

Onkar and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Apr-01-1992

Reported in : 1992CriLJ3179

Judge : Palok Basu and ;A.N. Gupta, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 148, 149, 302, 307, 363, 366 and 457; Code of Criminal Procedure (CrPC) - Sections 82 and 83

Appeal No. : Criminal Appeal No. 3055 of 1978

Appellant : Onkar and ors.

Respondent : State of U.P.

Advocate for Def. : D.G.A.

Advocate for Pet/Ap. : D.S. Tewari, ;B.P. Gupta and ;S.N. Mulla, Advs.

Disposition : Appeal allowed

Judgement :

Palok Basu, J.

1. Omkar Nath, Maiyadin, Narbada, Ganesh, Shankar and Chunni Lal have filed this appeal against the judgment and order dated 26-10-1978 passed by the IV Additional District and Sessions Judge, Banda, in Sessions Trial No. 254-A of

1975 convicting all the appellants under Sections 148 and 302/149 IPC and sentencing each of them to two years' R. I. and imprisonment for life respectively thereunder. The charge against the appellants was that on 18-9-1975 at about 1.30 p.m. in village Kamasin they formed an unlawful assembly the common object of which was to cause death of Juggi Lal, Munni Lal and Devi Dayal and also committing the offence of rioting which were punishable under Sections 148 and 302/149 IPC Omkar, Narbada and Maiyadin were further charged under Section 307/149 IPC with regard to the injuries caused to Munni Lal and Devi Dayal by their firearms.

2. The prosecution case is that Hori Lal owns a house in Kamasin town in the lower portion of which Juggi Lal maintained a shop situated only about 200 paces north to the police station Kamasin which has many adjoining shops. Omkar Nath's house is also at a short distance. The house of other accused is close to Omkar Nath's house. Appellant Chunni Lal lives in village Sunda.

3. On 18-9-1975 at 1.30 p.m. appellant Maiyadin, Omkar Nath and Narbada armed with guns and accused Ganesh and Chunni Lal armed with spears (Barchhi) came and Omkar Nath fired inside the shop of Juggi Lal and Munni Lal where these two and Devi Dayal were sitting at which time Hori Lal and his wife Raja Beti were on the first floor. At the firing of Omkar Nath, Juggi Lal shouted at which Munni Lal and Devi Dayal tried to run away when the three accused with guns fired as a result of which Munni Lal and Devi Dayal fell dead. Juggi Lal coming out of the shop was to climb the stairs for going to the first floor from the outer side. Juggi Lal was caught hold of by Omkar Nath and Maiyadin appellant who pulled him by his legs and dragged him towards the north side. The appellants Shankar, Ganesh and Chunni Lal inflicted injuries by the spears on Juggi Lal who went on crying and dragging continued till a field lying at a considerable distance in the eastern boundary of the village on the Kamasin-Rajapur-Dadu road. This field is said to belong to Surya Narain Srivastava who has been examined as CW 1 by the trial Judge. Hori Lal is said to have chased the assailants for some distance but then returned and after sometime he again went in search of Juggi Lal along with his nephew Bhondu and his wife and brought back the dead body of Juggi Lal and placed it by the side of the bodies of Munni Lal and Devi Dayal.

4. Hori Lal is said to have then written out a report and lodged it at the police station Kamasin which has been marked as Ex ka. 1. This chick report (Ex ka 34) was prepared by PW 8 Jairam Singh, constable/clerk who registered the case at general diary entry 34 true copy of which is Ex ka 34.

5. This FIR was taken down on 18-9-1975 at 2.55 P.M. when the said Jairam was incharge of the police station as the Station Officer, namely, PW 6 Girish Chandra Misra was out on some other duty. It is said that the special report of the case was sent vide general diary entry No. 17 at 4.00 p.m. on 18-9-1975 through PW 10 Indrapati Dubey who came back to the police station on 19-9-1975 at 9.30 a.m.

