

Parsadi Vs. State of U.P.

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Court : Allahabad

Decided On : Apr-28-2003

Reported in : 2004CriLJ104

Judge : M.C. Jain and ;K.N. Ojha, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 313; Evidence Act - Sections 58; [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 307

Appeal No. : Cri. A. No. 577 of 1987

Appellant : Parsadi

Respondent : State of U.P.

Advocate for Def. : G.S. Bisaria, AGA

Advocate for Pet/Ap. : G.C. Saxena, ;Kundan Singh, ;Shamumuddin Khan and ;M.W. Siddiqui, Advs.

Disposition : Appeal dismissed

Judgement :

M.C. Jain, J.

1. Appellant Parsadi has challenged the order of his conviction and sentences passed on 12-2-1987 by Sri S.R. Bhargava, the then Sessions Judge, Bareilly in

Sessions Trial No. 89 of 1985. He has been sentenced to life imprisonment under Section 302, I.P.C. and seven years' rigorous imprisonment under Section 307, I.P.C. with a direction that both the sentences shall run concurrently. Presently, he is in jail.

2. The incident took place on 26-10-1984 at about 2.45 p.m. near the Hospital in Bengali Colony, P.S. Shishgarh, District Bareilly. Lalji was murdered in the incident and injuries were caused to his daughter Rama Devi PW-2. The report was lodged by Omkar PW-1, an eye-witness, (son of the deceased) the same day at 4.10 p.m. The distance of the police station from the place of occurrence was about 8 kms. The deceased died in District Hospital, Bareilly.

3. The broad features of the prosecution case may be set forth. The day of the incident was Bhaivadoo (26-10-1984) falling after Deepawali. At the fateful time, Omkar PW-1 was proceeding to bus stand accompanied by his father Lalji (deceased), sister Rama Devi PW-2, Bhupal and Chet Ram. His father and sister were ahead of others. When all of them reached in front of the Hospital in Bengal Colony, the accused appellant came on a cycle from behind with his licenced gun hanging on his shoulder. He kept the cycle aside and accosted Lalji that he would teach him lesson for purchasing land of Bhogipura. He instantly fired his gun on him causing injuries to him and Rama Devi. Both of them fell down. But before he could reload his gun, Omkar PW-1 caught hold of the gun. There was struggle for the gun. Niwar of the gun got off. The accused appellant abandoned his gun and cycle and fled away.

4. Omkar reached the police station and lodged the F.I.R. there at 4.10 p.m., also deposited the gun of the accused. A case was registered and investigation followed at the hands of S. I. Virendra Kumar, PW-5. He proceeded to the spot and found both the injured lying there. Both of them were unable to give statements due to injuries. He sent them to District Hospital and recorded the statement of Omkar PW-1 at the spot. He inspected the site, collected bloodstained and simple earth. He also recovered cycle of the accused from the spot. The statements of the witnesses Bhupal and Dwarka were also recorded. The darkness had set in. He also recorded the statements of some other

witnesses. The witness Chet Ram was searched but it came to be known that he had accompanied the injured to the hospital. The accused was searched in vain. During night he stayed at village Jokhanpur and returned the police station the next morning at 7.40 a.m. He visited the District Hospital, Bareilly and came to know about the death of Lalji. The statement of Rama Devi injured was recorded. Chet, Ram had accompanied the dead body for post-mortem. The Investigating Officer, therefore, came to mortuary and recorded the statement of Chet Ram.

5. The accused was not to be found anywhere and he obtained permission for proceedings under Section 82/83, Cr. P. C. Eluding arrest, he, however, surrendered in the Court and was interrogated by the Investigating Officer on 26-11-1984.

6. It may be stated for the sake of clarity that the information regarding the death of Lalji had been sent from District Hospital to P.S. Kotwali from where a Sub Inspector was deputed to prepare the inquest report and to send the dead body for post mortem. The dead body was ultimately sent for post mortem which was conducted by Dr. Balvir Singh PW 3 on 27-10-1984 at 4.45 p.m. He was aged about 45 years and about one day had passed since he died. The following ante mortem injuries were found on his person :

1. Two gunshot wounds of entry with inverted margins on the front of chest right side upper part, 5 cm above right nipple, at 12 O'clock position, size 1 cm x 1 cm x chest cavity and 1 cm apart. No. blackening and tattooing directed backward.

