

**Manish Kumar Vs. State of U.P.**

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**SooperKanoon Citation :** [sooperkanoon.com/472052](http://sooperkanoon.com/472052)

**Court :** Allahabad

**Decided On :** Jan-30-2004

**Reported in :** 2004CriLJ2697

**Judge :** U.S. Tripathi and ;M. Choudhary, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 149, 300 and 307

**Appeal No. :** Capital Case Crl. Appeal No. 1795 of 2002

**Appellant :** Manish Kumar

**Respondent :** State of U.P.

**Advocate for Def. :** Rajendra Pd. Tiwari, Adv. and ;R.K. Singh, A.G.A.

**Advocate for Pet/Ap. :** G.S. Chaturvedi, ;Shashank Shekhar, ;V. K. Gupta, ;J.S. Sengar, ;R.K. Shingloo, Jitendra Kumar and ;Virendra Singh Patel, Advs. and ;Rakesh Chandra Upadhyaya, Amicus Curiae

**Disposition :** Appeal allowed

**Judgement :**

**U.S. Tripathi, J.**

1. The above appeals have been preferred against the judgment and order dated 14-5-2002 passed by Special Judge SC/ST (Prevention of Atrocities)

Act/Additional Sessions Judge, Jhansi, in Sessions Trial No. 23 of 2001 convicting appellants Manish and Halke alias Gulab under Section 302 read with Section 34, I.P.C. for committing murder of Kamta deceased, convicting appellants Manish, Halke alias Gulab, Laxman Singh alias Babuji, Babloo Darzi and Suraj under Sections 147, 148 and 302 read with 149 for murder of Bhanu Pratap and Kapoori Devi as well as under Sections 307 read with 149, I.P.C. for attempting to commit murder of Karan Singh and Katori Devi, further convicting appellants Manish, Halke alias Gulab, Laxman Singh alias Babuji, Suraj and Dheeraj under Sections 302 read with 149, I.P.C. for committing murder of Guman and sentencing appellants Manish, Halke alias Gulab and Laxman Singh alias Babuji to extreme penalty of death and fine of Rs. 500/- each under Sections 302 read with 149, I.P.C. and sentencing appellants Babloo Darzi, Suraj and Dheeraj to imprisonment for life and fine of Rs. 500/- under Sections 302 read with 149, I.P.C. Appellants Manish, Halke alias Gulab, Laxman Singh alias Babuji, Suraj and Babloo Darzi were further sentenced to 10 years R. I. and fine of Rs. 500/- each under Sections 307 read with 149 I. P. C. as well as one year R. I. under Section 147, I. P. C. and 2 years R. I. under Section 148, I. P. C.

2. The prosecution story, briefly stated, is as under :--

On the evening of 17-12-2000 at about 7.45 p.m. one Babloo Rajput s/o. Siya Saran, r/o. village Pathredi, P. S. Dehrauli informed the police of P. S. Moth, district Jhansi on phone that about 4-5 assailants came to his village and shot dead Babloo Pandit of village Pathredi. The same information was conveyed to P. S. Dehrauli by Sri Madan Singh, Station Officer, P. S. Moth. On receiving above information, Sri Madan Singh, apprehending happening of some incident by the assailants in village Saujana, of his police station, lying on the opposite side of river Betwa, along with Constables Safruddin, Ram Prakash, Badri Prakash and Munna Lal proceeded to village Saujana in a police jeep. He reached there at about 8.30 p.m. In the way he saw in the head light of jeep that a person was lying in the middle of the path. He stopped the jeep and saw that the person was dead. The door of the house, in front of which the dead body was lying, was closed. He knocked the door for about 10 minutes and assured that he was police officer and then one person came out of the door and told his name as Shyam Babu Yadav.

He told that the dead person lying on the path was Kamta alias Pappu of this village, who was murdered by appellants Manish Patel, Halke Chamar, Babloo Darzi and Laxman Singh alias Babuji. He further told that after committing murder of Kamta, the above persons went to the house of Kamta and made indiscriminate firing on his family members and thereafter they went to the house of Guman Ahirwar, where they also made firing. Sri Madan Singh along with Shyma Babu and police force reached at the house of Kamta. The doors of house of Kamta were closed from inside and ladies and children were weeping inside the house. There was a complete silence and sense of terror in the entire village. Sri Madan Singh disclosed his identity and got the doors opened. Inside the house he saw dead bodies of one male and one female. A lady and a child were also lying injured. Two ladies were weeping, who told their names as Smt. Ram Devi, w/o. Bhanu Pratap and Smt. Mateshwari, w/o. Kamta. The injured were Karan Singh (PW 2) and Smt. Parvati alias Katori (PW 3). The dead persons were Bhanu Pratap and Smt. Kapoori Devi, w/o. Laxman Singh. The ladies told that they were warming themselves at 'Alav' in front of their house. The appellants Manish, Halke, Babloo Darzi and Laxman Singh alias Babuji armed with revolver, gun and country-made pistol came there at about 5.30-5.45 p.m. and started indiscriminate firing, murdering Bhanu Pratap and Smt. Kapoori Devi and causing injuries to Karan Singh (PW 2) and Smt. Katori Devi (PW 3). Apprehending that the assailants would take away the dead bodies, they kept the dead bodies of Bhanu Pratap and Smt. Kapoori Devi inside the house and bolted the doors from inside. Thereafter, Sri Madan Singh reached the house of Guman Ahirwar. Smt. Nand Rani (PW 4), w/o. Guman was weeping inside the room by bolting the doors from inside. He got the doors opened and then she told that appellants Suraj, Dheeraj, Manish and Laxman Singh alias Babuji murdered her husband Guman by causing fire arm injuries and his dead body was lying in the nearby room of Bada. Sri Madan Singh saw the dead body of Guman lying in the room. On enquiry he came to know that Kamta deceased was driving tractor of Sobaran Yadav and was also looking after his cultivation. The tractor of Sobaran Yadav used to pass through the Bada of Manish, which he was objecting to and was having enmity with Sobaran and Kamta. He had also asked Kamta to leave the services of Sobaran Yadav, but Kamta had not taken it seriously. In the preceding night Manish had

