

**Uma Singh Vs. the State of Bihar**

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**Court :** Patna

**Decided On :** Aug-20-2008

**Judge :** Sudhir Kumar Katriar and Syed Mohammad Mahfooz Alam, JJ.

**Appellant :** Uma Singh

**Respondent :** The State of Bihar

**Judgement :**

**Sudhir Kumar Katriar, J.**

1. The sole appellant is aggrieved by the judgment dated 17.3.1988, passed by the learned 2nd Additional Sessions Judge, Samastipur, in S.T. No. 49/9 of 1987 (State v. Uma Singh @ Umiya Singh), whereby he has been convicted under Section 302 of the Indian Penal Code, and sentenced to undergo rigorous imprisonment for life, and further sentenced to undergo rigorous imprisonment for two years for the offence under Section 27 of the Arms Act. Both the sentences have been directed to run; concurrently. It is a case of circumstantial evidence and is based on last-seen theory.

2. According to the Fardbeyan of one Chandra Bhushan Singh (P.W. 12), recorded on 25.8.1986, at 7.30 A.M., before the Sub-Inspector of Police of Hasanpur police station, that the previous day, on 24.6.1986, his brother Shiv Bahadur Singh, Mukhiya of his village, had gone to Hasanpur Bazar. He did not return in the night and they thought that he had stayed there over-night. On

25.6.1986, at about 5 A.M., his first cousin Birendra Prasad Singh (P.W. 7), told him that Lakhpati Mahto (P.W. 11), a co-villager, had called him to his residence (Darwaja) and informed him that the previous day, at about 11 P.M., while he was returning from Hasanpur, he noticed a cycle near the Mango Orchard of Vakil Sahab of Chandrapur. Its frame was broken and was lying on the ground which he brought to his residence. His brother, Birendra Prasad Singh (P.W. 7), recognized the bicycle because the name of Shiv Bahadur Singh was inscribed on its handle, whereafter both of them alongwith Surendra Singh and Baijyanath Singh, co-villagers, went out in search of their brother Sheo Bahadur Singh. He met his first cousin (Mausera Bhai), Jagdish Singh, near Khavash Tola and informed him that Mukhiya Jee had been shot dead and the dead body was lying in the aforesaid orchard. He alongwith his first cousin went over to the orchard where he found Shiv Bahadur Singh Mukhiya dead and had been very badly injured. The clothes on his body were drenched with blood and the face was defaced. The left eye and the flesh behind it was pierced. He further stated that he was in a state of consternation (Ghabrahat) and stated that he will inform him of the name of the assailant after he comes to know of it. After enquiry, he learnt that the occurrence had taken place between 7 to 8 P.M. On the basis of these allegations, Hasanpur P.S. Case No. 099 of 1986, dated 25.6.1986, under Section 302 of the Indian Penal Code was registered. This was marked Ext. 5. This was followed by a formal F.I.R. under Section 302 of the Indian Penal Code, the same day at 11.30 A.M., and has been marked Ext. 1.

3. The Investigating Officer commenced investigation. He prepared the inquest report, and also forwarded the dead , body to Civil Assistant Surgeon (P.W. 10) for post-mortem. Charge-sheet was submitted against the appellant under Section 302 of the Indian Penal Code as well as Section 27 of the Arms Act on 24.4.1986. Cognizance was taken of the alleged offence. He pleaded not guilty and claimed to be tried.

4. The prosecution examined as many as 14 witnesses in support of its case. It proved the following documents:

(i) Exhibit-1- F.I.R.

- (ii) Exhibit-2- Forwarding of Fardbeyan of Hasanpur police station.
- (iii) Exhibit-3- Signature of Birendra Prasad Singh on the inquest report.
- (iv) Exhibit-4- Post-mortem report in the pen of Dr. V.B. Prasad (P.W. 10).
- (v) Exhibit-5-Fardbeyan of Sri Chandra Bhushan Singh (P.W. 12).
- (vi) Exhibit-6- Seizure list
- (vii) Exhibit-7- Map drawn in case diary at page 64, para 4, in the pen of the witness Sri Arun Kumar Singh.
- (viii) Exhibit-I- Material Exhibit (Taulia)
- (ix) Exhibit-II- 14-Sheets Exts list with.

5. The defence examined one witness in support of its case. It proved the following documents:

- (a) Exhibit-A-F.I.R. Rosara Hasanpur G.R. 779/75 in the pen of the Officer posted in the year 1975
- (b) Exhibit-B- Fardbeyan typed by G.D. Jadgor, signed by Chandradeo Narain Choudhary. Exhibit-C-Endorcement alongwith signature of Shiv Bhajan Singh, Officer-incharge of Rosara.

6. On a consideration of the materials on record and the submissions of learned Counsel for the parties, the learned trial court held that Shiv Bahadur Singh, Mukhiya, was done to death by means of fire arms. He has also found that the accused was, prior to his murder, last-seen with the deceased. He has also found that the Mukhiya was on good terms with a few persons in and around his Panchayat, but there is no evidence on record. There is no body other than Uma Singh who has hand in his murder. He has also found that the accused had taken loan from the deceased which had given rise to differences between them. In view of these findings, the learned trial court convicted the accused person in terms of Section 302 IPC and sentenced him to undergo rigorous imprisonment for life. He

has also found him guilty under Section 27 of the Arms Act and has sentenced him to undergo rigorous imprisonment for two years. Both the sentences have been directed to run concurrently.

7. P.W. 1 (Pramod Thakur) is a Karpardaz in Civil Court at Samastipur and is a formal witness. He has proved the First Information Report in the hand writing of A.S.I. Prahalad Singh, and has been marked Ext. 1.

8. P.W. 2 (Arun Kumar Jha) is also a Karpardaz in Samastipur Civil Court and is a formal witness. He has proved the forwarding report and has been marked Ext. 2.

9. P.W. 3 is Mani Mahto. He is a witness on the point of last-seen. It appears from his description in the proforma of the deposition that he is a resident of Village Deora, Police Station-Hasanpur, District- Samastipur, where he runs a tea shop. He has stated in his examination-in-chief that he knew Shiv Bahabur Singh deceased, who was the Mukhiya of Kalegram Gram Panchayat. He was murdered about one year and 15-16 days ago. On 24.6.1986, it was a Tuesday in the afternoon, Shiv Bahadur Singh had come over to his shop alongwith one person. They had come walking. The person who had accompanied him was rolling the cycle. Shiv Bahadur Singh had taken water in his shop whereafter he has said that (sic) whereafter they left the place. Anup Mukhiya (P.W. 6), Lakshuman Mukhiya, and his brother Ramashish Mahto (P.W. 5), were then present at the shop. He has further deposed to the effect that he heard the sound of a gun-shot about one hour after they had left. He had learnt on the following day that the Mukhiya had been shot dead. P.W. 3 recognized the person in the dock who had accompanied the deceased.

