

Dharmendra Singh and Etc. Vs. State of U.P.

Dharmendra Singh and Etc. Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/487012

Court : Allahabad

Decided On : Aug-19-1997

Reported in : 1998CriLJ2064

Judge : G. Malviya and ;Kundan Singh, JJ.

Acts : Evidence Act - Sections 13G and 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149, 302 and 392; Code of Criminal Procedure (CrPC) , 1974 - Sections 82, 83, 93, 161, 164 and 313

Appeal No. : Criminal Appeal Nos. 2011, 2019 and 2090 of 1995 and 15 of 1996 etc.

Appellant : Dharmendra Singh and Etc.

Respondent : State of U.P.

Advocate for Def. : Govt. Adv., ;A.B.L. Gour and ;Shishupal Sharma, Advs.

Advocate for Pet/Ap. : Sudhir Agarwal and ;Narendra Kumar, Advs.

Judgement :

Kundan Singh, J.

1. The aforesaid appeals have been preferred by Dharmendara Singh, Narendra, Gopal, Sanjeev, Pushpendra and Jagvir Singh against the common judgment and

order dated 5-12-1996 of Sri Dhani Ram, the then Special Judge/Additional Sessions Judge, Aligarh, in S.T. No. 1314 of 1994 whereby Dharmendra Singh, Narendra Yadav, Sanjeev, Jagvir, Pushpendra and Gopal have been convicted under Sections 148, 302, I.P.C. Dharmendra and Narendra have been sentenced to two years R.I. under Section 148, I.P.C. and they have also been sentenced to death by hanging them till their death under Section 302, I.P.C. Appellant Jagvir, Pushpendra, Sanjeev and Gopal have also been convicted under Sections 148 and 302, I.P.C. and they have been sentenced to undergo imprisonment for life under Section 302, I.P.C. and R. I. for two years under Section 148, I.P.C.

2. The Lower Court has also referred the matter for confirmation of death sentence awarded to Dharmendra Singh and Narendra Yadav by hanging them till their death.

3. The prosecution case, briefly stated, is that accused Dharmendra Singh, Jagvir Singh and Pushpendra Singh are residents of village Kamra Bagh, P.S. Mursan, District Aligarh while Narendra Yadav, Sanjeev and Gopal Kori are residents of Nagla Babu within the same police circle of Police Station Mursan, District Aligarh. Chandra Mohan and his family members had purchased 13 1/2 Bighas of agricultural land of village Khargu, Kothi and half share of Haveli with temple of village Karma Bagh from Shiv Saran Singh and Mahavir Saran Singh, who were grand-fathers of Dharmendra Singh accused, who was himself interested to purchase the same. As such Dharmendra Singh bore enmity against Chandra Mohan Singh complainant. The complainant was residing with his family members in the half portion of the Haveli while Dharmendra Singh was residing in another half portion of the Haveli in village Kamra Bagh. Km. Reeta, daughter of Chandra Vir Singh, another brother of the complainant, was studying in Class X in Mursan town. Narendra accused used to tease and outrage her modesty in her coming from and going to school. The complainant made a complaint to the family members of Narendra. Sanjeev Yadav and Gopal Kori are his friends. Narendra with his companions Sanjeev Yadav and Gopal Kori used to meet Dharmendra Singh at his residence in his portion of the Haveli. Pushpendra alias Pappu and Jagvir visited the house of Dharmendra Singh where they were entertained with food and drinks. About 4 or 5 days prior to the date of incident, Km. Reeta niece of

the complainant, had gone to cattle pond for reparing cow dung cake where Narendra again tried to outrage her modesty and threatened her that in case she makes a complaint against him on this occasion that would not be proper. She returned to her house and reported the matter to her uncle, the complainant, who along with Narendra Singh, his nephew, went to Narendra Yadav and beat him which infuriated him against the complainant and Km. Reeta. On 26-5-1994 the complainant along with his brother Chandra Pal Singh and nephew Ajai Singh went to village Salot to attend a marriage party at the house of Hardam Singh by a scooter and they returned at about 3.00 a.m. in the night of 26/27-5-1994 to their house in village Kamra. Bagh. As soon as they reached near the temple which is also near the Haveli and saw Dharmendra Singh, Pushpendra alias Pappu, Jagvir residents of village Kamra, Bagh, Narendra, Sanjeev and Gopal Kori coming out of the Haveli holding knives in their hands. All the three persons identified them in the head light of scooter, electric bulb outside the Haveli and moon light. The complainant also asked Dharmendra as to why they were running but all the accused persons quietly ran away. The complainant with his brother and nephew entered into the Haveli and found a petromax lantern burning on the partition wall and Pitamber Singh, Narendra, Ravindra Singh, Km. Reeta, Smt. Ramwati lying dead in the court yard, as a result of injury sustained by them. They had been killed by Narendra and others. Chandra Mohan Singh dictated, the F.I.R. to Sanjay Singh and sent it through Chandra Pal for lodging the same at police station Mursan, which was registered at 7.05 a.m. on 27-5-1994 at police station Mursan, District Aligarh.

4. P.W. 4, Om Prakash Sachan, S.O. of Police Station Mursan, was present at the time of registration of the case. He took all the papers in his hands and started investigation. He copied out the F.I.R. in the Case Diary and recorded the statement of Chandra Pal Singh under Section 161, Cr.P.C. at the police station itself and then he proceeded to the place of occurrence at 7.55 a.m. He reached the place of occurrence, where he found a crowd of village people. The family members of the deceased persons were weeping there. He found the dead bodies of Pitamber, Ramwati, Km. Reeta, Ravi and Narendra. He made the arrangement of law and order at the spot. Some police personnel were sent for search of the named accused persons. In the meanwhile Sri Sharad Chandra Pandey,

Inspector, Incharge Kotwali Hathras, Ram Kumar Tyagi S.I. of Police Station Kotwali Hathras, Amar Pal Singh, S.H.O. of PS. Hathrasgate, Subhas Chandra Rana, S.O. Police Station Chandrama, also reached there with Police force and inquest registers. Yashwant Singh, C.O. Sonker, S.P. (R.A.) and others had also arrived there. A wireless message for dog squad and field unit was sent. The preparation of inquest report was meanwhile stopped till the arrival of dog squad and team of unit. The Investigating Officer took the statements of Chandra Mohan and Ajai Singh. He inspected the venue and on their pointing out a site plan was prepared. Dog squad with team of field unit also came there. The dog from the dead body went to the room of Dharmendra Singh accused and returned. An empty bottle of wine, two glasses, out of them one was broken, one sieve, Aluminium tea pot and few piece of burnt bidis were recovered from the room of the accused Dharamendra Singh. They were sealed and a recovery memo was prepared.

5. S. O. Amar Pal Singh, held inquest of Ravi from 1.20 p.m. to 2.10 p.m. Jawahar, S.I. also held the inquest of Pitambar Singh from 1.30 p.m. to 2.55 p.m. He also held inquest of Smt. Ramwati Devi from 3.5 p.m. to 4.15 p.m. R.K. Tyagi held the inquest of Km. Reeta from 1.30 p.m. to 2.45 p.m. He also held the inquest of Narendra from 3.00 p.m. to 4.15 p.m.

6. The Investigating Officer also collected blood stained and ordinary earth from the spot. He also copied out the recovery, memos and inquest report in the case diary. He also copied out recovery memos of the blood stained piece of wood, blood stained underwear, blood stained string of the cots, blood stained bed sheet, skrit, blouse and bottle of wine etc. He recorded the statements of Chandra Mohan, Chandravir, Nemi Shankar, Rajesh, Kundan Singh, Brijendra Singh, Mahendra Singh, Chandra Pal Singh, Khajan Singh, Saheb Singh, who were witnesses of recovery memos. He also inquired from the persons gathered at the place of occurrence about the incident. The Investigating Officer along with Inspector Kotwali Hathras, S.O. Chandrapa, S.C. Hathras gate and force made search of the accused at their respective houses but none of them could be apprehended. The I.C. returned to the police station with recovered article at 8.30 p.m. Leaving P.A.C. at the spot for maintaining law and order. On 28-5-1994 he

again made a Dabish at the houses of the accused and apprehended Narendra and Gopal at 2.30 p.m. on 28-5-1994 from Mathura Road at the instance of the informer but no incriminating article was recovered from their personal search. He interrogated them at the spot and took them to the police station. The I.O. also made search of the remaining accused persons at different places but they could not be apprehended. On 31-5-1994 he moved court for the measures of under Section 82/93, Cr.P.C. and after receiving orders for taking proceedings under Sections 82/83, Cr.P.C. he attached the property of the accused persons. He apprehended Sanjeev Kumar at 10.30 p.m. on 31-5-1994 from a canal near Gopalpur Mathura Hathras Road. However no incriminating article was recovered from his search. He also interrogated him. He got an information that Jagvir surrendered in the court on 2-6-1994. He interrogated him on 3-6-1994 in Jail. As soon as he came out of the district jail, he got information from the pairakar of the police station that Dharmendra and Pushpendra surrendered in the court on the same day i.e. 3-6-1994. With the prior permission from the Magistrate concerned, he interrogated them in the Court's lock up where they showed their intention to get recovered the knives used in the crime and hidden by them in the business on the bank of Nala going towards Kharagpur. The Investigating Officer went with the force to recover the same but could not trace them out. The Investigating Officer applied for police remand of Dharmendra, Pushpendra and Jagvir on 4-6-1994 and they were handed over to police on 7-6-1994. On 4-6-1994 he met one Saint at the temple in front of the complainant's Haveli, who told him that he saw the accused persons going into the Haveli in the night of occurrence. He gave out his name Ram Sukhdas who subsequently filed an affidavit in court. Three accused persons who were taken on police remand went with the police party to a place where they had hidden two blood stained knives. One blood stained knife each was recovered on the pointing out of Dharmendra and Pushpendra from the bushes near the bridge of canal near Kila mohalla in the presence of Khajan Singh and Gorey Lal. Both the bloods stained knives were sealed at the spot and a recovery memo was prepared and signed by the witnesses.