assaulted Kamta, while he was going to the house of Sobaran Yadav. On account of above enmity, the appellants murdered Kamta and two other members of his family. He also came to know that prior to 13-14 years Lala Ram, s/o. Guman had murdered Ganga Patel, father of appellant Manish and on account of above enmity Manish along with other appellants committed murder of Guman. He also came to know that out of fear of appellants and terror created by them, none could dare to come out of his house and lodge report of the occurrence. Sri Madan Singh sent gist of above information to P.S. Moth and other senior officers on R.T. Set. Thereafter, he took the two injured Karan Singh (PW 2) and Smt. Katori Devi (PW 3) in the police jeep for medical examination.

3. Sri Madan Singh came to the police station Moth, where he lodged oral report of the occurrence at 10.10 p.m. On the basis of oral report Constable Moharir Ram Prakash (PW 11) prepared chik F. I. R. (Ext. Ka-15), made an endorsement of the same at G. D. report (Ext. Ka-16) and registered a case under Sections 147, 148, 149, 307, 302/34, I. P. C. and Section 3(2)(v) S. C. and S. T. (Prevention of Atrocities) Act against appellants Manish, Halke, Babloo Darzi, Laxman Singh alias Babuji, Suraj and Dheeraj,

4. The investigation of the case was taken up by Sri Vinod Kumar, Circle Officer (PW 15). He interrogated complainant Madan Singh at the police station. The injured Smt. Katori Devi and Karan Singh were sent to M. L. B. Medical College, Jhansi, where they were medically examined by Dr. N. R. Pandey (PW8) on 18-12-2000 at 1.55 a.m. and 2.10 a.m. respectively. Following injuries were found on their persons :--

Injuries of Smt. Katori Devi

(1) (a) Lacerated wound 0.8 c.m. diameter size x depth kept under observation to ascertain by the surgery unit on left side intraclavicular region with blood oozing positive. The margins were inverted and collar of abrasion positive. Kept under observation and referred to the surgery unit concerned for further needful.

(b) Lacerated wound of 0.5 c.m. diameter size in the left side intrascapular region. Depth kept under observation to be ascertained by the surgery unit. Blood oozing

was positive and margins were everted.

5. The injury was caused by fire-arm object. Nature kept under observation and advised x ray. Duration of injuries was fresh.

#### Injuries of Karan Singh

(1)(a) Lacerated wound of 0.7 c.m. diameter size x depth kept under observation, over anterior aspect of medial side of right upper-arm, upper 1/3rd region with blood oozing. Margins were inverted and collar of abrasion positive.

(b) Lacerated wound of 1 c.m. diameter size x depth kept under observation on right upper arm posterior aspect under 1/3 region. Margins were everted and blood oozing was positive.

(2) Abrasion in the area of 7 c.m. x 1.2 c.m. size over right side in lateral aspect of the abdomen. Blood oozing and collar of abrasion positive. Kept under observation and referred to the surgery unit.

6. The injuries 1 and 2 were caused by fire-arm object. Injuries No. 1 and 2 were kept under observation and advised X ray. Duration of injuries was about fresh.

7. Sri Vinod Kumar I. O. then came to the village of occurrence, inspected the places of occurrence and prepared site plan (Ext. Ka-25). On 18-12-2000 he interrogated Shishupal Singh (PW 1), Smt. Pista Devi, Karan Singh (PW 2), Nand Rani (PW 5) and other witnesses. The I. O. got conducted inquest of the dead bodies of Kamta, Bhanu Pratap, Smt. Kapoori Devi and Guman through Shivadas Tiwari (PW 9) and sent the dead bodies for post-mortem.

8. Autopsy on the dead bodies of the deceased were conducted on 18-12-2000 by Dr. Pratap Singh (PW 7), who found following ante mortem and internal injuries on the person of the deceased :--

#### Post Mortem report of Kamta alias Pappu Ante Mortem injuries :--

(1) Gun shot wound of entrance 1 c.m. x 0.8 c.m. x cavity deep on right side head 2 c.m. in front of upper part of right ear. Blackening present, oval shape, margins

inverted. Collar of abrasion present. A bullet recovered from brain matter.

(2) Gun shot wound of entrance of 0.8 c.m. x 0.6 c.m. x cavity deep, direction downward, over left side face 2 c.m. left to left angle of mouth. Blackening and collar of abrasion present. Margins inverted.

(3) Gun shot wound of exit 4 in number over an area of 6 c.m. x 3 c.m. in the size of 0.7 c.m. x 0.5 c.m. x cavity deep each of left side neck 5.6 c.m. above inner and left clavicle. Margins of all wounds were inverted and connection of all tracked to injury No. 2.

9. Internal examination showed fracture of right frontal and parietal region. Membranes and brain lacerated, clotted blood present. A bullet found in brain. Stomach contained about 100 ml. semi digested food. Small intestine contained gases. Large intestine contained faecal matter and gases. Death was caused due to coma, as a result of ante mortem gun shot injuries.

Post Mortem report of Bhanu Pratap

Ante Mortem injuries :--

(1) Gun shot wound of entrance 2.8 c.m. x 1.8 c.m. x cavity deep on left side back, 16 c.m. below left shoulder and 20 c.m. left from midline. Blackening present. Margin inverted, collar of abrasion present. On right side chest oval shape.

(2) Gun shot wound of exit 1.8 c.m. x 0.6 c.m. x cavity deep on right side chest 9 c.m. below arm pit. Margins everted. No blackening and no collar of abrasion.

