

Maharam and anr. Vs. State of U.P.

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Court : Allahabad

Decided On : Aug-31-2001

Reported in : 2002CriLJ278

Judge : G.P. Mathur and ;U.S. Tripathi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302 and 363

Appeal No. : Criminal Appeal No. 1401 of 1980

Appellant : Maharam and anr.

Respondent : State of U.P.

Advocate for Def. : D.G.A.

Advocate for Pet/Ap. : G.S. Chaturvedi, ;P.C. Sharma, ;Suchir Kumar, ;S.K. Kulshrestha and ;Manish Goyal, Advs.

Disposition : Appeal dismissed

Judgement :

U.S. Tripathi, J.

1. This appeal has been directed against the judgment and order dated 27-6-1980, passed by VI Addl. Sessions Judge, Etah in Session Trial No. 692 of 1979, convicting appellants Maharam (since dead) and Rarnesh under Section 302 IPC

read with Section 34 IPC and sentencing them to imprisonment for life.

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

Appellant Maharam was real brother of Hoti Lal and Narendra Prakash, the father of appellant Rarnesh, Tota Ram, the father of appellant Maharam had three other brothers, namely, Mint Lal (PW5), Ballani and Pritam Singh Dal Chand (PW2) is son of Mihi Lal (PW5) and cousin brother of appellant Maharam.

3. Smt. Ram Lali, deceased (32) was previously wife of Hoti Lal. A son named Rajendra was born to Smt. Ram Lali out of her wedlock with Hoti Lal, Hoti Lal was murdered on 9-4-1978. After one and half months of the murder of Hoti Lal, Ram Lali performed 'Dharao' (a customary from of marriage) with Dal Chand (PW2) and started living with him. Hoti Lal was a teacher in a primary school. He had contributed a sum of Rs. 1947/- be sides interest towards his Provident Fund and he had to gel an amount of Ha, 12,232/ - towards Group Insurance Scheme (GIS), Rajendra, minor son of Hoti Lal was his legal heir.

4. On 26-5-1.878 at about 8.00 a.m. Smt. Ram Lali, deceased was coining 10 village Mamedra, Near village Mamedra appellants Maharam and his brother Narendra Prakash along with appellant Ramesh Chandra and his brother Mahesh Chandra and Ganga Prasad kidnapped Rajendra from the lawful custody and guardtnship of his mother Smt. Ram Lali. A report of the said occurrence, Ext. Ka-7 was lodged by Smt, Ram Lali at police station Sidhpura, district Etah and since then Rajendra was missing.

5. On the after noon 23-7-1979 at. about 4.00 p.m. Dal Chand (PW2) was sitting on his charpai in front of his house under a Jamun tree. His younger brother Narendra was eating Jamun at the same place. Kirat Dev (PW4) was eating jamun by climbing on the jamun tree. Smt. Ram Lali deceased was cleaning wheat in the Angan which was open from outside. In the mean time appellants Maharam and Ramesh both armed with country made pistols came near the Jamun tree. They enquired about the whereabouts of Smt. Ram Lali from Dal Chand (PW2). Before Dal Chand could reply, the appellants, observed Smt. Ram Lali inside the Angan (court yard) and rushed towards her. Appellant Maharam fired on Smt. Ram Lali

due to which she sustained injury and fell down by raising cry. Dal Chand (PW2) raised alarm which attracted Mihi Lal (PW5) who rushed to the spot. Then appellant Ramesh fired on her which hit on her chest. On the alarm the appellants ran away. Dal Chand went to the deceased and found her dead.

6. Dal Chand prepared report, Ext. Ka-1 of the occurrence and went to police station Sidhpura, district Etah, where he lodged a report at 6.55 p.m. on the same day. Chik FIR Ext. Ka-8 was prepared by head Moharir, Shri Pal Singh, who made an endorsement of the same at G.D. report, Ext. Ka-9 and registered a case under Section 302 I.P.C. against appellants Maharam and Ramesh.

