established beyond doubt. Their testimony is natural, reliable and creditworthy and there is no reason at all to discredit the same. These evidences establish their presence at the same date, time and place where the deceased Ram Narain was allegedly murdered by the appellants. Two appellants namely, Jagdish and Kallu each fired one shot from their respective guns, causing fatal injury to the deceased. Besides, the deceased sustained two contusions on his chest and one incised wound behind right ear. The appellant Sheo Narain alias Baredi was armed with Pharsa, co-appellants Moti Lal and Bhagwat were armed with lathis and co-appellant Lala Ram was armed with Barchhi. Thus, the criminal conspiracy having been hatched by the appellants annihilating the deceased and causing injuries to PW-1, PW-2 and PW-3 (injured witnesses), from the evidence on record, has been proved beyond any shadow of doubt.

36. After considering the aforesaid aspects of the case, we do not find any merit in the submission of learned counsel for the appellants on this point and the same is hereby repelled.

37. The next contention of the learned counsel for the appellants is that the prosecution has not given any explanation of blunt object injuries found on the person of the deceased. On this ground, ocular testimony and medical testimony has been argued, besides gun shot wounds, two contusions and one incised wound were found on the person of the deceased. The injured persons were assaulted by the appellants with lathis and Pharsa besides making gun shot fires. Thus, the injured witnesses clearly stated that the deceased was fired upon by two appellants Jagdish and Kallu with gun. It is evident from the testimonies of PW-2 and PW-3 (injured witnesses) that they reached at the place of occurrence just at the time when two appellants Jagdish and Kallu each fired shot with gun and Ram Narain after sustaining firearm injuries died on the spot. When the injured witnesses reached near the deceased, they were also assaulted by Barchhi, lathi etc. causing several injuries to them.

38. Learned A.G.A. has submitted that though in specific words there is no mention of any assault with lathi, Barchhi and Pharsa by the appellants on the deceased in the F.I.R. or in the testimonies of the injured witnesses but the presence of injured witnesses at the scene of occurrence is fully established on account of injuries sustained by them in the same occurrence. The injured eye witnesses cannot be expected to give a precise and meticulous details in such type of cases where gun shots were being fired by two appellants.

39. In Brij Lal Vs. State of Haryana, 2002 Cr. L.J. 581 (S.C.): 2002 SCC (Criminal) 245 the Hon'ble Apex Court observed that it is difficult to state the exact location where the bullet hit when firing takes place all of sudden. Such a discrepancy/contradiction or exaggeration or embellishments on the other hand only lends assurance to credibility of evidence.

40. 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.

41. Hon'ble Supreme Court in *Takdir Samsuddin Sheikh Vs. State of Gujarat* and another 2012 CrI.L.J. 621 has recently observed on the point of appreciation of evidence in paragraph no.9 which reads as follows:-

"We are of the view that all omissions/contradictions pointed out by the appellants' counsel had been trivial in nature, which do not go to the root of the cause.

It is settled legal proposition that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions/improvements/embellishments etc. had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, omissions or improvements on trivial matters without affecting the case of the prosecution should not be made the court to reject the evidence in its entirety. The court after going through the entire evidence must form an opinion about the credibility of the witnesses and the appellate court in natural course would not be justified in reviewing the same again without justifiable reasons."

It has been further held in *Takdir Samsuddin Sheikh (supra)* that while appreciating the evidence of witness considering him as the interested witness, the court must bear in mind that the term 'interested' postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some other reason.