2. Five gunshot wounds of entry with inverted margins in an area 10 cm x 7 cm on the front of right shoulder joint and axilla 2 cm below the top of right shoulder joint, average size 1 cm x 1 cm x through and through 1 cm apart to each, no blackening and no tattooing, 4 cm away from injury No. 1.

3. Five gunshot wounds of exit on the back of right shoulder joint, fracture of right humerus and upper arm, in an area of 9 cm x 7 cm, average size 1.25 cm x 1.25 x through and through. Margins everted one shot palpable under the skin of right upper back removed and sealed. No tattooing and blackening.

7. On internal examination, the Doctor found fracture of 2nd and 4th ribs anterior side. Right lung was perforated. One shot was recovered. There was one litre of blood in pleural cavity. 100 grams digested food material was found in the stomach. Small intestine was empty and large intestine contained faecal matter. The death was as a result of shock and haemorrhage, due to ante mortem injuries.

8. It came to surface in the evidence that Jia Lal and Lalji alias Lal Dass were real brothers. The accused appellant is the son of the Jia Lal and Lalji Dass was the deceased. There was enmity between the families of two brothers for the last many years and there had been criminal incidents also. 10 or 12 days before the incident, Premwati, cousin of Omkar P.W. 1 executed a sale deed of 11 bighas land situated in village Bhogipura in favour of Lalji deceased. Accused appellant Parsadi was also interested in purchasing that land. In the context of past enmity, on account of sale deed, the accused became more inimical towards Lalji. He was a police constable and was under suspension at the relevant time.

9. It should also be related that Rama Devi P.W. 2 was medically examined on 26-10-1984 at 8.30 pm. by the Dr. S.K. Saxena P.W. 4 and the following injuries were found on her person :

1. A gunshot wound of entry 1.0 cm. x 0.5 x depth not probed on right eyelid middle, kept under observation. Advised X-ray. Margins inverted and lacerated. Fresh blood, oozing out.

2. A gunshot wound of entry 1.0 cm x 0.5 cm on right eye tower lid of eyelid x eyeball deep. Kept under observation. Advised X-ray, Fresh blood present.

3. A gunshot wound of entry 0.5 x 0.5 cm on right side face. 3 cm away from right angle of nose, muscle deep communicating with injury No. 6.

4. A gunshot wound of entry 0.5 x 0.5 cm front and upper part of right side neck. Kept under observation.

5. Abrasion 2.0 cm x 0.5 cm on right side root of neck.

6. Lacerated wound 0.5 cm x 0.5 cm on right side neck, 3.0 cm below right ear. (wound of exit of injury No. 3) some clotted blood and some fresh blood was present.

7. A gunshot wound of exit 0.6 cm x 0.6 cm, 1.5 cm above injury No. 5 communicating with injury No. 4.

10. Injuries Nos. 1 to 4, 6 and 7 were firearm injuries. Injury No. 5 was caused by friction and it was kept under observation.

11. The prosecution, in all examined six witnesses, out of whom the witnesses of fact were Omkar P.W. 1 and injured Rama Devi P.W. 2 as has come to be related in the earlier discussion also.

12. In his statement under Section 313, Cr.P.C., the accused denied the prosecution story. He filed written statement, also, the gist of which was that at the relevant time he was going to Basai Market on his cycle. Onkar, Lalji Bhupal, Chet Ram and Dwarka met him in front of Hospital in Bengali Colony. They said that they would not spare him. They pounced upon him. Omkar, Bhupal and Chet Ram started assaulting him with lathies. He tried to defend himself but his gun was caught. In the process of snatching, gun went off resulting in injuries to Rama Devi and Lalji. He too received injuries. He went to the police station Shishgarh but his report was not taken down. Then he sent telegram to S.S.P. Bareilly on 27-10-1984.

13. In defence, he examined Dr. F.A. Khan D.W. 1 who deposed that on 27-10-1984 at 11.05 pm. he had examined the accused and had found the following injuries on his person :

1. Traumatic swelling 5 cm x 5 cm on medial and posterior side of right hand. Kept under observation.

2. Abrasion 1 cm x 0.10 cm on base of right thumb posterior side.

3. Multiple abrasion with scab formation 4 cm x 3 cm on lateral side of right knee Joint.

3. Multiple abrasions with scab formation 4 cm x 3 cm on lateral side of right knee joint.
4. Abraded contusion 3.5 cm x 3 cm reddish blue coloured on front of right knee joint.
5. Traumatic swelling 7 cm x 4 cm on front of left thigh 16 cm from knee joint.
6. Complaint of pain in left side chest posterior side.
7. Complaint of pain on left calf muscle.
8. Abrasion 4 cm x 0.1 cm on lateral side of right middle finger.
9. Traumatic swelling 3 cm x 3 cm on lateral side of right ankle Joint.

