

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

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

SooperKanoon Citation : sooperkanoon.com/467190

Court : Allahabad

Decided On : Sep-21-1994

Reported in : 1995CriLJ1143

Judge : V.N. Mehrotra and ;Kundan Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 302 and 323; Code of Criminal Procedure (CrPC) , 1974 - Sections 161

Appeal No. : Government Appeal No. 1943 of 1980

Appellant : State of U.P.

Respondent : Dila and ors.

Advocate for Pet/Ap. : A.G.A.

Judgement :

V.N. Mehrotra, J.

1. This appeal has been filed by the State of U.P. against the judgment dated 9-6-1980 by Shri B. B. Agarwal, the then Sessions Judge, Saharanpur, acquitting all the accused persons of the offences under Section 302/149, 323/149, 147 and 148 I.P.C.

2. The prosecution case in brief was that deceased Om Pal had purchased some land from one Smt. Mukandi widow of Chhota of village Krishni for Rs. 20,000/-. Accused Dila is not the son of Chhota but he had come to him alongwith Smt. Mukandi. Om Pal was in possession over the land since the time of purchase. Accused Dila disputed the possession of Om Pal. On 27-9-1979 there was an altercation between Om Pal and Dila over the harvesting of the crop standing on the land. Dila at that time had threatened Om Pal.

3. It is alleged that at about 12.30 A.M. in the night of 28/29-9-1979 all the five accused persons accompanied by four others came to the house of P. W. Kishan Singh. Dila enquired about the whereabouts of Om Pal and when Kishan Singh kept mum he was hit with lathi by Dila. On the shouts of Kishan Singh a number of persons including Om Pal, Randhir Singh, Geeta Ram, Hari Singh, Balbir and Ved Prakash reached there. Dila exhorted his son Telu Ram to kill Om Pal, on which Telu Ram fired shot with a country made pistol, as a result of which, Om Pal was injured and he fell down and became unconscious. It is alleged that accused Dila was armed with a lathi, Sitam Singh with a knife, Gaje Singh and Ram Pal were armed with guns and, out of the four unknown persons, three were armed with lathi and one was armed with kulhari. The accused then assaulted Kishan Singh, Hari Singh and Randhir Singh also. They then left the scene of occurrence. It is alleged that light of lantern and torches possessed by the witnesses was available at the scene of occurrence. The injured were taken to the hospital at Saharanpur but Om Pal died near the hospital. Hari Singh, Kishan Singh and Randhir Singh were examined at the hospital between 4.30 A.M. and 5.00 A.M. P.W. 2 Geeta Ram lodged the written report at 8.15 A. M. on 29-9-1979. After registration of the case the Investigating Officer prepared the inquest report of the dead body. It was then sent for post mortem examination. The Investigating Officer recorded the statements of the witnesses. He prepared the site plan after local inspection. Later on charge sheet was submitted against all the five named accused persons.

4. The accused pleaded not guilty to the offences charged. They alleged that Dila continued to be in possession over the disputed land. They also alleged that they have been falsely implicated in the case.

5. The prosecution examined nine witnesses in this case. They included Geeta Ram (P.W. 1), Hari Singh (P.W. 2) and Kishan Singh (P.W. 3) as eye-witnesses of the occurrence. S. I. Daulat Ram Malik (P.W. 4) had prepared the inquest report of the dead body on 29-9-1979. Saktu (P.W. 5) has been examined to prove the motive of the crime.

6. Post mortem examination was conducted by Dr. M. N. Ansari (P.W. -6) at 4.30 P. M. on 29-7-1979. He found the following ante mortem injuries :

1. Rounded punctured wound 2 cm. in diameter and cavity deep left side chest on the posterior axillary line-margins inverted-skin around the wound scorched and tattooed in area of 1.5 cm.

2. Incised wound 1 x 1/2 cm x bone deep on left side head. 10 cms. from right eye brow, margins clean cut.

3. Incised wound 1.5 cm x 1/2 cm x scalp deep on right side head. 11 cms. from right eye brow.

7. On internal examination it was found that pleura under injury No. 1 was lacerated. Blood was present in the left pleura cavity. Wading and 13 small pellets were found in the cavity. The left lung and peritoneum were lacerated. Abdominal cavity contained blood and thirty two pellets were found there. Spleen was lacerated. In the opinion of Dr. Ansari the death was caused due to shock and haemorrhage due to the ante mortem injuries. The injury No. 1 was sufficient to cause death in the ordinary course of nature. That injury was caused by some fire arm. The deceased had died about half day earlier.