42. Hon'ble Supreme Court in *Gosu Jairami Reddy and another Vs. State of A.P.* 2011 CrI.L.J. 4387 has observed that it is not always easy for an eyewitness to a ghastly murder to register precise number of injuries that were inflicted by assailants and part of the body on which the same were inflicted. A murderous assault is often a heart-rending spectacle in which even a witness wholly unconnected to the assailant or the victim may also get a feeling of revulsion at the gory sight involving merciless killing of a human being in cold blood. To expect from a witness who has gone through such a nightmarish experience, meticulous narration of who hit whom at what precise part of the body causing what kind of

injury and leading to what kind of fractures or flow of how much blood, is to expect too much. Courts need to be realistic in their expectation from witnesses and go by what would be reasonable based on ordinary human conduct with ordinary human frailties of memory and power to register events and their details. A witness who is terrorised by the brutality of the attack can not be disbelieved only because in his description of who hit the deceased on what part of the body there is some mix up or confusion. It is the totality of the evidence on record and its credibility that would eventually determine whether the prosecution has proved the charge against the accused.

43. Hon'ble Apex Court in the case of Waman and others Vs. State of Maharashtra 2011 Cr.L.J. 4827 (SC) has held that ordinarily, the prosecution is not obliged to explain each injury sustained by the deceased or accused even though the injuries might have been caused in the course of occurrence, if the injuries are minor in nature, however, if the prosecution fails to explain a grievous injury on one of the accused persons which is established to have been caused in the course of the same occurrence then certainly the court looks at the prosecution case with a little suspicion on the ground that the prosecution has suppressed the true version of the incident. However, if the evidence is clear, cogent and creditworthy then non-explanation of certain injuries sustained by the deceased or injury on the accused ipso facto cannot be the basis to discard the entire prosecution case.

44. In Gosu Jairami Reddy and another Vs. State of A.P., 2011 Cr. L.J. 4387 (Supreme Court) the injury on neck of deceased was attributed to one of the accused by eye-witness, however, injury on neck was not revealed in the post-mortem examination report. This discrepancy was held immaterial by Hon'ble Apex Court observing that when the post-mortem report and eye witness depositions show that injuries were caused by sharp edged sickles that accused were carrying with them and are said to have used in the course of incident.

45. In the appeal in hand, the prosecution version initially was that the appellants armed with guns, Pharsa, Barchhi and lathis were present at the place of incident, two appellants fired one shot each with their respective guns and when the injured witnesses rushed to the rescue of the deceased, they were also assaulted by the

appellants causing injuries to them. The same facts were proved by the injured witnesses in their evidence. Thus, the presence of the appellants holding the said weapons on the date, time and place has been established. The prosecution version as narrated in the F.I.R. has also been proved by the injured witnesses and further corroborated by medical evidence. Possibility seems to be that when the injured persons were assaulted by the appellants, some blows were also given to the deceased with lathi and sharp edged weapon like Pharsa and the contusions and incised wounds were caused by the appellants to the deceased at the time when they were intercepted by the injured witnesses. In Gosu Jairami Reddy's case, it has also been observed that it is not always easy for an eye witness to a ghastly murder to register precise number of injuries that were inflicted by assailants and part of body on which same were inflicted. Thus, we are unable to accept this contention of the learned counsel for the appellants and the same is hereby repelled.

46. The next contention of the learned counsel for the appellants is that there was no motive for the appellants to commit this offence. This contention is also devoid of merits because there was old litigation and enmity between the appellants and the deceased prior to this incident. Though in the case of direct evidence, the motive has no significance, but in this case a sufficient motive has been proved. There was sufficient motive to commit this crime. One more contention of the learned counsel for the appellants that independent witnesses Raj Bahadur and Kamtu were not examined or produced by the prosecution. The Court has to see the quality of evidence adduced in the case and not the quantity. Sufficient reason has been given by the learned A.G.A. for non-examination of these so called independent witnesses. Since the informant and injured witness PW-1 tried to resile from the prosecution version, these independent witnesses had also been won over by the appellants, hence they were not examined. In this case, the F.I.R. was lodged within two and half hours of the incident of murder and journey between place of occurrence and Police Outpost Sisolar was travelled by the injured witnesses including PW-1 on bullock cart. Thus, this contention of the learned counsel for the appellants is also repelled.

