

**Satya Narain Vs. State**

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**Court :** Allahabad

**Decided On :** Dec-10-1984

**Reported in :** 1985CriLJ966

**Judge :** A.S. Srivastava and ;S.I. Jafri, JJ.

**Appellant :** Satya Narain

**Respondent :** State

**Judgement :**

**S.I. Jafri, J.**

1. Satya Narain, son of Shukru Pasi, resident of village Kantipur, Police Station Manjharpur, District Allahabad, has been convicted under Section 302 IPC and sentenced to life imprisonment by Sri J. S. Misra, 2nd Additional District and Sessions Judge. Fatehpur by his judgment and order dated 30-8-1978. Co-accused Dhanraj was also prosecuted along with Satya Narain but he was acquitted by the trial Court. This appeal has been filed by the appellant against his aforesaid conviction and sentence recorded by the trial Court.

2. The prosecution case is that Chhedilal, complainant was married to Smt. Ram Kali, daughter of Ram Prakash who was the elder brother of appellant Satya Narain. Smt. Ramkali died of Cholera in the morning of 24-10-76 at about 10 a.m. in village Bhaidpur, D, S. Khakreru, Distt. Fatehpur. The complainant sent a

message to his father-in-law Ram Prakash in village Kantipur regarding the death of his wife. The complainant awaited the arrival of Ram Prakash and his family members up to 3 p.m. but when none turned up from village Kantipur, the complainant and his father Maiku along with Pyare, Lallu, Ramhit, Kallu, Suresh, Kurkur alias Choa, Daswan, Dinai, Surajdin and Gokul carried the dead body of Smt. Ram Kali from village Bhaidpur to Jamuna Ghat, Tulsipur for the last rites in the Jamuna river. The dead body of Smt. Ramkali was immersed in Jamuna Ghat at about 4 p.m. and the complainant along with his companions returned from Jamuna Ghat for his village Bhaidpur and when they arrived at the crossing of villages Makhua and Gokalpur near the field of Matadin Kewat at about sunset, the appellant Satya Narain armed with a gun and a belt of cartridges accompanied by one unknown person Dhanraj came from the northern side and stopped. Maiku deceased and asked him as to where he had thrown the dead body of his niece Ramkali. Maiku replied that he had immersed the dead body in Jamuna ghat Tulsipur after performing last rites and they were returning from there. Thereupon, it is alleged, the appellant Satya Narain abused Maiku deceased by saying why Smt. Ramkali was immersed in the river without waiting for him when they had sent information to him and he further said that he would now throw their bodies in the Jamuna. The appellant Satya Narain then, opened fire at Maiku deceased which hit on his face, neck and leg from a distance of 12 or 13 steps. Maiku tried to escape towards south but the appellant in the meantime fired a second shot at him hitting at his thigh and buttock and Maiku fell down dead in the field of Matadin. Pyare and Lallu who were with Maiku at the time of firing, objected and asked the appellant Satya Narain as to why he had shot at Maiku. Thereupon, appellant fired the third shot at Pyare from, the same distance of 12 or 13 paces which hit the deceased Pyare. On receiving the injury Pyare also fell down in the field of Matadin and succumbed to his injuries. Lallu tried to escape towards Gopalpur but he was chased and fired upon by appellant Satya Narain from a very close range and Lallu also fell down on receiving the injury at distance of about 50 to 60 paces from the field of Matadin and he died there. It is also alleged that when the appellant Satya Narain was firing from his gun, he had entrusted the belt of cartridges to his unknown companion (accused Dhanraj) and Dhanraj had supplied cartridges to the appellant for loading the gun. Consequent to the firing,

the companions of the three deceased had dispersed here and there and concealed themselves in the eastern field of Jwar. It is also alleged that the appellant after committing the triple murder of Maiku, Pyare and Lallu warned the complainant and his companions not to approach police, otherwise they would also meet the same fate. It is further said that on hearing the sound of firing, persons of village Tulsipur had shouted that they were coming there. Appellant Satya Narain after threatening the witnesses had made good his escape along with his companion Dhanraj towards the side of Gopalpur.