8. Dr. S. K. Bansal (P.W. -7) had medically examined Randhir Singh at 5.00 A.M. on 29-9-1979. He found two lacerated wounds on the head, one contusion on the index finger, one lacerated wound on the chest and one abrasion on the left side abdomen.

9. Hari Singh was examined at 4.30 A.M. on that day. Two lacerated wounds were found on head. One contusion on the right side back. Another contusion on the left elbow joint alongwith swelling on the back and outer part of the left arm and the

elbow joint. One abrasion was found on the left forearm. One lacerated wound on the right side chest. Multiple abrasion on the left leg and multiple abrasion on inner aspect of right knee.

10. Kishan Singh was examined at 4.15 A.M. on the same day. There were three lacerated wounds on the head. Three abraded contusions on the left side head and one abrasion on the right side head.

11. According to the Dr. all the injuries were simple and were caused by some blunt object. All the injuries were fresh and could have been caused at about 12.30 A.M. in the night of 28/29-9-1979. S. I. Sanpat Singh (P.W. 8) had conducted investigation in the case and had submitted charge-sheet against the accused persons. Head Constable Istiyak Mohammad (P.W. 9) had prepared the chik report and had made entries in the G. D.

12. Constable Mahendra Singh (C.W. I) was examined as court witness. He had taken the dead body of Om Pal for post mortem examination.

13; Learned Sessions Judge held that the prosecution has not been able to prove its case beyond reasonable doubt and so acquitted all the accused persons.

14. In this appeal it has been argued on behalf of the State that the evidence produced by the prosecution was reliable and convincing. It has been contended that there was a motive for the crime and that three persons present on the spot has received injuries and so their presence could not be doubted. It has also contended that as there was sufficient light on the spot, injured witnesses could have identified the accused persons who were known to them, being resident of the same village. It is contended that the view taken by the trial court was unreasonable and improper and it was liable to be set aside.

15. The learned Counsel for the respondents has argued that the trial court has properly considered the evidence on record and has come to the conclusion that the evidence produced by the prosecution was not sufficient to prove the guilt of the accused. It is also contended that in this appeal against acquittal this Court should not reverse the finding recorded by the trial court merely because it was

possible to take a different view of the matter. It has also been argued that the view taken by the trial court cannot in any way said to be unreasonable or improper.

16. We have heard the learned Counsel for the parties and have perused the record of the case. In an appeal against the order of acquittal this Court has the same powers which a trial court has. It can examine the evidence on record and, if it Comes to the conclusion that the view taken by the trial court was unreasonable or against the weight of evidence, it could reject the finding recorded by the trial court. In the case *Kathawat Servai v. State of Tamilnadu*, 1994 SCC (Cri) 69 : (1993 AIR SCW 2291) it was observed that it is not the correct position in law that the appellate court is precluded from assessing the evidence in an appeal arising out of the judgment of acquittal. If the finding made by the trial court is against the weight of the evidence and the view taken by the trial court is unreasonable, the appellate court will be justified in rejecting such unreasonable finding made by the trial court, which is against the weight of evidence adduced in the case and the court of appeal will be quite competent to set aside the order of acquittal and convict the accused. In this case reliance was placed on the decision in the case *Ganesh Bhawan Patel v. State of Maharashtra*, 1979 SCC (Cri) 1 : (1979 Cri LJ 51).

17. We will now examine the evidence on record keeping in view the above mentioned observations made by the Supreme Court. As mentioned earlier, the incident in question had taken place at about 12.30 in the night of 28/29-9-1979. The F.I.R. in respect of that incident was lodged by the informant, Geeta Ram (P. W. 1) at 8.15 A.M. on 29-9-1979 at police station Rampur. It is not disputed that due to the injuries caused during the occurrence Om Pal died. Post mortem report of Om Pal, which was prepared by Dr. M. N. Ansari (P.W. 6), shows that the deceased had received one gun shot injury on the chest and two minor incised wounds on his head. Apart from this, as many as three other persons namely Hari Singh (P.W. 2) Kishan Singh (P.W. 3) and one Randhir Singh received a large number of injuries, which could have been caused by some blunt weapon such as lathi, during the occurrence. We have already referred to the medical examination of these injured persons by Dr. S. K. Bansal (P. W. 7). As stated earlier, the

prosecution has examined three witnesses including Hari -Singh and Kishan Singh as eye-witnesses of the occurrence. These witnesses have stated about the mode and manner of the occurrence and the persons who had participated in commission of these offences. The question arises as to whether this evidence produced by the prosecution was reliable and believable and sufficient to prove the prosecution case beyond reasonable doubt.