7. On 9-6-1994 the Investigating Officer received the Serologist report regarding Reeta and copies of post-mortem examination report of Ravi, Pitamber Singh, Reeta Ramwati and Narendra. They were also copied out in the Case Diary. The

I.O. Sri Om Prakash Sachan P.W. 4 was transferred on 6-7-1994. Then investigation was taken by Sri Gaya Prasad Inspector. He recorded the statement of Jai Ram Singh and others. He again inspected the place of occurrence and prepared site plan. On 29-7-1994 the investigation was transferred to the C.B. C.I.D. Laijnath Singh PW. 11, Inspector CB CID took the investigation on 29-7-1994. He examined Chandra Mohan Singh and Smt. Saroj and others under Section 161, Cr.P.C. Chandra Mohan produced a patromax lantern which was examined and given in the superdgi of Chandra Mohan. A Superdgi memo was prepared. Chandra Mohan Singh also presented an Investigation Card of Mardan Singh which was taken into custody and a recovery memo was prepared. Chandra Mohan Singh also produced a scooter which was given in his custody and a supurdgi memo was prepared to 30-7-1994. He recorded the statement of Dr. R.K. Gupta. He also interrogated the accused persons, the witnesses of inquest reports and other witnesses. After completing other formalities of investigation this I.O. submitted charge sheet against the accused persons in court.

8. The investigation conducted by the Police I.O. Sri O.P. Sachan was found to be irregular; hence disciplinary action has been taken against him under the police Act and a report was submitted to CB CID Head quarter. Dr. Rajendra Kumar Gupta PW 9 conducted the autopsy on the bodies of the five deceased persons.

9. Dr. Rajendra Kumar Gupta P.W. 9 concudcted the autopsy on the dead bodies of Ravi aged about 12 years on 28-5-1994 at 2.00 p.m. Pitamber Singh at 3.00 p.m., Narendra Singh at 3.30 p.m., Smt. Ram Wati at 4.20 p.m., Km. Reeta at 5.00 p.m. The Doctor found 6 stab wounds and 6 incised wounds on the body of Ravi, one stab wound and four incised wounds and one contusion on the body of Pitamber, 3 stab wounds and 7 incised wounds on the body of Narendra 10 stab wounds and two incised wounds on the body of Ramwati, while on the body of Km! Reeta 12 stab wounds and two incised wounds. Thus he found 53 incised and stab wounds and one contusion on the five dead bodies.

10. The prosecution examined 12-witnesses in all to prove its case. Out of them Saroj Devi P.W. 2 and Jai Ram PW. 3 were witnesses of factum of incident, PW 1 Chandra Mohan Singh saw the accused persons coming out of the house of

Haveli soon after the incident and Jai Ram saw the accused going inside the house and committing the murders of the deceased persons with their knives from the doors of Haveli. Other witnesses were of formal nature.

11. The accused persons denied the prosecution version and stated that they have been falsely involved in this case due to faction of the locality and the prosecution witnesses are party men of the complainant. Dharmendra Singh admitted in his statement recorded under Section 313, Cr.P.C. that he, accused Pushpendra, Jagvir and the complainant are residents of village Kamrabagh. He also admitted that Raghuraj Saran Singh, Shiv Saran Singh, Mahavir Saran Singh were his grand-fathers. Girdhari Saran son of Raghuraj Saran Singh was his father. Regarding the purchase of 13½ Bighas land of village Khargu and half portion of Haveli, Kothi with the temple of village Kamra Bagh by the informant and his family members from his grand-fathers Shiv Saran Singh and Mahavir Saran Singh, he stated that the transaction was done in his presence and he got it transferred himself. There was no electric light inside or outside the Haveli and Kothi. He was also intending to sell his own share. He further stated that he had gone to attend the marriage of the daughter of his wife's brother on 25-5-1994, where he fell ill and returned on 28-5-1994. His father was murdered by Billu Singh alias Ravindra nephew of Ram Saran M.L.A. His grand mother reported it against him. The complainant is a party man and relative of Ravindra; hence he has been falsely named in this case due to this enmity. Pushpendra admitted to be resident of village Kamra Bagh where Dharmendra, Jagvir and Chandra Mohan also reside. He also stated that Jagvir and Chandra Mohan also reside. He also stated that Jagvir was on inimical terms against him. There had been litigation regarding consolidation proceedings against him. Jagvir Singh also admitted that he, Dharmendra Singh, Pushpendra and complainant Chandra Mohan are residents of village Kamra Bagh. He further stated that Lagan Patrika of his sister was to go on 27-5-1994. He had enmity against Pushpendra and Dharmendra. The litigation is going on against the family members of Pushpendra. Narendra Yadav stated in his statement recorded under Section 313, Cr.P.C. that investigation was transferred to CB-CID at the instance of his uncle Dalvir Singh. His uncle Suresh Chandra Yadav contested election of Block Pramukh against Dharamvir Singh. The complainant is a party man of Dharamvir Singh. Due to this enmity he has been

falsely nominated in this case at the instance of Dharam Vir Singh, Block Pramukh. Sanjeev Kumar also admitted to be resident of Nagla Babu and stated that there is a person named Raju Yadav residing in his village. He has a son named Sanjeev alias Ashok who is studying in Class XI Rajesh Yadav is on inimical terms against him. Gopal also admitted himself to be resident of Nagla Babu and stated that his brother Lalta Prasad was assaulted by Shyam Vir and his brother on 21 -5-1994 when they went to lodge a report at police station, where they found Dharamvir Singh, Block Pramukh sitting there who is a sympathetic person of their opponent. Hence an altercation took place between them and that of Dharam Vir Singh, who is very close to Chandra Mohan and hence he has been involved in this case.

12. The accused also examined three witnesses in their defence. D.W. 1 Surendra Singh, Clerk Constable, Police Station Chandma was examined to prove the G.D. Report No. 11, time , 55 a.m. on 27-5-1994 showing the rawangi of Subhash Chandra S.C. with the constables by Government Jeep No. UGI 4544 to police station Mufsan.

13. D.W 2 Constable Sri Ram was examined to show some irregularities in the Serial number of chik reports of police station Mursan.

14. D.W. 3 Chandraj Singh was examined to prove NCR dated 26-5-1963 by his father and his N.C.R. dated 8-10-1971 and N.C.R. dated 9-9-1977. Though he admitted that these N.C.Rs. were not against the complainant or his family members.

15. The Additional Sessions Judge after going through and analysing the evidence on record held the appellants guilty of the offences charged with and he convicted and sentenced them as stated above.

16. Learned counsel for the appellants challenged the evidence of witnesses mainly on the following rounds :-

1. F.I.R. in this case is ante-timed.

2. Reaching of PW 1 Chandra Mohan Singh at the spot is just a coincidence and saw the accused persons in fleeting glimpse. His conduct was unnatural. He did not go to other persons for help. He did not go to lodge the F.I.R. just after the incident. There was no light outside the Haveli.

3. P.W. 2 Smt. Saroj Devi was not present at the spot. Her conduct was unnatural. After seeing the incident, she went inside the room and slept there and she came out of the room at about 8.00 a.m. when the police persons and other persons had arrived there. Her statement was not recorded till 13-7-1994.

4. P.W. 3 Jai Ram did not see the incident. His' conduct was also unnatural. After seeing the incident, he hid himself behind the bushes till dawn and then he went to his village and returned along with various persons at the spot where the police personnel and villagers had already arrived. His statement was also not recorded till 13-7-1994. All the witnesses were totally unreliable.