(3) Gun shot wound of exit 0.8 c.m. x 0.7 c.m. x cavity deep on right side chest 3 c.m. below injury No. (2). No blackening and no collar of abrasion.

(4) Gun shot wound of exit 0.7 c.m. x 0.6 c.m. on right side chest 0.5 c.m. below injury No. 3. No blackening and no collar of abrasion. Margins everted.

(5) Gunshot wound of exit 0.7 c.m. x 0.6 c.m. on right side chest 11 c.m. right to right nipple. No blackening and no collar of abrasion. Two pellets found in right side wall of chest. Wound of entry track out towards right side and injury to heart.

Both lungs lacerated.

10. Internal examination showed right lung lacerated about 500 ml. blood present, left lung lacerated about 100 ml. clotted blood present. Stomach contained about 150 ml. semi digested food. Small intestine contained digested food and gases. Large intestine contained faecal matter and gases. Death occurred due to shock and haemorrhage as a result of-gun shot ante mortem injuries.

Postmortem Report of Smt. Kapoori Devi Ante mortem injuries :--

(1) Gun shot wound of entrance 1.8 c.m. x 1 c.m. x cavity deep on top of right shoulder direction of track downwards. Blackening around margins present. Collar of abrasion present. Margins inverted.

(2) Gun shot wound of exit 2 c.m. x 1.3 c.m. x cavity deep with directions upward, margins everted. No blackening and no collar of abrasion present. Injuries No. 1 and 2 tracked to each other.

11. Internal examination showed fracture of right 9th, 10th ribs. Right lung lacerated with track of wound (hole) with 450 ml clotted blood present. Both sides of heart were empty. Abdominal cavity contained about 200 ml. blood. Small intestine contained chyme and gases. Large intestine contained faecal matters and gases. Death occurred due to shock and haemorrhage as a result of ante mortem gun shot injuries,

Post mortem report of Guman Chamar Ante mortem injuries :--

(1) Gun shot wound of entrance 3.6 c.m. x 3.0 c.m. x cavity on outer canthus of right eye including injury. Edges of wound inverted oval shape. Blackening of margins present. Direction of injury inner and left. Collar of abrasion all around present.

(2) Gun shot wound of exit 4.5 c.m. x 3.8 c.m. x cavity deep on left side face just in front of left ear. Margins everted and no blackening around wound. No collar of abrasion. Communicated to injury No. 1.

(3) Gun shot wound of entrance 1.8 c.m. x 1.6 c.m. x cavity deep on front surface of left shoulder. Blackening around the wound present. Collar of abrasion present. Margins inverted.

(4) Gun shot wound of exit 2.8 c.m. x 2 c.m. on left side back 2 c.m. below to inner angle of left scapula and 3 c.m. left to mid line. Margins everted. No blackening and collar of abrasion present.

(5) Gun shot wound of entrance 1.0 c.m. x 0.8 c.m. x cavity deep on left side front surface of chest, 10 c.m. below left nipple. Margins inverted. Blackening and collar of abrasion present. Track up to back vertebrae. A bullet found.

12. Internal examination showed fracture of left and right frontal bone and both sides of parietal bone. Membranes and brain were lacerated. 9th rib fractured on left side due to injury No. 5. Left side of pleura was lacerated. Left lung was empty. Stomach contained about 100 ml. semi digested food. Small intestine contained chyme and gases. Large intestine contained faecal matter and gases. Death occurred due to coma and shock as a result of ante mortem gun shot injuries.

13. The I. O. interrogated other witnesses on 19-12-2000 and 20-12-2000.

14. On 25-12-2000 Sub-Inspector Madan Singh along with Constable Ram Prakash Gupta (P. W. 12) and Chandrika Prasad (P. W. 14) apprehended appellants Manish, Laxman and Suraj at the bank of river Betawa in the jungle of village Chelara and recovered one S. B. B. L. gun No. 2785 from Manish. He also recovered one half gun of 315 bore from Laxman and prepared recovery memo. On the basis of recovery memo separate cases under Sections 25/27 Arms Act were registered against appellants Manish and Laxman. On 29-12-2000 the I.O. Sri Vinod Kumar (PW 15) interrogated Karan Singh (PW 2) and Smt. Katori Devi (PW 3) and other witnesses.

15. On 30-12-2000 Sri Madan Singh along with Constable Chandrika Prasad (PW 4) apprehended appellant Halke in village Dang in the middle of river Betawa and recovered .32 bore revolver No. 71665 and prepared recovery memo. On the basis of recovery memo a case under Sections 25/27 Arms Act was registered

against appellant Halke.

16. During investigation the names of Radha Rani, Rajjan and Ram Narain also came to light. On completion of investigation, the I. O. Sri Vinod Kumar (PW 15) submitted charge sheet against the appellants as well as Rajjan, Ram Narain and Radha Rani. The cases under Sections 25 Arms Act against Manish, Laxman and Halke was separately investigated by Sikandar Khan (PW 16), Brijendra Singh (PW 17) and Shiv Das Tewari (PW 18) and they separately submitted charge sheets against the three appellants under Sections 25/27 Arms Act.

17. Cognizance of the cases was taken by the Magistrate, who committed the case to the Court of Session.

18. The appellants Manish, Halke, Babloo Darzi, Laxman Singh alias Babuji and Rajjan alias Rajendra were charged with the offences punishable under Sections 147, 148, 302/149, I. P. C. Smt. Radha Rani was charged with the offence punishable under Section 120B and Section 3(2)(v) S. C. S. T. (Prevention of Atrocities) Act. Appellants Manish, Halke, Laxman Singh and Babloo were further charged under Sections 302/ 34, I. P. C. in the alternative. Ram Narain was charged with the offence punishable under Sections 302 read with 107 I.P.C. and 120B, I. P. C. Additional charges under Section 3(2)(v) of S. C. S. T. (Prevention of Atrocities) Act were also framed against appellants Manish and Laxman Singh. Appellants Manish, Halke, Laxman Singh and Babloo were further charged under Sections 307/ 34, I. P, C.

