

**Gopal and Etc. Etc. Vs. State of U.P.**

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**Court :** Allahabad

**Decided On :** Feb-26-1999

**Reported in :** 1999CriLJ2501

**Judge :** G.P. Mathur, ;J.C. Mishra and ;K.D. Shahi, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 143, 148, 149, 302 and 307;  
Code of Criminal Procedure (CrPC) - Sections 152 and 313

**Appeal No. :** Cri. Capital Appeal No. 132 of 1998 and Cri Appeal Nos. 140, 147, 161, 170 and 171 of 1998 and Refer

**Appellant :** Gopal and Etc. Etc.

**Respondent :** State of U.P.

**Advocate for Def. :** Govt. Adv.

**Advocate for Pet/Ap. :** A.D. Giri, ;P.N. Mishra, ;U.N. Sharma and ;Gopal Chaturvedi, Advs.

**Judgement :**

**K.D. Shahi, J.**

1. These appeals were once heard by a Division Bench of this Court, consisting of Sri Girdhar Malviya, J. (since retired) and Sri B. K. Sharma, J. Both the Judges

gave contradictory opinion. There was difference of opinion in their judgment. Shri Girdhar Malviya, J. upheld the conviction. Sri B.K. Sharma, J. after reading the judgment recorded by Sri Girdhar Malviya, J. was of the view that the appeals deserve to be allowed and all the appellants deserve acquittal.

2. Then there was again difference of opinion between both the Judges on the question whether the appeals be laid before the 3rd Judge or be reheard and decided by a Larger Bench. The matter was then referred to Hon'ble the Chief Justice for appropriate orders. Hon'ble the Chief Justice by constituting this Larger Bench directed that the appeals be laid before the bench of three Judges for re-hearing and disposal. This is how these appeals came up for hearing and were heard by this Larger Bench.

3. Ram Ajore, PW-I lodged an FIR on 20-10-1983 at 2 a. m. in respect of the murders of Vijai Kumar, Vinod Kumar, Rampati and Sheo Kumar and dangerous injuries to Rakesh Kumar in the night of 19/20-10-1983 at 11.45 PM in village Lauhar Mahaiya Magra Tejpur, PS Mau Aima. Murders are said to have been caused by Pancham, Nan Bachcha alias Nanhe, Lallu, Deo Dutt., Gopal, Guddu and Ali Hasan. All of them are said to be armed with knives. Ali Hasan died during the trial and the case against him abated. The remaining six accused persons were convicted and sentenced to death punishment under Section 302 IPC, seven years rigorous imprisonment and a fine of Rs. 5000/- under Section 307 read with Section 149 IPC and two years R. I. under Section 148 IPC.

4. All the appellants preferred separate appeals against their conviction and sentence. Appeal of Gopal was registered as CrI. Appeal No. 132 of 1998, appeal of Pancham was registered as Criminal Appeal No. 140 of 1998 and that of Guddu alias Rais Ahmad was registered as Criminal Appeal No. 147 of 1998. Appeal of Nan Bachcha alias Nanhe was registered as Criminal Appeal No. 161 of 1998 and that of Lallu was registered as Criminal Appeal No. 170 of 1998 and the appeal of Deo Dutt Pandcy was registered as Criminal Appeal No. 171 of 1998.

5. All the appeals arose out of conviction and sentence orders passed by Sri B. Prasad, 7th Addl. Sessions Judge, Allahabad dated 17th January, 1998 in Sessions Trial No. 269 of 1984 -- State versus Pancham Singh and others out of

one incident. Therefore, all the appeals were taken up together by the Division Bench as well as by this Larger Bench for disposal by a common judgment.

6. The facts of the case and details of argument have been very vividly narrated in the judgment recorded by our brother Judges of the Division Bench. We need not refer in detail the facts and evidence on record again. But, we directly advert to the findings on the arguments advanced by the learned counsel for the appellants, namely, Sri A.D. Giri, Sri P.N. Mishra, Sri U.N. Sharma and Sri Gopal Chaturvedi, learned counsel for the appellants.