17. Before adverting to the submissions of the learned counsel for the appellants, we would like to examine the evidence of relevant witnesses.

18. Chandra Mohan Singh PW 1 deposed that Dharmendra Singh, Pushpendra Singh, Jagvir Singh are residents of village Kamra Bagh, while Narendra Singh Yadav, Sanjeev Yadav and Gopal Singh Kori are residents of village Nagla Babu. The complainant and his family members had purchased half portion of the Haveli. Dharmendra was residing in the other half portion of that Haveli. Other five accused were friends of Dharmendra Singh and they used to visit him at his house, hence they were very well known to him. Nagla Babu is at a distance of one Kilometer from the place of occurrence. He had also made it clear that Raghuraj Saran Singh, Shiv Saran Singh and Mahavir Saran Singh were grandfathers of Dharmendra accused. Giridhari Saran / Singh was son of Raghuraj Saran Singh and/ Dharmendra Singh is son of Giridhari Saran Singh/ Shiv Saran Singh and Mahavir Saran Singh were living at the place of their in laws for about twenty years. Dharmendra Singh wanted to purchase the land and the house property of Shiv Saran Singh and Mahavir Saran Singh, but he could not do so due to insufficiency of money. The complainant and his family members purchased half portion of Haveli with temple, Kothi, 131/?. Bighas land, the share

of Mahavir Saran Singh and Shiv Saran Singh. The temple is adjoining the Haveli. Dharmendra was residing in the share of Raghuraj Saran Singh while the complainant and his family members were residing in the share of Shiv Saran Singh and Mahavir Saran Singh in the Haveli. There was a main gate of the Haveli for both the portions. From the Kothari there was two doors, one was for the accused Dharmendra and other was for the complainant party. There was a partition wall in the Haveli. Dharmendra was harbouring enmity against the complainant due to shares purchased by them. He used to extend threats. Km. Reeta was niece of the complainant. She was studying in G.S. S. Balika Schools, Mursan in High School. She had complained that Narendra Yadav resident of Nagla Babu used to tease her and outrage her modesty. A complaint was made to the family members of Narendra and warned that he should not do any such activity in future. About 4 or 5 days prior to the incident. Km. Reeta had gone to cattle pond for preparing the cow dung cake where Narendra Yadav again misbehaved and tried to outrage her modesty. She was also threatened that in case she makes any complaint, she will be killed. She made a complaint to her uncle, the complainant, and he along with his son Narendra Singh went to Narendra Yadav and gave beating to him, which annoyed him and his other companions.

19. Chandra Vir Singh, his wife Saroj Devi, son Ajai Singh and complainant with his wife Ramwati, son Narendra Singh, Ravindra Kumar and Km. Reeta daughter of Chandra Vir Singh were residing in the Haveli at the time of incident. In the evening of the day of incident, i.e. 26-5-1994, the complainant, with his brother Chandra Pal Singh and nephew Ajai Singh had gone to attend a marriage party in village Belot by a scooter. They left Pitambar Singh, Smt. Ramwati Devi, Narendra, Ravindra Singh and Km. Reeta, father, wife, son, nephew and niece, respectively. Two days prior to the incident i.e. on 24-5-1994, Smt. Saroj Devi had gone to Nagla Bhujia, P.S. Sadabad. The complainant party returned at about 3.00 a.m. in the night of 26/27-5-1994. As soon as they reached near the Haveli and temple, they saw Dharmendra Singh, Pushpendra, Jagvir, Narendra, Sanjeev Yadav, Gopal Kori coming out of the Haveli, holding knives in their hands and going towards the east of Nagla Babu. The complainant asked Dharmendra as to why they were running, at that time the accused were frightened. The

complainant and his companion identified them in the head light of the scooter and in the electric light. They went inside the Haveli and found that a Petromax lantern was burning on the partition wall and found his father Pitamber Singh, wife Smt. Ramwati Devi, Son Narendra Singh, nephew Ravindra Singh and niece Reeta lying in the pool of blood and they had knife injuries on their bodies. Reeta was found lying in front of verandah and she was naked from lower half portion of the body and that naked body was covered by a Dhoti. They trembled and terrorised that no person remained alive inside the house. Their condition was just like insant and they failed to think as to what they should do. They sat outside the Haveli and started weeping. In the morning some neighbours gathered there and they asked them to take steps with courage: Some of them asked whether any report has been lodged then the complainant regained his senses and dictated a report to his nephew Sanjai and then he signed it and sent to the police through Chandra Pal Singh. This report was lodged at 7.04 a.m. at the police station Mursan, District Aligarh. At about 8.00 a.m. the police reached the spot. At the time when the complainant, his brother and nephew had gone to attend the marriage party in village Belot, they had left Baba Sukh in the temple.

20. The Investigating Officer recorded his statement and that of Ajai Singh, Smt. Saroj Devi who came down from upper storey, Baba Sukh Ram and Jai Ram who is resident of Nagla Gopi. He used to come to see Baba Sukh Ram at the temple. The I.O, inspected the spot. He recovered blood stringes of cot, blood stained earth blood stained bed sheet, a piece of broken patra, skirt, blouse, Chaddhi and the recovery memos were prepared. The clothes of Reeta, Narendra, Ravindra, Ramwati Devi and Pitambar Singh, white bed sheet were blood stained. They were taken into custody and relevant memos were prepared. The petromax was also taken into custody and given in the supurdgi of the complainant and a supurdgi memo was prepared. The invitation card of the marriage party was handed over during the investigation to the Investigation Officer. Dog squad was also brought at the spot. The squad went inside the room of Dharmendra from where a bottle of wine, two glasses, pieces of bidis, gas cylinder and gas stove were recovered. Thereafter the dog came out of the house. The inquest reports were prepared and the dead bodies were sent to mortuary for postmortem examination and they were handed over to them after post-mortem examination.

When the police was present at the spot and was taking the statements of the witnesses, Saroj Devi came from the room of the upper storey and she was also interrogated. She told him that she had witnessed the incident but due to fear she hid herself in the room. The P. A.C. was deputed at the spot for about two months from that date. In his cross examination he made it clear that his terms with the fellow villagers were not good.

21. The evidence of this witness was challenged by the learned counsel for the appellants that it was a just coincidence that the accused persons were going from the Haveli after committing murders and the complainant with his brother and nephew reached there and saw the accused persons coming out of the Haveli, hence no reliance can be placed on his testimony. We do not find substance in the submission of the learned counsel for the appellants inasmuch as there is no inherent improbability in the statement of this witness. The complainant with his other family members saw the accused persons coming out of the Haveli from a distance of 5 steps. The gate of his house was at a distance of 5 or 7 steps from the place where he, his brother and nephew saw the accused coming out of the gate of his house. Their return at his own house about 3 a.m. in the night after attending marriage party was quite natural, he nominated the accused persons in the F.I.R. Thereafter he made statement under Section 164, Cr.P.C. to the I.O. and deposed the same on oath in the court. He cannot be said to have invented himself to be a witness. His statement is thoroughly consistent. We may point out a case 'State of Punjab v. Hari Singh' reported in AIR 1974 SC 1168 wherein the trial Court convicted the accused persons but the High Court reversed it into acquittal on the ground that Zora Singh must have invented the story that he got up to urinate so that he may pose as an eye witness. Even it was a just coincidence that he woke up to urinate and saw the incident. The apex Court rejected the reasoning of the High Court and allowed the State appeal affirmed conviction and sentence of accused was awarded by the trial Court. The relevant portion thereof is reproduced below (at p 1172 of AIR):

It is in dealing with the evidence of Zora Singh PW 3 that the High Court seems to us to have adopted a patently erroneous approach and to have given grounds which do not appear to us to be reasonably sustainable. The High Court seems to

have assumed that Zora Singh must have invented the story that he had got up to urinate so that he may pose as an eye witness of the occurrence. The ordinary presumption is that a witness speaking under an oath is truthful unless and until he is shown to be untruthful or unreliable in any particular respect. The High Court reversing this approach, seems to us to have assumed that witnesses are untruthful unless it is proved that they are telling the truth. Witnesses, solemnly deposing on oath in the witness box during a Trial upon a grave charge of murder, must be presumed to act with full sense of responsibility of the consequences of what they state. It may be that what they say is so very unlikely or unnatural or unreasonable that it is safer not to act upon it or even to disbelieve them. The High Court had no doubt tried to show that this was the position with regard to the whole of the testimony of Zora Singh. But we do not think that it was successful.