19. The appellants pleaded not guilty and their contention was that gang of dacoits committed the murder of 4 deceased and caused injuries to two persons when they entered into the village with intent to loot. The members of Suraksha Samiti resisted and threw brick bats on the dacoits. The police in order to meet out its inefficiency concocted another story and falsely implicated the appellants and other accused by pressurizing the witnesses, who were inimical with them.

20. The prosecution in support of its case examined Shishupal Singh (PW 1), Karan Singh (PW 2), Smt. Katori Devi (PW 3) and Smt. Nandrani (PW 4) as witnesses of fact, besides Karan Singh, s/o. Deen Dayal (PW 5), Asha Ram (PW

6), Dr. Pratap Singh (PW 7), Dr. N.R. Pandey (PW 8), A. S. I. Shiv Das Tewari (PW 9), Lakshmi Singh (PW 10), Constable Ram Prakash (PW 11), Constable R.P. Gupta (PW 12), S. I. Samid Hussain (PW 13), Constable Chandrika Prasad (PW 14), Sri Vinod Kumar, Circle Officer, I. O. (PW 15), Sikandar Khan (PW 16), Sub-Inspector B. K. Singh (PW 17) and Head Constable Shiv Das Tewari (PW 18) as formal witnesses.

21. The appellants examined Ram Swarup (DW 1) and Jas Rath (DW 2) in their defence.

22. The learned Sessions Judge on considering evidence of the prosecution held that offences punishable under Sections 25/27 Arms Act and Section 30 Arms Act against Manish, Halke, Laxman Singh and Radha Rani were not established. He further held that prosecution also could not establish the guilt of Rajjan and Ram Narain. However, he held that the prosecution successfully established the guilt of appellants Manish, Halke alias Gulab, Laxman Singh alias Babuji, Babloo, Suraj and Dheeraj for the offences punishable under Sections 147, 148, 302/34 for the murder of Kamta, offences punishable under Sections 302/149, I. P. C. for the murders of Bhanu Pratap and Smt. Kapoori Devi, and under Section 307/149 for attempt of murder of Karan Singh and Smt. Katori Devi and under Sections 302/149 for murder of Guman, With these findings, he acquitted Rajjan, Radha Rani and Ram Narain and convicted appellants Manish, Halke alias Gulab, Laxman Singh alias Babuji, Babloo, Suraj and Dheeraj as mentioned above,

23. On considering the quantum of punishment he found that acts of appellants Manish, Halke alias Gulab and Laxman Singh alias Babuji come under the category of rarest of rare cases and therefore sentenced them to death penalty under Sections 302/149, I. P. C. for the murder of above deceased and appellants Babloo, Suraj and Dheeraj to imprisonment for life under Sections 302/149, I. P. C. and other sentences as mentioned above.

24. Aggrieved with their above convictions and sentences the appellants have filed separate appeals noted above. There is also a reference from the trial Court for the confirmation of death sentence.

25. We have heard Sri G.S. Chaturvedi assisted by Sri Shashank Shekhar and Sri V.K. Gupta, for the appellant Manish, Sri J.S. Sengar for appellant Laxman alias Babuji, Sri Rakesh Chandra Upadhyaya, Amicus Curiae for appellant Halke and Sri R.K. Shangloo for appellants Babloo, Suraj and Dheeraj and have perused the entire evidence on record.

26. The appellants have not disputed the death of Kamta, Bhanu Pratap Singh, Smt, Kapoori Devi and Guman deceased as well as injuries to Karan Singh (PW 2) and Smt. Katori Devi alias Parvati (PW 3). The medical evidence of Dr. Pratap Singh (PW 7) established that the above four deceased died on account of gun shot injuries. The evidence of Dr. N. R. Pandey (PW 8) further established that Karan Singh (PW 2) and Smt. Katori Devi (PW 3) had sustained injuries, which could be caused by fire arm.

27. The motive has no significant role in a case but when the prosecution alleges a motive it should be examined. The Apex Court held in *Badam Singh v. State of Madhya Pradesh*, 2003 AIR SCW 5551 : (AIR 2004 SC 26) that even though existence of motive loses significance when there is reliability of ocular testimony, in a case where ocular testimony appears to be suspect the existence or absence of motive acquires some significance regarding the probability of the case. In this case the motive alleged by the prosecution was that Kamta deceased was driving tractor of Sobaran Singh, father of Shishupal Singh (PW 1). The above tractor used to pass through Bada of appellant Manish. The appellant Manish often objected Kamta in taking tractor through his Bada. He also asked several times Kamta to leave the work of Sobaran Singh. It is further alleged that a day before the occurrence appellant Manish had assaulted Kamta with butt of revolver.

28. The next motive alleged by the prosecution was that Lala Ram, s/o. Guman deceased had murdered Ganga, the father of Manish some 13-14years ago and Lala Ram and other accused of the said case were acquitted from the Court. The third motive alleged by the prosecution was that Smt. Kapoori Devi deceased had fought election of Up Pradhan against Ram Narain Darzi, father of appellant Babloo Darzi and she won the election by a margin of only one vote.

29. There is no satisfactory evidence to establish the above motive against appellant Manish. Sobaran Singh whose tractor was driven by Kamta deceased had not been examined. Though Shishupal Singh (PW 1) a boy of 14 years, s/o. Sobaran Singh has been examined as (PW 1) and Karan Singh (PW 2) and Smt. Katori Devi (PW 3) have also stated about this motive. The warning or the objection given by appellant Manish to Kamta would have naturally been told to his master Sobaran Singh and he would have been the best person to state about the above motive. The assault by appellant Manish on Kamta a day before the occurrence has also not been established, as Smt. Katori Devi (PW 3) admitted that no report of such occurrence was lodged, nor medical examination of Kamta was done. The above , motive thus appears concocted for the purposes of the case. Assuming that appellant Manish has such sort of enmity with Kamta deceased, the above enmity cannot be said to be the ground for murder of Kamta and two other persons of his family. The above motive was confined to Kamta deceased and actuated thereby he would have ordinarily targetted Kamta alone and not other two members of his family.