7. Investigation of the case was taken up by Narendra Pal Singh, I.O. (PW8). The I.O. interrogated Dal Chand (PW2) at the police station and proceeded to the place of occurrence along with Sub-Inspector; Nain Singh (PW6). The dead body of the deceased was found lying in the courtyard (sahan). Due to paucity of light Inquest could not be done in the night. The I.O. Narendra Pal Singh interrogated Mihi Lal (PW5) and other- witnesses. Nain Singh (PW6) conducted inquest of the dead body of the deceased on the next day. prepared inquest report, Ext. Ka-2 and other relevant papers, Ext. Ka-3 In Ka-6. He sealed the dead body of the deceased and handed over it to constables Ram Saran Lal (PW3) and Shiv Prakash for taking it for Postmortem examination, The I.O. narendra Pal Singh (P.W.8) visited the place of occurrence and prepared site plan Ext. Ka-10. He also took into possession the blood stained and simple earth from the spot, sealed it and prepared recovery memo, Ext. Ka-11. He also interrogated Kirat Dev, PW4 and made a search for the accused but they were not traceable.

8. The autopsy on the body of the deceased Smt. Ram Lali was conducted on 24-7-1979 by Dr. P.N. Verma (P.W.9) who found three fire arm wounds of entry on the back of left arm, right and left side of chest respectively, one fire arm wound of exit and two abrasions. The cause of death was due to shock and haemorrhage on account, of ante-mortem injuries. The Doctor prepared Post-mortem report., Ext. Ka-15.

9. On 1-8-1979, the I.O. visited the office of the Sub-Deputy Inspector of Schools and made an enquiry regarding money left by Hoti Lal. The appellants surrendered

in the Court and the I.O. interrogated them. On completion of the investigation the I.O. submitted charge sheet Ext. Ka-12 against the appellants.

10. Cognizance of the case was taken by the Chief Judicial Magistrate. Etah who committed the case to the Court of Session. Both the appellants were charged under Section 302 I.P.C. and in the alternative under Section 302 read with Section 34 I.P.C. The appellants pleaded not guilty and contended that they were falsely implicated on account of enmity with Dal Chand (PW2) who had kept Smt. Ram Lali, the widow of Hoti Lal, the real brother of appellant Maharam and uncle of appellant Ramesh in order to usurp the money left by Hoti Lal.

11. The prosecution in support of its case examined Kanchan Singh, (P.W, 1), a clerk in the office of Sub-Deputy Inspector of Schools, Etah, Dal Chand (PW2), constable Ram Saran Lal, (PW3), Kirat Dev (PW4), Mihi Lal (PW5), Sub-Inspector Nain Singh (PW6), Sub-Inspector Gandharva Singh (PW7), Narendra Pal Singh. I.O. (PW8) and Dr. P.N. Verma (PW9). Police driver Ramesh Chandra Misra, (CW1), Raj Kumar Singh. Wireless Operator, Police Lines Etah, (CW2), Constable Bhanwar Singh (C.W.3) and Constable Rathi Ram (C.W.4) were examined as Court witnesses, Dal Chand (PW2), Kirat Dev (P.W.4) and Mihi La! (PW5) were witnesses of fact, while the evidence of other witnesses was formal in nature. The appellants did not adduce any evidence in their defence.

12. The Learned Addl. Sessions Judge on consideration of evidence of the prosecution held that it was completely proved beyond suspicion that the two accused (appellants) committed murder of Smt. Ram Lali as alleged by the prosecution in furtherance of their common intention. With these findings he convicted and sentenced the appellants as mentioned above.

13. Aggrieved with their above conviction and sentence the appellants preferred this appeal.

14. Appellant Maharam died during pendency of the appeal as reported by the C.J.M. Etah vide his report dated 23-10-1999. Therefore, the appeal preferred by Maharam stands abated.

15. We have heard Sri G.S. Chaturvedi, learned Senior Advocate for appellant Ramesh and the learned A.G.A. for the respondent and have gone through the evidence on record.