47. Per contra, learned AGA has placed reliance on a decision of Hon'ble Supreme Court in the case of Jai Prakash Singh Vs. State of Bihar and another 2012 Cr.L.J. 2101 wherein it has been observed by Hon'ble Supreme Court that the FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.

48. The last contention of the learned counsel for the appellants is that one appellant namely, Lala Ram was juvenile on the date of commission of the offence and now he is entitled to the benefit of Juvenile Justice (Care and Protection of Children) Act, 2000, as amended by Juvenile Justice (Care and Protection) Amendment Act, 2006. In Section 2(k) and 2(1) of the Juvenile Justice Act 2000 as amended in 2006, whereby the provisions of the said Act were extended to cover juveniles who had not completed 18 years of age on or before the coming into force of the Juvenile Justice Act, 2000 on 1.4.2001.

49. Learned counsel for the appellants further contended that now the Hon'ble Apex Court has consistently taken note of the amendment and the judgment rendered in the case of Hari Ram Vs. State of Rajasthan, AIR 2011 S.C.(Cr.) 2053 and extended the benefit to persons who are found to be juvenile in conflict with law for an offence committed prior to the enforcement of the Juvenile Justice Act 2000 irrespective of their age when such determination is made after coming into force of the Juvenile Justice Act 2000.

50. The Hon'ble Apex Court in the case of Bhim alias Uttam Ghosh Vs. State of West Bengal, (2010) 14 Supreme Court Cases, 571 reiterating the same stand as taken in the case of Hari Ram (supra) in paragraph 16 thereof observed as under:-

"16. It is, thus, manifest from a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 of the 2000 Act, read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 that all persons who were below the age of eighteen years on the date of commission of the offence would be treated as juveniles even if the claim of juvenility is raised after they have attained the age of eighteen years on or before the date of the commencement of the 2000 Act and were undergoing sentences upon being convicted."

51. As per Scholar's Register and Transfer Certificate Form issued by National Inter College, Maudaha (Hamirpur), date of birth of the appellant Lala Ram is 18.10.1963 and the date of occurrence is 24.6.1980. On this basis, the age of the appellant Lala Ram comes to 16 years, eight months and six days. Thus, the appellant Lala Ram was juvenile in conflict with law on the date of the incident and is entitled to the benefit of Juvenile Justice (Care and Protection of Children) Act, 2000.

52. This Court called for a report from the Chief Judicial Magistrate, Hamirpur who submitted his report on 29.6.2012 to this Court vide letter No. 83/12, dated 29th June, 2012. As per the report of the Chief Judicial Magistrate, Hamirpur, the appellant Lala Ram has been found to be a juvenile in conflict with law on the date of the incident. Thus, there is no reason to disbelieve the date of birth of the applicant Lala Ram given in the Scholar's Register and Transfer Certificate Form and also the finding recorded by the Chief Judicial Magistrate, by which he found the appellant Lala Ram to be a juvenile on the date of the incident.

53. 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, the conviction of the surviving appellants are hereby upheld. The appeal respecting other appellants except appellant No. 4 Lala Ram, is hereby dismissed.

54. Since the appeal in respect of surviving appellants is dismissed, their bail bonds and surety bonds are cancelled. The surviving appellants are directed to surrender before the trial court immediately to serve out the remaining part of the sentence awarded to them. If they fail to surrender, the trial court is directed to get the appellants arrested and send them 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 17.5.1982.

55. We hold that the appellant No. 4 Lala Ram was juvenile on the date of the incident and he is entitled to the benefit of Juvenile Justice (Care and Protection of Children) Act, 2000. Since the participation of the appellant No. 4 Lala Ram has been established in the above analysis, in the said incident, his conviction vide impugned judgment and order of the trial court is maintained. While sustaining the conviction of the appellant No. 4 Lala Ram, we quash the sentence awarded to him and direct his release forthwith if he is detained in jail and if not required in any other case.

56. The appeal with regard to the appellant No. 4 Lala Ram succeeds partly to the extent indicated above.

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

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