30. The motive alleged for Manish against Guman deceased also does not appear convincing, as the alleged murder of Ganga father of Manish by Lala Ram, s/o. Guman and others was committed as late as 13-14 years ago. There is nothing on record to show that in between the acquittal of Lala Ram and the occurrence of this case any overt act was done by appellant Manish, while he was residing in the same village. Assuming that appellant Manish was bearing some grudge against Lala Ram, s/o. Guman, he would have taken revenge of the murder of his father with Lala Ram and not his aged father. No attempt was done on the life of Lala Ram or any of his brothers by appellant either in this incident or in any other incident during the period of 13-14 years. Therefore, this motive also does not appear to be a cause of the murder of as many as four persons in a series.

31. The third motive alleged against Ram Narain, father of Babloo Darzi that Smt. Kapoori Devi deceased had fought election of Up Pradhan against Ram Narain, in which she had defeated him by a margin of only one vote also does not appear to be a reason for such heinous crime, in which four persons lost their lives and two sustained injuries. Initially, the prosecution has set up a case that Ram Narain had

hatched out a conspiracy to eliminate Smt. Kapoori Devi, but the trial Court has held that the evidence of alleged conspiracy was not convincing and Ram narain as well as Smt. Radha Rani were acquitted of the charges of conspiracy and the State has not preferred any appeal against their acquittal. Therefore, this motive also does not appear to be a reason of heinous murder of four persons.

32. It is also alleged by the prosecution that on account of above motive the other appellants namely Halke, Laxman Singh, Babloo Darzi, Suraj and Dheeraj also joined the common object along with appellant Manish and actively participated in the murder of four persons and murderous assault on two persons. There appears no common bond among all the appellants and there is no satisfactory evidence to link all the appellants with the above motive, as all the appellants do not belong to one family and they were members of different communities. There is also no evidence to prove their association with appellant Manish.

33. In this way, the motive alleged by the prosecution was very weak and that too only on the part of one of the appellants with no common bond of others.

34. In this case, there is remarkable feature that none of the family of the deceased or any other member of the village had reported the matter to the police, nor had lodged report of the occurrence nor had informed even Chaukidar or any other responsible person of the village. The case of prosecution is that all the members of the family of the deceased and other villages shut down their doors and kept silence over such a heinous crime. It was one Babloo Rajput of village Pathredi, lying across river Betawa, who gave telephonic information to Police Station Moth at about 7.45 p.m. that 4\*5 dacoits had murdered Babloo Pandit of his village (Pathredi), P. S. Dehrauli and on above telephonic information, the police came in action,

35. The oral report of this case was lodged by Inspector Madan Singh of P. S. Moth at 10.10 p.m. i.e. after about 5 1/2 hours of the occurrence, while the distance of police station was only 8 kms. Information given to police by Babloo Rajput indicated that the murder of Babloo Pandit of village Pathredi was done by 4-5-dacoits. There is nothing on record to show as to who was responsible for the murder of Babloo Pandit of village Pathredi. This angle was not at all investigated,

as to whether actually a gang of dacoits was operating eliminating the persons believed by them to be the informers of police. There was increased possibility of its being so in view of simultaneous murders taking place at different places and the members of the victims' families keeping a stony silence. Though the prosecution set up a case that the appellants of this case after committing murder of four persons of village Saujana crossed river Betawa, went to village Pathredi and murdered Babloo Pandit, as it is mentioned in the G. D. report (Ext. Ka-23) regarding registration of case under Sections 25/27 Arms Act against Halke alias Gulab and that too is based on alleged confession of appellant Halke, which is not admissible. It has not been clarified whether any investigation regarding murder of Babboo Pandit of village Pathredi was done or not and who were the assailants of said case. No reason has been shown as to why the appellants would commit murder of Babboo Pandit of another village with whom they had no sort of enmity. It is also not the case of the prosecution that the appellants were so desperate or criminals that they did this heinous crime as well as murder of Babboo Pandit of another village to satisfy their sadistic pleasure. Thus, the report of the occurrence was lodged by a person, who had no personal knowledge of the case and it was lodged by a Police Officer, who unfortunately could not be examined, as he died before trial of this case. This incidence has a serious concern with the working of police and not coming forward of any person of the family of the deceased or of the village in lodging the report speaks volumes regarding genuineness of the contents of F.I.R.

36. Now we discuss the evidence of ocular witnesses of each incident.

37. In the first phase of incident Kamta deceased was allegedly murdered in front of house of Sobaran Singh. The sole witness of this phase of incident is Shisupal Singh (PW 1) a boy of 14 years, s/o, of Sobaran Singh. He stated that at about 5,30 p.m. on the evening of occurrence he was sitting in front of his door along with this younger sister Priyanka, younger brother Ashish and mother Smt. Pista. Kamta deceased came in front of his house and he was talking with him. In the meantime, appellants Manish, Halke, Babuji alias Laxman and Rajjan came there. Manish was having revolver, Halke single barrel gun, Laxman alias Babuji half gun of 315 bore and Rajjan a danda. Manish told to Kamta that he had lodged report

against him at the police station and he would not spare him alive. The other persons with Manish exhorted. Manish fired on Kamta with his revolver, due to which he fell down. 3-4 shots were also fired by other appellants and accused. Thereafter, the assailants went towards house of Shyam Babu. After sometime, his father came to the spot and saw what happened to Kamta deceased. Lifting Kamta he proceeded towards his house, but when he reached in front of the house of Shyam Babu, he saw that some one was coming. Therefore, leaving the dead body of Kamta there he returned back to his house.