16. The appellants have not disputed the identity, death and cause of death of Smt. Ram Lali, deceased. According to the ocular witnesses Dal Chand,(PW2), Kirat Dev, (PW4) and Mihi Lal, (PW5), fire arm injuries were caused on Smt. Ram Lali and on account of above injuries, she died on the spot. Sub-Inspector Nain Singh Sharma, (P.W.6) stated that the dead body of Ram Lali, deceased was found in sahan and he conducted inquest of the dead body, sealed the dead body and handed over it to constables Ram Saran Lal (PW3) and Shiv Prakash for taking it for Postmortem. Constable Ram Saran Lal, (P.W.3) stated that he escorted the sealed body of Smt. Ram Lali from the spot to the mortuary and produced before the Doctor who conducted Post-mortem. Dr. P.N. Verma,(P.W.9), who conducted autopsy on the dead body stated that he found the following ante-mortem injuries on the person of the deceased. (1) Multiple fire arm wounds of entry in an area of 8 x 7 cm on the back and outer side of left arm (lower half) and elbow. Margins were inverted. Blackening present at margins. Each wound was about 3/4 cm to 1 cm in diameter.

(2) Multiple fire arm wound of exit in an area of 13 x 5 cm on the front of the left arm (lower half) and elbow. Margins everted. Blackening not present. Each wound of about diameter of 1 to one half cm.

(3) Abrasion 9 x 2 cm on the back of left elbow and upper part of left fore arm.

(4) Multiple fire arm wounds of entry in an area 13 x 8 cm on the left side of lower part of chest including lower part of left breast. Margins inverted. Blackening not present. Average diameter of each wound about % to 1 cm.

(5) Fire arm wound of entry 2 cm x 2cm on the lower part of right side of chest 23 cms from umblicus at 10 O' clock position. Blackening and tatooing present around in area of 8 x 7 cm. Margins inverted.

(6) Multiple abrasions in an area of 10 x 5 cm on the left side of chest below breast.

(7) Abrasion 3 x 1 cm on right side of chest below breast.

(8) Left humerus bone fractured.

17. The internal examination showed that eighth rib on right lateral side was fractured. Heart was lacerated. Peritonium was lacerated and blood was present in the cavity. The stomach contained four ounces semi-digested food. Small intestine was empty and large intestine contained faecal matters. Liver was lacerated.

18. The cause of death was shock and haemorrhage on account of ante-mortem injuries noted above.

19. There is no challenge of the above ocular, link and medical evidence. Therefore, the identity of death and cause of death of Smt. Ram Lali has been fully established.

20. The motive of the offence alleged by the prosecution was that Smt. Ram Lali, deceased was previously married with Hoti Lal, real brother of appellant Maharam and uncle of appellant Ramesh. Hoti Lal was murdered on 9-4-1978. After about one and half months of the murder of Hoti Lal, Smt. Ram Lali deceased performed 'Dharao' (second marriage) with Dal Chand (PW2). Hoti Lal was a teacher in a primary school. His Provident Fund money and Group Insurance money was to be paid to her and her son Rajendra. That the appellants in order to have their better claim over the money left by Hoti Lal, firstly kidnapped Rajendra from lawful custody of Smt. Ram Lali on 26-5-1978 and thereafter had to eliminate Smt. Ram Lali so that she may not perfer claim over the money left by Hoti Lal.

21. It is not disputed that Smt. Ram Lali, deceased was previously married with Hoti Lal, the real brother of appellant, Maharam and uncle of appellant Ramesh. It is also not disputed that Hoti Lal was murdered on 9-4-1978 and there after Smt. Ram Lali performed Dharao with Dal Chand, (P.W.2) and was living with him. However, the appellants had denied that they were having any claim over the money left by Hoti Lal. They also denied the alleged kidnapping of Rajendra from

the lawful guardianship of Smt. Ram Lali. Kanchan Singh,(P.W.1), clerk in the office of the Sub-Deputy Inspector of Schools; Etah stated that Hoti Lal was a teacher in Primary Pathshala, Pasama. he was murdered in April, 1978. he had contributed a sum of Rs. 12,000/- towards Group Insurance Scheme and Provident Fund. The above amount was not paid to any person and Hoti Lal had also not made any nomination in favour of any person, he further stated that in the absence of nomination the money was to be paid to the person having Succession Certificate from the Court. No Succession Certificate was filed by anybody.