6. One constable Ramesh Chandra was sent to S. O. who was then at Raipur with intimation about this incident. It is, however, admitted that copy of the FIR was not sent to him. PW 6 Girish Chandra Misra, Investigating Officer, allegedly reached the police station at 9.30 p.m. and reached the place of occurrence at night but could not take any steps as it was dark and postponed the inquest etc. till the next morning. Inquest reports on the dead bodies of Devi Dayal, Juggi Lal and Munni Lal were completed between 6.30 a.m. and 9.30 a.m. on 19-9-1975 and all necessary documents relating thereto (Exs. Ka 2 to Exs ka 10) were prepared. The Investigating Officer allegedly took the blood stained clothes of the three deceased and prepared necessary memorandum. He is also said to have collected blood stained earth and plain earth from the place of occurrence. He is said to have also recovered three empty cartridges black in colour, 9 pellets, 12 tieklis and two wads an prepared memorandum which has been proved as Ex ka 22. These articles are material exhibits 31, 32 and 33 before the trial Judge. He recorded the statement of Hori Lal and his wife Smt. Raja Beti and subsequently he made search for the accused who were absconding. Consequently proceedings under Sections 82/83 Cr. P.C. were taken against them. The Chemical examiner and the serologists have reported human blood on the items sent to them and their reports have been proved as Ex ka 47. Affidavits have been filed during trial before the trial Judge by constable Kedar Singh and Ganesh Prasad. At the time of surrendering before the Magistrate Omkar-nath is said to have deposited his double-barrel gun which was taken into possession by Daya Shankar Upadhyaya, court muharrir vide Ex ka 45. The Ballistic expert was asked

to submit his report about the cartridges having been used by the said gun of Omkar Nath. The report of the Ballistic expert has been tendered in evidence as Ex ka 48. The Expert has not been examined during trial.

7. The autopsy on deceased Juggi Lal was done on 20-9-1975 at 11.35 a.m. by Dr. Mehrotra at district Hospital, Banda. The age of the deceased was 22 years and two days had passed since the time of death and signs of the decomposition started on the body. He found the following ante mortem injuries on the dead body :

1. Punctured wound 1 cm x 1/2 cm x skin deep on right side 2.5 cm and from back of right ear. Margins lacerated.

2. Multiple punctured wound (three in number) 1 cm x 1/2 cm x 2 cm deep in area of 6 1/2 cm x 3 cm on rightside of face 3 cm from right eye brow. Margins are lacerated. Wounds are obliquely and laterally directed.

3. Lacerated wound 1 1/2 cm x 1 cm x muscle deep on the right side of face 5 cm below right ear.

4. Punctured wound 1 cm x 1/2 cm x 4 1/2 cm bone deep on right side of face from right eye. Margins lacerated. Wounds directed medially, obliquely and forward. Fracture of bone underneath present.

5. Multiple fractured wound in area of 5 1/2 cm x 5 cm bone deep in middle of forehead joint above bridge of nose. Margins lacerated fractures of both frontal bone, fracture present and nasal bone fracture present.

6. Lacerated wound 2 cm x 1 cm x muscle deep on left side of face 1 1/2 cm below left eye.

7. Punctured wound 1 1/2 cm x 1 cm x bone deep on left side of face 1 cm away from left angle of lip. Margins lacerated present obliquely, medially and forward directed.