7. To appreciate the arguments the facts of the case, in few words, are that in the night of 19/20-10-83 a Nautanki was going on in the Ramleela ground of village Lauhar Marhaiya Nagra Tejpur, P. S. Mau Aima. Residents of village Benipur were playing Nautanki. Male people were playing the parts of male as well as female. The Nautanki was being seen by about four to five hundred persons (cross-examination dated 8-1-1991). Accused persons were also sitting on the cots. They were said to be armed with knives. They flashed torches at the ladies. Again they proclaimed a reward of Rs. 2/- the name of eunuchs the of village Benipur. This was not relished by Vijai Kumar. He asked not to do so. At this, he was assaulted by knife by Lallu. Vijai Kumar fell down. At this Vinod Kumar, Ramapati, Rakesh Kumar and Sheo Kumar rushed. They were also assaulted. Vijai Kumar and Vinod Kumar died in the way to the polite station. Sheo Kumar and Ramapati were sent to hospital, Rakesh Kumar -- injured, deceased Vijay Kumar and Vinod Kumar were taken to the police station. FIR was lodged at 2 a.m.

8. Charges were framed by the learned Sessions Judge. The prosecution examined as many as five witnesses. PW-1 Ram Ajore, P. W.-2 Trijugi Narain, PW-4 Ram Chandra. PW-5 Mohan Lal and PW-7 Rakesh Kumar-injured were examined as eye-witnesses and the witnesses of fact. Out of above five witnesses, Trijugi Narain, Ram Chander and Mohan Lal did not support me prosecution story and were declared hostile. The prosecution also examined P.W. 3 Mahendra Pd. Dubey, who is a witness of taking bloodstained and simple earth from the place of occurrence and preparation of Phard thereof. PW-6 Dr. S.D. Mishra has conducted the post mortem report of the deceased. PW 8 Dr. Chandra

Shekhar has examined the injuries of Rakesh Kumar on 20-10-83 at 4.30 a.m. in Swarup Rani Nehru Hospital, Allahabad. It is alleged that Rakesh Kumar was first sent to Primary Health Centre, Mau Aima. There the doctor advised to take him to Allahabad (PW. 9 cross examination dated 28-10-1997). P.W. 9 B. B. Singh, S. I. has investigated the case and filed the chargesheet. P. W.-10 Sesh Nath Ojha had produced Rakesh Kumar in Swarup Rani Nehru Hospital, Allahabad for medical examination. PW-11 Constable No. 321 Rajendra Singh has proved the signature and writing of Sub-Inspector Nand Lal who had prepared the inquest report. Thereafter the prosecution closed its evidence.

9. Statements of accused persons were recorded under Section 313 Cr. P.C. They denied the entire prosecution story and claimed false implication. They did not lead any evidence in defence.

10. After hearing the arguments the learned Sessions Judge convicted and sentenced the appellants, as stated above, being aggrieved by which these appeals have been filed by all the appellants.

11. We have heard learned counsel for the parties and have gone through the records. We have also the opportunity of going through the judgments recorded by our brother Judges, namely Sri Girdhar Malviya, J. and Sri B. K. Sharma, J. This larger Bench is unanimous in its opinion and also agree with the opinion expressed by brother Girdhar Malviya, J. We now proceed to give our opinion and reply the arguments of the learned counsel for the parties.

12. At the very outset, we want to say that it is very easy to find fault with anything. Even accurate computers are prone to commit faults and mistakes. Not only this, human mind cannot be read. Sometimes it works in the direction that it becomes adamant to help one party and tries its level best to spoil the case. It is well known, at least by the police officers, who investigate the case, also know that they should take prompt action and should immediately record the statement of the witnesses. They should not make cuttings and over-writings etc. in the police papers so as to create suspicion about the sanctity of the papers. They should fairly prepare the inquest report and police papers and should write the case diary with accuracy and correctly. These propositions of law and facts cannot be doubted. But if the

police officers deliberately sleep over the matter, try to spoil the case and do not record the evidence of the witnesses immediately, the poor dead persons who have been killed cannot come out to say why you are spoiling the case. The bereaved family and the witnesses have only to remain silent spectators to what the police officers do. If they intervene, a judicial notice of the fact can be taken that they are humiliated, even beaten and implicated in false cases. Fear of police atrocities keeps them mum. They are also ignorant of the fact that what shall be the effect of delay and discrepancy. Therefore, also, they have nothing to intervene with the investigation. In our view, investigation of the case, if faulty, even mischievous or collusive should not be a ground to reject the ocular testimony of the informant who lodged the F.I.R. promptly. If the FIR is recorded soon or is recorded after four or five hours, why should the prosecution or the persons who have died 'suffer'. Each and every case has to be decided on its intrinsic evidence. If the eye-witnesses are believable the mere weakness of the investigation should not be a ground to reject their testimonies. Our brother Sri B.K. Shiinna. J. looked into the entire case in this light soon in the bare facts that the witnesses and the deceased were helpless if the police did not act properly.