22. S.I. Gandharva Singh, (P.W.7) stated that on 26-5-1978, Smt. Ram Lali had lodged a written report at 6p.m. against Narendra Singh, Maharam Singh sons of Tata Ram, Ramesh and Mahesh Chandra sons of Naresndra Singh, resident of village Jalipur and Ganga Prasad resident of Shahpur under Section 363 I.P.C. on the basis of which he prepared a chik report Ext. Ka-7. A persual of the report Ext. Ka-7 shows that Smt. Ram Lali had alleged in her above report that on 26-5-1978 when she was coming from village Mamedra to her village Jalipur, near village Mamedra, Narepdra Singh, Maharam, Ramesh Chandra, Mahesh Chandra and Ganga Prasad snatched her son Rajendra from her custody and on her objection they caused injuries to her. The above report was lodged about two months before the occurrence of this case when Ram Lali was not expecting her murder. The above evidence is sufficient to prove that the appellants were having claim over the money left by Hoti Lal and wanted to eliminate Smt. Ram Lali and her minor son, who could be the real claimants of the said money.

23. Dal Chand, (P.W.2) stated in his cross-examination that Smt. Rain Lali had moved an application alter 20-22 days of the death of Hoti Lal at Kasganj for becoming guardian of her minor son and the accused persons had opposed to it,, on the ground that Ram Lali performed Dharao with Dal Chand and therefore, she could not become guardian of minor son from previous husband and that the accused had preferred their claim of guardianship of Rajendra. The learned Counsel for the appellant contended that this evidence is not admissible as it is a secondary evidence and the primary evidence was the document (copy of the application for becoming guardian and objection of the accused against it), which were not filed and, therefore, in the absence of direct evidence, the secondary

evidence cannot be accepted. It is true that primary evidence in this regard was not produced but even if we ignore the above evidence, there is sufficient evidence on record to show that there was dispute between the appellant and Smt. Ram Lali, regarding guardianship of minor son of Hoti Lal and the money left by Hoti Lal and the appellants being heirs of Hoti Lal had a motive to eliminate Smt. Ram Lali.

24. The suggestion on behalf of the appellant to Dal Chand, P.W.2 was that Dal Chand (P.W.2) as well as Smt. Ram Lali were witnesses in the case of murder of Hoti Lal, that Dal Chand had filed an affidavit in the said case, that he had not seen the occurrence of murder of Hoti Lal. He was also pressurising Smt. Ram Lali not to give evidence against the accused of the said case and, therefore, he himself got her murdered. Dal Chand, P.W.2 has repelled the above suggestion and there is no sufficient evidence on record in support of it. No doubt Dal Chand, (P.W.2) admitted that he as well as Smt. Ram Lali were witnesses in the murder of Hoti Lal and that he had filed an affidavit in the Court that he had not seen the occurrence of the said case. But it does not indicate that he was also pressuring Smt. Ram Lali not to give evidence in the said case Dal Chand, (P.W.2) had kept Smt. Ram Lali as his wife fully knowing that she was widow of his cousin brother, Hoti Lal. In case Dal Chand (PW3) was claiming any right over the property of Hoti Lal, he could succeed only if Smt. Ram Lali was alive. Therefore, he was not expected to act against his own interest by getting her murdered. As such there was sufficient evidence against appellants regarding motive.

