

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

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Court : Allahabad

Decided On : Feb-13-1995

Reported in : 1995CriLJ3873

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

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149, 302 and 307;
Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Criminal Appeal Nos. 1004 and 1005 of 1982

Appellant : Usman and ors.

Respondent : State of U.P.

Advocate for Def. : A.G.A., ;S.M.A. Qazmi and ;S.A. Gilani, Advs.

Advocate for Pet/Ap. : S.S. Tiwari, ;Kamal Krishna, ;K.K. Srivastava and ;I.N. Mulla, Advs.

Judgement :

V.N. Mehrotra, J.

1. Criminal Appeal No. 1004 of 1982 has been filed by appellants Usman, Lodhai, Saddam alias Mohammad Sad and Husnain while Criminal Appeal No. 1005 of 1982 has been filed by appellants Phallu alias Pharooq Ahmad and Jamiluddin

against the judgment and order dated 17-4-1982 by Shri K.L. Sharma, the then II Additional Sessions Judge, Allahabad convicting the accused persons for committing the offences punishable under Sections 302/149; 307/149; 148 and 147, I.P.C. and sentencing each of them to undergo imprisonment ranging from two years' R.I. to life imprisonment.

2. Both these appeals have been heard together and shall be disposed of by this judgment.

3. During the pendency of these appeals, appellants Lodhai and Jameeluddin died and so the appeals as far as these relate to them, have abated.

4. According to the prosecution allegations, the informant Mohd. Hamid was resident of village Lodipur, Police Station Sarai Inayat, district Allahabad. Deceased Mohd. Mahmood was the father of the informant while deceased Mohd. Hameed was the elder brother of deceased Mohd. Mahmood. Mohd. Shahid is the brother of informant. It was alleged that about 7.00 a.m. on 3-6-1978, these four persons were sitting on the Chabutra in front of the shop of Mohd. Hameed in village Lodipur. At that time, accused Lodhai, armed with a pistol; Saddam armed with a pistol; Usman armed with his licenced gun; Phallu armed with a pistol, Faiq armed with a pistol; Jameeluddin armed with pistol; and Husnain armed with a licenced gun, came there from northern side. Accused Saddam asked his associates to kill these persons in order to take revenge of the murder of their brother-in-law. All the accused persons thereupon started firing with their respective weapons. The victims tried to run away. Mohd. Hameed was hit and fell down on the Rasta. Mohd. Mahmood was also hit and injured but in order to save himself, he ran from there and entered into the shop of one Murli situated in the house of Tejai. The accused persons, however, chased him and after entering the shop, fired shots killing him there. The shouts of the informant and other persons attracted a large number of persons to the scene of occurrence. The accused persons thereupon fired shots causing injuries to Mohd. Afzal; Jeet Lal; Ram Bali and Mohd. Kazim. The informant and his brother Mohd. Shahid also received fire-arm injuries. The accused persons thereafter went away from the scene of occurrence. Mohd. Mahmood and Mohd. Hameed died on the spot. Informant

thereafter prepared the written report and lodged the same at Police Station Sarai Inayat, which is situated at a distance of about five miles from the place of occurrence, at 8.15 a.m.

5. On the basis of the written report, the case was registered. The investigation was entrusted to Sri Raghuraj Singh, Station Officer (P.W. 11). He immediately reached the place of occurrence. He found the dead body of Mohd. Hameed lying on the Rasta near the place of occurrence and the dead body of Mohd. Mahmood lying inside the shop of Murli. The inquest reports as well as other connected papers were prepared by the Investigating Officer. Both the dead bodies were sealed and were sent for post-mortem examination. The Investigating Officer took in his custody the blood stained earth and plain earth from the place where the dead bodies were lying. He also took in his possession five empty cartridges. Necessary memos were prepared in respect of the recovered articles. The Investigating Officer then recorded the statements of Mohd. Hamid and Mohd. Shahid who had by that time returned after the medical examination. The site plan was prepared by the Investigating Officer after local inspection. He also recorded the statements of the witnesses of inquest proceedings and also the witnesses of the memos. The Investigating Officer then searched for the accused persons at their houses but they were not available. On 4-6-1978 also, the Investigating Officer searched for the accused persons but could not find them. He then returned to the police station where the sealed articles were kept. The Investigating Officer again searched for the accused persons on 5-6-1978 but was unable to find them. He was then transferred on promotion and, so further investigation was entrusted to S.I. M.P. Singh (P. W. 13). We went to the village in question on 7-6-1978 and recorded the statements of Jeet Lal, Ram Bali and others. He interrogated accused Phallu and Usman on 11-6-1978. On 15-6-1978, the further investigation was entrusted to the Station Officer, Amar Singh (P.W. 8). After completing the investigation, he submitted the charge-sheet on 22-6-1978.