22. Learned counsel for the appellants next 'contended that this witness had not full opportunity for identifying the accused persons, when this witness saw the accused persons coming out of the Haveli and going towards east in fleeting glimpse and it was highly improbable for him to identify all the six accused persons in fleeting glimpse. This contention had also no legs to stand inasmuch as all the six accused persons were previously known to him, three of them are residents of the same village and rest three are residents of village Nagla Babu which is at a distance of one km. All of them used to visit the house of Dharmendra Singh. The witness identified all of the accused in the head light of the scooter, electric light of the bulbs on the Haveli and Kothi and full moon light. There was no difficulty for him to identify all the known accused persons. Dr. Hans Gross in his Text Book 'Criminal Investigation' I Edition 1962 gave out the human perception in the moon light for identification on page 159 in the following words :-

By moon light one can recognize, when the moon is at quarter, persons at a distance of from twenty one feet, in bright moon light at twenty three to thirty feet; and at the very brightest period of the full moon, at a distance of from thirty three to thirty six feet moon light may be increased.

23. Similarly, Dr. Modi in his Text Book 'Medical Jurisprudence and Toxicology ' Twentieth Edition of 1977 on page 61 described the moon light for recognition in

the following lines :-

According to Tidy, the best known persons cannot be recognised in the clearest moon light beyond a distance of seventeen yards. Colonel Bary, I.M.S. is of opinion that at distances greater than 12 yards the stature or out line of the figure alone is available as a means of identification.

24. Night of the incident was of a full moonlit night. PW 4 Chandra Mohan Singh deposed in cross examination that he saw the accused persons from a distance of 5 or 7 steps from the gate of Haveli. It seems that he was at a distance of 5 or 7 steps from the gate of the Haveli when the accused were coming out of the Haveli. In view of the texts stated above he was within the limits of recognition in the full moon light and was in a position to recognize the known persons (accused). He has deposed that he recognised the accused persons coming out of the Haveli from a distance of 5 or 7 steps. We find no reason to discard his testimony.

25. Besides full moonlight there was head light of the scooter which is more effective, and more creative of illumination for identification and provide Tear vision to enable him for identifying the know accused persons. Known persons can very well be identified within seconds even in fleeting glimpse. This witness had full opportunity and sufficient light for recognition of the accused persons.

26. Learned counsel for the appellants challenged the statement of this witness on the basis of omissions of certain facts in the F.I.R. and in his statement recorded under Section 161, Cr.P.C. This witness deposed that he had left Baba Sukh Ram in the village. With reference to the F.I.R. and his statement recorded by the I.O. The witness admitted in his statement that when they went to village Belot, Baba Baba Sukh Ram was present in the village and it was not mentioned in the F.I.R. He also admitted that he had not stated to the I.O. that Baba Sukh Ram was present in the village at that time. It was further admitted by him that he did not state to the I.O. regarding their going by scooter of Har Narain. He also admitted to have told about their going by a scooter. It was further pointed out that there is no recital in the F.I.R. or in his statement recorded by the two I.Os. that this witness asked Dharmendra as to where he was going. He admitted that this fact was not disclosed to the I.O. When he was again interrogated by the second I.O. he told

about this fact to him. He could not explain as to why this fact did not find place in his statement recorded by the Inspector C.I.D. He further pointed out that the witness admitted that he remained weeping, shrieking for about 2-3 hours but nobody came to him. This fact is not mentioned in the F.I.R. nor in his statement recorded under Section 161, Cr.P.C.

27. Learned counsel for the appellants referred the statement of this witness recorded under Section 161, Cr.P.C. in respect of which he admitted that he had not mentioned that Reeta had gone to cattle pond for preparing cow dung cake. There is a recital in the F.I.R. that about 4 or 5 days prior to the date of lodging of the F.I.R. his niece Reeta had gone to cattle pond where Narendra teased and outraged her modesty. It is true that in the F.I.R. it is not mentioned that she had gone to cattle pond for preparing the cow dung cake. Going of Km. Reeta to cattle pond is mentioned in the F.I.R. for what purpose she had gone to cattle pond is not mentioned in the F.I.R. that makes no difference at all. The omissions in the F.I.R. and statement recorded under Section 161, Cr.P.C. referred to by the learned counsel for the appellants are of minute details which are natural and irrelevant to affect the testimony of the witness.

28. Learned counsel for the appellants further pointed out that the witness could not tell about abadi (number of persons living) of the village of Nagla Babu. He had no relations and landed property there and he was not visiting that village hence he was not in a position to know the accused residents of village Nagla Babu. Thus the identification of the accused residents of village Nagla Babu by this witness is doubtful and cannot be relied on. Narendra was teasing and making assault and outraging modesty of his niece. There is no question that he was not known to this witness. He had made complaint against him to his parents and he was also beaten by this witness. So far as the other two accused persons residents of village Nagla Babu are concerned, they were friends of Narendra and were visiting Dharmendra Singh at the Haveli. Thus in our opinion all the three accused persons belonging to Nagla Babu were previously well known to this witness. It was also pointed out that this witness has not mentioned in the F.I.R. or in his statement recorded under Section 161, Cr.P.C. that Sanjeev Yadav and Gopal are friends of Dharmendra Singh. The fact is mentioned in the F.I.R. that

they used to visit the house of Dharmendra Singh and entertain there. Visiting or entertaining Dharmendra Singh by Sanjeev Yadav and Gopal itself shows the friendship amongst them. The F.I.R. and the statement recorded under Section 161, Cr.P.C. are not encyclopaedia, to give each and every minute details which had come into light during the deposition in the Court. Sometime witnesses do not think it proper to get it mentioned in the F.I.R. or in their statements recorded under Section 161, Cr. P.C. but it does not mean that the facts do not exist.

29. The learned counsel for the appellants contended that the relations of the complainant and Dharmendra were cordial. Dharmendra was living alone for about 5 or 6 days prior to the incident. His other family members including wife and children used to reside there. The witness admitted that they used to see whether Dharmendra had come and the outer door had been bolted but if he had not come the house was bolted from inside. In case Dharmendra came later on, the gate of the house was opened by them and Dharmendra went to his courtyard. As such it was not expected of Dharmendra to commit such heinous crime. The witness admitted in his cross-examination that Dharmendra was on inimical term but it was not expected of him for such atrocious action.

30. The general principle of appreciation of evidence is that in case the testimony of a witness regarding his presence at the scene of occurrence appears to be truthful in the facts and circumstances, the minor omissions or additions in his statement are not considered to make his testimony untruthful or unreliable.

31. In the present case we have examined the evidence from each and every corner and came to the conclusion that this witness reached at the time when the accused persons after committing five murders were coming out of the main gate of Haveli and he had full opportunity to recognise all of them and the accused were holding knives in their hand at that time. His testimony in our opinion is truthful, unimpeachable and inspires full confidence. Mere omission of certain facts in the F.I.R. or in the statement recorded under Section 161, Cr. P.C. or additions in deposition do not make his testimony unreliable.

32. The prosecution has also relied on the testimony of Smt. Saroj Devi, PW 2. She deposed that Dharmendra, Pushpendra, Jagvir, Narendra, Sanjeev Yadav

and Gopal were previously known to her. All of them were standing in the dock and she knew them very well prior to the incident. The Haveli in which they were living was purchased from the grandfather of Dharmendra which annoyed him. The Haveli had two portions-one portion was occupied by them while Dharmendra was residing in the other. There is a partition wall in the Haveli. The house was electrified inside and outside both. The electric bulbs were fixed on the gate of the Haveli and on the Kothi which is near the temple. Besides the electricity they also used petromax. She had gone to village Nagla Bhuria prior to occurrence where sister of her husband's father was ill and she had gone to see her. She had returned to her house (Haveli) at about 7.00 or 7.15 p.m. in the night of the incident. At that time she found Baba Sukh Ram at the temple and husband's father Pitambar Singh, Ramwati Dcorani, her daughter Km. Reeta, Ravi and Narendra sons of her Dever. She inquired from Reeta about Chandra Mohan and Ajai as to where they had gone. She told that Chandra Mohan, Ajai and Chandrapal had gone to village Belot. She also informed her that they would return at about 3.00 in the night. Pitambar Singh used to sleep outside the Haweli, Reeta was studying in Mursan. She used to inform that Narendra Yadav was in the habit of teasing her in the way. Chandra Mohan had complained to the parents of Narendra Yadav regarding teasing of Km. Reeta. After that complaint, Reeta had gone to cattle pond for preparing cow dung cake where she met Narendra who threatened her that in case she would make any complaint in future, he would kill her. Reeta complained regarding this fact to this witness and she also made a complaint to Chandra Mohan. Chandra Mohan and Narendra gave beating to Narendra Yadav. That incident took place about 4 or 5 days prior to the incident. Her father-in-law after taking dinner, was sleeping on the Chabutra outside the kothi. The electric light was there but she could not say as to whether the light was available in the night of occurrence. When they took dinner the petromax lantern was burning which was kept on the partition wall in the court yard of the Haveli. After taking dinner she had gone to sleep in her room on the upper storey. There is stair case having a door for the upper storey. At that time she had bolted the door of the stair case from inside. At that time she left Ramwati, Reeta, Narendra inside the courtyard. After mid night she heard cries, weeping and shrieks from the court yard. She woke up and came at the 'mudeli' and saw in the light of petromax