14. According to the Doctor, the injuries were simple except Injury No. 1 which was kept under observation and X-ray was advised. Injuries Nos. 2 to 4 and 8 were caused by friction. Injuries Nos. 1, 5 and 9 were caused by blunt weapon. Duration of the injuries could be 1 1/2 to 2 days.

15. We have heard Sri S.G. Saxena, learned counsel for the appellant and Sri G.S. Bisaria, learned A.G.A. from the side of State in opposition. The learned counsel for the appellant has assailed the order of conviction and sentences on the ground of insufficiency and incredibility of evidence.

16. It has first been argued by Sri Saxena that the learned trial Judge has committed grave error by basing conviction of the accused appellant on a part of his statement under Section 313, Cr.P.C. According to him, the learned trial Judge relied upon inculpatory part of his statement, but rejected the explanatory part which he could not legally do. He cited a Division Bench decision of this Court in the case of Aziz Khan v. State of U.P., 1992 JIC 854 in support of his contention. It was ruled in the said case that it is well settled that the Court cannot split the statement of an accused under Section 313, Cr.P.C. in two parts and accept one portion and reject another. The Court should either accept it as a whole or reject it as a whole. It is not permissible for a Court to accept the inculpatory part of the answers given by the accused in statement under Section 313, Cr.P.C. In that

case, the learned Sessions Judge had placed reliance upon a part of the statement of the accused under Section 313, Cr.P.C. for holding that he had exceeded the right of self defence, but he had discarded that part of his statement where he had stated that the prosecution party had tried to assault him with spears.

17. The reference was made of a few decisions of the Supreme Court. The first one was the case of *Narain Singh v. State of Punjab*, 1963 All LJ 330 : (1964 (1) Cri LJ 730) at page 333, in which, it was held as follows :

'If the accused person in his examination under Section 342 confesses to the commission of the offences charged against him, the Court may, relying upon that confession proceed to convict him, but if he does not confess and in explaining circumstances appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety. It was not open to the Court to dissect the statement and to pick out a part of the statement which may be incriminating, and then to examine whether explanation furnished by the accused for his conduct is supported by the evidence on the record. If accused admits to have done an act which would but for the explanation furnished by him is an offence, the admission cannot be used against him divorced from the explanation.'

18. The second case was that of *Yusuf Ali Ismail v. State of Maharashtra*, AIR 1968 SC 147 : (1968 Cri LJ 103) in which it was held that while considering answer of the accused given under Section 342, Cr.P.C. (old), the Court cannot accept the inculpatory part and reject the exculpatory part of the answers. Another case was that of *State of Gujarat v. Acharya Shri Devendraprasadjji Pande*, AIR 1971 SC 866 : (1971 Cri LJ 760), in which the Apex Court said that the Court cannot split the statement of the accused into various parts and accept a portion and reject the rest. The Court should either accept it as a whole or not rely on it at all.

19. Indeed, ratio of the said decisions of the Apex Court has the binding effect without any debate. But true purport of the same to be understood, keeping in view

the provisions of Section 58 of the Indian Evidence Act as also the purpose of Section 313, Cr.P.C. flowing from the phraseology employed therein. Section 58 of the Indian Evidence Act states that the facts admitted need not be proved. It is applicable to civil and criminal proceedings alike. The principle beneath this provision is to constrict or shorten the area of dispute so as to concentrate on the vital and central core of the controversy calling for adjudication by the Court.

20. The object and purpose of Section 313, Cr.P.C. as flowing from the phraseology employed therein, in short, is to afford an opportunity to the accused personally to explain any circumstances appearing in the evidence against him at the trial. Apart from the inculpatory part there are many other facts and circumstances emerging from the prosecution evidence at the trial which may be explained by the accused in his statement under Section 313, Cr.P.C.