9.1 P.W. 3 has stated in his cross-examination that he was not concerned with village Kalegram. He has no cultivation there. He has further deposed to the effect that he had heard about the murder of Shiv Bahadur Singh. Of all the residents of Village Kalegram, he recognized only Sheo Bahadur Singh, the Mukhiya. He was running his tea shop for 5-6 years. His shop is by the road side. He and his brother, Ramashish Mahto (P.W. 5), are running the tea shop. It is open from 6 or 6.30 A.M. to 6 or 6.30 P.M. He did not know the accused from before, and had seen him for the first time in his tea shop.

10. P.W. 4 is Sarju Ram and is a Mazdoor. He is also a witness on the point of last-seen. He has stated in his examination-in-chief that he knew Mukhiya Shiv Bahadur Singh who had been murdered about one year and 15-20 days ago. It was a tuesday, at about 5 P.M., he was going to catch a train for Samastipur. He reached near a bridge in . Village Deora and noticed Shiv Bahadur Singh along with the accused holding a bicycle. There were three more persons who he did not recognize. Umia was resident of Kale. P.W. 4 had enquired from the Mukhiya as to what had happened to the old-age pension, and he had replied that it shall be paid on Friday, The Mukhiya, the accused, and the three other persons proceeded towards Kale. He had thereafter proceeded towards Hasanpur to catch the train. He went to Samastipur by train where he learnt about the murder of the Mukhiya. He recognized Umia, who was dragging the Mukhiya's bicycle. He identified the accused person in court.

10.1 He has stated in his cross-examination that he had left his village at 5 P.M. for samastipur. The accused Uma Singh are three brothers, two of whom are working at Gauhati. Uma Singh has one Bigha of land. He has stated in paragraph 9 of his cross-examination that the Mukhiya has no enemies. He had no enmity with Uma Singh also. He has also stated that he had heard about the murder of the Mukhiya from others.

11. P.W. 5, Ramashish Mahto, is a resident of Village Deora and is the full brother of P.W. 2. He is also a witness on the point of last-seen. He has deposed to the effect that he knew Mukhiya Shiv Bahadur Singh who had been murdered by some body about twelve months ago in the night hours. While returning from Hasanpur Bazar, the Mukhiya before his death had taken water at the tea shop of his brother Mani Mahto (P.W. 3). 5-6 more persons were with him. He had gone over to his brother's shop for tea and water. He had himself given drinking water to the Mukhiya, whereafter he (the Mukhiya) had left with one person after telling him that (sic) . He did not recognize the person who had accompanied, the Mukhiya. He had only heard of his name. He had not seen his face because he had left soon after giving drinking water to the Mukhiya, He has also stated that the Investigating Officer had recorded his statement.

11.1 P.W. 5 at this stage was declared hostile. But A.P.P. was granted permission to cross-examine him. Anup Mukhiya, Lakshuman Mukhiya, and Mani Mahto were present at the shop. He has further deposed in his cross-examination that both the Mukhiya and accused had taken tablets there.

12. P.W. 6 is Anup Mukhiya and has been tendered as a witness.

13. P.W. 7 is Birendra Prasad Singh, who is the cousin of the deceased as well as the informant. He has proved his signature on the inquest report (Ext. 3). He has stated in his examination-in-chief that the occurrence had taken place on 24.6.1986, at about 7 to 8 P.M., Lakhpati Mahto (P.W. 11) had gone over to his residence after he had got up in the morning and showed to him a bicycle with damaged frame. The name of Shiv Bahadur Singh was engraved on its handle. On enquiry, P.W. 11 had informed him that he had found the bicycle near Chanderpur orchard by the road-side belonged to Nand Kishore Rai. On enquiry from his brother about Shiv Bahadur Singh, he had informed P.W. 7 that he had gone out in the night and had not till then returned. Then all of them alongwith a few more persons went out in search of the Mukhiya and met Jagdish Singh on way who informed them that the Mukhiya had been murdered and the dead body was in the orchard. They went over to the orchard and found the dead body of the Mukhiya. The dead body was covered with blood and the flesh of the left eye had come out. The Investigating Officer had then reached the place of occurrence and prepared the inquest report. He had put his signature on the inquest report and has identified his signature marked Ext. 3. He has stated in paragraph 3 of his examination-in-chief that the Mukhiya and Uma Singh were on inimical terms. He claimed to have recognized Uma Singh and also identified him in court.

13.1 He has stated in his cross-examination that he did not know the name of the person who had killed the deceased till such time the Investigating Officer had reached the place of occurrence. The murder had perturbed him as a result of which he was not in peace for two days. However, he recovered and had thereafter mentioned Uma Singh's name as the murderer of the Mukhiya which he had heard from others. He has stated in paragraph 6 of his cross-examination that the Mukhiya did not have any enmity with anybody for political reasons. He was

inimical only with Uma Singh because of money transactions. He has further stated that he had told the Mukhiya not to travel by night because of the condition prevailing in the village. He has affirmed in paragraph 9 of his cross-examination that he is a cousin of the deceased. He has also stated about various litigations touching the deceased one way or the other.

14. P.W. 8 is Amrendra Prasad Singh, is cousin of the deceased, and brother of P.W. 7. He has deposed to the effect that on 25.6.1986, in the morning, he alongwith his family members had gone to take bath in river Ganga. The family members were ahead and he was lagging behind. When he approached the orchard, he had noticed the slippers which he had identified to be of Shiv Bahadur Singh and he looked around and found his dead body in the orchard. He went near the dead body and found him to be dead. He ran over to get back his family members who had gone ahead and had showed them the dead body. This was followed by assemblage of 300-400 persons and Jagdish Singh (P.W. 13), a relative was also present. He further stated that he identified the accused standing in the dock. He also stated that the Mukhiya and the accused had problems over money transaction.