lantern the six named accused persons who had knives and they were assaulting Pitambar Singh, Ramwati, Reeta, Ravi and Narendra with their knives. After seeking the incident, she came perplexed and feared. She entered into her room and bolted the doors from inside. She heard noise in the morning then she woke up. She opened the room and came out of it. It was break-fast time. There was complete light of sun. The sun had arisen when she descended and reached there. She found various persons and police standing there. She found Reeta lying in the Verandah, Narendra on the ground. Ravi, Ramwati and Pitamber were lying dead on their cots. She told about the incident to the police persons. She also stated that she had heard that Dog was also called there. She could not say as to what time the dead bodies were sent for post-mortem examination. About a month and a week Chandra Mohan informed her that her statement was not recorded by the I.O. She came to Aligarh and at that time Sukh Ram and Jai Ram had also come. She dictated a draft of affidavit to a Typist there. On her affidavit her photo was also affixed. She was interrogated by the Inspector of C.I.D. She had told the facts to him which she had stated in the court on the date of her deposition. She also made it clear that besides Dharmendra, she knew all the accused persons from before because they used to visit Dharmendra and entertain drinking and eating with Dharmendra. By slip of tongue she stated that both the family members were residing in the Kothi which had one main gate and thereafter a room (Dwari) which has two openings. She corrected that it was Haveli and not Kothi.

33. Thus she is the eye witness of the occurrence and her statement was challenged on the ground that her conduct was unnatural as after seeing the incident she went inside her room of the upper storey. Her statement was not recorded by the I.O. of Civil Police and she is manufactured witness but this aspect will be considered later on.

34. Learned counsel for the appellants submitted that her maternal house is in village Rashipur. She showed her ignorance about the places where her sisters were married. There were three sisters including herself. She stated that she had no knowledge where sisters were married. She also told that she does not know that her sister was married in village Kila (Mursan). Although she admitted that

Satendra was her brother-in-law, but she could not say as to whether Satendra was residing in Killa. It was also pointed out that the family members of Pushpendra were not known to her. She stated that she knew the residents of Nagla Gopi but she does not know Mahavir and Khajan Singh. She was not aware about the name of the mother of Jagvir. She had never seen her. She also did not know father, brother and sister Sharda of Jagvir. She also does not know mother of Pushpendra. She was not aware of the other persons living in village Kamra Bagh. On the basis of that statement the contention of the learned counsel for the appellants is that how she was able to know Pushpendra and Jagvir when she was not aware of other family members of these two accused persons. Jagvir and Pushpendra are friends of Dharmendra and they used to visit Dharmendra where they entertained eating and drinking. As such we do not find any force in the contention as she did not know Jagvir and Pushpendra prior to the incident.

35. Learned counsel for the appellants again pointed out that she had gone to Aligarh. At that time Jai Ram and Baba Sukh Ram were also present with Chandra Mohan. All of them got typed their affidavits. Learned counsel for the appellants also pointed out certain omissions in her affidavit such as Reeta had informed that Chandra Mohan and others had told her to return at about 3.00 a.m.' in the night and that fact is also not mentioned in the statement recorded by the C.I.D. She could not explain as to why that fact was not mentioned in her statement recorded by the C.I.D., particularly when she had stated about that fact to him. In the affidavit it is also not mentioned that after dinner Pitambar had gone to the Chabutra for sleeping. There is no recital regarding light in the affidavit and in her statement recorded by C.I.D. Inspector. It is also pointed out by the learned counsel that she and other family members had no talking terms with Gopal; hence she was not in a position to recognise him. But she had explained that he used to visit Dharmendra and Dharmendra called him as Gopal hence she knew the name of Gopal accused. For about a year prior to the incident Gopal was visiting Dharmendra where they took daily drinking etc. but none of the family members objects the habit of Dharmendra or any other accused or made any complaint to police station which was not liked by her family members. She did not know the names of father or brother of Gopal accused. She also did not know that Lalta Prasad, a brother of Gopal, was a practicing lawyer at Hathras. She made it

clear in her cross-examination that she became faint and unconscious after seeing the accused persons assaulting the deceased and she could not say as to how long her shrieks continued. She regained her senses in the morning. She had not disclosed the fact of unconsciousness and fits either to the I.O. or in her affidavit and she could not explain the reasons therefore. She stated that her statement was recorded by the I.O. of Civil Police. She did not state at what time the statement of Chandra Mohan was recorded. At that time Baba Sukh Ram and Jai Ram were also present. She could not say as to whether their statements were recorded by the I.O. of Civil Police on that date. After giving her statement to the I.O. she again became faint and unconscious. She remained with police only for the period when her statement was recorded. She could not say how far she remained _ unconscious thereafter. After the night of incident next day she had gone to Nautal Gopi from village Kamra Bagh. She returned after three or four days. At that time she will not find higher officers (SSP) in the village. She did not disclose about the incident to any person till her affidavit was filed and her statement recorded by the I.O.

36. Learned counsel for the appellants submitted that the aforesaid statement of the witness clearly shows that she was a got up witness and was not present in the night of incident at the house but we are not in agreement with the learned counsel inasmuch as she could not be nominated as witness in the F.I.R. as well as in the statement of the complainant recorded under Section 161, Cr.P.C. only due to reason that the complainant along with his brother and nephew had gone at about 5 p.m. to another village to attend a marriage party while Smt. Saroj Devi came at the Haveli at about 7 or 7.30 p.m. In the morning the I.O. recorded his statement after reaching at the spot, by that time she was sleeping in her room on the upper storey. As such the complainant could not contact her and had no knowledge that she had arrived and was also present in the house at the time of incident. She is a rustic lady of rural area. Admittedly after the incident, at the venue four or five inspectors, Sub Inspectors, S.P. (R.A.), S.S.P., D.I.G., D.M. C.Os and police of three police stations were present. The witness stated that she was suffering from fits for about 10 years and she has produced medical prescriptions of regular treatment of her fits. Where 5 persons being but chered by the accused persons and she saw the accused persons committed murder of 5

persons with knives there is nothing unusual for this rustic lady of rural area to become faint and unconscious and coming out of her room after the police had come. She was suffering from serious fits and after seeing the terrible and horrible scene she became faint and unconscious; hence nothing was improbable in her conduct. After going through her statement we find that she was present in the house at the time of incident.

37. Learned counsel for the appellants again submitted that her statement was not recorded by the I.O. at the spot and she was manufactured later on and her statement was recorded only to make the incident witnessed by her. We are not convinced at all. When she came from her room which was on the upper storey there were various police personnel. If she had disclosed about the incident to any of them that she had given her statement to the I.O. the impression of such type cannot be said to be unreasonable, in view of her being a rustic lady of rural area in the presence of police of three police stations and of high officers at that time.

38. Learned counsel for the appellants pointed out omissions of certain facts which were deposed in her statement in the court and had not been mentioned in her statement recorded under Section 161, Cr.P.C. She gave out a concise statement in her affidavit to show that she was present at the spot and she had witnessed the incident. Various facts had not been inquired by the I.Os.; hence she had not told about them. These facts did not affect the veracity of her testimony. If we come to the conclusion after going through her statement that she was actually present and saw the incident, her statement cannot be brushed aside only on the basis of omission of certain facts in her affidavit and her statement recorded under Section 161, Cr.P.C. We do not find any inherent improbability in her statement that she was present in her room at the time of the incident and had witnessed the incident. Thus we find the testimony of this witness is trustworthy and acceptable.

39. The prosecution has also examined Jai Ram (PW 3) regarding the incident. He deposed that he knew all the six accused persons standing in the dock prior to the incident. He is resident of village Nagla Gopi which is at a distance of about 1 1/2 Kos (about 2 miles) and the distance between Nagla Babu and Nagla Gopi is about 2 Kos (about 3 miles). On the day of incident, he had come to meet Baba

Sukh Ram who was present at the temple situate opposite to the Haveli of the complainant. The witness had come in the evening at about sunset, and stayed with Baba Sukhram. There was a lamp (Deepak) in the temple. There was electric bulb on the gate of Haveli and on the Komi besides the temple. He woke up on hearing the barking of dogs and saw that all the six accused persons were going from the side of the temple to the Haveli. When they reached near the Haveli, first of all Dharmendra made Pitambar Singh awaken who was sleeping by the side of the Kothi. He saw all those accused in the light of electric bulbs. They had taken Pitamber Singh inside the Haveli. After 5 or 7 minutes he heard shrieks from the Haveli. Both Baba Sukh Ram and this witness went to the Main gate of the Haveli and saw peeping through its doors all the 6 persons assaulting five persons with knives inside the house and saw the activities of the accused persons in the light of petromax lantern which was kept and burning on the partition wall. After seeing the horrible scene he ran away in order to save his live. He hid in the ditch behind heap of bricks (Chatta) where there was a bush, after dawn he went to his village Gopi Nagla where he disclosed about the incident to the villagers and he returned at about 9.00 at the place of occurrence and saw various police persons besides the public present there. He also saw Chandra Mohan and Saroj as well. At the time when Smt. Saroj was giving her statement to the Inspector he was standing behind her. Thereafter he also disclosed to the Inspector that he had also witnessed the incident and requested him to record his statement. He also gave his statement to the police Inspector. After about one month and a week he was informed by Chandra Mohan that his statement was not recorded by the Inspector then he went to Aligarh where he got his affidavit typed out and affixed his photograph thereon and that affidavit was given to C.I.D. Officer. In his cross examination he made it clear that there was no bulb light on the temple.