25. The occurrence took place at about 4.00 p.m. The report of the occurrence was lodged by Dal Chand, (P.W.2) at 6.55 p.m. at P.S.Sidhpura, which was at the distance of four miles (about six kins.) from the place of occurrence. Dal Chand, (P.W.2) stated that after the occurrence he prepared report in his own hand writing and went to police station and lodged the same. In his cross-examination he stated that after lodging the report at the police station he came to the spot along with the police and reached there at about 8.00-8.30 p.m. He denied the suggestion of the appellant that no report was lodged in the evening of the occurrence, but it was lodged in the next morning. The I.O. Narendra Pal Singh, proved the chik F.I.R. G.D. report, which was prepared on the date of the

occurrence at 6.55 p.m. He further stated that he interrogated the informant, Dal Chand (PW2) at the police station and reached the place of occurrence on the same night at 8.30 p.m. His above evidence has not been challenged. The arrival of informant, Dal Chand, (P.W.2) at the police station at 6.55 p.m. and then coming back along with police on the spot at 8.30 p.m. corroborates his testimony that the report of the occurrence was lodged at 6.55 p.m. Considering the manner in which the report was prepared and the distance of the police station from the spot, we are of the view that there was no delay in lodging the report and the report was promptly lodge. The report Ext. Ka-1 contained the date, time place of the occurrence, the name of the accused person, weapons possessed by them, the motive for the offence and precise manner of the occurrence. The prompt lodging of the report, also shows that the informant, Dal Chand (P.W.2) had no occasion for deliberations and there was no possibility of false Implication.

26. The occurrence allegedly took place on the evening of 23-7-1979 at about 4.00 p.m. inside the angan of the deceased. There is no disputed regarding the date of occurrence. However, the time of occurrence challenged. All the ocular witnesses, namely, Dal . Chand, P.W.2, Kilal Dev, P.W.4 and Mihi Lal, P.W.5 stated that the occurrence took place at about 4.00 P.M. the report which was promptly lodged at 6.55 p.m. mentioned the above date and time of the occurrence. The medical evidence also corroborates the above date and time of the occurrence. The medical evidence also corroborates the above date and time of the occurrence. As such the date: and time of the occurrence is also corroborated by the medical evidence and the FIR.

27. Regarding place of occurrence the learned Counsel for the appellant contended that the deceased was murdered somewhere else when she had gone to attend the call of nature and thereafter her deadbody was brought in the: Angan. The ocular witnesses stated that Smt. Ram Lali, deceased was inside her Angan, when she was shot dead. The I.O. visited the spot on the same night and found the dead body of the deceased in the sahan. The I.O. recovered blood stained and simple earth from the spot and prepared a recovery memo. The recover)' of blood from the spot has not been challenged by the appellant, Site plan Ext. Ka-10 shows that the dead body of the deceased was lying at the place

'H'. The above place is inside the Angan of the deceased in front of western rooms of the house. The recovery memo Ext, Ka-10 shows that the blood stained earth was recovered from the place where the dead body of the deceased was lying. No doubt it was suggested on behalf of appellant that the occurrence took place at some other place, but no counter place of the occurrence has been suggested. The presence of the dead body and the blood on the spot corroborated the testimony of ocular witnesses that the occurrence took place in the Angan of the deceased .

28. In order to prove the manner of occurrence and complicity of the appellant the prosecution relied on the ocular testimony of Dal Chand, P.W.2, Kirat Dev, P.W.4 and Mihi Lal, P.W.5. Learned Counsel for the appellant has vehemently challenged the presence of the above witnesses on the spot and their opportunity to observe the occurrence.

29. Dal Chanel, P.W.2 the second husband of the deceased stated that on the evening of the occurrence he was sitting on a charpai under the Jaraun tree towards south of his house. His younger brother Nareudra was; also present there and was eating janiun. Kirat Dev, P.W.4 was on that Jamun tree and was eating Jamun by directly plucking it from the tree. Smt. Ram Lali was cleaning wheat in the Angan. Appellants Maharm and Ramesh armed with country made pistols came on the Rasta adjacent towards north of the Jamun tree and enquired about Smt. Ram Lali. Before he could say any thing the appellants saw Ram Lali in the Angan, which was open. They proceeded towards Ram Lali and appellant Maharam fired first shot, which hit Smt. Ram Lali, who fell down, raising cries. Thereafter appellant, Ramesh fired shot on her. The witnesses raised alarm, his father Mihi Lal also came to the spot. The appellants after committing murder of Smt. Ram Lali went towards west. In his cross-examination, the witness stated that after about one and half hours of the occurrence his neighbours came to the spot from their fields. The houses of Devi Ram, Fateh Singh, Tulasl, Murari and others were existing towards south of his house. Persons were residing in the houses of Tej Singh and Devi Ram alone and other houses were vacant. Tej Singh and Devi Ram were residing in their respective house along with their wives, Pyare Lal had a shop in his house. Shop of Pyare Lal was closed at the time of