14.1 He has stated in his cross-examination that he was not present at the time of the murder. He has denied the suggestion that he had spoken about Mukhiya's murder after hearing from others, and has asserted that he had himself seen the dead body in the orchard. He has further stated in his cross-examination that, though he was not aware of the details of the money transaction between the deceased and the accused, but was aware that it had taken place in the sixth month of 1986. The money transaction between the accused and the deceased had taken place in the presence of Chandra Bhushan Singh (P.W. 12), the informant, and the brother of the deceased. The money transaction had given rise to enmity between the two. He had come to know of money transaction on 11.6.1986. The trouble about the money transaction had taken place in the afternoon at the door-steps of the Mukhiya, in the presence of P.W. 8, the accused, the deceased, and P.W. 12. He has asserted that he had stated before the police about the money transaction between the deceased and the accused in the presence of P.Ws. 2, 9, Lakshuman Mukhiya and Chandra Bhushan Singh (P.W.

12).

15. P.W. 9 is Jiwach Singh and is also a witness on the issue of last-seen. He has deposed to the effect that he had taken the train at Gauhati in the morning of 23.6.1986, and reached Hasanpur on 24.6.1986 at about 4.30 P.M. He alongwith his full brother, Parmanand Singh, had gone over to the shop of Chandu Lal Marwari in Hasanpur Bazar to purchase a bag of cement where he had noticed that Shiv Bahadur Singh and Uma Singh were sitting together. Shiv Bahadur Singh was the then Mukhiya of his Gram Panchayat. He was wearing white Dhoti and Kurta and there was a red mark of sandal paste (Chandan) on his forehead. P.W. 9 and his brother had purchased a bag of cement from the shop and had taken the same on bullock cart to his residence. The two brothers had gone over to their residence on a bicycle. He had heard next day in the morning that Mukhiya had been murdered in the orchard of Vakil Saheb, He has stated that Uma Singh, whom he had seen in the shop of Chandu Lal Marwari, was present in the dock and had identified him. He has further deposed that he frequently met Uma Singh at Gauhati. He has stated that he and his brother had stayed at the shop of Chandu Lal Marwari for 5-7 minutes. He had learnt of the murder of Shiv Bahadur Singh from the co-villagers.

16. P.W. 10 is Dr. V.B. Prasad. He has deposed to the effect that on 26.6.1986, he was posted at Samastipur Sadar hospital as Civil Assistant Surgeon and was still continuing as such at the time of his deposition. He had conducted the postmortem examination on the dead body of deceased Shiv Bahadur Singh at 9.30 A.M. He had found the following ante-mortem injuries over the body of the deceased:

I. Lacerated wound over right side of face in front of right external ear round in shape 1'x1' leading to cranial cavity with inverted margin. Blood clot was present. Margin was blackened and tattooed. A portion of middle part of right external ear was lacerated and continuous with the wound described above 1 1/2' through and through. This was wound of entry.

II. Lacerated wound over the left orbital bone over its medial and inner side oval in shape with everited margin 1 1/2' x 1 1/4' leading into cranial cavity. Blood clot was

present. This was the wound of exit.

He has stated in his cross-examination that age of injuries was determined by colour. He has further stated that the injury might have been caused by pistol or revolver. Such injuries can be caused by rifle but not by gun. The same might have been caused by bullet and not by pellet. He has admitted that he is not a ballistic expert. He has stated about the issues of fire-arm by mere guess, just like a layman,

17. P.W. 11 is Lakpati Mahto. He has deposed to the effect that on 24.6.1986, which was a Tuesday, he had gone over to Rosera. He had returned by train to Hasanpur station, had got down there at 9 P.M., and was returning to his village on foot. When he reached near the orchard at Chanderpur village, he had found a bicycle abandoned by the road side. He had taken the bicycle to the Shivalaya and had shown it to the Mahanth Jee. He had brought the bicycle to his residence which had a broken frame. He noticed next day in the morning on the handle of the bicycle the engraving (sic). He had immediately gone over to the residence of Birendra Prasad Singh (P.W. 7), and informed of the same which led to the search of Shiv Bahadur Singh by about five persons. They first of all went to the place where they had found the bicycle and after entering the orchard had found the dead body of Shiv Bahadur . Singh. They had found fire-arm injury in his right eye and was dead.

17.1 He has stated in his cross-examination that he had noticed the injury only at one place of the dead body, at the right eye. He had not found any other item near the bicycle. He knew Uma Singh since childhood who are three brothers. Prior to the occurrence, he was working in Assam. He did not know whether or not Uma Singh was living in Assam prior to the occurrence. He had seen the accused in the village a few days ago. He was not aware whether or not the caste men of his Panchayat were extremely unhappy of Shiv Bahadur Singh or not. He was also not aware whether or not the accused was a person of lowly character. He was also not aware whether or not he was an active member of the Communist party. He was not related to Chandra Bhushan Singh and in fact belonged to different caste.

18. P.W. 12 is Chandra Bhushan Singh, and is the full brother of the deceased. He had deposed to the effect that on 24.6.1986, Shiv Bahadur Singh had gone to Hasanpur with some personal work on a bicycle. He did not return in the night and they thought that he had stayed there over-night. Next day in the morning, P.W. 11 (Lakpati Mahto) had called his cousin brother, Birendra Prasad Singh (P.W. 7) over to his place and had shown the bicycle which he had found abandoned by the side of the Orchard. The cycle had a broken frame. Birendra Prasad Singh had then gone over to the residence of P.W. 12 and had informed him about the bicycle. Thereafter he alongwith Birendra Prasad Singh, Surendra Singh, and Baijnath Singh went out in search of Shiv Bahadur Singh. They met Jagdish Singh and learnt from him that Mukhiya Jee had been done to death and his dead body was in the orchard. The Investigating Officer had gone over to the orchard. He had identified his signature on Fardbeyan which has been marked Ext. 5. A white striped towel soaked in blood alongwith bloodstained earth were also seized. A seizure list was prepared on which he and Baijnath Singh affixed their signatures and the same has been marked Ext. 6. He has stated in paragraph 4 of his examination-in-chief that the money transaction had taken place between the deceased and the accused. Trouble had arisen after Shiv Bahadur Singh had demanded money from the accused that the loan amount be refunded. He identified Uma Singh who was standing in the dock.