18. It will be proper at this stage to refer to the topography of the place of occurrence. The site plan (Ext. ka-13), prepared by the Investigating. Officer on 29-9-1979, shows that in the abadi of village Krishni there was a bagar in Which there were houses of Kishan Singh, Hari Singh, Balbir, Geeta Ram, deceased Om Pal, Randhir, Sukhbir and Bhulwani. There was a gate towards the west of this bagar leading towards the public way. The first house near this gate is that of Kishan Singh which consists of a kotha, baithak and to the west of the baithak is a varandah and then a chabutara. According to Kishan Singh he was sleeping in the open on the chabutara during the night of the occurrence. To the north of the house of Kishan Singh is open Sahan. There is another kotha of Kishan Singh to the north of this open land. The houses of Hari Singh (P.W. 2), Balbir and Geeta .Ram (P. W.1) are situated in a row on the northern side while the house of Om Pal, deceased is situated towards the East in the bagar. The houses of Randhir, Sukhbir and Bhulwani are situated towards sought in the bagar. The kotha of Hari Singh-(P.W. 2) faces south having two doors opening into a verandah. It is said that a burning lantern was hanging at point 'C' shown in the site plan. The Investigating Officer found one 12 bore used cartridge and one live rifle cartridge lying at point 'B', which is to the south of the varandah of Hari Singh. It is alleged that Om Pal and witnesses were injured at point 'A', which is also to the south of the verandah of Hari Singh.

19. Kishan Singh (P.W. 3) has stated that at about 12.30 A. M. in the night all the five accused persons alongwith four other unknown persons reached his house. According to him, accused Telu was armed with a country made pistol, accused Sitam was armed with a knife, accused Gaje Singh and Rampal were armed with guns and accused Dila with lathi. He has also stated that he was asked as to where Om Pal was and while asking this Dila hit him with a lathi. He has also

stated that on his shouts Hari Singh, Om Pal and Randhir reached there. The assailants then caused injuries to these persons. Om Pal was shot by Telu on which he became unconscious. He has also stated that he as well as Hari Singh and Randhir were injured. All the injured persons were brought to Saharanpur Hospital. They were medically examined there, but Om Pal died. This witness has also stated that at the time of the occurrence Om Pal had reached there from his house. Geeta Ram (PW 1) has stated that on hearing the shouts he woke up at about 12.30 in the night. He reached near Kishan where the accused persons and four others were present. He has also stated about the weapons possessed by the assailants. This witness has also stated that Dila had asked Kishan to disclose about the whereabouts of Om Pal and that he had also beaten Kishan. This witness has further stated that Om Pal, Randhir Singh, Sukhbir and Balbir also reached there. Thereafter accused Dila asked Telu to shoot Om Pal on which Telu fired the country-made pistol causing injury to Om Pal. He has also stated that the accused persons had also caused injuries to Hari Singh, Kishan Singh and Randhir Singh. This witness has further stated that Om Pal became unconscious and fell down. According to him a lantern was burning in the verandah of Hari Singh and that witnesses Ved Ram and Sukhbir had torches. He has also stated about the medical examination of the injured and the death of Om Pal. This witness has further stated that he had got the F.I.R. (Ext. Ka 1) written at the Saharanpur Hospital and thereafter he lodged the same at police station Rampur. Hari Singh (P.W. 2) has also stated about the occurrence. He has mentioned the names of . the assailants and the weapons possessed by them. He has also stated that his father Kishan was beaten by the accused when he did not disclose, about the whereabouts of Om Pal. Kishan then shouted, on which he and other witnesses reached there. He has further stated that Telu on being instigated by Dila fired a shot from country made pistol causing injury to Om Pal. Om Pal fell down and became unconscious. He has also stated that the accused persons had also caused injuries to him as well as to Randhir and Kishan Singh. He has further stated that the injured persons were taken to Saharanpur Hospital where they were medically examined. However, Om Pal had died.

20. The prosecution witnesses have stated about the availability of light of burning lantern as well as the torches possessed by the two witnesses who has reached

the scene of occurrence. The Investigating Officer actually examined the lantern and found that a lantern was hanging at place 'C' shown in the site plan. He also examined the torches of the witnesses and prepared memo in respect of the same.