occurrence as he had gone out side the village. Learned Counsel for the appellant contended that on the own showing of Dal Chand, (P.W.2) the persons residing in his neighbourhood were working on their fields and none was present in the house at the time of occurrence, therefore, in all probabilities Dal Chand, (P.W.2) would have also been working at his field and was not present on the spot. Having gone through the evidence of the witness we find no force in the above contention. The witness categorically stated that he was sitting beneath a Jamun tree along with his brother Narendra. Kirat Dev, P.W.4 was sitting on the Jamun tree. No doubt the occurrence took place in the month of July, but. it can not be said that in the month of July no male member in the village remains at his house and always remains at his field. After the occurrence the witness had prepared report and came to the police station, where he lodged the report at 6.55 p.m. In ease the witness was not present on the spot at the time of occurrence, he could not have lodged the report so promptly.

30. As stated by Dal Chand. P.W.2, he was sitting on the charpai beneath Jamun tree in front of his house. The presence of the witness in front of his house in the owning was natural and probable, unless some thing was shown that he could not be. present. there. Nothing has been shown by the defence that the witness was at some other place. In these circumstances there appears no ground to doubt about the presence of the witness In front of his house.

31. The witness was the second husband of Smt, Ram Lali, deceased, but the occurrence had taken place Inside the Angan of the witness and the deceased and in such cases only inmates of the house are in a position to observe the occurrence.

32. No doubt appellant Maharam was the cousin brother of the witness and Ramesh was his nephew and there was also a dispute between the appellants and the witness regarding money left by Hoti Lal the previous husband of Smt. Ram Lali, deceased. But as mentioned above, the appellants had greater motive to commit murder of the deceased and nature of enmity between the parties indicates that Dal Chand, P.W.2 had no occasion to falsely implicate the appellants.

33. The next eye witness of the occurrence is Kirat Dev, P.W.4. The witness stated that on the evening of the occurrence at about 4.00 p.m. he was sitting on the Jamun tree in front of house of Dal Chand (P.W.2) and was eating Jamun that Dal Chand (P.W.2) and his younger brother Narendra were also sitting beneath the Jamun tree. He had not seen any person coming near the jamun tree. He saw the appellants when they enquired about Ram Lali from Dal Chand. Maharam and Ramesh appellants were having country made pistols in their Viands. Smt. Ram Lali was cleaning wheat in the Angan. Maharam appellant fired on Smt. Ram Lali from country made pistol, which hit her on her left hand and she fell down. Ramesh appellant came near Smt. Ram Lali and fired on her which hit on the right, side chest below axilla. Dal Chand and Narendra Pal raised alaram, Mihi Lal came on the spot on the alarm. Both the appellants ran towards west after committing murder. Thereafter he got down of the Jamun tree and went to Smt. Ram Lali, and found her dead. In his cross-examination the witness has stated that he was working at ' Delhi and came from Delhi on the morning of the date of his evidence. His father informed that he had to appear in Court and, therefore, he came to Court. He had seen the entire occurrence while sitting on the Jamun Otree. He denied the suggestion of the appellants that he was a relative of Dal Chand (P.W.2).