8. Lacerated wounds 1 1/2 cm x 1 cm x muscle deep side, 1/2 cm apart 1/2 cm above upper lips.

9. Lacerated wound 1 cm x 1/2 cm x scalp deep on lid of skull 8 cm above bridge of nose.
10. Multiple abrasion in area of 3 cm x 2 cm on left side of forehead 1 cm above left eye blow.
11. Lacerated wound 2 cm x 1 cm x bone deep on left side of skull 4 cm above left ear.
12. Multiple fracture wounds in area of 9 cm x 7 cm x muscle deep on right side of neck and of neck. Margins lacerated. Wound is directed upward and laterally and obliquely.
13. Punctured wound 1 cm x 1/2 cm x 3 cm deep on left side of neck 4 1/2 cm below angle of margins lacerated.
14. Lacerated wound 2 cm x 1 cm left side of neck 1 cm above injury No. 13.
15. Punctured wound 1 1/2 cm x 1 cm x abdominal cavity deep on left side of abdomen 5 cm above left iliac artery. Margins lacerated. Wounds directed medially upward and forward.
16. Lacerated wound 1 cm x 1/2 cm x skin deep on lower part of left side of abdomen 8 cm below umbilicus.
17. Punctured wound 1 1/2 cm x 1 cm chest below deep on left medially to left nipple. Margins lacerated wound directed obliquely downward and backward.
18. Punctured wound 1 1/2 cm x 1 cm x chest cavity deep on left side of chest, 1 cm below medially nipple, margins lacerated. Wound is obliquely directed downward and backward.
19. Punctured wound 3 cm x 3 cm x chest cavity deep on left side upper part of axilla. Wound is directed upward and medially and obliquely. Margins lacerated.
20. Multiple abrasions 30 cm x 15 cm on back part of chest on left sides and lumber vertebrae and lumber region.

21. Lacerated wound 1 cm x 1 cm x muscle deep part of left shoulder.
22. Multiple abrasion in area of 12 cm x 6 cm on upper arm and forearm in dividing elbow and medial elbow.
23. Lacerated wound 11/2 cm x 1 cm x muscle deep on right buttock.
24. Multiple abrasion 7 cm x 3 cm area on medial side of right knee joint.
25. Multiple abrasion 15 cm x 6 cm on lateral and outer aspect of left leg.
26. Multiple abrasion 20 cm x 7 cm in upper arm and forearm left side including all.
27. Abrasion 6 cm x 5 cm on outer part of neck.
28. Abrasion multiple 5 cm x 1 cm on left side of chest 3 cm below nipple.

8. There was fracture of frontal bone of both sides and also of the nasal bone. The sternum bone was also fractured and pleura of right side was ruptured. There was laceration in the lower part of right leg. The heart was empty and was ruptured on anterior aspect. There was about 5 oz. semi digested food present in the stomach. There was creamy white pastry material in the small intestine. There was faecal matter in the large intestine. Doctor said that the death was due to ante mortem injuries.

9. On the same day at about 1.50 p.m. autopsy was conducted on the body of Munni Lal who was about 22 years of age and two days had elapsed since his death. The following ante-mortem injuries were found.

1. Gunshot wound :--

Wound of entry, 11/2 cm x 1 cm x neck contents deep in anterior aspect of neck right side neck just above medial end of sterno clavicular joint in right side sternum upper margins inverted. Wound is directed obliquely downwards and laterally left side on probing. No blackening, no charring, no tattooing present. Wound of exit 2 cm 11/2 cm on back of upper part of chest on left side medial to scapula at the junction of supra and infra scapular region 6 cm away from thoracic vertebral

spine. Wound is chest cavity deep. Margins everted. No blackening, no charring or tattooing present wound of exit is communicating with wound of entry. No. 1 wound is directed obliquely upwards and medially. No. 2 gun shot wound of entry 2 1/2 cm x 2 1/2 cm x abdomen cavity deep on the epigastric region upper part of abdomen. 16 cm above umbilicus and 9 cm medially to right nipple. Wound is directed downwards, backwards margins inverted No blackening, no charring present. No. 3 lacerated wound 2 1/2 cm x 1 1/2 cm x muscle deep on the left side of neck 1 cm below angle of mandible. There was fracture of rib No. 2 of the left side of posterior aspect pleura on left side ruptured and the trachea in lower part ruptured through and through. Laceration was present in upper lobe of left lung through and through. The heart was empty carotid, vessels connected with heart were ruptured. Free and clotted blood present in thoracic cavity. Peritoneum ruptured through and through. About 10 oz of free and clotted blood was present in cavity. There was ruptured stomach wall in anterior aspect lower part through and through. About ounce of semi digested food material was present in the small intestine. White creamy food material was present, Large intestine was full of faecal matter. One metallic pellet and one wad was recovered from the liver. There was rupture of liver of left lobe anterior aspect through and through. Total number of 3 wads were detected two from abdominal cavity and one from liver. The pellets were also recovered, 5, from abdominal cavity and one from liver were recovered and these are sealed and these are Exs. 34 and 35 respectively. The cause of death was due to ante-mortem injuries as a result of shock.