21. Judged in the right perspective, true purport of the ratio of the above decisions is that in case the statement of the accused under Section 313, Cr.P.C. consists of inculpatory part accompanied by explanatory part, then two parts cannot be dissected or separated. Either the two parts have to be accepted as a whole or to be rejected. It is not permissible to rely upon the inculpatory part of and ignore the explanation part. However, apart from the inculpatory and explanation parts, if there is an admission of the accused in his statement under Section 313, Cr.P.C. in relation to other facts and circumstances, they can be acted upon as his admission within the parameters of Section 58 of the Indian Evidence Act. To say in other words, that part of the statement of the accused under Section 313, Cr.P.C. can be taken note of which makes admission in respect of certain facts other than inculpatory part and explanatory part. In case the contrary view is taken that the entire statement of the accused under Section 313, Cr.P.C. is to be ignored, then the very purpose of such statement beneath Section 313, Cr.P.C. would be nugatory and meaningless.

22. While going through the impugned judgment, we find that the learned trial Judge was quite conscious of this limitation. He set off the case of the accused in his statement under Section 313, Cr.P.C. and the written statement filed by him that he denied the prosecution story and alleged that his gun was snatched and he

was assaulted but due to enmity he was falsely implicated. The judgment records this part of his story that he was going to Basal Market on cycle, that Omkar (P.W. 1), Lalji (deceased), Bhupal, Chet Ram and Dwarika met him in front of the hospital, Bengali Colony; that they held out that they would not spare him; that pounced upon him; that Omkar, Bhupal and Chet Ram started assaulting him with lathies; that he tried to defend himself but his gun went off resulting into injuries to Rama Devi and Lalji, that he also received injuries; that he went to police station Shishgarh but his report was not recorded and that on 27-10-1984 he sent telegram to S.S.P. However, the learned trial Judge clearly observed that falsity of defence story could not dispense with the burden of proof lying upon the prosecution. Nor could it be the basis of conviction. In fact, the conviction has been recorded on the strength of evidence placed on record which was put to strict judicial test. The truth of the matter is that leaving aside the inculpatory and explanatory parts of the statements of the accused, it can be legally taken from his statement that the incident took place at, the complained spot on the date and time as alleged by the prosecution and that he was present there with his gun. This part of his statement has nothing to do with inculpatory part and explanation offered by him in connection therewith. We therefore, reject this argument that the learned trial Court has based conviction of the accused appellant relying upon the inculpatory part of his statement under Section 313, Cr.P.C. while rejecting the explanatory part.

23. We now proceed to examine other arguments of learned counsel for the accused appellant relating to the other aspects of the matter. It is urged that the F.I.R. is ante timed and that its language shows that it was written at the police station after consultation. It is also urged that Omkar P.W. 1 was not at all present at the time of the incident and was later on called to lodge the; F.I.R. It is reasoned in support of this argument that, according to him, leaving his injured father and sister at the spot, he rushed to the police station to lodge the F.I.R. and subsequently also did not accompany the injured to the hospital. A sentence has been picked up from the F.I.R. which is said to be suggestive of its having been written at the police station. The sentence is 'MAI MAUKE PER GHAYAL PITAJI VA BAHIN KE PAS APNE RISTDAR CHETRAM VA ANYA LOGON KO CHHORKAR RAPAT KO AAYA HUN.' It has been pointed out that he admitted in

his cross-examination that he was a graduate. He insisted that he wrote the report at the crime spot itself. But it is urged that the use of the above sentence in the F.I.R. is suggestive of it having been written at the police station. It is not possible to jump to this conclusion on the said singular sentence picked up from the contents of the F.I.R. It was a fact that he had left the injured at the spot in the care of certain persons. His two family members viz. father and sister were injured badly of shooting out of whom, one (father) died in the hospital the same day. In those emotion ridden and tension packed moments he could not be expected to make use of only specific selected words in scribing the F.I.R. at the spot. Even if worst is taken that actually the F.I.R. had been written by him after reaching the police station, that does not lead to the conclusion that it had been written under the influence of the police. It has to be taken note of that it is a case of single accused. A close relation of the victim would not spare the real culprit and substitute another for him. In the situation in which Omkar P.W. 1 was placed immediately after the incident, he could not be expected to take a cool minded and reasoned decision about what to do. He acted according to the first impulse that crossed his mind by rushing to the police station by bus to lodge the F.I.R. living injured there in the care of others including his relation Chetram. So far as his not going with the injured to the hospital after the arrival of the Investigation Officer is concerned, suffice it say that the statement of Omkar P.W. 1 is that his relations Chhadammi Lal, Karan Singh, Chet Ram and Chokhe Lal had gone with the injured to the hospital. There is nothing wrong that he did not accompany them and stayed at the spot with the Investigation Officer to cooperate in the investigation activities there. It may be pointed out that the dispatch of two injured to the hospital was the first thing to be done by the Investigating Officer on reaching the spot. The contention of the ante-timing of the F.I.R. is completely countered by this fact that the medical examination of Rama Devi was recorded on the back of the letter which had been prepared by the Investigating Officer after reaching the spot. The injured were sent for medical examination from the spot with Constable Suraj Pal and Mohar Singh as stated by the Investigating Officer Virendra Kumar P.W. 5. Immediately after registering of the case, the Investigating Officer had proceeded for the spot. All things considered, it is not possible to accept the argument assailing the F.I.R. to be tainted or ante-timed. The criticism