3. After the occurrence, the complainant Chhedilal went to his village Bhaidpur in the late hours of the night and there he prepared the written report Ex. Ka 1 and went to police outpost Dhata, Police Station, Khakreru and handed over his report at 7.30 a.m. next morning to the head constable. The head constable on the basis of the aforesaid report Ex.Ka 1, prepared Chik, report Ex.Ka 6 and registered a case under section 302 IPC in the General Diary of the Police outpost, copy of which is Ex.Ka 7. Later on, papers were sent from outpost Dhata to police station Khakreru the same day an entry in the General Diary was made therein. Copy of the same is Ex.Ka. 5. Jagannath Tiwari PW 6, Station Officer of police station Khakreru took up the investigation of the case and started for the place of occurrence and reached there at about noon and there he found the three dead bodies of Maiku, Pyare and Lallu on the spot. He recorded the statement of Chhedilal PW 1 and conducted inquest on the dead bodies of Maiku, Pyare and Lallu. The inquest reports are Exts. Ka 8, Ka. 11 and Ka 14 respectively. He sent the dead bodies of the three deceased in a sealed cover to the mortuary for post mortem examination through constables Kanhaiya Singh and Rajaram. He also found blood there and collected the blood stained and unstained earth and kept the same in separate Dibbas. He also prepared the recovery memos. He found two empty cartridges at the place of occurrence and prepared recovery, memos Ex Ka 24. The empty cartridges are ' marked material Exts. 22 and 23.

4. The Investigating Officer also took the statements of witnesses Kallu, Gokul and Daswan on 20-10-1976 (sic). Then Investigating Officer arrested the appellant on 27-10-1976. During the course of investigation, co-accused Dhanraj surrendered in the Court on 18-12-1976. After ^completing the investigation, Jagannath Tiwari,

Station Officer, submitted charge-sheets against the appellant and co-accused Dhanraj.

5. Doctor M.M.S.A. Khan PW 4 conducted autopsy on the dead body of Maiku at 2.30 p.m. on 27-10-1976 and he found the following ante mortem injuries on the dead body of the deceased.

1. Multiple gunshot wound of entry present in an area of 7, 1/2' X 3' extending horizontally, from the left eye to the occipit and vertically from the middle of the left cheek to left temporal region 3' above the left ear, which is torn each 1/2' X 1/4' X skin to cavity deep. Blackening present direction from left to right, forwards, backwards and downwards Bones fractured underneath.

2. Multiple gunshot wound of entry in an area of 2' X 2' present over the posterior lateral aspect of middle third of right thigh each 1/2' X 1/4' X through and through. Blackening present. Direction from right to left forwards, backwards and upwards. Bone underneath fractured.

3. Multiple gunshot wound of exit in an area of 2 1/2' X 1 1/2' present over the antero-medial aspect of upper third of right thigh, each 1/2' X 1/4' X through and through.

4. Multiple gunshot wound of entry in an area of 2' X 1 1/2' present over the antero-medial aspect of the upper third of left thigh. No blackening present. Direction from right to left forward, backward and upward.

6. According to the opinion of the Doctor, death was caused due to shock and haemorrhage as a result of the injuries. Doctor Khan also conducted post-mortem on the dead body of Pyare on 27-10-1976 at 3.30 P.M. and he found the following ante mortem injuries on his person, '

1. Lacerated wound 4' X 2' X muscle deep present over the inner aspect of middle and lower third of left upper arm.

2. Gunshot wound of entry 1/2' X 1' X through and through present over the small of neck on the left side. Bleeding present, direction from backwards, downwards

and forwards, bones underneath fractured.

3. Multiple gunshot wound of exit five in number in an area of 4' X 2' extending from the left side of neck to the left side of the cheek and lateral to the left angle of the mouth.