10. On the same day was done the autopsy on the body of Devi Dayal, aged about 14 years and 2 days and elapsed since time of death. The following ante-mortem injuries were found :--

1. Gun shot wound of entry 9 cm x 5 cm x bone deep on posterior lateral aspect of left elbow joint and upper arm x lower part of left side margins inverted, wound directed obliquely inwards and midline deep. No blackening, no charring or tattooing present. Fracture of left humerus lower end present.

2. Wound of exit 10 cm x 6 cm x bone deep on anterior medial aspect of left elbow and upper arm, wound is communicating through and through with wound

entry No. 2 margins everted and lacerated. No blackening and no charring present.

3. Gun shot wound of entry 2 punctured wound 11/2 cm apart on the left side chest on anterior aspect 6 cm below left nipple. Wound 1 cm x 3/4 cm x cavity deep x margins everted, no blackening, no charring and no tatooing present. It is in level with wound of entry No. 1. The rib of left side at the site of injury No. 1 and injury No. 2 was fractured. The pleura of left side was ruptured. There was a laceration of lungs right lung and left lung. The heart was empty and laceration was present on anterior aspect of both the chambers. Free clotted blood was present on both sides cavity. Two metallic pellets were recovered from muscle or right chest (Ex. 36) semi digested food material about 3 oz. was present. Creamy white food material was present in small intestine, faecal matter was present. Cause of death was of ante-mortem injuries. The doctor prepared the post mortem report at the time of autopsy and these are Exs. ka 31, 32 and 33 respectively. The doctor has further deposed as PW 7 that it is possible that the deceased might have died on 18-9-75 at about 1.30 p.m. He said that the injuries to deceased Juggi Lal were caused before death by spear which was pointed and blunt. Abrasion present oh the body were due to dragging. The injuries of Munni Lal and Devi Dayal deceased were caused by firearms and in the opinion of the doctor the injuries were sufficient in the ordinary, course of nature of cause death.

11. During trial all the appellants denied their participation in the offence and have attributed their false implication due to enmity. They have filed certain papers in defence and these are the Ex kha 3, chik FIR of crime No. 22 of 1975 of Police station Kamasin dated 22-3-1975, Under Section 302 IPC against Juggl Lal deceased which was lodged by Bachchu Lal of the murder of Ram Karan who was a peon in Vinoba Inter college, the copy of judgment of ST No. 26 A of 1975, State v. Banda and others (Ex kha 4) in which Juggi Lal deceased was complainant, copy of FIR (Ex kha 5), crime No. 57 police station Baberu of 1975 Under Section 302 IPC against Habib which was lodged by Munni Lal deceased on 18-5-75 at 5 p.m. at police station Baberu copy of FIR (Ex kha 6) of crime No. 52 of 1974 of police station Baberu Under Section 363, 366 IPC against Jai Prakash s/o Chotu and Chotu's parentage unknown lodged by Babu Lal on 27-3-74 at 1.15 p.m. copy

of GD No. 8 of 24-3-72 (Ex kha 7) in which on the report of Juggi Lal case Crime No. 25 Under Sections 457 IPC was registered which gave rise to ST No. 26 A/75. The copy of special report (Ex kha 8) and extract of crime register of police station Kamasin No. 87 was filed (Ex. Kha 9) and of the receipt of case diary of Ex kha 10. The accused only examined formal witnesses Sri Chandrabhan (DW 1), Record keeper collectorate, Banda and Chote Lal (DW 2) Record-keeper of police office Banda and did not produce any other defence.

12. The prosecution has examined four eye-witnesses in this case. PW 1 is Hori Lal, the informant. PW 2 is Raja Beti, wife of Hori Lal. PW 3 is Sheo Baran Singh who is the cousin of Devi Dayal deceased and PW 5 Chhote Lal, father-in-law of the eldest son of Hori Lal.

13. Sri D. S. Tewari, learned counsel for the appellants has been heard at length in support of this appeal. Sri Ashok Singh, learned AGA has argued the matter vehemently on behalf of the State. The entire record has been placed by them which has been examined thoroughly.