6. Injured Shahid was medically examined by Dr. Lal Virendra Pratap (P.W. 4) at 9.45 a.m. on 3-6-1978. He found the following injury on his person:-

'Fire-arm wound 3/10 cm. circular on the left side of back of thigh upper portion. There was no tattooing.' The duration of the injury was noted as recent.

7. The same doctor medically examined the informant Mohd. Hamid at 10.15 a.m. on the same day. He found the following injury on his person:-

'One fire-arm wound 3/10 cm circular on the 8th rib 10 cm. below nipple. No tattooing or scratching was found. Depth could not be ascertained.' The duration of the injury was noted as recent.

8. Dr. M.K. Gupta(P.W. 10) medically examined Mohd. Afzal at 10.30 a.m. on 3-6-1978. He found the abrasions on the face, chest and illiac. The injuries were found fresh and were caused by some blunt object.

9. Injured Jeet Lal (P.W. 6) was medically examined at 11.30 a.m. on the same day by Dr. Gupta. He found one abrasion 1/4' x 1/4' on the right side back. The injury was fresh and was caused by some blunt object.

10. Injured Mohd. Kazim was medically examined at 11.45 a.m. on the same day and abrasions measuring 1/4' x 1/4' were found on the right side chest and right leg. Both these injuries were fresh and were caused by some blunt object.

11. Injured Ram Bali (P.W. 5) was medically examined at 10.00 a.m. on the same day by Dr. Gupta. He found one fire-arm wound 2 1/2' x 2' x through and through on the inner aspect of the right hand. Corresponding wound of exit was also found. The injury was grievous and was caused by some fire-arm. The injury was fresh in duration.

12. The post-mortem examination of the dead body of Mohd. Mahmood was conducted by Dr. B.B. Singh (P.W. 14) at 11.00 a.m. on 4-6-1978. He found the following ante mortem injuries on the body of deceased Mohd. Mahmood :-

(1) Lacerated wound 8' x 8' bone deep on the head front back and side. Skull was broken into pieces. Brain matter absent. Margins lacerated and everted.

(2) Fire-arm wound 2 1/2 x 2/2' x abdominal cavity deep on left side of abdomen. Middle in the anterior axillary line. Margins lacerated, inverted and irregular.

Tattooing present. A small portion of the loop of intestine was coming out of the wound.

(3) Fire-arm wound 3' x 3' x muscle deep on the front of left elbow joint. Margins lacerated and irregular but the margins of the outer side of the wound were inverted with marks of blackening. Margins of the inner side of the wound was everted. No blackening.

13. On internal examination, Dr. B.B. Singh found the following conditions:-

Skull - Broken into pieces.

Base - Fractured.

Peritoneum - Lacerated.

Cavity - Contained about 2 pint clotted blood.

Contents - Ruptured at many places.

Small intestines - Lacerated at many places.

Large intestines - Contained laceration.

Bladder - Empty.

14. He recovered two large sized pellets from the right side of the abdomen and sealed them. He also sealed the clothes of the dead body. In his opinion the death was caused due to shock and haemorrhage and coma caused by the injuries.

15. The post-mortem examination of the dead body of Mohd. Hameed was conducted by Dr. B.B. Singh (P.W. 14) at 12.00 noon on 4-6-1978. He found the following ante mortem injuries on the dead body:

(1) Fire-arm wound 4' x 7' x bone deep on the front of face lower half part of neck and left side of neck up to cheek bone. Margins lacerated, irregular, but margins at the upper end of the wound is inverted and blackening and tattooing present. But margins at the lower end is everted and no blackening or tattooing present.