7. According to the opinion of the Doctor, the cause of death was due to shock and haemorrhage as a result of injuries.

8. Dr. Khan also conducted autopsy on the dead body of deceased Lallu on 27-10-1976 at 4.10 p.m., and he found the following ante mortem injuries on his person.

1. Multiple gunshot wounds of entry present in an area of 3 1/2' X 2' over the xiphialastral , region 4" below and medial to the right nipple each 1/2" X 1/2" X cavity deep. Blackening present from onwards, downwards and backwards.

2. Gunshot wound of entry 1 1/2' X 1' X through and through present over the front aspect of lower third of left forearms. Blackening present. Bones fractured underneath.

3. Gunshot wound of exit 2' X 1 1/2' X through and through present over the posterior aspect of lower third of left forearms.

4. Gunshot wound of entry 1/2' X 1/4' X muscle deep present over the left gluteal region 1/2' below the left iliac crest. Blackening - present. One gunshot recovered.

9. According to the opinion of the doctor, the death was caused due to shock and haemorrhage as a result of injuries.

10. The appellant pleaded not guilty to the charge and attributed his false implication in the case due to enmity. The appellant stated that Maiku, Pyare and Lallu deceased were dacoits and the accomplices of notorious dacoit Pitambar of Mukhaba and Bisal of Irai and the murder of the deceased persons Maiku, Pyare and Lallu took place while the deceased along with other dacoits were sharing the looted valuables after committing dacoity and that while they were dividing the booty in the Nala situate near the place of occurrence, there emanated a quarrel between them over the division of booty and the associated of deceased persons

opened fire at them, resulting in their death. He also alleged that it was only in the morning that the dead bodies of the three deceased were spotted by Daya Shankar, Gram Pradhan of village Tulsipur who went to out post Dhata and informed the -police about the three dead bodies in the morning of 24-10-1976. He further stated that the wife of Chhedilal did not die of Cholera but she had eloped with Dulare Pasi of Gora Gaon. The appellant Staya Narain sated that he was posted as constable at Kanpur and was on his duty at Kanpur at the time and date of occurrence. According to him, he was present at the roll call at police Lines, Kanpur but he did not produce any evidence about his alleged alibi.

11. The appellant examined two witnesses in his defence and they are DW 1 Daya Shankar, Pradhan of village of Tulsipur and DW 2 Bhagwati Prasad.

12. The prosecution examined six witnesses in support of its case arid out of them, Chhedilal PW 1, Kallu PW 2 and Ramhit PW 3 are the witnesses of the occurrence.

13. PW 1 Chhedilal is the son of deceased Maiku. The other two deceased Pyare and Lallu are his uncles. Chhedilal (PW 1) has stated that on 24-10-1976 at about 10 A.M. his wife Smt. Ramkali was afflicted With Cholera and died of it in his village Bhaidpur. He sent information to that effect to her father Ram Prakash in village Kantipur. He further stated that he waited for Ram Prakash but when he did not turn up there up to 3 p.m. he then along with 11 persons including PW 2 Kallu, PW 3 Ramhit carried the dead body of Smt. Ramkali to Jamuna Ghat, Tulsipur for immersion. After the immersion, while they were returning back to their village and as soon as they reached near the crossing at the out skirts of Tulsipur near the field of Mata Din Kewat at about sunset, the appellant Satya Narain, the uncle of Smt. Ram Kali, armed with gun and a belt of cartridges along with one unknown person (co-accused Dhanraj) came from the northern side in front of Maiku deceased. He further stated that appellant Satya Narain stopped his father Maiku and asked him as to where he had thrown the dead body of his niece Ram Kali and when Maiku replied that he had immersed the dead body in the Jamuna Ghat Tulsipur, the appellant Satya Narain became furious and uttered abuses to Maiku and fired twice with his gun at Maiku which hit him at his face, thigh and buttock