13. Now the first thing to be seen is whether the eye-witnesses are believable. There is nothing in the cross examination that no Nautanki was being played and the total case is false. There is no allegation that the Nautanki was being played at some other place than, in village Launar Mar haiya Nagar lejpur. There is also no allegation that the Nautanki was being played by somebody else than the male person of village Benipur, Benipur is adjoining village to Lauhar Marhaiya Nagnilpur, four or five hundred persons from different villages were assembled to see this Nautanki, Persons even from Mau Aima, which is at a distance of 7 or 8 kilometers had come to this Nautanki. As the case of the prosecution is that male persons of village Benipur were playing this Nautanki, naturally the presence of deceased persons cannot be doubted. Rakesh Kumar got injury in this very incident. His presence also cannot be doubted. Ram Ajore and Rakesh Kumar both are residents of village Benipur. Ram Ajore is informant and Rakesh Kumar is the injured.

14. With regard to the statements of the hostile witnesses, we would first like to say that the statements of the hostile witnesses are not totally to be disbelieved. It has to be scrutinized. Trijugi Narain PW-2 has specifically admitted that the Nautanki in the said night was being played. He only stated that he had not gone to the place of Nautanki. He further stated that he has seen the injury of Vijai Kumar, Binod Kumar, Rakesh Kumar Sheo Kumar and Ramapati. He was not cross-examined by the accused side. Therefore, factum of Nautanki and the injuries to the deceased and the victim are admitted by the hostile witnesses as well.

15. PW-2 Ram Chancier had stated that he did not see the Nautanki in the said night. But he also; admitted the factum of Nautanki in the said night. Similar is the statement of P.W. 5 Mohan Lal. Thus, these witnesses also admitted the factum of Nautanki in the said night although they said that they had not seen the occurrence but they also admitted the injuries to the deceased and the victim or said that they do not know how they were injured.

16. Now coming to the statement of Ram Ajore; he has narrated about the entire prosecution story. In the cross-examination he was suggested that he did not see the occurrence. The deceased received injuries somewhere else, Nautanki was not being played and he is giving false statement. If the Nautanki was being played and if others had gone to see the Nautanki, even the ladies were seeing the Nautanki, there is no improbability that Ram Ahore had gone to see the Nautanki. Rakesh Kumar was already injured on the spot, his presence at the spot cannot be doubted. Thus, there is nothing apparent for which these witnesses should be disbelieved. Time of occurrence and weapon of assault etc. has not been challenged. It was argued that there was no light. One is unable to digest that when a Nautanki was being played, about four or five hundred persons have assembled, there shall not be any light.

17. Learned counsel for the appellants have argued that the F.I.R., Ex. Ka. 1 is ante time and should not be taken as the FIR because G. D. entry was made by one Amrit Lal Maurya -- Hotneguard. The FIR, lodged at 2 p.m. is hit by the provisions Section 152 Cr. PC, and is not a genuine piece of paper.

18. What has come in evidence is that when Nautanki was being played there was one constable and one Homeguard. They may be there on law and order duty. After the occurrence Amrit Lal Maurya appears to have rushed to the police station and had given the information at the police station that in the Nautanki murders have been committed. G. D. entry was made at 1 AM. On this information inquest report of Vijai Kumar and Vinod Kumar, Ex. Ka-17 and Ext. Ka-18 were prepared by Banshidhar Pandey, SI. He has written in this inquest report the name of the informant as Amrit Lal Maurya and not Ram Ajore complainant. It was argued that this inquest report was prepared at 5.30 a.m. and 8.30 a.m. respectively. If the FIR was lodged at 2 a.m. it should have come in the inquest report that the FIR had been lodged at 2 a.m. by Ram Ajore. Technically this is correct. But if the dead body was there at the police station and if Amrit Lal Maurya has already made entry in the G. D. and if the Sub-Inspector prepared the inquest report, took Amrit Lal Maurya as informant and recorded his name in the inquest report as the informant, the prosecution case cannot be thrown away merely on the ground that the FIR, lodged at 2 AM, has not been mentioned in it. It may be in the mind of the Sub-Inspector, preparing the inquest report, that the name of two informants should not be written in the inquest report. It is true that Banshidhar S.I. and Amrit Lal Maurya who have made G. D. entry have not been examined but that itself will not make the FIR as unbelievable. They ought to have been examined. But their examination could have proved nothing except that Banshidhar has prepared the inquest report and Amrit Lal Maurya has made G. D. entry. It was argued that the injured was brought at the police station but he did not lodge the FIR. Law does not make any obligation on the part of the injured to lodge the FIR. After all, he had got injuries. He had also seen the murders of four persons, his age in 1991 being 24 years he should be hardly of 16 years on the date of incident. If some more responsible person was available at the police station, he would have taken the responsibility of lodging the FIR. This young chap, who was almost juvenile on that date, could not have been forced to lodge the FIR although he might have been fit to speak, give statement and to lodge the FIR. It was argued in it the statement of this Rakesh Kumar was recorded by the I.O. on 7-11-83 after about 17 or 18 days. The witness was hospitalised for about 21 days. He was available in the hospital. If he did not record the statement of this witness immediately