21. The prosecution witnesses have also stated about the motive for the crime. It is said that there was a litigation between accused Dila on the one hand and deceased Om Pal on the other hand relating to some land which Om Pal had purchased. The dispute also related to the crop which had been sown on the land; that litigation was still pending when the present occurrence took place. It is alleged that a day before the occurrence Dila actually threatened Om Pal. It also appears from the cross-examination of Geeta Ram (P.W. 1) that one year before this occurrence there was an incident in which accused Telu and his mother was injured, in which deceased Om Pal and this witness as well as others were prosecuted, that case was pending when the present occurrence took place. It also appears that Om pal had also prosecuted Dila and others but they had been acquitted about five or six months before the occurrence. It is thus clear that there were several litigations between the parties which could furnish a motive for the accused to commit the murder of Om Pal. Though it can also be said that this could also furnish a motive for false implication of the accused persons or some of them.

22. As mentioned earlier, apart from the deceased Om Pal three other persons had received injuries during the occurrence. Out of these injured persons two have been examined as eyewitnesses.. The third witness Geeta Ram has his house in the bagar, his assertion that he reached the scene of occurrence on hearing the shouts of Kishan Singh is quite believable. Thus, all these three witnesses were natural witnesses of the occurrence whose presence cannot be doubted. These witnesses have stated about the presence of light at the scene of occurrence. In our view there is no sufficient reason to disbelieve the presence of light at the scene of .occurrence. It is not a case in which somebody might have fired a single shot aimed at the victim when the witnesses could not have time to reach the place-in order to see the assailants. Several persons were injured during the occurrence. It must have taken at leas) some time in causing injuries to the

victims. In such circumstances it would have been natural for the persons having torches to reach that place alongwith their torches. Apart from this, the witnesses have also stated about the presence of burning lantern in the verandah of Hari Singh (P.W. 2). Reason for the presence of the lantern is said to be that the child of Hari Singh was unwell in that night and for this reason a lantern was kept burning in the verandah. Thus considering the material on record we find that the evidence produced by the prosecution was quite believable as regards the actual occurrence.

23. The learned Sessions Judge has, while referring to the lodging of the F.I. R., made some observation as regards the presence of parsuram resident of village Nandpura at the hospital at Saharanpur. According to Geeta Ram (P.W. 1) he got the F.I.R. written by Parsuram at the Saharanpur Hospital after his medical examination. He has also stated that he had returned from Saharanpur at about 7.30 A. M. after which the F.I.R, was lodged. Geeta Ram (PW 1) was not asked as to when Parsuram reached Saharanpur Hospital. The learned Sessions Judge has referred to the statement of Kishan Singh (P.W. 3) where he has mentioned that the medical examination was done at about 4.00 A.M. and till the medical examination no body else from the village or any relative had reached the hospital. This witness was also not asked as to whether parasuram has reached the hospital after the medical examination or whether any F.I.R. was got scribed by Geeta Ram (P.W. 2) at the hospital. It is quite possible that Parasuram had reached Saharanpur Hospital after the injured had been medically examined and it was then Geeta Ram got the F.I.R. written by him. In the circumstances the inference drawn by the learned Sessions Judge that the F.I.R. must have got scribed by Geeta Ram at the police station Rampur cannot be accepted.

24. The learned Sessions Judge has then considered the question of motive and has observed that it was difficult to accept that Dila, accused would have been aggrieved. He also, in effect, observed that the persons related or interested in Om Pal could have named the accused persons on suspicion. The learned Sessions Judge also did not believe the assertion about the alleged verbal altercation between accused Dila and the deceased. We have closely examined this aspect of the matter and we are unable to agree with the observations made

by the learned Sessions Judge. As we have already mentioned, there were several litigations between the parties. The dispute relating to the land was still pending before the revenue court. There was also a civil litigation as well as criminal litigations. In such circumstances, it cannot be said that the accused Dila or his son could not feel aggrieved with the deceased or that the accused persons had been named merely on the ground of suspicion.

25. The learned Sessions Judge has then held the presence of light at the scene of occurrence doubtful. According to the prosecution allegations a lantern was burning in the verandah outside the 'kothari' of Hari (P.W. 2). The Investigating Officer examined that lantern and marked the place, where it was hanging, in the site plan. The prosecution witnesses have stated about the presence of this source of light. It is said that as the child of Hari Singh was ill, the lantern was kept burning. This fact was mentioned in the F.I.R. as well as in the statements of the witnesses. The learned Sessions Judge has observed that in case the child was ill the lantern should have been kept burning inside the 'Kothari' and not in the verandah outside the 'Kothari'. He has disbelieved the presence of light from lantern only on this ground. We are, however, unable to accept this reason. It was not necessary to keep burning lantern inside the kothari where the child was sleeping. It could have been kept in the verandah so that the light could have been available as and when needed during the night.