Direction from upward down to the left side of the body. Trachea and cardiac vessels of left side were punctured.

(2) Fire-arm wound 2' x 2' x chest cavity deep on the left side chest upper part just below injury No. 1 with 6 small fire-arm wounds around the main wound each 1/10' x 1/10' x skin deep. Margins lacerated, inverted and irregular. There was no blackening and tattooing.

16. On the internal examination of the dead body, the doctor found the following conditions:

Skull - Ten small fire-arm pellets were recovered from the chest left side.

Left Lung - Ruptured, and lacerated under injury No. 2.

Right Lung - Nil.

Thoracic cavity - Contained about 2 bottles of clotted blood.

Contents - Empty.

Small intestines - Empty.

Large Intestines - Full of faecal matter.

17. The doctor recovered 10 small sized pellets from inside injury No. 2 and sealed them in a packet and forwarded them to the S.S.P. He also sealed the clothes of the dead body.

18. In the opinion of the doctor, the death was caused due to shock and haemorrhage as a result of injuries caused by fire-arm.

19. In the opinion of Dr. Singh, both deceased had died about one day earlier. The injuries were sufficient to cause their death in the ordinary course of nature.

20. The prosecution has in this case examined 15 witnesses. The witnesses included Mohd. Hamid (P. W. 2); Mohd. Shahid (P.W. 3); Ram Bali (P. W. 5); Jeet Lai (P.W. 6) and Abdul Aziz (P.W. 7), who are said to be the eye-witnesses of the

occurrence. Apart from these, the three doctors, investigating officers and other police personnel were also examined.

21. During the trial, accused Faiq died and the trial proceeded against the remaining six accused persons.

22. All the accused persons pleaded not guilty to the offences charged. They denied the prosecution allegations and contended that they have been falsely implicated in the case due to previous enmity. They also alleged that the murder of Mohd. Mahmood and Mohd. Hameed was committed outside the village before the day-break and was not seen by anybody. It was also asserted that the witnesses examined by the prosecution were interested and belonged to the party of the informant.

23. The accused persons examined five witnesses in defence. D.W. 1 Gopal Ji was probably examined to prove that Ram Bali son of Babbar Pasi was admitted in his Nursing Home. However, this witness could not say anything about it. He asserted that he could not say as to whether that, person was admitted there on 7-6-1978 or remained there for 3 or 4 days. D.W. 2 Lakhanji, D.W. 3 Manmohan Gopal, D.W. 4 Prajapati Lal and D.W. 5 R.K. Kapoor are the employees of the Ordnance Depot, Fort. Allahabad. It is said that accused Mohd. Usman and Husnain were employees of the Ordnance Depot and were present at the Fort, Allahabad and could not have been present in village Lodipur at the time of occurrence. These four witnesses have been examined to prove the alibi set up on behalf of these two accused persons.

24. The learned Additional Sessions Judge relying upon the evidence produced by the prosecution, rejected the plea of alibi taken by the accused Mohd. Usman and Husnain and observed that though it appears that these accused persons had reached the Fort at Allahabad by 8.00 a.m. on 3-6-1978; they could have covered the distance of about 12-13 miles from village Lodipur to Fort within half an hour or so to reach the Fort after the occurrence.

25. In these appeals, Sri S.S. Tiwari, who is representing the appellants, has argued that the prosecution evidence in this case is highly interested and

unreliable. It has also been argued that the statements of the eye-witnesses do not find support from the medical evidence. It has further been argued that in the cases of two of the accused persons, who have set up the plea of alibi, it has been established that they had reached the Fort at Allahabad at about 7.45 a.m. and so their presence on the scene of occurrence could not be possible.