he could not have gone to the police station to force the I.O. to record his statement. It is only the mistake or mischief of the I.O. otherwise there was no reason for which his statement could not have been recorded as early as possible.

19. P.W. 1 Ram Ajore is said to be unbelievable merely because his statement in the Court was once recorded on 10-3-86 and then again on 8-1-91. We do not want to go into the controversy who is to be blamed for that but he has always given a consistent and believable statement. It was argued that Ram Ajore absconded from the proceedings but the ordersheet shows that he had never absconded from the proceedings. When his statement was recorded after examination-in-chief his cross-examination was deferred and it appears that it was prayed that after other witnesses have been examined he shall be cross-examined. Thereafter the case was moving from one Court to another Court like shuttle- cock. On 30-8-1988 all the witnesses were in attendance but they were not examined. Then the statements of P.W. 2 Trijugi Narain and P.W. 3 Mahendra Pd. Dubey were recorded on 28-7-89. Statements of P. W. 4 and P. W. 5 were recorded on 4-8-89 and then Ram Ajore was taken up for cross-examination on 8-1-91. The argument was totally misconceived that Ram Ajore was absconding. Even on 28-5-90 his signature on the ordersheet is there. He was present in the Court on 30-8-88. But the case was transferred. The argument cannot be appreciated that Ram Ajore was not ready to support the prosecution story, therefore, the prosecution delayed his cross-examination. To the contrary, it is apparent that other eye-witnesses could be won over by the lapse of time and delay factor. When four persons have been killed so easily no one will like to be killed by supporting the prosecution case. It was argued by the learned counsel for the appellants that the place of occurrence had been shifted. How it has been shifted was tried to be explained that it is shown to be near the Manch of Nautanki, then it has been shown after the road. For Iliis the site plan is to be seen. There is plot of Salik Ram Patel in the north. Plot of Ragghu in the east. Plot of Ramnath in the west and die plot of Salik Ram in the south. There is huge land in between. The Manch of Nautanki was in the north east corner. A road was going in between the land. People sat in this huge area to see the Nautanki. Some sat in the north east of the road, some sat in the south of the road. This road is not a demarcation line to shift the place of occurrence. The road may be hardly 7 or 8 ft. wide. If, after

assault to Vijai Kumar, some of the injured were attacked in the south of the road it cannot be said that the place of occurrence has been shifted. Place of occurrence remains the same as surrounded by the above plots.

20. It was argued that the witnesses did not know the accused persons and Lallu had claimed identification. That identification was not arranged and, therefore, complicity of the accused persons is doubtful. The FIR in this case was lodged on 20-10-83, Lallu surrendered on 2-11-83, chargesheet was filed in the Court against all the accused persons on 7-11-83. Once the chargesheet is filed in the Court of the Magistrate, bail is away from the hands of the investigating agency. Investigating agency could have done nothing after the chargesheet is filed. If Lallu surrendered on 2-11-83 he may have applied for identification on the same day but his first application for identification came up before the Court on 30-11-83. If the Magistrate did not think it proper to arrange the identification the prosecution cannot be held responsible for that.