and Maiku stumbled down dead in the field of Mata Din. He further stated that on the protest raised by Pyare and Lallu deceased, appellant Satya Narain opened a third fire at Pyare and Pyare also on receiving the injuries, fell down dead on the ground in the field of Matadin. Lallu deceased made an unsuccessful attempt to run for safety towards Gopalpur but appellant Satya Narain chased him and opened a fourth shot with a close range from his gun which hit Lallu and Lallu also fell down dead at a distance of 50 to 60 paces from the field of Matadin. He also stated that appellant Satya Narain while firing, had handed over the belt of cartridges to his unknown companion (accused Dhanraj) and Dhanraj had supplied cartridges for loading the gun to Satya Narain appellant. He also stated that on account of firing, his companions had run for their safety and concealed themselves in the eastern field of Jwar Crop. He further stated that after committing the triple murder of Maiku, Pyare and Lallu, appellant Satya Narain held out threats to them not to approach the Police, otherwise they would also meet the same fate. He also stated that on the alarm raised by them, the persons of village Tulsipur had shouted that they would be coming. After the appellant had run away, the complainant Chhedilal went near the victims and found all the three persons dead. He stated that he remained near the dead bodies during the night and about two hours before dawn, leaving the dead bodies at the place of occurrence in the case of his companions, he first went to his village Bhaidpur and narrated the entire incident to his mother and wrote down the written report Ex. ka 1 and then, he left for police outpost Dhata of police station Khakreru along with the report and lodged the same at 7.30 a.m. on 25-10-1975. The Head constable of Dhata, police outpost on receiving the written report, prepared a Chik report on the basis of the written report and registered a case at the Police outpost. He further stated that he was directed by the head constable to go back to the place of occurrence and said that Darogaji would be reaching the place of occurrence subsequently, Kallu PW 2 and Ramlal PW 3 have also narrated the same story regarding the occurrence as given by Chhedilal PW 1. Both these witnesses are Pasi (Scheduled Caste) by caste like Chhedilal complainant.

14. Sri C. S. Saran, the learned Counsel for the appellant contended that the evidence of the three eye-witnesses examined in this case is in direct conflict with the medical evidence. According to the evidence of Chhedilal PW 1 his father had

received gunshot injuries by two shots fired by Satya Narain appellant but a perusal of the post mortem report and the statement of Doctor MMS Khan PW 4 would clearly indicate that injury No. 1 of deceased Maiku is the out come of single shot having multiple gunshot wounds in an area of 7' X 3' extending horizontally from left eye to the occiput and vertically from the middle of the left cheek to left temporal region. Blackening present direction from left to right, forwards, backwards and downwards. From the evidence of Chhedilal PW 1, it is quite apparent that the appellant had fired his gun at the deceased Maiku from a distance of 12 or 13 steps. The dispersal of the gunshot pellets in an area of 7 1/2' X 3' with blackening could not be caused from a gun if the gun had been fired from a distance of 12 or 13 steps. It appears that in view of the blackening and long dispersal of the pellets, this injury No. 1 clearly appears to be the result of firing by a country made pistol from a close range and not by a gun as alleged by the prosecution witnesses. It is more probable that the deceased had received the injury No. 1 by a country made pistol fired from a distance of within 6ft and not by a gun from a distance of 12 or 13 paces as stated by the complainant and his witnesses. Further, the other two injuries of Maiku, namely, injury No. 2 and injury No. 4 also appear to be the result of two separate shots. Therefore, the prosecution evidence that the deceased Maiku was fired twice by the gun of appellant is belied by the medical evidence.

15. According to the prosecution, Pyare deceased had also received injuries from the gun of appellant Satya Narain when he fired his gun for the third time. From the statement of Doctor Khan PW 4 and also looking to the post mortem report of deceased Pyare, two injuries were found on the person of Pyare deceased. The first injury was a lacerated wound 4' X 2' X muscle deep on the aspect of middle and lower and of the left upper arm. According to Dr. Khan PW 4 this lacerated injury was caused by a blunt weapon. The prosecution has failed to explain this injury. As far as the second injury of Pyare deceased is concerned, the prosecution evidence is that it was also fired by the gun from a distance of 12 or 13 steps, but in this injury also blackening was present around the wound. This injury appears to be the result of firing by a country made pistol from within a distance of six ft. Therefore, the oral testimony of the witnesses is again belied by the medical evidence.