38. The F.I.R. version disclosed that when Madan Singh informant along with police force reached at village Saujana he saw in the head light of the jeep one person lying dead on the way. The house in front of the said place was closed. He knocked the door of the said house for about 10 minutes and disclosed his identity and then one person named Shyam Babu Yadav opened the door and he told that the dead body belonged to Kamta, who was murdered by Manish, Halke, Babloo Darzi and Laxman Singh of his village and after murdering Kamta above persons went to the house of Kamta and murdered his family members and thereafter they went to the house of Guman Ahirwar, where they also fired shots. This shows that the information regarding incident in which murder of Kamta took place was given to the Inspector for the first time by Shyam Babu Yadav. But Shyam Babu Yadav was not examined by the prosecution. The prosecution has also not cared to examine Sobaran Singh, who allegedly lifted the dead body of Kamta and left it in front of the house of Shyam Babu Yadav and the prosecution felt contended by examining a boy of 14 years, son of Sobaran Singh.

39. Rajjan, who was acquitted by the trial Court was not named as one of the assailants by Shyam Babu to Inspector Madan Singh. According to evidence of Shishupal Singh (PW 1), Kamta deceased was murdered on the way in front of his house, he fell down there and blood had fallen on that place. Site plan (Ext. Ka 25) shows that blood was found at place 'B', which is in front of the house of Shyam Babu. But the recovery memo (Ext. Ka-4) proved by Inspector Vinod Kumar (PW 15) shows that blood was collected from place 'A' where Kamta was murdered. Place 'A' is in front of house of Sobaran Singh. Thus, according to recovery memo (Ext. Ka-4) no blood was collected from place 'B'. The F. I. R. also shows that

Shyam Babu told that Kamta was murdered in front of his house where his dead body was lying. It does not show that Kamta was murdered at place A. Thus, there is significant variance in the evidence of Shishupal Singh (PW 1) and the place of murder of Kamta given in the F. I. R. and site plan.

40. Shishupal Singh (PW 1) stated that the police came in front of his house at about 9.30 p.m. in the night and enquired from him. There is no mention in the F. I. R. that any enquiry regarding the occurrence was made from Shishupal Singh (PW 1). The witness has also introduced name of Rajjan as one of the accused. According to his evidence only Manish fired from his revolver and thereafter other persons having gun and half gun also fired.

41. In this way, Shishupal Singh (PW 1) appears to have been introduced subsequently and his evidence is not supported by F. I. R. version, place from where blood was recovered and other circumstances of the case. He also does not appear wholly reliable witness and there is no corroboration of his evidence. His evidence suffers from material discrepancy.

42. The witness is admittedly son of Sobaran Singh, whose tractor used to pass through Bada of Manish and Manish used to object on the passing of tractor of Sobaran Singh from his Bada and Kamta deceased was driver of tractor of his father. Moreover, the evidence of witnesses does not link the other appellants to join their hands in the murder of Kamta. Shishupal Singh (PW 1) therefore appears to be a partisan witness and therefore sole testimony of Shishupal Singh regarding incident of murder of Kamta does not inspire confidence. It is true that testimony of a witness cannot be discarded simply because he was a partisan witness. But there are other circumstances referred to above, which cast strong doubt on the veracity of the witness who cannot be believed.

43. On the next phase of incident in which Bhanu Pratap and Smt. Kapoori Devi were murdered and Karan Singh (PW 2) and Smt. Katori Devi (PW 3) were assaulted. The prosecution has relied on ocular testimony of Karan Singh and Smt. Katori Devi (PW 3), Karan Singh (PW 2) a boy of 15 years old stated that on the evening of occurrence at about 5.30-4.45 p.m. he along with his uncle Bhanu Pratap deceased, mother Smt. Kapoori Devi deceased, maternal uncle Deshraj,

Bua Parvati Devi alias Smt. Katori Devi (PW 3) was warming himself at Alav in front of his house. His cousin brother Harendra was standing in front of door. Appellant Manish armed with licensed revolver of his mother, Halke armed with 12 bore single barrel gun, Laxman armed with 315 bore half gun, Babloo armed with 12 bore half gun and Suraj armed with country made pistol came from western side and surrounded him and other persons present near Alav. They started indiscriminate firing. The shots fired by Manish hit his uncle Bhanu Pratap, shot fired by Halke hit his mother Smt. Kapoori Devi. He also sustained injuries by shot fired by Manish. He could not see as to whose shot hit Smt. Katori Devi. Bhanu Pratap fell down and died on the spot. His mother moved three four steps towards his house and then fell down and died. After firing the above persons went towards east. After going of the appellants, his brother Devendra and Harendra and Bhabhi Maleshwari and Mama Deshraj lifted the dead bodies of Bhanu Pratap and Smt. Kapoori Devi inside the house and closed the doors from inside because the sound of fire was heard from western side of the village and there was apprehension that dead bodies of his uncle and mother could be lifted by the assailants. He was also informed that his uncle Kamta was also murdered in front of the house of Sobaran Singh. The police came to his house at about 9-9.30 p.m. and on assurance given by the police the door of his house was opened. He and his Bua Smt. Katori Devi were taken to Moth Hospital and thereafter to Medical College, Jhansi.

44. Smt. Katori Devi (PW 3) stated that her matrimonial home was in village Dariyapur. Prior to 5-6 days of occurrence she had come to her Maika at village Sawjana. On the date of occurrence at about sunset her brother Bhanu Pratap, nephew Karan Singh and maternal uncle of Karan Singh were warming themselves at Alav in front of the house. Devendra was standing at the door and Harendra was standing in front of the garage. Appellant Manish armed with revolver, Halke armed with single barrel gun, Laxman, Suraj and Babloo armed with half gun and country made pistols came there from the side of Chabutara (western side). Manish fired on Bhanu Pratap, Halke fired on Smt. Kapoori Devi and other accused also fired. She stood up and sustained injuries on her chest, which came out from her back. She could not see whose shot hit her. Her nephew Karan Singh also sustained two shots. But she could not see whose shot hit him.