26. We have heard the learned counsel for the appellants and State and have perused the material on record.

27. The medical evidence, referred to above, clearly shows that Mohd. Mahmood and Mohd. Hameed had died on 3-6-1978 as a result of ante mortem injuries received by them. The medical evidence also establishes that Mohd. Shahid and Mohd. Hamid as well as Ram Bali (P.W. 5) had received fire-arm injuries. These injuries could have been caused at the time of occurrence. Jeet Lal (P.W. 6) received one injury i.e. abrasion 1/4' x 1/4' on the right side back. Apart from these, Mohd. Kazim received two abrasions measuring each 1/4' x 1/4'. Mohd. Afzal received four abrasions. Regarding these three injured persons, Dr. M.K. Gupta (P.W. 10) was of the opinion that these injuries could not be caused by fire-arm. We are unable to accept this opinion. In case the shot is fired from a long distance by some country made pistol, it is quite possible that the pellets could cause abrasions also in case their velocity at the time they hit the person is not such as to penetrate the skin. This fact is also observed by H.W.V. Cox in his Medical Jurisprudence and Toxicology at page 283, 5th Edition. The nature of the injuries received by these three persons indicates that the same could possibly be caused by pellets.

28. As regards the time of occurrence, the medical evidence supports the prosecution version that the occurrence took place at about 7.00 a.m. on 3-6-1978. It was suggested on behalf of the accused persons that the occurrence took place somewhere outside the village in the early hours when it was dark. There is, however, no material on record to support this suggestion. On the contrary, the statements of the eye-witnesses as well as the medical evidence indicate that the occurrence had taken place at about 7.00 a.m. on that day. It is in evidence that the dead body of Mohd. Mahmood was found lying inside the shop of Murli while

the dead body of Mohd. Hameed was found in the passage near the Chabutra where the victims were allegedly sitting before the assailants reached the spot and started firing. The Investigating Officer prepared the Panchayatnama of the dead bodies at these places and he also took in his possession the blood stained earth and plain earth and also the empty cartridges lying on the spot. In these circumstances, it can be said that it has been fully established that the occurrence had taken place near the Chabutra of the shop of the two deceased persons. The places where the two dead bodies were found have been shown in the site plan prepared by the Investigating Officer. The site plan indicates that the shop of Mohd. Hameed was to the west of the place where his dead body was lying. The shop of Murli is towards the north of the shop of Mohd. Hameed and it is situated in the outer room of the house of one Tejai.

29. Now coming to the statement of the pro-, secution witnesses, great reliance has been placed on the depositions of Mohd. Hamid (P.W. 2) and Mohd. Shahid (P.W. 3). Both these witnesses have stated that they as well as the two deceased persons were sitting on the Chabutra in front of the shop of deceased Mohd. Hameed and were talking. All the accused persons came there from the northern side. Accused Saddam shouted that these persons be killed in order to take revenge of the murder of their brother-in-law. The accused persons then started firing. The persons, who were present on the Chabutra, tried to ran away. Mohd. Hameed was, however, hit and fell down on the Rasta. Mohd. Mahmood, however, ran towards north and entered into the shop of Murli. The accused persons chased him and after entering the shop fired shots killing him there. As mentioned earlier, both these witnesses had received one gun shot injury each which could be caused by pellets when they and other persons, who had collected on the scene of occurrence, were shouting. The presence of these witnesses on the spot has been fully established. It is true that these witnesses are related witnesses and it can also be said that there was enmity between both the sides, but merely due to this their statements cannot be discarded when their presence at the scene of occurrence has been established.

30. The statements of the abovementioned witnesses find some support from the statements of Ram Bali (P. W. 5) and Jeet Lal (P. W. 6). As mentioned earlier,