34. The witness has given sufficient explanation for his presence on the spot. According to his evidence he was sitting on the Jamun tree in front of the house of Dal Chand (P.W.2) and was eating Jamun. It is very common that the persons of the village freely Luke Jamun fruits without any objection from the owner of the tree. There is nothing in his cross-examination to show that he could not present on the spot at the time of occurrence. The witness has given a natural statement that though he had not seen the appellant coming under the Jamun tree, but his attention wan drawn when he heard the talks of appellants with Dal Chand, P.W.2. Since the witness was sitting on the tree, he was in a position to observe the movement and acts of the appellants in the Angan. An attempt was made from the side of the appellants that Kirat Dev. P.W.4 was relative of Dal Chand, P.W.2. The witness has repelled the suggestions and there is nothing on record to prove that he was in any way related with Dal Chand. Thus there is nothing on record to show that the witness had any sort of enmity, ill-will or grudge against, the

appellants. In these circumstances the witness was independent one. The witness has thus proved his presence on the spot and opportunity to observe the occurrence, which took place in the day light.

35. The last eye-witness of the occurrence is Mihi Lal, P.W.5, the father of Dal Chand, (P.W.2). The witness stated that he was residing separate from his son, Dal Chand, (P.W.2) in a separate house. At the time of occurrence he was present at his house. Hearing the sound of fire he came out of his house and rushed towards the house of Dal Chand. He saw the appellants Maharam and Ramesh in the lane of the house. He also saw that Ramesh appellant went in the Angan and fired on Smt. Ram Lali. Ramesh fired on Smt. Ram Lali when she was lying on the ground. Maharam and Ramesh then ran towards west. His sons Dal Chand and Narendra Pal were also present under the Jamun tree and Kirat Dev was sitting on the Jamun tree. In his cross-examination the witness stated that his house was at a distance of 20 paces from the house of Dal Chand, where he heard sound of fire. He came in the Angan of Ram Lali. When Ramesh fired on Ram Lali he was at the the distance of 4-5 paces towards north of Ram Lali. That after about half an hour of the running of the appellants, Dal Chand, Kirat Dev and Nain Pal came near Ram Lali.

36. It has come in the evidence of other witnesses that the appellant Maharam fired first shot on Smt. Ram Lali. The attention of Mihi Lal, (P.W.5) was attracted on hearing sound of fire. He rushed towards the spot and when he came to the spot, he saw that the appellant Ramesh fired on Smt./Ram Lali. Rushing to the spot by Mihi Lal on hearing sound of fire and reaching immediately was natural and probable as the distance was only 20 paces. Second shot on Smt. Ram Lali was fired subsequent to the first and, therefore, Mihi Lal, (P.W.5) was also in a position to observe that part of the occurrence which was stated by him.

37. No doubt Mihi Lal (P.W.5) is the father of Dal Chand, (P.W.2) and father in law of the deceased, but he is equally related with the appellants as he was uncle of appellant Maharam and grand father of appellant Ramesh. Thus it was not expected from him to spare out the real assailants and falsely implicate innocent persons. There is nothing in the cross-examination of the witness to doubt about

his presence and having any motive to depose falsely against the appellants.

38. It was pointed out that Mihi Lal stated in his cross-examination that Dal Chand, Kirat Dev and Nem Pal came near Ram Lali after half an hour of running of accused which shows that these witnesses had not seen the occurrence. This inference can not be drawn by picking out a solitary sentence from the evidence of a witness. The statement of a witness should be read as a whole. If we go through the entire statement of the witness it will show that the witness had admitted presence of Dal Chand and Kirat Dev from the very beginning as he stated that at the time of occurrence his sons Dal Chand and Nem Pal were under Jamun tree and Kirat Deo was on Jamun tree. The place of occurrence is visible from Jamun tree. As such the witness had not ruled out presence of Dal Chand (PW2) and Kirat Deo (PW5) on the spot.