18.1 He has stated in his cross-examination that Mukhiya Jee did not have differences with his co-villagers but had differences with Uma Singh. He has further stated that the accused and his two brothers were living in Assam and were there prior to the occurrence. They were working with a Marwari and had gone over to Gauhati only 8-10 days prior to the occurrence. He has denied enmity between Shiv Bahadur Singh and one Faguni Singh, a co-villager. He has further stated that Surendra, Birendra (P.W. 7), and Amrendra (P.W. 8), are his first cousins. He has stated in paragraph 9 of his cross-examination that a number of litigations had taken place between his family and that of Faguni Singh. He has given details about some of the litigations. He has also stated in his cross-examination that Shiv Bahadur Singh was his guardian. He did not participate in the money transaction. He has expressed unawareness about other details of his money transaction(s). He, however, volunteered to state that he had given loan of

Rs. 600/- to Uma Singh.

19. P.W. 13 is Jagdish Singh and is a resident of Village Deora. He has deposed to the effect that on 25.6.1986, at about 5 A.M., Amrendra Singh of Village Kale had come over to his place and had informed him that Mukhiya Jee had been murdered previous night. He had further informed him that the dead body was lying in the orchard. He had then gone over to the orchard where Chandra Bhushan Singh, Birendra Singh, Surendra Singh, and others had also reached. They had noticed the dead body of Mukhiya Jee. He was cousin of Mukhiya Jee.

He has expressed his unawareness about enmity of Mukhiya Jee with people there. He has also stated that Mukhiya Jee had differences with Faguni Singh, He had been hearing of litigation between Kameshar Singh, Uncle of Mukhiya Jee and Faguni Singh.

20. P.W. 14, Arun Kumar Singh, is the Investigating Officer. He was posted as Officer Incharge of Hasanpur police station on 25.6.1986. He had on that day recorded the Fardbeyan of Chandra Bhushan Singh (P.W. 12) and on hearing the same had affixed his signature. He has identified the Fardbeyan which was already marked Ext. 2. He had forwarded the Fardbeyan to Hasanpur police station for F.I.R. to be recorded. Sri Prahalad Singh, the Assistant Sub Inspector of Police, had prepared the formal F.I.R. on the basis of the Fardbeyan which he has identified and which is already marked as Ext. 1. He had himself undertaken the investigation. He had prepared the inquest report with respect to the dead body of Shiv Bahadur Singh. Chandra Bhushan Singh and Birendra Prasad Singh affixed their signatures as witnesses.,; He had sent the dead body alongwith forwarding note for post-mortem. He had inspected the place of occurrence and had seized a white striped towel with blood stains and had also seized blood soaked earth. The seizure list was prepared in the presence of witnesses and has been marked Ext. 6, During the course of inspection, he prepared a sketch plan of the site in his hand writing which has been marked Ext. 7. One eye was badly injured. He had found trail of blood from the road side to the Orchard where the dead body was found. There were trampling marks on the ground. He had also found a piece of flesh at the road side, and another one by the side of the head of the deceased.

Both the legs of the deceased were wrapped in mud. He has also given a vivid description of the tea shop of Mani Mahto. He had obtained order of the learned Sub Divisional Judicial Magistrate, Rosara, for confiscation of the property of Uma Singh and had also obtained orders of the Superintendent of Police. After completion of investigation, he submitted the charge sheet against Uma Singh showing him to be absconder. The accused after some time surrendered in the court, whereafter he (the I.O.) had entered into a fresh investigation and finally submitted charge sheet under Section 302 I.P.C. read with Section 27 of the Arms Act. He has admitted the position that the informant (P.W. 12) had not stated the name of Uma Singh in his Fardbeyan. He has tried to give a summary of the statements of the different witnesses during the course of investigation.

21. The defence has examined one witness namely, Rabindra Thakur who is a formal witness and has proved the F.I.R. of Hasanpur P.S. Case No. 7(3) of 1975, Fardbeyan of Chandeshwar Singh and entries of the Officer Incharge, have been marked Exts. A, B and C respectively.

22. The accused made statement under Section 313 of the Code of Criminal procedure. He, inter alia, stated that he had been at Gauhati on the date of occurrence.

23. Learned Counsel for the appellant has submitted that the evidence of P.Ws. 3, 4, 5 and 9 on the issue of last-seen has not been corroborated by any other material. He has also submitted that P.W. 5 had, just after his examination-in-chief, been declared hostile. Therefore, the conviction on such evidence would be quite unsafe. He has relied on the following reported Judgments:

(i) A.I.R. 1979 SC 1620 (Lakhanpal v. The State of Madhya Pradesh),

(ii) : 1979 CriLJ1310 (Pohalya Motya Valvi v. State of Maharashtra),

(iii) : 1991 CriLJ2191 (Inderjit Singh and Anr. v. State of Punjab)

(iv) 2007(2) B.B.C.J. 306 (Anil Kumar v. The State of Bihar).

He has also submitted that the accused was a unpopular person and had picked up enmity with a number of persons and, therefore, the enmity with the appellant is not of much consequence in proving the motive. In his submission, the witnesses have not stated as to which of the enemy had perpetrated the murder. He has also invited our attention to paragraph Nos. 27 and 28 of the deposition of the Investigating Officer (P.W. 14).

24. The learned Public Prosecutor has submitted that, in view of the materials on record, conviction of the appellant on the basis of the last-seen theory is possible. The defence has not cross-examined the prosecution witnesses on the question of last-seen. The time between the last seen and the occurrence was not too wide. He has relied on following judgments: (a) 2003 (1) SCC (Cri)201 (Bodh Raj. @ Bodha and Ors. v. State of Jammu and Kashmir) and (b) 2005 SCC (Cri) 642 (State of U.P. v. Satish). He has next submitted that in a case of last-seen, the accused has to discharge: his onus and to explain as to where the deceased had gone after they were last-seen together. He relies on the judgment of the Supreme Court in the case of Lakhan Pal (supra) . He has also submitted that there is clear evidence on record that the deceased and the appellant had developed enmity on account of money transaction, that had been loaned by the deceased to the appellant followed by refusal on the part of the appellant to return the same. In any view of the matter, in his submission, the motive is not essential to be proved to convict the accused.