of the conduct of Omkar P.W. 1 subsequent to the happening is also built on straw. We may also point out here that this argument has no basis that he was subsequently called and was not an eye-witness to the incident. We note that it was not even suggested to him in his cross-examination that he had been called subsequently.

24. It is pertinent to state here that though motive is not very material in the present case of eye-witness account in which one of the eye-witnesses is injured herself, namely, Rama Devi P.W. 2. Still the prosecution has led evidence that there was motive also on the part of the accused appellant to commit this crime. The old enmity between the two sides is an admitted fact and the statement of Omkar P.W. 1 regarding criminal incidents between the two sides earlier to the present happening was not challenged in his cross-examination. The immediate motive was that the deceased had got a sale deed of land executed from his cousin sister Premwati by means of a sale deed. The factum of execution of sale deed was also not challenged in his cross-examination, Premwati is also cousin of the accused-appellant. The prosecution case is that he was also interested in purchasing that land and he felt bad when the deceased purchased the same. Indeed, the purchase of land by the deceased from Premwati was an aggravating circumstance inflaming the earlier strained relations between the two sides. So, it is not only a case of direct eyewitness account being one of the injured herself as an eye-witnesses, but there is evidence of motive also on the part of the accused appellant for the commission of this crime.

25. Learned counsel for the accused appellant then argued that Omkar P.W. 1 and Premawati P.W. 2 were interested and inimical witnesses and as such the prosecution was bound to examine the independent witnesses. However, it came forth in the cross-examination of these two witnesses that the persons who were accompanying the deceased and the witnesses were also close relations of the deceased. Therefore, even if they had been examined, it would not have served any useful purpose. Of course, it is clear from the F.I.R. and admission of the witness that some other persons had come to the spot, but it did not emerge as to who they were. If certain persons had been attracted after the firing of the spot by the accused appellant, they would have only witnessed the scuffle which took

place thereafter for the snatching of the gun from the accused appellant. They could not depose about the actual shooting. It is cardinal principle of law otherwise also that the evidence is not to be counted but weighted. In the present case, non-examination of the other witnesses does not at all adversely effect the prosecution version. Omkar P.W. 1 and Premwati P.W. 2, though interested and inimical, were definitely present at the spot and this factum is beyond the pale of doubt. As earlier stated, one of them was herself injured of the felony. It was Omkar P.W. 1 who had snatched the gun of the accused appellant after he had opened fire and had taken it to the police station where he handed over the same while lodging the F.I.R. Both of them withstood the test of cross-examination firmly. The central core of their testimonial assertions remained intact that it was the accused appellant who opened shot injuring one of them (Rama Devi P.W. 2) and their father Lalji who subsequently died in the hospital.

26. Then the point made by the learned counsel for the accused appellant was that the statement of the injured or the deceased were not recorded by the Investigating Officer immediately on reaching the spot. Suffice it to say that the deceased had received fatal injury and could die any moment. Rama Devi was also seriously injured including injury in her right eye. The statement of the Investigating Officer Virendra Singh P;W. 5 is there to the effect to that because of serious condition of injured, he immediately managed to send them to the hospital on reaching the spot. Lalji died in the hospital the same day and the statement of Rama Devi P.W. 2 was recorded by him in the hospital the following day 27-10-1984. No Investigating Officer even of little experience would have committed the indiscretion of wasting time in recording the statements of serious injured persons at the spot instead of immediate rushing them to the hospital for treatment. Recording of their statements at the moment could not at all be accorded priority. Therefore, it cannot be made a ground of criticism that their statements were not recorded by the Investigating Officer on reaching the spot.