21. It is very difficult to recollect on which particular date and on what occasion a person would be known to other person. But it can only be seen whether there was any opportunity for the witness to have known the accused persons. Accused Lallu, like others, is also resident of Mau Aima. No other person says that he was not known to the witness. He should be put up for identification. Accused persons also do not say how others were known to the witnesses and why they did not claim identification. There was nothing unnatural that the witnesses knew Lallu as well. If others from Mau Aima can see the Nautanki why not Lallu. Regarding Lallu, a long cross-examination was made to witness Ram Ajore that he knew Lallu from before 4 or 5 years. Lallu was known as notorious in the locality and this is why he was known to him. He stated that he had seen Lallu several times sitting in the shop of Nai. He had also seen him sitting with Gopal. Lallu is said to be selling biscuit at Mau Aima. This fact has not been denied by him that he did not sell biscuit there. It is not said that Lallu was vagabond and was doing nothing. If he had got a shop at Mau Aima which is a big market and if witnesses went there and purchased articles from him that is sufficient reason to know him. Not only this when the statement of Lallu was recorded under Section 313 Cr. P.C. he stated his profession of selling biscuits. Thus this fact is admitted that Lallu used to sell

biscuit in Mau Aima and if the witnesses knew him there is no improbability in it.

22. Regarding Guddu, it is said that another Guddu of the same village was arrested. He was challenged in some excise case and instead this Guddu has been implicated. This is a mere suggestion. He did not state that he is not brother-in-law of Mukhtar. That was sufficient to disclose his identity. These facts will not help the accused person. It was again argued that the assailants are said to be seven in number. Vijai Kumar has been inflicted two injuries while others only one injury. The total injuries are six in number. It is not said that who injured to whom. It was argued that there is no evidence of any common object and some of the accused persons may be innocent as well, there may be doubt of false implication. It was argued that in these circumstances all the accused persons are entitled to acquittal. We have considered this aspect of the case as well. It is not the case of fire. Knife can be assaulted from a very close range. If 4 or 5 persons are surrounded by seven person, who inflicted injury to whom cannot be said by anybody; when one is in a very close range then alone he can be assaulted. All the seven person have come together. They were sitting together on cots, they teased the ladies together and flashed torches together. They made sarcastic remarks together. When marpeet started all of them rose, assaulted the victims and killed them. If in that process the witnesses are unable to say who caused injury to whom it is immaterial. All are bound by the acts of others as common object can be created even at the spur of the moment. We have already said that the absence of light is ruled out. Nautanki was going on that very night from 10.30 p.m. and the assault was made at 11.45 p.m. it cannot be said that the witnesses did not see who are the persons of common object and who formed unlawful assembly and who attacked. After all, out of 500 persons only seven have been named. There was no previous enmity between the parties. There was no reason to falsely implicate anybody and in these circumstances there is no ground to discard the statement of prosecution witnesses.

23. Place of occurrence, time of occurrence, weapon of assault and participation of accused persons, all have been fully established. Both the witnesses are fully believable witnesses and they have proved the case to the hilt. Some laches or mischief on the part of the to is no ground to discard the statement of the

witnesses which has been fully corroborated by the medical evidence.

24. We fully agree with the findings and opinion given by brother Sri Girdhar Malviya-J. We now proceed to answer the query made by brother Sri B. K. Sharma, J.

25. At page 5 of his judgment Sri B.K. Sharma, J. has also given the opinion that it is a case of homicide and Rakesh Kumar has been injured. It was observed that at the police station in the Chitthi Majroobi crime number etc. has not been given. Rakesh Kumar was medically examined at Swarup Rani Nehru Hospital, Allahabad on 20-10-83 at 4.30 a.m. The defence criticised the I.O. for not examining him till 7-11-83. The I.O. has given contradictory reasons. Once he has stated that the victim was not in a position to give statement and again he stated that he had seen the victim at the police station on 20-10-83 and he was fit. The doctor also reported him to be fit. This is all trade but if the I.O. did not record his statement knowingly it is he who is to be blamed and the prosecution story cannot be thrown away. If the dying declaration of the victim could have been recorded the defence could have very well argued that it is not admissible in evidence because he is alive. There was no occasion for Rakesh Kumar to have narrated the story to anybody else unless he is specifically asked for. In our opinion, the ruling reported in State of Orissa v. Mr. Bramhanand AIR 1976 SC 2488 : 1976 Cri LJ 1-985, shall not apply to the facts of the present case. There is none to say that he had asked but Rakesh Kumar, did not narrate the story to him. We have already discussed in our judgment, after perusal of the ordersheet that Ram Ajore was not absconding and if he has not cross-examined for four years he was not to be blamed.