25. I have perused the materials on record and considered the submissions of learned Counsel for the parties. P.W. 11 was the first person who had seen the bicycle in a damaged condition on the road side near the orchard. He had informed the Mahanth Jee of the Shivalaya of the same, and after the latter had seen it, P.W. 11 had carried the bicycle to his residence. In the morning, he noticed that the name of Shiv Bahadur Singh was engraved on the handle of the bicycle. He had then gone over to the residence of P.W. 7, and brought him to his residence to show the bicycle. They had then gone out in search of Shiv Bahadur Singh and during the course of which they had met P.W. 13 who had informed him (P.W. 11) about the death of Shiv Bahadur Singh. P.W. 8 has also deposed to the effect that he alongwith the family members were going for a bath in river Ganga,

and had noticed the Chappal of Shiv Bahadur Singh at the road side, next to the orchard. They had entered the orchard to find the dead body lying there. His left eye was badly injured. The Investigating Officer has also given identical description of the place of occurrence as well as the dead body. He had prepared the inquest report. He has given full description and condition of the dead body when it was seen by the said prosecution witnesses. The condition of the dead body, as stated by the eye witnesses, is fully consistent with the description in the inquest report and the post-mortem report. It further appears that he had been murdered outside the orchard and the dead body was dragged inside the orchard by holding his hands and the shoulders. This is evident from the mud covering the lower portion of his legs, and also from the trail of blood-marks that had been noticed from the roadside to the place where the dead body was found. It is manifest that he was shot through his left eye leading to his death on account of shock and haemorrhage. I, therefore, hold that Shiv Bahadur Singh had been murdered and his dead body was found in suspicious circumstances in the orchard,

26. I next come to the issue relating to last-seen. P.Ws. 3 and 5 are full brothers and were running a tea shop. P.W. 3 has stated in his deposition that he was selling tea in his shop when the appellant had reached the shop. In the after noon Shiv Bahadur Singh had gone over to the shop-with another person who was dragging a bicycle. Shiv Bahadur Singh had taken water at the shop whereafter he had said (sic). Both had left the tea shop together. He has further deposed that P.W. 6, P.W. 5, and one Lakshman Mukhiya were also present at the shop. He has stated as follows in paragraph 3 of his examination-in-chief: (sic).

The deposition of P.W. 3 leaves us in no doubt that the deceased and the appellant had left the shop together followed by the fire-arm shot about one hour thereafter.

27. P.W. 5 was also present at the shop and has deposed to the effect that Uma Singh had asked for water from his brother, Mani Mahto (P.W. 3). 5-6 persons were with them. He has also deposed that he had himself handed over drinking water to Shiv Bahadur Singh. He along with one person had thereafter left the

place saying (sic). He has very frankly admitted that he did not recognize Umia and remembered him only by the call of his name. It must be stated that P.W. 5 was needlessly declared hostile because his evidence fully supports the prosecution case. His deposition that he had not seen the face of Umia, but remembered his name only having been so called by Shiv Bahadur Singh before they left together, in my view means that he was deposing truthfully. There is therefore, no reason to discard his testimony.

28. P.W. 4 has deposed to the effect that he had noticed the deceased and appellant together at the bridge near Village Deora. He has also stated that they were there alongwith three other persons whom he did not recognize. The deceased, the appellant and other three persons had gone away in one direction. P.W. 9 had noticed the deceased and the appellant sitting together at the cement shop in the village and does not speak of the presence of anybody else. These are the four witnesses on the issue relating to last-seen, and the common thread is that they had seen the deceased and the appellant together at three different places, namely, at the shop, the bridge, and the cement shop, within a short span of time. Two of the eye witnesses have stated that the deceased and the accused were at the tea shop with three more persons, but only the deceased and the appellant had left the place. The other witness has stated that they had met two persons at the bridge alongwith three persons and ail the five had gone away together. The deposition of two witnesses at the bridge were found with three more persons appear to have met there (the deceased and the accused) by chance. The two were last-seen together in the cement shop without anybody else. I have no doubt that two were last-seen together thrice by different persons within a short span of time.

29. Learned Public Prosecutor is right in his submission that the time-lag of one hour between the last-seen at the tea-shop and the fire-arm shot was not too wide that the prosecution would have been required to explain the same.

30. This has to be read with the evidence that Uma Singh was absconding just after the occurrence and had surrendered in court after the charge sheet had been submitted. The accused has not explained the circumstances, and the reasons for

his absence, for such long time. This has also to be read with evidence of P.W. 3. in paragraph 3 of deposition set out hereinabove.

31. It appears to me from the evidence on record that Shiv Bahadur Singh was a Mukhiya and was a fairly unpopular person in the area. He had undoubtedly picked up enmity with the appellant also because of the money transaction that had taken place between them. P.W. 12, the informant and the full brother of the deceased, has fully testified to the same. Shiv Bahadur Singh used to lend money to others. He had in the year 1986 given a loan of Rs. 600/- to the appellant which he had refused to return giving rise to differences between them. P.Ws. 7 and 8 have also deposed to the same effect. I thus hold that there was sufficient motive on the part of the appellant to commit the murder of the deceased.

32. Law is well settled in a case like the present one, based on circumstantial evidence and after the last-seen theory is proved by the prosecution, the onus shifts to the defence to explain the circumstances as to where had the deceased gone after they were last-seen. Learned Public Prosecutor is right in his submission that the defence has completely failed to cross-examine the prosecution witnesses on the theory of last-seen. This has to be read with the discussion hereinabove with particular emphasis on the deposition of P.W. 3, that the sound of fire-arm was heard one hour after they were seen together at the tea shop. In between they were seen together twice by other eye witnesses. The defence did not examine any witness to discharge its onus to explain the circumstances after they were together last seen thrice in a span of one hour.

33. Learned Public Prosecutor has rightly relied on the case of Pohalya Motya Valvi (supra). It has been held as follows in paragraph 9 of the judgment: Ordinarily, when a person is accused of committing murder of another, the fact that the accused and the deceased were last seen alive in company of each other and the failure of the accused to satisfactorily account for the disappearance of the deceased is considered a circumstance of an incriminating character....

34. This takes me on to the last question relating to the applicability of Section 27 of the Arms Act. Learned Counsel for the appellant has not challenged this aspect

of the matter and, therefore, there is no need to enter into a discussion of this aspect of the matter. That will not make any difference in either view of the matter.

35. In view of the foregoing discussion, this appeal is fit to be dismissed, and the conviction and sentence passed by the learned trial court is upheld. I accordingly hold the appellant guilty of the murder of Shiv Bahadur Singh and he is convicted under Section 302 IPC, He shall undergo rigorous imprisonment for life. The conviction and sentence under Section 27 of the Arms Act is also maintained. Bail bond of the appellant is hereby cancelled and he is directed to surrender before the learned trial court forthwith.