27. Learned counsel for the accused appellant then pointed out that as per the injury report of Rama Devi Ext. Ka-4 the gunshot wounds of entry sustained by her were of size 1.0 cm x 0.5 cm and of 0.5 cm x 0.5 cm, whereas the size of gunshot wounds of entry of the deceased Lalji was 1 cm x 1 cm. He meant to argue that

the two could not have sustained injuries by one and the same shot. In our opinion, the argument is wholly misconceived. The definite case of the prosecution is that one shot had been fired by the accused appellant. A look at the firearm injuries sustained by the deceased and Rama Devi indicates that the dispersal was considerable, meaning thereby it was not fired from very close range. This argument is belied by defence case also. It was suggested to Omkar P.W. 1 in his cross-examination that at the time of the incident he had others with him had lathies who surrounded the accused appellant, hit him with lathies and snatched his gun and cycle and further that in the scuffle the gun went off injuring his father and sister. He denied this defence version suggestion to him in his cross-examination. The dispersal being considerable as indicated by the gunshot injuries sustained by the deceased and Rama Devi, the injuries as sustained by the deceased and Rama Devi could be sustained by one shot.

28. The defence version is completely belied that the gun went off in the scuffle of snatching it. Had it been so, the shot would have produced signs of close range firing. The defence version is shattered by another circumstances that the shot did not hit the deceased either by downward to upward or by upward to downward. The direction of shot hitting the deceased was from front to backward Medical evidence, therefore, is more consistent with the prosecution story.

29. A few words need be stated about the injury report of accused appellant Parsadi who was examined on 27-10-1984 at 11.05 a.m. in District Hospital, Bareilly by Dr. F.A. Khan DW 1. His case is that he had been hit by Omkar P.W. 1 and others on his side with lathies and his gun was snatched which went off. He somehow managed to run and reached the police station Shishgarh. He wanted to lodge the F.I.R. but the same was not taken down. It is to be noted that he himself was a police constable. Had he actually reached the police station in injured condition and narrated the incident, ordinarily his F.I.R. would have been taken down and he would have been sent for medical examination. In any case, he would not have been allowed to leave the police station. It is not believable that his report was not taken down and he was allowed to go. He got himself medically examined late in the night at 11.05 p.m. at his own accord. Though Dr. F.A. Khan stated, that he had been medically examined as a private case as per the order of

Superintendent of District Hospital, but no such order is there on record. His medical examination report also does not record that it was done on the order of Superintendent of District Hospital. He claimed that he had been hit with lathies. However, he did not sustain any lacerated wound. There was no injury on his head. Except Injury No. 1, all his injuries were superficial in nature. All the injuries of the injured were on non-vital and approachable parts. Injuries No. 6 and 7 were no injuries at all as they have been recorded as complaint of pain in left side of chest and on left calf muscle. Dr. F.A. Khan D.W. 1 had to admit that all the injuries might be self suffered and self inflicted: We have not the slightest doubt that the accused appellant managed to procure this spurious medical examination report of himself in an attempt to create false defence. There is no reason as to why he was going to the market with a loaded gun hung on his shoulder. It does not stand to reason at all that Omkar P.W. 1 and others with him, who were completely unarmed, would have dared to snatch his gun, risking their own lives.

30. On consideration of all the aspects and arguments of learned counsel for the accused appellant, we are satisfied that the prosecution has succeeded in establishing its case against the accused appellant by clinching and conclusive evidence. The fact was that the accused appellant had arrived at the spot and after resting his cycle had challenged the deceased, fired his gun and caused fatal injuries to him and murderous injuries to Rama Devi P.W. 2. It was thereafter that by scuffle Omkar P.W. 1 snatched his gun. He swiftly acted with alacrity and made bold, taking courage in both the hands and succeeded in snatching gun from him before he could reload it to widen and enlarge his criminal act. The accused appellant then managed to make his escape good. He thereafter vanished and went underground surrendering only after proceedings under Section 82/83, Cr.P.C. were initiated against him by the Investigating Officer. His conduct, too, speaks of his guilty mind. The offences under Sections 302 and 307, I.P.C. have rightly been held as proved against him. No interference is called for by this Court in appeal in the order of conviction and sentences passed against him.

31. We hereby dismiss this appeal.

32. The accused appellant was reported to be lodged in Jail as per report of Chief Judicial Magistrate, Bareilly dated 5-3-2003 in consequence of our order dated 31-1-2003. The Chief Judicial Magistrate, Bareilly shall confirm this fact that he is actually lodged in Jail. He shall do the needful to ensure that he undergoes the sentences passed against him.

33. The office shall send the copy of this judgment along with the record to the lower Court to ensure compliance within two months.

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