40. The statement of this witness was disputed by the learned counsel for the appellants that he is also a manufactured witness. His conduct was also unnatural and his statement also suffered from the informity that his statement was not recorded by the I.O. for a long time. Identification of accused persons by him at the spot was not reliable inasmuch as he had no relation in village of Babu Nagla. He had not visited the village Nagla Babu and he did not know any resident of Nagla Babu. Hence his identification is not worthy of reliance. The learned counsel for

the appellants also referred the affidavit and statement recorded under Section 161, Cr.P.C. to show that he had not mentioned the fact that he met the accused at the time when he visited Baba Sukh Ram where accused used to come. This fact does not find place in the affidavit nor in the statement recorded under Section 161, Cr.P.C. and the witness could not explain about this fact as to why this fact was not mentioned in his affidavit and statement. We have earlier pointed out that some omission of facts in the affidavit which was a concise statement of fact that he had witnessed the incident and the statement recorded under Section 161, Cr.P.C. the whole testimony of the witness cannot be thrown out unless that omission materially affect the testimony. The affidavit is only a concise statement of the fact that he had witnessed the incident. If the I.O. has not inquired about various facts or the witness under wrong impression deposed that he had disclosed those facts to the I.O., omission regarding those facts in his statement recorded under Section 161, Cr.P.C. will not detract the reliability of the witness.

41. The learned counsel for the appellants again pointed out the omission regarding light of petromax lantern inside the house and electricity light on the Kothi and the Haveli besides the temple. We find in his affidavit that there was light of bulb out side the house and inside the Haveli. The observation of learned trial Judge is that there was a mention of the light in the affidavit and his statement under Section 161, Cr.P.C. but petromax was not mentioned therein. The light of electric bulb on the Kothi and the Haveli has been proved by Chandra Mohan whose testimony was very natural. The omission of the petromax by this witness in his affidavit and statements recorded under Section 161, Cr.P.C. will not affect the truthfulness of this witness.

42. The learned counsel for the appellants again challenged the evidence of this witness on the ground of introduction of fictitious story that he got up after hearing the barking of dogs and saw the accused persons going inside the Haveli and saw the incident peeping through the doors after hearing the shrieks of the deceased persons. But we are unable to agree with the learned counsel for the appellants inasmuch as the dogs in the village, if some persons go in the night, start barking; hence nothing is improbable that the witness awoke after hearing the barking of dogs. We have discussed the facts and circumstances of the case State of Punjab

v. Hari Singh AIR 1974 SC 1168 (supra) wherein the witness woke up to urinate and saw the accused persons. The High Court set aside the conviction and returned the verdict of acquittal which was reversed by the Supreme Court holding that there was nothing improbable in the facts and circumstances that the persons woke up to urinate which was just a coincidence to witness the incident.

43. From the lengthy cross examination of this witness learned counsel for the defence could not point out any inherent improbability or any fact leading to an inference of unreliability. Hence in our opinion the testimony of this witness cannot be brushed aside only on the ground that his statement was not recorded by the 1st I.O. and he is not named in the F.I.R. or his conduct was not proper as expected, which will be discussed later on. This witness deposed that he was sleeping with Baba Ram Sukh Das on the chabutra of the temple which was in front of the Haveli. He woke up on the barking of the dogs and saw all the six persons going inside the Haveli. After 5 or 7 minutes he heard shrieks of deceased persons inside the Haveli. He saw the accused persons assaulting with knives. He also explained that the accused persons were known persons. They also met Baha Ram Sukh Das and he saw them visiting Baba Ram Sukh Das. At the time of incident he apprehended great danger of his life, he could have been dealt with in the same manner. He hid in a ditch behind the heap of bricks. He went to his village in the dawn. We can imagine what would be condition of a witness who saw actual butchering which must have reflected him for several months. The explanation of the prosecution of omission of his name in F.I.R. and statement of PW 1 is acceptable that PW 1 had no knowledge that this witness was also present and saw the incident. On over all assessment of the testimony of this witness it appears that he was present and saw the accused persons going inside the Haveli and also saw the accused persons assaulting the deceased with their knives. His testimony is reliable and acceptable.

44. Now we revert to the general submission of learned counsel for the appellate.

45. Learned counsel for the appellants submitted that the names of PWs 2 and 3 were not mentioned in the F.I.R. and their statements were recorded under Section 161, Cr.P.C. by the Investigation Officer C.P.C.I.D. after about one month

and 18 days; hence their evidence is not believable at all.

46. We have given our anxious thought to the submission made on behalf of the appellants. There is no bar in the Evidence Act or any other rule of law to consider the evidence of a witness who is not named in the F.I.R. or he is examined at later stage after one or two months by the I.O. There is no law to discard the testimony of such witnesses ipso facto as unreliable only on the ground that the witness is not mentioned in the F.I.R. or his statement was recorded at a later stage where the circumstances of the case lead to an inference that he was present at the scene of the incident and the prosecution has come forth with the explanation for omission of the name of the witness in the F.I.R. or his delayed examination by the I.O. It is certain that the evidence of such, witness is subject to close scrutiny in the facts and circumstances of the case. The omission of a witness's name in the F.I.R. or late examination of the witness by I.O. is not by itself to be a ground for rejection of his testimony. Now we examine the circumstances of the case in this respect. The 1st I.O. investigated the case improperly or unvigilantly either negligently or deliberately. The 1st I.O. committed the following irregularities during the period in which he investigated the case.

(i)'Scooter and petromax were mentioned in the F.I.R. itself. Even then he neither examined them nor he took them into custody, nor probed into their existence at the time of incident.

(ii) He had not inspected properly the house where the incident took place. He ought to have carefully seen the room of upper storey also and surroundings of the house. Had he inspected the room of upper storey, he could have found the presence of Smt. Saroj Devi PW 2 in the room of the upper storey and enquired her regarding the incident.

(iii) The Investigating Officer (1st) got disclosed from the accused persons regarding blood stained knives hidden by them. He straightaway went to the place where the knives were said to have been hidden by the accused persons. It is a matter of chance that the knives could not be recovered either due to insufficient location of that place or inefficiency of the I.O. Had the knives been recovered by him on the information received from the accused persons, this recovery was not

admissible and that recovery could not come under the purview of Section 27 of the Evidence Act.

(iv) He had not recorded the statements of Smt. Saroj Devi, Baba Sukh Ram and Jai Ram.

(v) He also did not inquire as to whether any person was present at the temple which was in front of that Haveli. Had he inquired about the presence of any person at the temple, he could have received information regarding the presence of Baba Sukh Ram and Jai Ram at the temple in the night of the incident.

(vi) He had also not inquired from the persons living in the vicinity of the incident as to whether they had seen the incident or not.

(vii) He also did not prepare the site plan properly. He could have mentioned the place where the complaint was present with his companions on the scooter at the time when the accused were coming out of the Haveli.

(viii) He had not properly investigated regarding the light available to the witnesses for identifying the accused persons.

47. Due to reasons aforesaid PW 11 Bajj Nath Singh deposed that the disciplinary action has been taken against the I.O. Sri Om Prakash Sachan on the ground that he had committed irregularities in the investigation hence the investigation was transferred to Sri Gaya Prasad, who of course, investigated the case for a week only and he has not been examined by the prosecution in this case. Then PW 11 Bajj Nath Singh took over the investigation and conducted the same.