36. In the result, this appeal is dismissed

**Syed Md. Mahfooz Alam, J.**

1. Since the prosecution case and evidence of the witnesses have already been incorporated by my learned brother in the above paragraphs, as such I would not like to state the same again at the cost of repetition.

2. Admittedly, this is a case of last-seen. So far the criminal law is concerned, the principle is that the prosecution has to prove its case beyond all reasonable doubt. There is no place of 'may or might' in the administration of criminal justice and the conviction shall not be based on the premises that the accused might have committed murder but the principle is that the court has to arrive at a definite conclusion that the accused was the only person who had committed the crime. At the outset, I would like to say that this case is not of such nature in which it can be held that the accused was the only person who had committed murder of the deceased. The fact that the deceased had enmity with several persons has been fully established from the evidence available on record and in this regard, I would like to mention the evidence of the Investigating Officer (P.W. 14) made at paragraph 28 of his evidence. In the said paragraph he has categorically deposed that during enquiry he came to know that the accused had enmity with several persons of his village. He was also an accused in Hasanpur P.S. Case No. 196 of 1982 under Sections 148, 149 and 302 of the Indian Penal Code. He had also enmity with his co-villager Faguni Singh and 10-12 days prior to the occurrence

incident of assault had taken place between them and for the said incident Hasanpur P.S. Case No. 84 of 1986 under Sections 147, 149, 323, 342 and 447 of the Indian Penal Code was instituted against the deceased. Other P.Ws. have also supported this fact that the deceased had enmity with Faguni Singh of his Village and criminal cases were going on in between them. It appears that during cross-examination the defence has drawn the attention of the P.W. 14, the Investigating Officer towards the statements of the informant (P.W. 12), P.W. 7, P.W. 8, P.W. 13 and P.W. 11 that they had stated before him that the deceased being the active member of Communist Party and also a Mukhia had enmity with several persons including one Ram Sevak Ram of village Deodha who was seen going towards village Chanderpur riding on horse on the day of occurrence at 4-5 P.M. (vide paragraphs 15 and 16 of P.w.14). This statement of the I.O.(P.W. 14) shows that the prosecution witnesses have themselves admitted that the deceased, who was a worker of a communist party had enmity with several other persons. Not only this but the evidence of the prosecution witnesses shows that civil as well as criminal litigations were also going on in between them. Moreover paragraph 21 of P.W. 14 shows that P.W. 11 had stated before him that the deceased was also of bad character. All these evidences show that not only the accused appellant but other persons also had motive to commit murder of the deceased. Under such circumstance merely on the basis of the evidence of some of the witnesses whose statements can not be taken to be gospel truth, the appellant cannot be convicted. The fact that before the I.O. (P.W. 14) the witness namely P.W. 12 (informant), P.W. 7, P.W. 8 and P.W. 13 have not stated that they had suspicion that the appellant might have committed murder of deceased also establishes that the implication of appellant with the alleged crime of murder is after thought. In this regard paragraphs 14, 15, 16, 17 and 18 of P.W. 14 (I.O.) are relevant.

3. I have already stated above that at best, it is a case of last-seen and I am of the view that even if the evidence of P.Ws. 3, 4, 5 and 9, who are witnesses of the last-seen is believed to be true, without any if and but, even then on those evidence the appellant can not be convicted. In the following paragraph I would like to incorporate the evidence of the above said witnesses.

4. P.W. 3 is the first witness on this point. His evidence is that on the alleged date of occurrence in the evening the deceased had come to his tea shop alongwith one person whom he was calling Uma Singh. His evidence has been supported by P.W. 5 who is his own brother. He has also said that the deceased had come to his shop alongwith one person whom he was calling as 'Uma' . However his evidence shows that there were 5-6 more persons with him (deceased). The evidence of P.Ws. 3 and 5 further shows that it was deceased who asked the said Uma to accompany him which shows that the deceased himself had persuaded Uma to follow and it was not 'Uma' who compelled the deceased to accompany him. If the said Uma had any intention to commit the murder of the deceased, he would have shown hurry in leaving the tea shop of P.W. 3 and he should have persuaded the deceased to go with him instead of the deceased persuading the appellant. Thus, the evidence of P.Ws. 3 and 5 establishes that there was nothing abnormal in the behaviour of the appellant on the basis of which it could have been inferred that he had intention to cominit the murder of the deceased rather the behaviour of the deceased showed that there was cordial relation with the appellant and the said Uma Singh. So far the evidence of P.W. 3 that after leaving the tea shop by the deceased and the appellant Uma Singh he heard the sound of firing is concerned, it has got no proximity between the two as P.W. 3 has deposed that he had heard the sound of firing after an hour of leaving of the tea shop by the deceased and the appellant. Thus there appears no proximity between the sound of firing and leaving the tea shop by the appellant and the deceased. Moreover the evidence of the Investigating Officer as well as the inquest report shows that the place of occurrence is situated in Village Chanderpur and from the said place of occurrence village Deora is situated at a distance of half K.M. away. P.W. 3 as well as P.W. 5 are residents of village Deora and the tea shop is also situated there. Under such circumstance, the evidence of P.W. 3 that he heard the sound of firing is absolutely unbelievable as the distance of shop and the place of occurrence is half K.M. away and moreover, P.W. 5 who is his own brother, has not supported this statement of P.W. 3 that he had heard any sound of firing. Thus, I am of the view that P.W. 3 can not be said to be a trustworthy witness. As regards P.W. 5, the prosecution has itself declared, him hostile and the prosecution does not want to place reliance upon his evidence and therefore, in

such situation I am of the view that the evidence of P.Ws. 3 and 5 goes away. As regards the evidence of P.W. 4, his evidence is that he had seen the deceased in the company of the appellant near the bridge at Village Deora and at that time three more persons were accompanying them. Under such circumstance, it would be unfair to believe that the appellant was the only person who was last-seen in the company of the deceased. This evidence of P.W. 4 finds corroboration from the evidence of P.W. 5 that the deceased had come to his tea shop alongwith three other persons besides the appellant. Thus, from the evidence of P.W. 4 coupled with the evidence of P.W. 5, it is established beyond doubt that the deceased was last seen alongwith the appellant as well as in company of 3-4 more persons. Under such circumstance, the appellant alone can not be held responsible for the murder of the deceased. Moreover it appears that P.W. 4 is a resident of Kale Tola and according to his evidence, he had seen the deceased in the company of the appellant near a bridge at village Deora. I have already stated above that according to the evidence of the Investigating Officer (P.W. 14) the place of occurrence is at village Chanderpur. At paragraph 10 the Investigating Officer has deposed that village Deora lies half K.M. away from the place of occurrence which establishes that P.W. 4 has not seen the appellant and the deceased together near the place of occurrence. There is nothing in his evidence to draw inference that he had seen both the persons going towards the place of occurrence nor he has stated that he had seen the appellant coming from the direction of the place of occurrence and some thing unusual was noticed in his activity. I am, therefore, of the view that this evidence of last-seen of P.W. 4 is not of much consequence.