After firing the accused went towards the house of Manish. Bhanu Pratap and Smt. Kapoori Devi died on the spot. The dead bodies of Bhanu Pratap and Smt. Kapoori Devi were brought inside the house by Devendra and Harendra and maternal uncle of Karan and they bolted the door from inside, as sound of fire was coming and they were apprehending that assailants might again come to the spot.

45. In the F. I. R. it is mentioned that Manish, Halke, Babloo Darzi, Laxman Singh alias Babuji, only four persons, were the assailants in the incident in front of house of Bhanu Pratap. But Karan Singh (PW 2) and Smt. Katori Devi (PW 3) added name of Suraj also and assigned him role of firing with country made pistol. In his cross examination Karan Singh (PW 2) stated that Manish fired three shots, one shot hit Bhanu Pratap and two shots hit him. Medical evidence of Dr. Pratap Singh (PW 7) shows that Bhanu Pratap had sustained one gun shot wound of entry and four gun shot wounds of exit. Two pellets were recovered from chest wall of Bhanu Pratap. The doctor opined that injury of Bhanu Pratap was caused by cartridge having pellets. The two injured witnesses stated that Manish appellant, who fired on Bhanu Pratap was having licensed revolver of her mother. Post mortem report of Smt. Kapoori Devi shows that she had sustained one gun shot wound of entry and one gun shot wound of exit. According to witnesses shot on Smt. Kapoori Devi was fired from gun by appellant Halke. The evidence of Dr. N. R. Pandey (PW 8) shows that Karan Singh had sustained two lacerated wounds and one abrasion of the small diameter. These injuries do not appear to have been caused by revolver. Thus, the evidence of Karan Singh (PW 2) and Smt. Katori Devi (PW 3) is in total contradiction with medical evidence.

46. The evidence of above two witnesses also suffered from material discrepancy, as Karan Singh had told before the I. O. that appellants came from eastern side. He had not told before the I. O. as to who fired on him. He had also not told the name of Suraj as assailant before the I. O. The description of weapons possessed by each of the accused was also not told before the I. O. by the witness. Smt. Katori Devi (PW 3) had also told before the I. O. that assailants came from eastern side and in her evidence she told that assailants came from side of Neem tree, which is towards west. She had also not told before the I. O., as to who fired on Bhanu Pratap and Smt. Kapoori Devi. She had also not told the weapon

possessed by Suraj.

47. The conduct of above two witnesses is also irresponsible as after the occurrence none had raised alarm, nor had cried for help, nor had informed the incident to the villagers or sought their help. If the assailants were well known, to the witnesses, the dead bodies of the two deceased would have not been lifted and kept inside the house, but the normal conduct of the witnesses and other members of the family was to raise alarm, seek help of villagers and inform the police. Their version is also in contradiction with the F. I. R., medical evidence and the stand taken during investigation.

48. It is true that Karan Singh (PW 2) and Smt. Katori Devi (PW 3) are injured witnesses and their presence on the spot cannot be doubted. But the injuries on the person of a witness is guarantee of his presence, but it is no guarantee of his truthfulness. Highly improbable conduct of the witnesses and material discrepancies referred to above make their testimony unbelievable.

49. It is true that minor discrepancies and variation, which do not have any effect on the credibility of the witnesses cannot be the basis of discard intrinsic value of the evidence. As observed by the Apex Court in State of Rajasthan v. Smt. Kalki, AIR 1981 SC 1390 : (1981 Cri LJ 1012), normal discrepancies in evidence are those, which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, such as shock and horror at the time of occurrence and those are always there, however honest and truthful a witness may be. Material discrepancies are those, which are not normal, and not expected of a normal person. Courts have to level the category under which a discrepancy may be categorized, while normal discrepancies do not corrode the credibility of party's case, material discrepancy does so. As mentioned above, the discrepancies in the evidence of those two witnesses are material as they affect the material aspects of the case, and therefore, these material discrepancies corrode the credibility of these two witnesses. Though, being injured persons, the testimony of Karan Singh (PW 2) and Smt. Katori Devi (PW 3) do not inspire confidence.

50. On the last phase of the incident in which Guman Ahirwar was murdered, the prosecution has relied on sole testimony of Smt. Nand Rani (PW 4). She stated that on the date of occurrence at about sun set she was drawing water on the hand pipe. Her husband Guman was cutting fodder by chaff cutting machine. In the meantime, Manish armed with revolver, Halke armed with gun, Lakshman armed with half gun and Suraj and Dhiraj armed with Katta came there from western side. Manish with revolver shot on her husband Guman. Her husband fell down sustaining injury. Thereafter, all the appellants fired from their respective weapons. The appellants then went back through the way they had come. She closed doors of her house and started weeping. At about 9 p.m. police came, and told that they were police officers and asked to open the door. Then she opened the door. The police enquired about the occurrence and she narrated entire story. She further stated that father of Manish was murdered and her son Lala Ram was falsely implicated in said case. Lala Ram was arrested by police and sent to jail. Later on he was acquitted of said case. On account of it, Manish was having enmity. While she was weeping before police, she was told that Kamta, Bhanu Pratap and Smt. Kapoori Devi were also murdered.