14. The trial Judge has on very cogent grounds discarded the testimony of PW 3 Sheo Baran Singh and PW 5 Chhote Lal. The relevant paragraphs may be usefully quoted here.

Shiv Baran Singh (PW 3) is a close relation rather cousin of deceased Devi Dayal and stated the prosecution version of shooting by the accused Narbada, Maiyadeen and Omkar who had guns and that while Juggi Lal was attempting to go up-stairs he was dragged and the accused armed with spears inflicted injuries on him. He is not an inimical witness and the defence wants to shatter his testimony only by saying that his presence at that time and place is doubtful and further there is certain contradiction in the statement he made to I.O. and in this court and also about the fact tht he has given different account in his statement in the court about the purpose of visit of Devi Dayal in the shop of Juggi Lal. In examination-in-chief he stated that he sent Devi Dayal to the shop of Hori Lal to fetch a Nariyal and in cross-examination he denied this and when confronted with earlier statement he confirmed that the earlier statement is correct. He was also confronted with other statement made in this court wherein he stated at one place

that the accused fired on Devi Dayal and Munni Lal while they came out of the shop and were running on the rasta while in cross-examination he has said that they were fired immediately they came out of the shop and they were not fired while running on the rasta and said that his earlier statement in examination-in-chief is correct, it was further pointed out that the assailants gunmen were to the north of the deceased. It is said that when they were shot at Devi Dayal and Munni Lal were towards east and the gunmen were to the west and at that time when the accused fired then the face of the accused was to the east. He also said that 4 to 5 fires were made on the spot. By this cross-examination the defence wants to contradict this witness by the medical evidence in the case. I have also discussed this aspect in the discussion of the evidence of Raja Beti (PW 2) and it is futile to discuss again as I hold the same reasoning about this witness also. This witness has further said that CI and CO reached the spot along with the lawyer brother of the deceased Juggi Lal within 4 to 5 p.m. on the day of occurrence while the evidence has come that C.O. and C.I. reached at about 9.30 in the night as stated by G.C. Misra (PW 6). This witness has further said that Hori Lal went to scribe the FIR on the same day but returned without lodging the FIR and told him that there was none in the police station so FIR was not lodged and the FIR was lodged next day in the morning. Thus this witness gives one version of one time and the other version at other time. However, this witness has said that the written report was written immediately after the murder inside the shop and was accepted by the police on the next day and further said that he remained with the dead body of Devi Dayal and could not say whether the FIR was lodged on that day or not. This witness has also said that the police told him that he is being kept as a witness in the case. This witness has further added in cross-examination that he was present at the time of search made by I.O., C.I. and C.O. of the house of accused Omkar and took him for the search and from there two red empty cartridges were taken in possession by the police. By these cartridges the witnesses meant empty cartridges. The witness was re-examined also and he said that red empty cartridges were taken by the police while the recovery on the spot is of black empties and he was not made a witness of search. On analysing the evidence of this witness it appears that either out of fear or out of some other clandestine reason he is not speaking frankly either for the prosecution or for the defence and

his evidence is a mingled piece of evidence of truth and falsehood. The defence shattered him on various points and got a feather in the cap by eliciting in cross-examination the fact that the empty cartridges were recovered by the police from the house of accused Omkar and this fact was not at all put to other eye witnesses examined in the case on 17-1-1978. While this witness was cross-examined on 18-1-78. Such a witness though his cousin brother was murdered cannot be said to be reliable witness but his evidence about the murderous assault on Devi Dayal remains intact. He was sitting at that time at the shop of Balmiki which is in front of the shop of Hori Lal complainant and he rightly said that he could not see the happenings inside the shop. But I do not take his evidence into account at all because had he been present on the day of occurrence his statement would have been taken by the I.O. on that very day i.e. on 18-9-1975. I, therefore, discard his testimony from consideration.