16. Now coming to the injury of Lallu deceased which is said to be the result of 4th shot fired by the appellant Satya Narain. It may be noted that Lallu had received three gunshot wounds. Injury No. 1 consists of multiple gunshot wounds of entry in an area 3 1/2' X 2' with blackening present injury No. 2 is also a gunshot wound on entry 1 1/2' X 1' X through and through with blackening present over the front aspect of lower third of left forearm. Injury No. 4 is also a fire arm injury 1/2' X muscle deep over the left gluteal region 3 1/2' X below the left iliac crest, blackening present. Thus, these injuries in view of the blackening and long dispersal of pellets on the body of the deceased appears to be the result of two shots fired from a country made pistol and not by a single fire by gun. It is more probable that these injuries were caused by two shots whereas the prosecution evidence is that they were caused by a single shot fired from the gun by the appellant Satya Narain. In view of the conflict between the oral testimony of the witnesses and the medical evidence as stated above, it is highly doubtful whether the occurrence was really witnessed by Chhedilal PW 1, Lallu P.W. 2 and Ram Hit P. W. 3.

17. It was next contended by the learned Counsel for the appellant that there stood inordinate delay in lodging the First Information Report at Police outpost Dhata and it is highly doubtful that the FIR of the occurrence was really lodged at 7.30 a.m. on 25-10-76 at Police outpost Dhata as alleged by the prosecution. It was pointed out by the learned defence counsel that Police outpost Dhata was hardly at a distance of about 2 kms. and there were eleven persons in the company of the complainant at the time of occurrence but no First Information Report was lodged at the Police outpost Dhata during the night of the occurrence though the occurrence is alleged to have taken place at about sunset. The complainant Chhedilal had stated that he had left for his village Bhaidpur in the night about two hours before dawn and after informing his mother about the occurrence, he had scribed the F.I.R. at his house whereas P.W.2 Kallu had stated that after the occurrence, he along with complainant Chhedilal remained near the dead bodies for the whole night and it was only in the morning that Chhedilal was sent to outpost Dhata for lodging the F.I.R. Likewise Ramhit PW 3 stated that he along with his companions remained near the dead bodies during the night and when Sub Inspector reached the place of occurrence, he, Suresh,

Chhote, Benti, and complainant Chhedi Lal were present there. If Chhedilal had really left the place of occurrence during the night to his village Bhaidpur, there stood no reason as to why Kallu PW 2 and Ramhit PW 3 would have stated that Chhedi Lai, First informant remained with them throughout the night near the dead bodies of the deceased. It was further contended by the learned Counsel for the appellant that constable Moharrir Shivraj Singh of police outpost Dhata who was alleged to have received the First Information Report Ex. Ka 1 and was also alleged to have prepared the Chik report Ex. Ka 6 on the basis of Ex. Ka 1 at police outpost Dhata was not examined in this case, and instead writing on the Chik report Ex. Ka 6 was proved by Jagannath PW 6, the investigating officer of this case of Police Station Khakreru. Jagannath Tiwari P.W.6 stated that Raghuvansh Singh Head constable of Police Station Khakroru had deceived the Chik report Ex. Ka 6 and F.I.R. Be, Ka 1 through constable Kanhaiya Singh of Police outpost Dhata on 25-10-1976 and the said head constable had made an endorsement in the General Diary of the Police station regarding it. It was urged by the learned defence counsel that neither Kanhaiya Singh constable for Raghuvansh Singh, head constable were produced in this case to prove the fact of receipt of Ex. Ka 6 and Ex. Ka 1 at police station Khakreru on 25-10-1976 and instead P.W.6 Jagannath Tiwari had proved the endorsement made by Raghuvansh Singh, head constable in the general diary of police station Khakreru. There is no explanation furnished by the prosecution on the record as to why Clerk constable Shiv Raj singh, constable Kanhaiya Singh and Raghuvansh singh, head constable were not examined in this case. They were material witnesses to prove that the First Information Report of the occurrence was lodged at police outpost Dhata at the time alleged by the prosecution and the same along with the Chik report was received at P.S. Khakreru on 20-10-1976 through constable Kanhaiya Singh at the time mentioned in the GD Entry of P.S. Khakreru.