39. Learned Counsel for the appellant contended that evidence of the ocular witnesses is in contradiction with the medical evidence of pointed out that according to the evidence of the ocular witnesses two appellants fired one shot each on Smt. Ram Lali, but the medical evidence shows that she had sustained three fire arm wounds of entry, besides one fire arm wound of exit and 2 abrasions. He further contended that there was blackening on injury No. 1 and injury No. 5 and there was no blackening on injury No. 4. Therefore, all the three injuries were caused by three different shots and there is no explanation as to who fired third shot. We have given due consideration to the above contention and are of the opinion that the evidence of ocular witnesses is not in contradiction with the medical evidence. It is pertinent to mention at this stage that the witnesses have stated that one shot was fired by each of the appellant. They also clarified as to which shot hit which part of the body of deceased. But it is impossible for a witness to observe the movement of the pellets or bullets so closely and such statements are nothing but exaggeration. The credibility of a witness is not affected, if he exaggerates some thing as it is normal tendency of a witness to give a photogenic statement in order to make his evidence more natural and probable. Therefore, the statement of the ocular witnesses that the shots fired by appellant Maharam hit on left auxiliary region of the deceased and the shot fired by Ramesh hit right on her auxiliary region is nothing but an exaggeration and on this ground their evidence

cannot be rejected.

40. Post mortem report shows that injury No. 1 was fire arm wound of entry on the back of upper side of the left arm lower half. Injury No. 4 was on the left side lower part of chest and injury No. 5 was on the lower part of right side of chest. Injury No. 1 had also communicating wound of exit. It has come in the evidence of the ocular witnesses that at the time of occurrence Smt. Ram Lali deceased was cleaning wheat. In such a situation there was every possibility that her left hand was touching left side chest. The shot which caused injury No. 1 was such a forceful one that it resulted in to an exit wound fracturing humerus bone. Therefore, the possibility that the shot which caused injury No. 1 also caused injury No. 4 after the pellets came out cannot be ruled out. This is also admitted by Dr. P.N. Verma (PW8) that in case the hand of deceased was over her chest, injuries Nos. 1 and 4 could be caused by one shot. The dimension of injury No.4 is nearly the same which was the dimension of wound of exit and the seat of the wound of exit and seat of injury No.4 were adjacent to each other. It looks probable because injury No.4 had no blackening, while injury No. 1 had blackening. Therefore, the nature and seat of the fire arm injuries of Smt. Ram Lali, deceased indicates that those injuries could be caused by two shots and in these circumstances there is no conflict between oral evidence of ocular witnesses and the medical evidence.

41. Besides the fire arm injuries the deceased had also sustained two abrasions on the back of left elbow and right side of chest. It has come in the evidence of the ocular witnesses that after sustaining first shot Smt. Ram Lali, deceased fell down on the ground. Therefore, those injuries could be caused by friction on the ground. Besides the above injuries there was also fracture of humerus bone, which was due to injury No. 1. Thus, we find that the medical evidence is in conformity with the oral evidence.

42. Learned Counsel for the appellant further contended that presence of abrasions on the person of deceased indicates that she had offered resistance and it appears that some one had attempted to sexually assault her and she resisted and in such resistance she sustained abrasions .This sort of suggestion

was given to Dal Chand (P.W.2) but he has repelled the same and there is no evidence in support of said suggestion, as mentioned above, there is every possibility that two abrasions were caused by friction due to fall on the ground. It was also possible that the deceased had floundered and the abrasions were caused in such situation.

43. Therefore, the testimony of ocular witnesses is corroborated by prompt F.I.R., medical evidence and other circumstances of the case.

44. We are, therefore, of the view that the evidence of ocular witnesses, medical evidence and other evidence on record has successfully proved the manner of occurrence and complicity of the appellants.

45. In view of our above discussions and observations, we find that the prosecution has successfully proved the guilt of the appellant Ramesh for the offence punishable under Section 302 read with Section 34 I.P.C. In this way we find no merit in the appeal preferred by the appellant Ramesh and it is liable to be dismissed.

46. We accordingly, dismiss the appeal preferred by appellant Ramesh. The appeal preferred by appellant Maharam has already abated. The conviction of the appellant Ramesh under Section 302 read with Section 34 I.P.C. and sentence of imprisonment for life under said section are hereby confirmed.

47. The appellant Ramesh is on bail. He shall surrender before Chief Judicial Magistrate, Etah, who shall send him to jail to serve out the sentence. The Chief Judicial Magistrate shall also secure the arrest of appellant Ramesh through process of law available to him.

48. Office is directed to send a copy of this judgment to Chief Judicial Magistrate, Etah within a week for compliance and report within a month.