Chhotey Lal (PW5) has supported the prosecution case and said that he only knew Omkar and Narbada accused. The prosecution did not put any identification parade for the accused to bring corroboration of his statement as the other accused were not known to him from before. He also happens to be a chance witness as he was not expected to be present at that time and at that place. He is resident of village Hardauli and said that he had come to stay with Hori Lal (PW 1) only 2 to 3 days earlier. I do not place any reliance on his testimony because he has given wavering account of the version in this court. He was to be examined in this case on 18-1-1978 but on that day he went away without informing the court and the next day when he was examined he has said that due to the fear of the accused he did not give evidence on 19-1-1978 although in his statement he has said that there was no talk with the accused on the previous day. Secondly the conduct of this witness is also unnatural. He is said to be sitting at the time of incident at the shop of Balmiki Baniya but he did not name Shiv Baran Singh (PW 3) who happened to be also there at that time. His conduct that after the occurrence he went away straight to his village and returned the next morning only to meet the I.O. who took his statement. He has contradicted his statement to the I.O. that after the occurrence he went to the house of Juggi Lal and narrated the story of the incident to his (Juggi Lal) wife and did not go by the side of the dead bodies with the wife of Hori Lal (PW 1) and with sister Usha. Thus when a chance

witness behaves in an unnatural manner the value of his testimony becomes meagre and unbelievable. As a related witness it was expected that he should have extended a helping hand to the bereaved family rather than to evaporate to his home. Thus I totally discard his testimony from consideration.

15. Sri Ashok Singh took us through the evidence of these witnesses Sheo Baran and Chhote Lal in order to criticise the finding of the trial Judge that they were not reliable witnesses. After a close scrutiny of the statement of these two witnesses and the findings recorded by the trial Judge and for the added reasons noted hereinafter, it has to be held that the trial Judge has rightly discarded these two eye-witnesses.

16. One has to guard oneself against an FIR which mentions persons as eye-witnesses whose presence is shown or demonstrated to be doubtful. Some extra support must come to satisfy the court that the allegations in the FIR, the time of lodging of the FIR and the manner of assault stated in the FIR are all correct. Keeping this view in mind the testimony of PW 1 Hori Lal, informant, and his wife PW 2 Smt. Rajabeti has to be examined. The trial Judge has, however, placed reliance in the testimony of these two witnesses which, after scrutiny of the entire record, does not inspire confidence. Sri D.S. Tewari, learned Counsel, has rightly placed the statement of the six Court witnesses which were examined by the learned trial Judge in order to find out the truth. CW 1 is Surya Nath Srivastava from whose field the dead body of Juggi Lal was said to have been removed by Hori Lal and brought near the other two dead bodies, has said that at about 7 or 8 in the morning he had heard about the two dead bodies lying in the Bazar while the third was said to be lying in the field.

17. The said witness is a teacher in the Vinoba Inter College, Kamasin, which is about 150 or 200 yards away from his residence. He is M.A., L.T. and had got his degree of M.A. in Geography. He further admitted that after having heard about the dead bodies he did not go to see the said dead bodies because he was indisposed and such ghastly scene may have created depression in him. In cross-examination by the defence he had admitted that the third dead body was of a student of his college. He was a student of perhaps class VII or VIII. The College

had closed down by 10 a.m.

18. The class register of class VIII was summoned which was proved to be in the handwriting of Din Bandhu Chandel and was duly proved by this witness. It was noted therein that Devi Dayal the deceased was absent on 18-9-1975. His presence is noted on 17-9-1975. It has further been admitted that it is because of the death of this boy that the college had closed down at 10 a.m.

19. C. W. 4 S.P. Srivastava happens to be the Sub-Post Master and lives in that very locality. His categorical statement is that on 18-9-1975 at about 6 a.m. he came to know that two dead bodies were lying in front of the shop of Juggi Lal whereas one dead body was somewhere else. He denies that the post office was closed on the said date and has further said that it could not be closed without Government order.

20. C.W. 5 Deoraj whose Chakki (flour mill) used to run between 7.30 a.m. and 7.30 p.m. has said that the dead bodies were lying in front of the shop of Juggi Lal when he had gone to open his flour mill.