26. Regarding FIR, we can safely say that that is not encyclopedia. Law also does not provide who shall lodge the FIR. FIR in this case is neither too prompt nor delayed. If the I.O. did not properly prepare the police papers eye witnesses or the deceased should not be blamed for that. That is a mistake or mischief of the I.O. The first inquest report was prepared at 5.30 a.m. Nobody did say that the occurrence took place after 5.30 a.m. Rakesh Kumar was examined at Swarup Rani Nehru Hospital, Allahabad at 4.30 a.m. The occurrence took place about mid-

night. Rakesh Kumar went from the place of occurrence to the police station, then Primary Health Centre and then to the district hospital. If the I.O. would have been fair he could have very easily prepared correct inquest report but if he did not do so his conduct is to be only criticised and not the prosecution case.

27. It was argued that the copy of the G.D. entry No. 2, at 1 a.m. lodged by Amrit Lal Maurya has not been produced. It is true that the paper has been weeded out. But there is nothing on record to show that this entry of the G.D. was the FIR. Had it been a FIR chick report might have been prepared on this basis. Amrit Lal Maurya has not been examined. He could have been summoned by the accused as defence witness but mere non examination of Amrit Lal Maurya and non production of G.D. entry will not show that the FIR is ante timed. Emphasis was laid on the citation made in the FIR 'Muljimon ki talash police karrahi hai' will not in any way help the accused persons because information had already been given at the police station at 1 p.m. One police and one homeguard was already there FIR is not a substantive piece of evidence. By this alone the entire prosecution case cannot be rejected. This is only to confront the maker of it. It will only put the machinery of law into motion. It is only corroborative piece of evidence. In no way it can be said that the FIR is false. In this particular case, learned brother Sri B. K. Sharma, J. has also mentioned that the Government Advocate could not give explanation as to why the information given by Amrit Lal Maurya -- Homeguard was not recorded in the chick register and why it was recorded in the G. D.. The simple reply is that creptive information by RT set, information by telephone and the information by only stating that some incident has occurred is no FIR in the eye of law and if Amrit Lal Maurya -- Homeguard had only informed that murders have been committed without telling other details and without saying that he was an eye-witness of the occurrence it was not necessary for the police to have recorded his information in the chik report, to be used as the FIR. At page 22 of his judgment, brother Sri B. K. Sharma, J. himself has observed that the Investigating Officer did not record his arrival etc. in the G. D. The I.O. has given conflicting statement. For that the I.O. is to be blamed and the entire prosecution story is not to be thrown away. In the Chitthi Majroobi by Rakesh Kumar crime number etc. has not been given, for the simple reason that he was sent from the police station at 1.30 p.m. to Swarup Rani Nehru Hospital, Allahabad, while information given by

Amrit Lal Maurya was not treated to be an FIR and looking to the urgency that like other four persons, who had only one injury and had died, the police might have thought that without going into other formalities at least one injured may be saved, and he should be immediately sent to the district hospital. That may be only a clerical lapse on the part of the police authorities. By no stretch of imagination it can be said that the FIR was lodged after 9.30 a.m. of the other day. Learned brother Sri B.K. Siarma, J. has thrown the entire prosecution story only disbelieving the investigation of the case and the I.O. which, in our opinion, is not sufficient to discard the entire prosecution story. There may be ignorance, laches and loss of patience looking the four murders and even the mischief by the I.O., as discussed above .

28. Regarding other arguments, in the judgment of brother Sri B. K. Sharma, J., and the learned counsel for the defence we have already expressed above our opinion.

29. We are in full agreement with the findings recorded by brother Sri Girdhar Malviya, J. and we hold that the case is fully established against the accused persons.

30. On sentence also we agree with the findings given by brother Sri Girdhar Malviya, J. that this is not a case of rarest of rare. Accused persons are not habitual offenders. Trial has also ended after about sixteen years. In these circumstances, imprisonment for life was found to be adequate punishment. Regarding other offences as well we fully agree with the findings recorded by brother Sri Girdhar Malviya, J.

31. These appeals have got no force and on findings on conviction these appeals are to be dismissed and are accordingly dismissed. Punishment of death is hereby commuted to life imprisonment and it is hereby directed that all the appellants shall undergo imprisonment for life for having murdered the victims Vijai Kumar, Vinod Kumar, Ramapati and Sheo Kumar. The learned Sessions Judge has given just and reasonable punishment for the charges under Sections 307/149 and 143 IPC, which is hereby upheld.

32. With the above modification, all the appeals are hereby dismissed. The reference No. 2 of 1998 made by the learned Sessions Judge for the confirmation of the death punishment of the appellants are hereby rejected.

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