18. No doubt, the link evidence is of a formal nature in a criminal case but sometimes, it assumes considerable importance for corroboration of certain material facts of the prosecution case. In such a situation if the prosecution agency deliberately withholds the production of such link evidence in the trial, it assumes greater importance and casts serious reflection on the truthfulness of the prosecution case. In this case also the vital link evidence as discussed above was

not produced by the prosecution. This fact coupled with other circumstances brought on the record of the case has led to the inescapable inference that the First Information Report was not lodged at Police outpost Dhata at 7.30 A.M. as alleged by the prosecution.

19. It was further contended by the learned Counsel for the appellant that there is interpolation and over-writings in Exts. Ka 9, Ka13, Ka14 and Ka16 prepared by Jagannath Tiwari, P.W.6 who had conducted inquest on the dead body of the deceased persons. Ex. Ka 9 is the Challan lash of Maiku deceased and in column No. 2 of this document which is meant for mentioning the date and time of the report at the Police Station, the time of report appears to be first written as 10 A. M. but subsequently it was interpolated and changed to 7,30 A.M. A similar type of interpolation is also seen in Ex. Ka 13 which is challan lash of Pyare deceased. In column No. 2 of this document, also 10 A.M. was first written as the time of report at the Police Station but subsequently it was interpolated and changed to 7.30 A.M. This is also quite apparent from the naked eye. Likewise in the inquest report Ex. Ka 14 of Maiku deceased in the first column meant for writing the date and time of report at the Police Station, it is quite clear that the time of report was first written as 10 A.M. but .subsequently it was interpolated and changed to 7.3Q A.M. This is also quite apparent from the naked eye. Likewise in the inquest report Ex. Ka 14 of Maiku deceased in the first column meant for writing the date and time of report at the Police Station, it is quite clear that the time of report was first written as 10 A.M. but subsequently it was interpolated and changed to 7.30 A.M. We have very carefully scrutinised the aforesaid Exts. Ka 9, Ka 13, Ka 16 and Ka 14 prepared by Jagannath Tiwari PW 6 Investigating Officer of this case. We are fully satisfied that in all the aforesaid four documents, Jagannath Tiwari Investigating Officer had tampered with them and had changed the already written time of report from 10 A.M. to 7.30 A.M. This conduct of the Investigating Officer is highly deplorable and he deserves to be condemned in the strongest terms. On account of the aforesaid interpolations and over-writings in the documents Exts. Ka 9, Ka 13, Ka 14 and Ka 16 prepared by Jagannath Tiwari, the investigation in the case has been rendered suspect and it is highly doubtful if the First Information Report of the occurrence was really lodged at the outpost Dhata at 7.30 A.M. on 25-10-1976. There appears to be substance in the contention of the learned Counsel for

the appellant that the F.I.R. in this case was lodged after due consultation of police outpost Dhata and it was ante timed.

20. It was next contended by the learned Counsel for the appellant that the witnesses examined are chance witnesses and they are highly partisan as they belong to the same caste and not a single person belonging to village Tulsipur was examined by the prosecution to establish that the occurrence had really taken place at about sunset as alleged by the prosecution. Chhedilal P. W. 1 has first stated that the place of occurrence, was situated at a distance of 25 or 30 steps, then he made a somersault and said it was at a distance of half a mile. He had further stated that during the occurrence, people from Tulsipur village had cried out that they were coming for their help but none appeared from the villagers of Tulsipur throughout the night It is surprising that during the occurrence, the complainant heard voices of the villagers of Tulsipur but they did not turn up at the place of occurrence during the night This may be on account of the fact that the occurrence might have taken place at late hours of the night during the darkness. Therefore, it-is doubtful that the occurrence had taken place at about sunset as alleged by the prosecution. The defence suggestion that the occurrence had taken place during darkness cannot be ruled out. It is therefore, quite probable considering overall circumstances in the case that the occurrence in the case took place during darkness.