both these witnesses had received injuries. The injury received by Ram Bali (P. W. 5) was grievous in nature. Ram Bali (P.W.5) is a resident of village Sarai Shanker which is at a distance of about one and half furlongs from village Lodipur. This witness has stated that at about 7.30 a.m., he had come to the shop of Murli to purchase soap. According to him, Murli was at the shop and at that time, Mohd. Mahmood had entered the shop and after being injured by gun fire, he fell there. He has also stated that he ran away due to fear but was injured in his hand by shot. He has also stated that people were shouting but he could not see the persons who had fired the shot though he had seen accused Saddam running away with the gun. This witnesses has then stated that Mohd. Mahmood died inside the shop of Murli. He has also stated that he was medically examined by the doctor on the same day. Obviously, this witness was not prepared to name the assailants. He was cross-examined on behalf of the prosecution and was confronted with his statement recorded under Section 161, Cr.P.C. where he had named the assailants. He, however, denied that he had made any such statement. This witness has admitted that he was afraid and so he was making untruthful statement. It is obvious that this witness was under great fear. Similar is the case with Jeet Lal (P. W. 6) who is the son of Murli. He has stated that the occurrence took place at 7.00 a.m. when he was present at the shop. On hearing the sound of gun fire, he came out when he was hit with the pellets. He has also stated that Hamid, Shahid, Ram Bali and others were also injured. He has further stated that Mohd. Mahmood fell down inside the shop after being injured. He has, however, stated that he has heard the sound of 4-6 gun fires. He then stated that he could not identify the assailants. He has further stated that Mohd. Mahmood died inside the shop while Mohd. Hameed had died on the Rasta. This witness was also cross-examined by the prosecution but he was not prepared to name the assailants. To a Court question, he replied that he was afraid and apprehended danger to his life. On being asked from whom he apprehended danger, the witness kept mum. This witness was then confronted with his statement recorded under Section 161, Cr.P.C. where he had named the assailants. He, however, kept mum. He then stated he was afraid of the accused persons and so he was not stating the whole truth.

31. The statements of Ram Bali (P. W. 5) and Jeet Lal (P. W. 6) clearly support the prosecution assertion about the place and time of occurrence. It also appears that these witnesses were not prepared to name the assailants as they were mortally afraid of them.

32. The next eye-witness examined by the prosecution is Abdul Aziz (P. W. 7). This witness has stated that the occurrence took place at about 7.00 a.m. when he was present at his door way. He saw the two deceased and witnesses Mohd. Hamid and Mohd. Shahid sitting on the Chabutra of their shop. At that time, all the accused persons armed with guns and pistols reached there and started firing shots. He has also stated about the injuries received by the two deceased persons. He has further stated that Mohd. Mahmood had entered the shop and all the seven accused persons also reached there and fired shots killing him. This witness has also stated that after killing the victim inside the shop, the assailants came out and fired shots which caused injuries to the witnesses and after that they went away towards the west.

33. On behalf of the appellants, it has been argued that this witness was inimical to the accused persons and for this, he was deposing against them. The statement of this witness does indicate that he had some enmity with accused Lodhai as about 14-15 years before this occurrence, he was arrested for attempting to commit theft at his house. However, merely due to this reason, the statement of this witness cannot be discarded. He has explained his presence at the scene of occurrence and there does not appear to be anything in his statement to indicate that he has not witnessed the occurrence which took place in the broad day light.

34. The learned counsel for the appellants has also contended that though it is alleged by the prosecution witnesses that a large number of persons of the village had assembled at the place of occurrence, no independent witness has been examined. We, are, however, not impressed with this contention. We have already mentioned that the two independent injured witnesses appeared to be mortally afraid of the assailants and could not dare to name them even though they supported the prosecution case about the actual occurrence. Considering the circumstances in which this occurrence took-place, it will be difficult to expect any

independent witness to fully support the prosecution case. Any how, we have to examine the reliability of the witnesses who have been actually examined by the prosecution. As mentioned earlier, the presence of Mohd. Hamid and Mohd. Shahid cannot be doubted. They have fully supported the prosecution version of the occurrence which also finds support from the statements of other witnesses examined by the prosecution.

35. The learned counsel for the appellants has then argued that the manner of the occurrence, as narrated by the prosecution witnesses, does not appear to be probable. The learned counsel has contended that it is difficult to believe that though four persons were present at the Chabutra of the shop, no injury was caused to Mohd Hamid and Mohd. Shahid while they were at that place. It is true that these witnesses have stated that they do not receive any injury when they were present at the Chabutra but considering the fact that when the assailants reached the Spot and started firing after one of them had shouted that the revenge be taken of the murder of his brother-in-law, these two witnesses could succeed in running away from the Chabutra so as to escape any injury being caused to them at that place.