5. The next witness on the point of last-seen is P.W. 9, namely, Jiwach Singh. He has deposed that he had seen the appellant with the company of the deceased at about 4.30 P.M. on 24.6.1986 at the shop of one Chandu Lal Marwari situated at Hasanpur Bazar. His evidence shows that both persons were sitting in the shop of Chandu Lal Marwari and he did not detect any abnormality in the behaviour of both the persons. From the evidence of P.W. 9, it is established that the appellant was seen alongwith the company of the deceased at about 4.30 P.M. The evidence of other witnesses shows that till 5.30 P.M. the deceased was seen alive and so, it can not be said that the appellant was last-seen in the company of the

deceased by P.W. 9. I have already mentioned above that the Investigating Officer has stated that the place of occurrence lies in village Chanderpur. Admittedly this P.W. 9 had also not seen the appellant and the deceased together at or near the place of occurrence which is situated at village Chanderpur rather he had seen both the persons in Hasanpur Market. So, it is difficult to connect that the appellant was the person who might have committed the murder of the deceased.

6. It has come in the evidence of the informant (P.W. 12) that the appellant was on inimical term with the deceased due to differences on money transaction but this evidence of the informant appears to be after thought because of the fact that in the Fardbeyan there is no whisper about the enmity between the appellant and the deceased. It further appears that P.W. 7 Birendra Prasad Singh and P.W. 8, Amrendra Singh, have deposed that some quarrel had taken place between the appellant and the deceased due to the differences on money transaction but the evidence of the I.O (P.W. 14) shows that before the police P.W. 7 and P.W. 8 had not stated anything about such quarrel taking place between the appellant and the deceased. At paragraph 5, P.W. 8 has deposed that about the said quarrel he got information on 11.6.1986. Admittedly, the occurrence had taken place on 24.6.1986 i.e. after more than a fortnight of the alleged quarrel. So there is no proximity between the said quarrel and the murder of the deceased which had taken place on 24.6.1986. The evidence of the Investigating Officer (P.W. 14) made at paragraph 28 shows that an occurrence of assault had taken place between the deceased and one Faguni Singh his co-villager about 10-12 days before the occurrence of murder for which Hasanpur P.S. Case No. 84/1986 under Sections 147, 149, 323, 342 and 447 of the Indian Penal Code was instituted. If the quarrel which had taken place on or before 11.6.1986 between the deceased and the appellant can be said to be the motive of this occurrence then why not the incident of assault which had taken place between the deceased and Faguni Singh just 10-12 days ago for which Hasanpur P.S. Case No. 84/1986 was instituted can be said to be the motive of this occurrence. The evidence on record further shows that civil as well as criminal Litigations were also pending between the deceased and this Faguni Singh. So Faguni Singh had clear motive for committing murder of the deceased and-not the appellant.

7. It has come on record that one Lakhpati Mahto (P.W. 11) has deposed that while he was coming from Hasanpur station on 24.6.1986 at about 9 P.M. he saw a bicycle lying on the road near the orchard at village Chanderpur. He picked up that bicycle and informed about the said bicycle to Mahanth Jee and thereafter he brought the said bicycle to Shivalaya and from there he brought the said bicycle to his house. He has further deposed that on the next day he noticed that the name of the deceased was engraved on the said bicycle and then he informed about the bicycle to other witnesses. If this statement of P.W. 11 is taken to be true then I am of the view that there is more suspicious circumstance against this P.W. 11 to believe that he might have committed the crime of murder and while he was attempting to snatch the bicycle of the deceased he noticed that the deceased might have identified him and then he would have committed his murder and thereafter he brought the said bicycle in his house. However, on presumption no one can be put on trial. I have mentioned this fact only because of the fact that more incriminating material was available against this P.W. 11 in comparison to the appellant against P.W. 11 in comparison to the appellant against whom the only evidence is that he was last seen in the company of the deceased but nothing abnormal was detected by the witnesses rather the evidence shows that both the persons alongwith some unknown persons were moving in cordial manner and so there was no reasonable ground to believe that the appellant might have committed the murder of deceased Shiv Bahadur Singh.

8. It has been argued by the learned State counsel that the appellant had taken plea of alibi and in his statement under Section 313 of the Code of Criminal Procedure he has stated that on the alleged date of occurrence he was at Gauhati. He argued that the appellant was bound to prove this plea of alibi. I am afraid that this argument of the learned State counsel is not in conformity with the material available on record which will show that it is the prosecution witness who has admitted in his evidence that the appellant was working at Gauhati at the house of one Marwari. It is also in the evidence of the prosecution witnesses which stands corroborated from the evidence of the Investigating Officer that for the last 10 years the appellant was working in Assam and only 8-10 days prior to the occurrence, he had left his village for Assam. Under such circumstance it was the responsibility of the prosecution to establish as to when the appellant had returned

back from Assam or from Gauhati. When this fact was admitted by the informant himself (vide paragraph 6 of P.W. 12) that about 8 to 10 days prior to the occurrence the appellant had left his village for Gauhati then the burden was upon the prosecution to prove as to when the appellant again came back from Gauhati. The facts admitted need not to be proved and the onus does not lie on the appellant to prove that on the alleged date of occurrence he was at Gauhati when the prosecution witness himself has admitted that about 8-9 days prior to the alleged occurrence he had gone to Gauhati. Therefore, I am not in a position to accept the argument of the learned State Counsel that the appellant had failed to prove the plea of alibi.

9. It has been submitted by the defence counsel that only on the basis of the last-seen the appellant can not be convicted and law requires some sort of corroboration. In this regard learned defence counsel has placed reliance upon the decisions reported in : 1991 CriLJ2191 (Inderjit Singh and Anr. v. State of Punjab) 2006 Cri.L.J. 4506 (Parna Oraon and Anr. v. The State of Jharkhand) 2007(2) P.L.J.R. 622 (Anil Kumar and Anr. v. The State of Bihar) and : 1979 CriLJ1310 (Pohalya Motya Valvi v. State of Maharashtra).