21. In this case, since the prosecution witnesses of fact are chance witnesses highly interested and partisan, it would be highly unsafe to place reliance on their testimony without corroboration by medical evidence which is rather in conflict with the oral testimony. This conflict assumes more significance in view of the prosecution case that the occurrence had taken place at about sunset and no FIR of the occurrence was lodged at Police outpost Dhata during the night though police outpost Dhata was not far off from the place of occurrence.

22. The motive alleged by the prosecution also suffers from weakness. It is not understandable that if the complainant Chhedilal and his companions did not wait for the arrival of the father of Ram Kali or his uncle, why the appellant would all of a sudden, resort to firing killing three persons on the spot. The motive suggested

by the prosecution also appears to be flimsy and we do not find it '\*' strong enough which may enrage the appellant to the extent of committing triple murder.

23. The appellant has also examined Daya Shankar D.W.I Gram Pradhan of village Tulsipur Trai. He stated that about two years ago on the third day of Deepawali, on the day of Dooj, he had seen three dead bodies at about 5.30 A.M. at the outskirts of his village Tulsipur when he was going alongwith his labourer, plough and bullocks to his agricultural field in plot No. 242. According to him he had seen two dead bodies on the southern corner in the field of Matadin at a distance, of 5-6 feet from each other and he had seen one more dead body towards the east of the said field lying at a distance of about 50-60 steps. He further stated that after leaving his labourer in the field he returned to his village and told this fact to Hanuman Kewat. He further stated that he went to outpost Dhata, at about 7.15 or 7-30 A.M. and had given information to the constables at Dhata outpost that three dead bodies were lying at the outskirts of his village Tulsipur.

24. Carefully, we have gone through the evidence of Daya Shankar Pradhan and we did not find any infirmity to disbelieve his evidence. The only weakness as pointed by the trial court, is that he did not lodge a written report at the police outpost Dhata. We do not think that it was the duty of Daya Shankar, Pradhan to have necessarily lodged a written report at Police outpost Dhata about the fact of three bodies were lying at the outskirts of Tulsipur village. The oral information given by Pradhan Daya Shankar was quite enough to move the police machinery for taking necessary action in the matter. Daya Shankar Pradhan is a Brahmin by caste and is a respectable person and he is quite independent. His evidence inspires confidence. The trial court had not given any valid reason to disbelieve his testimony. The prosecution has not shown any association of the appellant who is pasi by caste with Daya Shankar Pradhan DW 1. We therefore hold that the trial court fell in error in not placing reliance on the testimony of Daya Shankar Pradhan DW, 1 who is not only independent but also respectable. The evidence of witnesses in trial whether they depose for the prosecution or defence is to be judged by the courts with the same standard of the test of reliability. The defence evidence should not be bye-passed or overlooked by the courts simply because

the witnesses had deposed in favour of accused. The trial court, has to give cogent and convincing reasons for discarding the defence evidence.

25. Having considered all the facts and circumstances of the case, we come to irresistible conclusion that the prosecution had failed to prove the charge against the appellant and the conviction and sentences recorded by the trial court against the appellant, deserves to be set aside.

26. In the result, the appeal is allowed. The conviction and sentence of the appellant recorded by Sri J. S. Mishra, II Additional Sessions Judge, Fatehpur by his judgment and order dated 13-2-78 are set aside. The appellant is on bail. He need not surrender. His bail bonds are cancelled.

27. The licensed gun of the appellant taken possession of by the Investigating Officer during investigation, shall be returned to the appellant by the Chief Judicial Magistrate, Fatehpur within one month of the receipt of the record of the case from the High Court.

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