26. The next source of light alleged by the prosecution is that Sukhbir and Ved Prakash, who had reached the scene of occurrence, had torches which they had flashed. This source of light was mentioned in the F.I.R. The Investigating Officer also examined the torches of these witnesses and prepared the memos in respect of the same. Eyewitnesses have also stated about the presence of torch light at the scene of occurrence. The learned Sessions Judge has disbelieved the presence of torch light only on the ground that none of these two witnesses was injured and that it was difficult to believe that they were at such a distance that they could not be injured. We are, however, unable to accept this observation. It was not necessary that each and every person who had reached the scene of occurrence on hearing the shouts of the victims should have received injuries. It is not alleged that there was some direct enmity between the accused and the

persons possessing torches that they must have been injured by the assailants. It is not a case that those persons who had torches with them also intervened in the fight. They could have flashed their torches while at a little distance from the place where the victims were being assaulted. On a consideration of the evidence on this question we accept the prosecution assertion that light of lantern and torches was available at the scene of occurrence.

27. An observation was also made by the learned Sessions Judge regarding the concealment of identity by the known assailants. It was mentioned that as unknown persons were also present, it was not free from reasonable doubt that the accused themselves would participate in the crime. Considering the facts of the case, particularly the fact that there was enmity between the deceased and the assailants, it was not beyond probability that the assailants would not have concealed their faces. The unknown assailants may have been called to assist the known assailants and as the act was being perpetrated due to previous enmity, it cannot be said that the known assailants would not have accompanied the unknown ones.

28. The learned Sessions Judge has then referred to some contradiction as regards the place where the deceased Om Pal was sleeping. He has also observed that in case the deceased was sleeping near Kishan (P.W. 3), the assailants would not have on coming to that place first asked this witness to disclose his whereabouts. Kishan (P.W. 3) has stated that when he was being beaten by the assailants Om Pal came running to that place from his house. Hari (PW. 2) however, stated that Om Pal was sleeping near Kishan at a little distance to his north. This statement was made in his cross-examination. However, in his examination-in-chief this witness has stated that he had reached the scene of occurrence on hearing the shouts of his father Kishan and on reaching there he found that Om Pal, Randhir and Sukhbir and others had already reached there. The statement of Kishan on this point appears to be more acceptable as he was sleeping in the open and would have known as to whether Om Pal was sleeping near him or at his own house, a short distance away. Apart from this, Hari Singh (P.W. 2) has also stated that Om Pal, used to change the place where he slept during night, so that could also be the reason for accused Dila to enquire about the

whereabouts of Om Pal from Kishan as soon as he reached the place of occurrence. We do not find any improbability in the assertion by the prosecution witness that on reaching the scene of occurrence accused Dila had asked Kishan to disclose the whereabouts of Om Pal and on his refusal to do so hit him with lathi.

29. The learned Sessions Judge has then referred to the fact that there was a lack of community of interest between the accused Dila and his son Telu on one hand and accused Ranpal, Gate Singh and Sitam Singh on the other hand. The learned Sessions Judge has also mentioned that there could be a case of false implication of these accused as they or their relatives were witnesses in the earlier litigation between Dila and the deceased. Reference has also been made to the fact that though it was alleged that Gaje Singh and Ranpal were armed with guns, it was not alleged in the F.I.R. that they had fired any shot from these guns, but witnesses have now tried to assert that actually one or two shots were fired by them. We have considered the evidence about the alleged use of guns by Gate Singh and Ranpal. It is true that in the F.I.R. it was not even alleged that these two accused persons, who were said to be armed with guns, fired a single shot. In the statement under Section 161 Cr. P.C. also no such allegation was made. However, Geeta Ram (PW. 1) has in his statement asserted that one shot was fired by these persons at the time of the occurrence and another shot was fired when they were leaving the place of occurrence, though in the earlier part of the cross-examination this witness had stated that no shot was fired by them. Hari Singh (P.W. 2) has stated that these two accused persons had fired only one shot when they had gone out of bagar. Kishan (P.W. 3) has, however, not stated that any shot was fired by these two accused persons. In the circumstances the assertion by these witnesses regarding the firing of shots by accused Ranpal and Gate Singh cannot be accepted.