48. Where the investigation was not being conducted properly and fairly, it is but natural that the statements of PW 2 and PW 3 were not recorded by the I.O. Smt. Saroj Devi PW 2, is a rustic lady of rural area. When she came from the room where she was lying in fainted condition, she found several police personnel. Admittedly Inspectors, Sub Inspectors five in numbers, C.O., S.P. (R.A.) along with police staff of four police station were present. The D.M. S.S.P. and various authorities were also present at that time. She disclosed regarding the incident to some of the police personnel considering that he was investigating the case. He

might not be the I.O. but under misunderstanding or wrong impression of the fact the lady thought it that she had given her statement regarding the incident to the police. At the later stage, it came to know that her statement was not recorded by the I.O. She filed an affidavit on 6-7-1994 and on the basis of that affidavit, the police recorded her statement. Her statements were recorded on 13-7-1994 and 29-7-1994. As PW 2 Smt. Saroj Devi came at about 7.00 p.m. as such PW 1 had no knowledge regarding the presence of PW at the house, hence he had not named her in the F.I.R. as a witness. The statement could not be recorded by the I.O. after lodging of the F.I.R. only due to misunderstanding of the fact and negligence of the I.O. In the circumstances, it cannot be denied that Smt. Saroj Devi was not present in her room of the upper storey of the house at the time of the incident. If she was present and she had seen the incident, there is no reason as to why her statement should not be considered.

49. Similarly PW 3 Jai Ram was not named in the F.I.R. as witness of the incident. He had come at about sunset to meet Baba Sukh Ram Das at the temple which is in front of the Haveli. He was also sleeping with the Baba Sukh Ram Das. He woke up on the barking of dogs in the night and saw all the six accused coming to the Haveli where they took Pitambar Singh from the outside to inside the Haveli. He heard cries from the Haveli, he along with Baba went there and saw after peeping through doors, forceful scene of murders by the accused persons. He was afraid of so much that he ran away and hid himself behind the bushes near the brick kiln till dawn. He went to his village Nagla Gopi and returned with several village fellows to the spot where he found a gathering of various persons, police Sub Inspectors, Police Staff. He saw Smt. Saroj giving statement to Sub Inspector and thereafter he also gave his statement about the incident. The complainant was not aware of the arrival of this witness as the witness reached the temple after his departure to village Belot, hence he could not be named by him in F.I.R. This witness under the misunderstanding gave his statement to some police staff considering him to be the Investigating Officer. Can we think that he would have courage to inquire as to which was of the police staff to record his statement. When he could know that his statement has not been recorded, he filed his affidavit. Then his statement was recorded by the I.O. As we have seen the 1st I.O. had not investigated the case properly hence his statement could not be

recorded by the 1st I.O. There is satisfactory explanation for not recording his statement by 1st I.O. As such omission of the name of this witness in the F.I.R. and his relayed examination by the I.O. will not effect the credibility of his evidence.

50. Unnatural Conduct of the witnesses :- Learned counsel for the appellants submitted that the conduct of the PWs was unnatural and was not acceptable in the facts and circumstances of the case. PW 1 deposed that after seeking the dead bodies of his family members in the Haveli he along with his brother and nephew came out and sat outside it where they continued weeping, wailing, shrieking till about 6.30 a.m. from the time of their arrival there (3.00 a.m.). They did not go to other persons of the village for help, to inform them about the incident, to the police at a distance of about one Km. for lodging report. Some one asked him as to whether report had been lodged, then he dictated the F.I.R. and sent it to police station. PW 2 Smt. Saroj Devi did not make hue and cry or raise alarm for help after she saw the murderous assault by accused persons with knives on her own family members and she did not make any attempt to save the deceased persons. She went inside her room, locked it from inside and slept there and woke up after hearing the noise of police and various persons gathered there at about 8.00 a.m. She did not disclose to I.O. about the scene witnessed for at long intervals. PW 3 Jai Ram woke up on hearing the barking of dogs and saw the accused persons going towards the Haveli and entering inside it. He along with Baba went to see the happening inside the Haveli after hearing the shrieks from the Haveli. He saw after peeping through the doors that the accused were assaulting the deceased persons with their knives. He ran away and went to a place behind the bushes due to fear he remained there till dawn-break. He went to his village and returned with some persons of his village to spot at the time when police had reached and various persons gathered there. He neither went to police station to inform about the incident nor he raised alarm or contacted other persons of the village of occurrence for the help of vie He did not disclose about the incident to the I.O. for about one and half months of the incident.

51. We will first consider unnatural conduct of the witnesses.

52. There is no text or any rule of universe to describe the natural or human conduct in a particular situation, a person would act or behave in particular manner. Every person reacts in his own way. Such as in a train dacoity, a person seeing the dacoits surrenders all his property without any resistance, while other may resist in surrendering his property to the dacoits. Few may die but do not yield. Some may cowardly run away from the clutches of the dacoits while others may hide in a safe place to save their skin. A courageous person takes active role of catching hold of the dacoits without caring of his own life. Similarly, in a case of murder, one may shriek and start weeping. Some may run to save their own skin and seldom person shows his courageous conduct in fighting for saving others or catching hold or chasing the miscreants to apprehend. It depends upon mental, physical structure, stints of cowardness or courage of a person, social structure where he is residing and what are his relations with the persons living in the locality and society. We cannot ignore cases where the gruesome murders of kms of family members are committed by named miscreants and some of their family members sustained injuries in broad day light incident but the complainant and injured persons resiled from their earlier statements and F.I.R. In cross examination deposing that they could not recognise the real assailants, and they had not been examined by the I.O., their conduct in such fashion is only to save skin of remaining members of the family and allow the accused for acquittal. Course on the basis of present structure of law knowing that the witnesses are deposing false, and they have been won over by the accused persons, are helpless to dispense with correct decisions. As such there is no universal law that a particular person will act or behave in particular manner Act of one person may differ from other in one set of facts and circumstances. There is no rule of law that a particular person has not acted in a particular manner and his action was against human conduct; hence his evidence should be ignored. We are required to examine the facts and circumstances of each case and decide whether the act of such person was justifiable in the facts and circumstances of the case and we have to scrutinize their evidence closely.

53. The Apex Court has laid down circumscription of human conduct of a witness of a murder case in the case of Rana Pratap v. State of Haryana reported in AIR 1983 SC 680 in the following lines (at p 682 of AIR):-

Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to rescue of victims, even going to the extent of counter attacking by the assailants. Every one reacts in this own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unreliable and unimaginative way.

54. In the case in hand in which five members of the complainant's were brutally murdered. We can visualise the conduct of this witness in havoc, heart burn horrible, trembling and pierceful scene wherein five members of his family including his wife were lying in cold blood. He could not understand what he should do. In such circumstance, it was nothing unnatural or impossible for one if he would have become insane or even died in shock. After seeing the murder of five members of the family in the Haveli, the complainant his brother and nephew came out of the Haveli and sat out side it, weeping, shrieking and wailing till 6.30 a.m. His terms with fellow villagers were not good. They did not go to other persons for help or to the police station by that time and some persons came there and some one asked him whether report had been lodged at the police station. He replied in negative and then the F.I.R. was dictated and was sent to police station. In our view, there was nothing unnatural or improbable in the conduct of the complainant. Moreover he had not good terms of his village fellows.

55. In similar way PW 2 Smt. Saroj Devi saw accused persons committing murder of her family members from the Mudeli of Verandah. She became stunned and speechless due to shock and went inside the room and locked it iron) inside due to fear. She is patient of fits for the last 10 years. She filed medical slips and prescription of her disease during her deposition. She due to shock went into fits and slept. On hearing the noice of various persons inside the Haveli, she woke up and came down where she narrated about the incident to some police personnel. We do not find any abnormality or unnaturality in her conduct. We cannot expect more from an illiterate rustic lady of rural area. The informant was not aware of her arrival in the evening. Had there been any possibility of plantation of

evidence, he could not have been prevented from nominating her in the F.I.R. as witness. The defence has not disputed the existence of stair case for upper storey and of the room thereon. The First I.O. was most negligent. He did not enquire about the stair cases or inspect door and room of upper storey. No body interrupted her sleep. Had the spot been inspected by the I.O. carefully, he could have found her presence inside the room of upper storey.

56. So far as the conduct of PW 3 is concerned, he woke up on the barking of dogs and saw the accused going inside the Haveli. He heard shrieks and cries of the family members of the complainant's family members after 5 or 7 minutes. He went to the gate of the Haveli and saw the accused persons assaulting the deceased persons with their knives. He was afraid and thought that in case he was seen by the accused persons he would also be dealt with in the same manner. We can imagine the condition of a person who saw horrible and terrible scene wherein he found the accused persons butchering five persons with their knives and hearing shrieks and cries of dying 5 persons. Due to fear he ran and hid behind the bushes near the heap of bricks and he remained there till dawn, then he went to his village and returned with some persons of his village to the spot where he found various persons and number of police staff. Conduct of his hiding behind the bushes till dawn, not doing any thing to help deceased persons by making hue and cry or to go police station is not unnatural human conduct in view of the above discussion.