36. The learned counsel for the appellants has also argued that it does not appear to be probable that Mohd. Mahmood could have tried to run away towards north when it was said that the assailants had also come from northern side. We do not find any improbability in this act. As mentioned earlier, the dead body of Mohd. Mahmood was, in fact, found inside the shop. One could say that it would have been proper for Mohd. Mahmood to run towards the south or the west instead of running away towards the north, but the victim did not have the opportunity to ponder over the matter in a detached manner. The assailants had reached the spot and had started firing their weapons. In such circumstances, the deceased must have lost his wits and tried to run away without thinking whether he will be able to escape death. It cannot, under the circumstances, be said to be improbable that a person who was injured at the Chabutra, would have run towards the shop of Murli which is situated at a distance of only a few paces from the place of occurrence.

37. The learned counsel for the appellants has then argued that injury No. 1 of Mohd. Mahmood could not have been caused by gun shot. The learned counsel has relied on the statement of Dr. B.B. Singh (P. W. 14) who had conducted the post-mortem examination. In this cross-examination, this witness has stated that injury No. 1 of Mohd. Mahmood could have been caused by explosive but could not have been caused by pistol or gun. To a Court's question, the witness replied that even if several shots were aimed at the head, even then injury No. 1 could not have been caused. When this witness was reexamined by the prosecution, he replied that he was not a ballistic expert. He then said that injury No. 1 of Mohd. Mahmood could have been caused by firing shots from fire-arms in case shot had hit at adjoining places. The statement of this witness does not rule out the possibility that injury No. 1 of Mohd. Mahmood could have been caused by gun fire. According to H.W.V. Cox, high velocity projectiles, especially those of military weapons, may cause gross damage to the head by virtue of the total release of their extremely high kinetic energy. The effects may be so destructive as to cause virtual decapitation and the injuries may sometimes be confused with those due to high explosive rather than to a simple projectile. According to Modi also, high velocity missiles produce gross brain damage, the skull is shattered and bone pieces are indriven with force.

38. Taylor in his Principles and Practice of Medical Jurisprudence mentions that if a standard shot gun (20 bore or greater) with a normal load cartridge is fired at contact range through the head, the skull will often disintegrate, whereas if fired at contact range into the chest no injury other than the entry wound may be visible, the chest cavity containing the expanding gases. In both the skull and the chest cavity the shot is widely dispersed.

39. In the present case, the prosecution witnesses were not inside the shop when the assailants entered it and fired several shots. It may be that several shots were fired aimed at the head of the victim from a very close range. In the circumstances, it cannot be said that injury No. 1 of Mohd. Mahmood could not have been caused by gun fire.

40. The learned counsel for the appellants has argued that though it is alleged that the two of the victims had received injuries .while they were present at the Chabutra in front of their shop, no blood stains were found at that place or in between the Chabutra and the shop of Murli. It is true that the Investigating Officer has not mentioned that any blood stains were found on the Chabutra or on the passage but that does not, in any way, show that the occurrence had not started from the Chabutra. The evidence on record shows that a large number of village people had reached the place of occurrence. Their number was alleged to be about 200 or 250. In the circumstances, even if some drops of blood had fallen on the Chabutra or on the passage, that could have been erased by the time the Investigating Officer reached there. It is not alleged that any of the victims had fallen on the Chabutra after being injured but, instead, it is alleged that they had immediately started running away from the place. In such circumstances, the absence of blood at these places is not at all material.

41. The prosecution evidence has in this case fully established the place and time of occurrence. The statements of the eye-witnesses are also supported by the medical evidence. Further, the F.I.R. in this case was lodged shortly after the occurrence without any unnecessary delay. The contents of the F.I.R. corroborate the statement of informant Mohd. Hamid on all material particulars.