21. CW 3 Ram Milan has stated that he heard about the incident being committed at about 1 p.m. whereafter the post office was closed. He is said to be a clerk in the said post office where CW 4 S. P. Srivastava was the Sub-Post Master. The statement of CW 3 is, therefore, directly contradictory to the statement of the Sub-Post Master.

22. Even CW 1 Surya Narain Srivastava, who had a shop nearabout the place of incident has said that it was 7 a.m. when he had seen the dead body lying. The aforesaid statement of those persons whom the trial Judge has examined as witnesses of the locality leaves no room for doubt that there is a serious dispute about the time of the incident. That being so the allegations about the manner of the assault and lodging of the FIR also becomes circumspect. It was rightly pointed out that there was no acceptable explanation about non-presence of the Investigating Officer. No papers or entries from the general diary has been proved which may indicate that PW 6 Girish Chandra Mishra was, in fact, away from the police station when the FIR was lodged. The argument has been advanced that in

fact, the said Investigating Officer had tried to create evidence for the prosecution by keeping himself away so that he could conduct a case with the help of the related witnesses of the deceased. In this connection it was rightly emphasised that if Hori Lal would have really lodged the first information report at 2.55 a.m. then a special report should have been received by the District Magistrate and the S.S.P. on 18-9-75 itself. In fact, PW 10 Indrapati Dubey has admitted that he left the police station Kamasin with the special report at about 4 a.m. and had personally handed over a special report to the officers concerned on 18-9-1975 but he returned to the police station on 19-9-75 at 9.30 a.m.

23. But this is not so. DW 1 Chandra Bhan who was the Record-Keeper of the Collectorate who had come with the original record relating to the receiving of the special report, has deposed that the special report relating to the incident reached at the office of the District Magistrate on 19-9-1975. He has proved the seal and the necessary endorsement on the said document. True copies of those entries have been filed as Ex Kha 9. Nothing has been elicited in the cross-examination of this witness which may indicate any falsehood in his aforesaid deposition.

24. It was rightly emphasised that if the matter was really reported at 2.55 p.m. inasmuch as the case was really registered at that hour by the Head-Muharrier, then he should have sent a copy of the FIR to the S.O. wherever he may have been, requesting him to reach the site at once. In this connection it was emphasised that the post-mortem examinations would have been done on 19-5-1975 if the inquests had really been done within about 9.30 a.m. as is the prosecution case. There is force in the argument that the aforesaid circumstances do indicate that all may not be fair with the investigating agency. It is impossible to hold that the FIR was in fact lodged at 2.55 p.m. as is alleged by PW 1 Hori Lal.

25. The first information report categorically states that Omkar had fired at Juggi Lal. There is not a single firearm injury on Juggi Lal. Smt. Rajabeti says that the deceased had not taken any food but some digested food material is found in the stomach of the concerned deceased. Admittedly Juggi Lal was the son of the informant and Munni Lal was the son-in-law of the informant. They will be having more than enough reason to support their version as may have been got put

through the FIR at the instance of the local police. From an examination of the entire material on record it does appear that the testimony of these two witnesses does not inspire confidence inasmuch as the medical evidence does not lend full support to their interested testimony.

26. A word may be said about the comment made by the trial Judge that in the instant case the witnesses may have been terrorised by high-handed act of the accused whose reputation may not have been good. That may be so. However, the conviction of six persons has to be proved beyond doubt by cogent and reliable evidence. If conviction is to be recorded on the premise that some witnesses may not have come forward for the terror of the accused, the testimony of the witnesses who have been examined has to be straight and reliable enough to inspire confidence. If, as the findings recorded about indicate, the testimony of even the interested witnesses is contradicted by the medical evidence and the lodging of the FIR also is doubtful at the time and manner alleged, the benefit has got to go to the accused.

27. In view of the aforesaid discussion it has to be held that the prosecution has failed to prove the case against the appellants beyond reasonable doubt and, therefore, they are entitled to acquittal.

28. Consequently this appeal succeeds and is allowed. The conviction and sentences awarded to the appellants by the judgment under appeal are set aside. The appellants are on bail. They need not surrender. Their bail bonds are discharged.