30. The learned Sessions Judge has then also referred to the alleged use of knife by accused Sitam Singh. In the F.I.R. it was not alleged that Sitam Singh had caused any knife injury to deceased Om Pal. It was alleged that he and other persons who were armed with lathi caused injuries to Hari Singh, Randhir and Kishan Singh. None of these three persons, however, received any knife injury.

Post mortem report of the deceased Om Pal shows that he had received two wounds on his head. These wounds were however, not noted by the S.I., who had prepared the inquest report. It may be that the Section 1, was not careful in preparing the inquest report or it may be that these minor injuries which were on the head and might have been covered by hair were not visible to him. The fact, however, remains that in the F.I.R. it was not alleged that any knife injury was inflicted by accused Sitam Singh to the deceased. We agree with the observation by the learned Sessions Judge that there does not appear to be any community of interest between Dila and his son Telu on the one hand and accused RAMPAL Gate Singh and Sitam Singh on the other hand. Further, some doubt has also been created regarding the use of gun by accused. Ranpal and Gate Singh and the use of knife by Sitam Singh. The case of these three accused persons appears to be separable from that of accused Dila and his son Telu. though it cannot be said that these three. accused persons had been falsely implicated by the persecution witnesses, still considering the doubt regarding their actual participation in the CRIME it will be proper to extend the benefit of doubt to them. However, as regards accused Dila and Telu we do not find anything to throw any doubt regarding their participation in the crime. It appears that these two accused persons alongwith four others had committed the murder of Om Pal and caused injuries to three others. It appears that the learned Sessions Judge has been much influenced by the so called absence of any injury which could have been caused by a country-made pistol and the alleged presence of an injury which could have been caused by a rifle, on the body of the deceased. The learned Sessions Judge has referred to the recovery of one used 12 bore cartridge and one live rifle cartridge at the scene of OCCURRENCE and thereafter, due to some unexplained reason. has come to the conclusion that there was every likelihood of use of a rifle on the spot. He has thereafter negated the contention of the witnesses that Om Pal was hit by a country made pistol used by Telu. We are of the view that these observations by the Sessions Judge are the result of misreading of the evidence. The investigating Officer found a 12 bore used cartridge as well as live rifle cartridge on the spot. It will thus appear that a 12 bore cartridge was fired. There is nothing to show that any of the assailants was armed with rifle or had used the same. The post mortem of Om Pal clearly and beyond doubt shows that Om Pal

was not hit by a rifle cartridge but was shot by a cartridge which could have been fired from a country made pistol. The post mortem report shows that thirteen small pellets were re-covered from the pleural cavity. Obviously these pellets could not have been fired from a rifle but could have been fired from a country-made pistol. It appears that learned Sessions Judge did not consider the clinching evidence available on this point and so coming, to a wrong conclusion, rejected the assertions made by the prosecution witnesses about the firing of the shot from country-made pistol by accused Telu.

31. On a consideration of the entire material we are of the view that the findings arrived by the learned Sessions Judge regarding the participation of the accused Dila and Telu are unreasonable and based on misreading of evidence. We are also of the view that the prosecution evidence is sufficient to establish the guilt of accused Dila and Telu beyond reasonable doubt. As regards accused Ranpal, Gaje Singh and Sitam Singh, they were entitled to benefit of doubt, as mentioned earlier.

32. In the result, this appeal is partly allowed so far as it relates to accused respondents Zila alias Dila and Telu and it fails as against accused respondents Ranpal, Gaje Singh and Sitam Singh. The judgment dated 9-6-1980 by the Sessions Judge, Saharanpur is set aside to this extent only. Accused respondents Zila alias Dila is held guilty for committing offences punishable under Section 302 read with Section 149 I.P.C., 323/149 I.P.C. and Section 147 I.P.C. and he is sentenced to undergo imprisonment for life, R.I. for six months and R. I. for six months respectively, accused Telu Ram is held guilty for committing the offences under Section 302 I.P.C, 323/149 I.P.C. and 148 I.P.C. and is sentenced to undergo imprisonment for life, R.I. for six months and R.I. for one year respectively. All the sentences of both of the accused shall run concurrently. They are on bail. Their bail bonds are cancelled. They shall be taken into custody to serve out the sentences imposed on them.

Appeal partly allowed.