Ante timed F.I.R

57. The learned counsel for the appellants further contended that the F.I.R. is ante-timed. It was not lodged at the time alleged by the prosecution. In support of this contention, he submitted that the police reached at the place of occurrence at about 8.00 a.m. and the dog squad was called in order to know about the actual ' assailants. The dog squad with unit reached at the place of occurrence and could not detect any thing then the inquest reports of the dead bodies were held by three Inspectors and Sub Inspectors, that is why some offences have not been mentioned in the inquest report and the first page of the inquest reports have been subsequently filled up. The dead bodies were received at the mortuary at 1.30

p.m. on 28-5-1994. Till the receipt of the dead bodies, the matter was thought over and a false F.I.R. was prepared at the later stage. The F.I.R. was written by Ajai but subsequently it was replaced by Sanjai. We have thought over the matter and we do not find any substance in the contention of the learned counsel for the appellants inasmuch as the F.I.R. was lodged at 7.05 a.m. on 27-6-1994 at the police Mursan, district Aligarh. As the names of the accused had already been disclosed in the F.I.R., the Investigating Officer when reached at the place of occurrence, sent some police force in search of the accused persons, but none of the accused could be apprehended. In the evening he again sent the police force in search of the accused persons. Four telegrams on 28-5-1994 between 7.30 a.m. and 8 a.m. had been sent on behalf of Gopal and Narendra accused showing that they had been arrested about 10 p.m. on 27-5-1994 by the police apprehending false involvement (Ex. Kha-16 to Ex. Kha-19). The receipt of dead bodies was noted in G.D. No. 12 of Police lines at 7.20 a.m. on 28-5-1994 and they were received at 1.30 p.m. on 28-5-1994 at the mortuary. In case the F.I.R. was not ready prior to the receipt of the dead bodies at police lines and in the mortuary, the accused could not have been arrested as alleged by the defence. Though according to the prosecution Gopal and Narendra accused were arrested next day i.e. 28-5-1994. The Doctor, who conducted the post-mortem examination of the deceased, has also received the copies of inquest reports with chick reports, G. D. reports Challan Nash, Photonash and other papers and signed them. If the dead bodies had been sent at 4, 5 p.m. on 27-5-1994 along with all the papers including inquest chick report (R.I.R.) and were received at Police lines at 7,20 a.m. on 28-5-1994 the very foundation of the contention of learned counsel falls down. In our view the F.I.R. is not ante-timed.

58. Recovery, of blood stained, knives :- The learned counsel for the appellants submitted that the recovery of blood stained knives at the pointing out of Dharmendra and Pushpendra is fictitious and cannot be relied on inasmuch as they had already disclosed in respect of the place where they had hidden the knives of the crime and the I.O. had gone to search those knives. The I.O. himself planted those knives and showed them to have been recovered at the pointing out of the accused. This contention has also no force inasmuch as the I.O. negligently without knowing the consequence had gone to the place where the knives had

been hidden as disclosed by the accused but due to insufficiency of location of that place, the knives could not be recovered. The accused persons, namely, Dharmendra, Pushpendra and Jagvir were taken by the police custody on 7-6-1994 on the police remand which was applied for on 4-6-1994. Two blood stained knives were recovered at the pointing out of Pushpendra and Dharmendra each by one from the bushes of eastern patri of canal near the bridge in the vicinity of Mohalla Killa of Mursan, in the presence of a public witness Khajan Singh (P.W. 12). Those knives were searched out by Dharmendra and Pushpendra from the bushes at that time which were handed over by them to the police and these knives were open and blood stained.

59. The blood of knives were analysed and serologist found it to be of human blood. Of course, the blood was found insufficient for analysing the blood group. It is a very important piece of evidence which corroborates the participation of these two accused Dharmendra and Pushpendra in the incident. The recovery has been proved by P.W. 12 Khajan Singh a witness of public besides the I.O. During the cross examination, nothing could be elicited to disbelieve the piece of evidence. We find this piece of evidence reliable and acceptable to corroborate the prosecution case.

60. We have also considered the defence version that the accused persons have been falsely involved in the present case. P.W. 1 Surendra Singh, who was posted as Constable at police station Chandrana, proved the copy of G.D. Ext. Kha-7, P.W. 2 Sri Ram has also been examined to prove certain papers regarding the crime No. 67 of 1994 under Section 136 Act and copy of chick report of crime No. 68 of 1994 under Sections 147, 148, 149, and 302, I.P.C. copy of chick report of crime No. 68A of 1994 under Section 392, I.P.C. and some other copies of G.D. reports in order to show that there was some manipulation in the printing of number of chick reports. Actually there is no manipulation. It was due to manufacturing defect some printing numbers were not in seriatum. D.W. 3 Chandraj Singh produced three copies of N.C.R. dated 26-5-1983, 8-10-1971 and 9-9-1977 but they do not relate to the complainant or any member of his family.

61. Dharmendra stated in his statement that he had gone to attend the marriage of his some relation and he was not present in his house in the night of incident. The plea of alibi has not, been proved by any evidence even he has not stated in witness box; hence the plea of alibi of Dharmendra accused cannot be considered.

62. It was also contended that there was inter se enmity between Pushpendra and Jagvir. Both of them could not join their hands in the commission of the present crime. The defence has also filed the documents regarding the litigation between the families of Jagvir and Pushpendra, but the contention of the learned counsel for the appellants is not sustainable inasmuch as even the litigation had taken place between the families of Pushpendra and Jagvir, there is no evidence that both those accused were not friends of each other and were on bitter inimical terms hence they could not join in the commission of the crime. In our view they could join their hands for the common object for committing rape on Km. Reeta and murder of family members of the complainant.

63. We have thoroughly examined the evidence of P.W. 1 Chandra Mohan Singh, P.W. 2 Smt. Saroj Devi and P.W. 3 Jai Ram is fully convincing, reliable, trustworthy to place implicit reliance. We do not find any inherent improbability nor any scope for unreliability in their evidence. In the facts and circumstances stated above, their evidence does not suffer from any infirmity or illegality. We have no hesitation to place explicit reliance on their testimony.

64. Of course, we do not find any concrete evidence of rape committed on Km. Reeta by any of the accused persons, but the circumstances lead us to a conclusion that at least the accused persons had made attempt to commit rape on Km. Reeta. Her body was found in the verandah where her half lower portion was found completely naked. Her underwear and petticoat were torn and found at different places in the same house. In the circumstances the Sub-Inspector who held her inquest report, opined that there was probability of committing rape which clearly indicate that attempt was made for committing rape on her. She was dragged from her cot to verandah and the petticoat was torn and was thrown to a side, and then her underwear was also torn and was thrown to other side. She might have been rescued by other members of the family and they were killed then

and there by the accused persons when she was to be subjected to rape and was overpowered. The accused persons inflicted knives injuries on her body. The doctor found 14 knife injuries on her body. It was Narendra Yadav accused who used to tease and outrage her modesty; she had made complaint to the complainant who lodged complaint with the parents of Narendra. About 5 days prior to the incident, she went to the cattle pond for preparing the cow-dung cake; she was again teased and her modesty was outraged by Narendra and a threat was extended to her that in case she made any complaint, she would be killed. She made complaint to her uncle complainant who along with his son went to Narendra and gave him a beating. Narendra visited the house of Dharmendra in the absence of complainant, both Dharmendra and Narendra made a plan to commit rape upon Km. Reeta. Dharmendra may or may not have been interested in committing rape but he was interested to eliminate the family members; hence both joined their hands for the common object for the commission of rape and murder. The other accused persons being companions also joined them and their participation has been proved by the prosecution evidence. Infliction of a large number of injuries on the bodies of each deceased and murder of two lads of 12 years and murder of an old person of 70 years and murder of 15 years girl and attempt of rape on her are indicative of the fact that the intention of the accused persons was much more than murder and rape. As the whole episode was planned and prepared by Dharmendra and Narendra; hence they deserve extreme penalty for the commission of five murders of two boys of 12 years, Km. Reeta, Ramwati, wife of complainant, and Pitambar an old person of 70 years. They have committed murders in a very cruel and brutal manner inflicting as many as 53 injuries on five persons. The Court below has not committed any error in awarding the extreme penalty of death to Narendra and Dharmendra, who were instrumental behind the whole episode of awful tragedy. We, however, are conscious of the fact that the appellants Dharmendra and Narendra after their convicting by the trial Court are languishing in death cell since 3-6-1994 and 28-5-1994, respectively, i.e. more than three years. Consequently now it may not be proper to confirm the sentence of death passed on them by the trial Court.

65. Accordingly, all the appeals of Dharmendra Singh, Narendra, Gopal, Sanjeev, Pushpendra alias Pappu and Jagvir Singh against conviction are hereby

dismissed. However, the reference made by the learned Sessions Judge for confirmation of death sentence is rejected and the sentence of Dharmendra and Narendra is commuted to life imprisonment under Section 302, I.P.C. The sentences awarded to other appellants are confirmed.

66. The accused-appellants are in jail. They shall serve out their sentence.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com