51. In her cross examination she admitted that her son Lala Ram who was residing at village Dursada, had come to her house, 2 minutes before the occurrence. But in an answer to a Court question she stated that Lala Ram had gone to ease himself. She further stated that when Lala Ram came to her house prior to occurrence she was inside her house and she had no talk with him. Kailash (her another son) was inside the house. He was tethering cattle. If Manish had to take revenge of his father's murder, he would have made Lala Ram his target who had come to village and not his 70 years old father Guman. The explanation of Smt. Nand Rani that Lala Ram had gone to attend call of nature within two minutes of his coming to the house from village Dursada does not appear convincing, as it was an improbable conduct of Lala Ram to go to attend call of nature within 2 minutes of his arrival without talking with his mother and if he had no talk with his mother, she could not know that he had gone to attend call of nature. Smt. Nand Rani (PW4) further stated that after the murder of Guman, Lala Ram did not return to her house after attending call of nature and remained somewhere else and came after arrival of police. When the assailants left the spot Lala Ram would

having returned to his house and at least would have raised alarm. Kailash another son of Guman was at the house but he did not raise any cry even after going of the assailants and did not take help of villagers to report the matter to the police.

52. Smt. Nand Rani (PW 4) further stated in her cross-examination that after occurrence she and her son clasped dead body of deceased and wept but she further stated that leaving the dead body at the spot she and Kailash went inside of the house after one minute. If the assailants had left the spot, there was no occasion for the witness to go inside the house leaving the dead body uncared for. Her conduct thus was highly improbable.

53. Smt. Nand Rani (PW 4) had not told the name of Halke before Madan Singh on the night of occurrence, as his name does not find place in F. I. R. as assailant of Guman. She had not told before I. O. that Suraj and Dhiraj were having Kattas. She had also not told to Madan Singh that Manish fired on her husband. The role of Manish was thus subsequently developed. The witness told before the I. O. that occurrence took place at 6 p.m. but she subsequently changed her version and stated before the Court that occurrence took place at the time of sunset, to introduce visibility aspect as on the date of occurrence sun set at 5.15 p.m.

54. In this way conduct of Smt. Nand Rani (PW 4) is highly improbable. Her evidence is full of subsequent developments to suit the prosecution story. There are material discrepancies in her evidence. All these factors taken together discredit her sole testimony regarding third phase of the occurrence in which Guman deceased was murdered. Smt. Nand Rani (PW 4) is thus not wholly reliable witness and her evidence does not find corroboration from any other evidence. Therefore, her sole testimony is not worthy of credence.

55. There is another remarkable feature in the case that only two boys of 14-15 years old and two ladies have been examined though adult members had also seen the occurrence. This sort of selection of witness has not been explained.

56. Regarding complicity of appellants Babloo, Suraj and Dhiraj all the four ocular witnesses have given different versions, which do not coincide with each other.

57. Shishupal Singh (PW 1) had not named Babloo, Suraj and Dhiraj appellants in the murder of Kamta deceased. He had no doubt named Rajjan with no role. The trial Court had rightly disbelieved participation of Rajjan and acquitted him.

58. Karan Singh (PW 2) had named only Babloo and Suraj and had not named Dhiraj. He had not told name of Suraj before the I. O. The specific role of Babloo, and Suraj was also not stated by the witness.

59. Smt. Katori Devi (PW 3) had also not named Dhiraj. She had not assigned any weapon to Suraj before the I. O. She had also not assigned any specific role to Babloo and Suraj.

60. Smt. Nand Rani (PW 4) had not named Babloo, She had also told before the I. O. that Suraj and Dhiraj were having country made pistols. No specific role was assigned to them.

61. The scrutiny of evidence of ocular witnesses shows that the appellants Babloo, Suraj and Dhiraj were not present at places of occurrence of any phase.

62. The learned A. G. A. contended that presence of above appellants with weapons has been assigned by the ocular witnesses and this shows that they had shared common object and therefore they were rightly convicted with the aid of Section 149, I. P. C. Having considered the evidence on record we find that these three appellants had no common bond with other accused Manish, Halke and Lakshman. Motive to eliminate Kamta and his family members (Bhanu Pratap and Smt. Kapoori Devi) and Guman has been assigned only to Manish. The alleged conspiracy of appellants Babloo, Suraj and Dhiraj with Ram Narain and Smt. Radha Rani was not accepted by the trial Court. Therefore, there is no evidence to show that Babloo, Suraj and Dhiraj had any purpose to join Manish and share common object. There was no unity of object. The initial case of prosecution was that all the six appellants and Rajjan participated in all the three phases of the occurrence, but as mentioned above even presence of all of them has not been supported by the witnesses. Rajjan whose case was at par with Babloo, Suraj and Dhiraj was acquitted by the trial Court.

63. In this way we find that participation of Babloo, Suraj and Dhiraj has not been proved and their names appear to have been added just to increase the number of assailants in proportion to the number of deceased. The prosecution could also not link this crime with the murder of Babloo Pandit of village Pathredi committed in same series.

64. The above facts and circumstances of the case indicate that Inspector Madan Singh and the Investigating Officer have done only patch work to take credit and to show that crime has been worked out so as to avoid displeasure of higher authorities as to the slack law and order situation in the area. The crime appears to have been committed in some other manner by some others. The assailants were so barbarous that nobody could dare to resist and report the matter to the police. The local police wrongly implicated the appellants of the same village and of neighbouring village to cater its incompetence to lay hands on real culprits.

65. In view of our above discussions and observations we find that prosecution has utterly failed to establish the guilt of the appellants and therefore conviction and sentence of appellants cannot be sustained. The appeals thus succeed.

66. Criminal Appeals No. 1795 of 2002, 1802 of 2002, Jail Appeals No. 1846 of 2002 and 1845 of 2002 as well as Criminal Appeal No. 2461 of 2002 are, accordingly, allowed. Conviction and sentence of appellants of above appeals are set aside and they are acquitted. The reference sent by Sessions Judge is, accordingly, rejected.

67. All the appellants are in jail. They shall be released forthwith unless wanted to be detained in connection with some other case.