42. As regards the motive for the crime, it is not disputed that there was long standing enmity between the two parties. It is also not disputed that the brother-in-law of accused Usman and Saddam had been murdered before this occurrence for which both the deceased persons as well as Mohd. Hamid (P. W. 2) and Mohd. Shahid (P. W. 3) were prosecuted but these persons were acquitted in the month of March, 1976 by the Sessions Court. This is said to be the immediate motive for committing the crime as it is alleged that both the murders were committed in retaliation. Thus the prosecution has established sufficient motive for commission of this crime.

43. The learned counsel for the appellants' has been argued that accused-appellants Mohd. Usman and Husnain, in any case, were falsely implicated in the case as they could not have been present at the scene of occurrence but they had

gone to the Fort, Allahabad where they were serving in the Ordinance Depot. As mentioned earlier, D.W. 2 Lakhanji; D.W. 3 Manmohan Gopal; D.W. 14 Prajapati Lal and D.W. 5 R.K. Kapoor, who were working in the Ordinance Depot, Fort, Allahabad, have been examined to prove the alibi set up by these accused persons. The learned Additional Sessions Judge has after considering this evidence, come to the conclusion that though it has been shown that these accused had reached the Fort at Allahabad by 8.00 a.m. on 3-6-1978, they could have reached there after covering the distance of 12 or 13 miles from the place of occurrence at village Lodipur.

44. Sri S. A. Gilani, Advocate, who has appeared on behalf of informant, as well as the learned A.G.A., have argued that the plea of alibi set up by the accused persons is false and the documents which have been produced by these defence witnesses could not be relied upon due to the inconsistencies in the same. It has further been argued that even if it is accepted that these accused persons had reached the Fort at Allahabad by 8.00 a.m., as has been observed by the trial Court, even then they could have covered the distance of 12 or 13 miles from village Lodipur after participating in the crime.

45. We have considered the evidence on this question. There appears to be some inconsistencies in the documents produced by the defence witnesses regarding the presence of these accused at Fort, Allahabad. However, even if it is accepted that these accused had reached there by 8.00 a.m. on 3-6-1978, as has been observed by the learned trial Judge, still we are unable to accept the plea of alibi set up by these accused persons. As will appear from the prosecution evidence, this occurrence had taken place at about 7.00 a.m. The distance of the place of occurrence from Fort, Allahabad is said to be about 12 or 13 miles. Can it be said that a person who had participated in the commission of the crime at village Lodipur, could not have been present at the Fort, Allahabad about 8.00 a.m. The answer is a clear 'no'. A person could have covered this distance by any fast moving vehicle such as a motor cycle or a car. It is obvious that these murders were committed in a planned manner. So it cannot be difficult for these accused persons to plan their presence at the Fort, Allahabad immediately after committing the crime. They could have easily arranged for a fast moving vehicle so as to

reach the Fort before the gate admitting the employees is closed. Obviously, the prosecution cannot be in a position to lead definite evidence regarding the vehicle by which these accused persons might have travelled. Considering these circumstances we are unable to accept the contention by these accused persons that they could, not have been present at the scene of occurrence when these murders took place. In the circumstances, we reject the plea of alibi set up on behalf of these accused persons.

46. On a consideration of the entire evidence and the circumstances of the case, we are of the view that the prosecution has been able to prove its case beyond all reasonable doubt. In the circumstances the learned Sessions Judge was right in holding the accused persons guilty of committing the offences punishable under sections 302/149; 307/149, and 148, I.P.C. As regards the offence under Section 147, I.P.C. we are of the view that as the appellants were allegedly armed with fire-arms, they were rightly convicted under Section 148, I.P.C. and they could not have been convicted under Section 147, I.P.C.

47. Thus while setting aside the conviction and sentence under Section 147, I.P.C. of the appellants, we confirm the conviction of appellants Usman, Saddam alias Mohammad Sad, Husnain and Phallu alias Pharooq Ahmad under Sections 302/149; 307/149 148, I.P.C. We also confirm the sentences imposed on the appellants for these offences. All the appellants are on bail. They shall be taken into custody forthwith to serve out the sentence imposed on them.

48. The appeals by deceased appellants Lodhai and Jameeluddin have abated.