10. From the decision reported in the case of Inderjit Singh (supra) : 1991 CriLJ2191 . I would like to quote the following observation of the Apex Court which is relevant in the facts and circumstances of this case.

The only relevant circumstance as pointed above is that the appellants and the deceased left the house together in a friendly manner for bird-shooting. It is needless to say that no conviction can be passed on this sole circumstance.

11 In the case of Anil Kumar (supra) 2007 (2) PLJR page 622 a Division Bench of our High Court highlighting the principle relating to conviction based on last-seen and relying upon the decision of the Apex Court in the case of Sharad v. State of Maharashtra A.I.R. 1984 SC 1622 has made following observation at paragraph 12 of the judgment.

Taking the required precautions in the ...light of such judgment this Court finds no option but to agree with the submissions advanced by learned Counsel for the

appellant that the chain of circumstances as per evidence adduced by the prosecution in this case is not complete so as to reach to reasonable conclusions inconsistent with the innocence of the accused. The evidence on record as noticed above is not sufficient to show that in all human probabilities the act must have been done by the appellant/accused.

The facts of this case are similar to the facts mentioned in the above mentioned two decisions and the only circumstance which came against the appellant is that the appellant and the deceased were seen moving together at three different places (in friendly manner) prior to the murder of the deceased but then there is evidence of P.Ws. 4 and 5 that at that time 4 to 6 more persons were also with the deceased. So it can never be held that the deceased was last-seen alive only in the company of the appellant. Thus it is difficult to hold that the appellant was the only person who had opportunity to commit murder of the deceased excluding all other person committing the alleged crime of murder.

12. On the point of last-seen the State counsel has also placed reliance upon the decisions reported in 2005 S.C.C. (Cri) 642 (State of U.P. v. Satish) and 2003(1) S.C.C. (Cri) 201 (Bodh Raj @ Bodha v. State of Jammu and Kashmir) (SC).

13. In the case of Bodh Raj @ Bodha (supra) the Apex Court has given guidelines for convicting the accused on the basis of 'last-seen together'. The relevant lines from the said decision are quoted below:

The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime become impossible. It would be difficult in some cases to, positively establish that the deceased was last-seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last-seen together, it would be hazardous to come to a conclusion of guilt in those cases.

14. In the case of State of U.P. (supra) the Apex Court again reiterated the above view.

15. I am of the view that both the decisions are more helpful to the appellant than to the prosecution. There is nothing on record when the deceased was murdered. The evidence on record shows that the dead body of the deceased was located in the morning at about 7-8 A.M. Admittedly, the deceased was seen in the company of the appellant in the evening one day prior to the recovery of the said dead body. So, it can not be said that the time gap between the last seen and the recovery of the dead body of the deceased was so small that the responsibility of murder could have been easily fixed upon the appellant. Moreover some other persons were also seen with the deceased and so the appellant was not the only person who was last-seen alongwith the deceased. I, therefore, hold that both these decisions help the defence and not the prosecution.

16. From the evidence of P.W 14 paragraph 4 it appears that the I.O. had seized a blood stained towel (vide Ext.6 from the place of occurrence which has also been corroborated by the informant (P.W. 12) and other witnesses. The recovery of blood stained towel from the place of occurrence was an important link for implicating the real culprit but not a single witness of the prosecution has come forward to depose that the recovered towel belonged to the deceased and so in my view, this important link i.e. recovery of towel from the place of occurrence which could have proved the complicity of the appellant with the alleged murder was also broken.

17. To sum up I would like to say that the evidence of last-seen which is the basis of the conviction of the appellant is wholly uncorroborated from other circumstances and on such uncorroborated evidence the appellant can not be convicted. The evidence of the prosecution witnesses that there was animosity between the deceased and the appellant due to quarrel on the point of money transaction is after thought and unbelievable in view of the fact that the informant did not even whisper about this animosity in his Fardbeyan, Even if it is believed that some quarrel had taken place with regard to the alleged transaction of money between the deceased and the appellant it had taken place much before the

alleged date and time of murder and there is no proximity between the said quarrel and the murder of the deceased. The evidence of the witnesses, namely, P.Ws. 3, 4, 5 and 9 who are said to be the witnesses of last seen shows that both the deceased as well as the appellant were seen in cordial manner and it was deceased who persuaded the appellant to go with him. This circumstance further gives credence, to my view, that the deceased had not left the tea shop at the instance of the appellant rather the deceased himself insisted the appellant to go with him which goes to show that the deceased had not apprehended any danger at the hands of the appellant. All these facts establish that the relationship between the deceased and the appellant just before the alleged occurrence was very much cordial and it can never be said that they were on inimical terms with each other. The evidence on record establishes beyond doubt that the deceased being a member of Communist party and a Mukhiya had enmity with several persons of his village specially with one Faguni Singh with whom even civil cases were going on besides criminal cases and just ten days before an occurrence of assault had taken place between them and so there is reason to believe that other persons might have been interested in the murder of the deceased. The evidence of P.Ws. 3, 5 and 9 shows that while above mentioned witnesses had seen the deceased in the company of the appellant, there were several other persons with them and so it can not be held that the appellant alone was responsible for the murder of the deceased. There is no evidence that the appellant was seen by the witnesses near the place of occurrence which could have given suspicion that the appellant might have committed the murder. Under such circumstance, I am of the view that the evidence of last-seen is not sufficient to convict the appellant under Section 302 I.P.C.

18. As regards the evidence of other witnesses and the evidence of doctor is concerned, I am not repeating their evidences in view of the fact that the murder of the deceased is not denied and since there is no eye witness of the occurrence who could have seen the murder, as such it is also not necessary to discuss the evidence of the doctor in order to establishes the manner of occurrence. However, the fact of murder is not denied and it is established from the evidence on record.

19. On the basis of the discussions made above I find and hold that the appellant, namely, Uma Singh is not guilty to the charge under Section 302 I.P.C. and 27 of the Arms Act and hold that the conviction of the appellant under Section 302 I.P.C. and 27 Arms Act is bad in law. Accordingly, the conviction and sentence passed against the appellant under Section 302 I.P.C. and 27 of the Arms Act are set aside and he is acquitted of the charges under Section 302 I.P.C. and 27 of the Arms Act.

20. The appellant is on bail, as such he is discharged from the liability of his bail bond.

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