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**Rajendra and ors. Vs. State of U.P.**

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**Court** : Allahabad

**Decided On :** Aug-26-2002

**Reported in** : 2003CriLJ1821

**Judge** : J.C. Gupta and ;Imtiyaz Murtaza, JJ.

**Acts** : Indian Penal Code (IPC), 1860 - Sections 149 and 300

**Appeal No.** : Criminal Appeal Nos. 652 and 656 of 2000 and Revn No. 448 of 2000

**Appellant** : Rajendra and ors.

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

**Advocate for Def.** : A.G.A.

**Advocate for Pet/Ap.** : Ashwini Kumar Awasthi, ;Manish Tiwary, ;V.C. Tiwary, ;A.B.L. Gaur, ;Shashank Shekhar and ;Surendra Singh Rajput, Advs.

**Disposition** : Appeal allowed

**Judgement** :

**Imtiyaz Murtaza, J.**

1. Both criminal appeals are against the judgment and order dated 1-3-2000 passed by Sri H. S. Yadav IV Addl. Sessions Judge, Etah in Session Trial No. 516

of 1994 whereby the appellants, Rajendra, Pati Ram and Bhudeo Singh were convicted and sentenced to death under Section 302 read with Section 149 IPC. They are further sentenced to pay a fine of Rs. 3000/- each and they are further convicted under Section 436 IPC and sentenced to 10 years rigorous imprisonment and to pay a fine of Rs 2000/- each and they are further convicted under Section 148 IPC and sentenced to one year rigorous imprisonment and a default of payment of fine they are further sentenced to six months rigorous imprisonment. The remaining appellants have been convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs. 3000/- each under Section 302 read with Section 149 IPC. They are further sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 2000/- each under Section 436 IPC. They are further sentenced to rigorous imprisonment for one year under Section 148 IPC and in default of payment of fine they are further sentenced to six months simple imprisonment.

2.. Both the appeals are filed against one judgment and order, therefore they have been heard and disposed of together.

3. The brief facts of the case are that on 3-5-1993 the marriage of the daughter of Chhotey Lal of his village within the police station Marehra district Etah was arranged in which Dharam Pal and his family members were not invited at the behest of Hari Singh and Balvir Singh on account of previous enmity. This lead to annoyance of Dharam Pal and his family members. Chhotey Lal had arranged the feast of the marriage at the house of Kishan Lal. Natthu Singh, Netra Pal, Kali Charan, Tej Singh Kishan Lal and some other persons were sitting for dinner. At the same time at about 6.00 P.M. Dharam Pal having gun, Rajendra having 315 bore pistol, Radhey Shyam, Ram Prakash son of Lankush, Ram Prakash son of Gende Lal, Kunwar Pal, Tilak Singh, Phool Singh, Netra Pal, Satyaveer, Smt. Champa, Smt. Urmila, Smt. Kalawati, Smt. Reshma. ' Smt. Maharani, Smt. Pushpa, Udaiveer Singh, Smt. Dulari, Bhudeo Singh, Natthu Singh, Pati Ram, Ram Khilari alias Khyali Ram, Alan Singh, Behari Singh, Smt. Naraini and Kunwar Pal all having Tamancha, lathi and pharsa came and challenged that no body will take dinner and everybody will be shot dead. Dharam Pal in order to terrorize the people open fire and his other companions exhorted to surround the invitees there.

Balveer Singh along with licensed gun of his father was present inside the house of Kishan Lal where food was being cooked. He had opposed the acts of Dharam Pal and his companions and tried to convince them. Dharam Pal and his companions chained the door of the house from outside and some of them climbed on the roof and started digging the roof. Thereafter Dharam Pal came out of the house and all other accused persons entered inside the house of Kishan Lal. They caught Balveer Singh and all the accused persons exhorted then axe blows were inflicted on his neck. On account of this Balveer Singh died on the spot. The accused persons also broke the gun of Balveer Singh and carried away the barrels and cartridges. Hari Singh due to fear took shelter in his home along with his grand sons and grand daughter. Then accused persons put his house and a Bajaj Scooter on fire after pouring Kerosene oil thereon. On account of this Hari Singh, Km. Guriya, Manoj and Surendra died due to suffocation and burns. The report of the occurrence was lodged by Dinesh Kumar at police station Marehara district Etah on 3-5-1993 at 7.00 P.M. which was registered as case Crime No. 36 of 1993. After registration of the case the investigation was done by Narendra Singh Tewatiya S.H.O. of Police station Marehara district Etah. In this occurrence Manoj, Hari Singh, Km. Guriya, Balveer Singh and Suirendra had lost their lives. Dr. H. B. Singh, Medical Officer of district hospital Etah conducted the post mortem examination of Manoj (Ext. Ka-11), Hari Singh (Ext. Ka-12) and Km. Guriya (Ext. Ka-13). The Doctor found the following ante mortem injuries on the dead body of Manoj :--

Ist and IInd degree burn on face, upper part of chest, right upper arm, Back

Upper part. Blisters on chest, face,

In the opinion of the doctor, death was caused one day prior to post mortem burns.

Hari Singh

Ist and IInd degree burn all over body. Blisters present on face, both upper

Limbs and both legs.

Death one day prior to post mortem due to burn and suffocation;

Km. Guriya

Ist and IInd degree burn all over body. Blisters present on face, both arms, chest and both thighs.

Death about one day prior to post mortem due to burns leading to shock.

Dr. O. P. Varshney, Medical Officer district hospital Etah conducted the post mortem examination of dead bodies of Balveer Singh (Ext. Ka-2) and Surendra (Ext. Ka-3) and he had found the following ante mortem injuries :

Balveer Singh

1. Incised wound 10 cm x 4 cm bone deep in the front of neck trachea ossifagus cut and further damaged on thymus bone on neck

2. Abrasion 1 cm x 1/2 cm on the right side cheek.

3. Incised wound 2 cm x 1/2 cm x muscle deep on the left side of chin, 3.5 cm away from angle of mouth lip.

4. Incised wound 1 cm x 1/2 cm x bone deep on the left check vertically 3.5 cm away from angle of left eye.

5. Lacerated wound 5 cm x 1 1/2 cm bone deep on the left eye brow outer side.

6. Lacerated wound 5 cm x 1 1/2 cm x bone deep on the left side of the head 6.5 cm above the ear.

7. Lacerated wound 5 cm x 1/2 cm x bone deep on the left upper head 5 cm above the left ear.

8. Incised wound 1 cm x 1/2 cm x muscle deep on the left side of neck.

9. Multiple abrasions through & through in an area of 10 cm x 6 cm on the left side chest and neck.

Death about one day prior to post mortem due to shock and haemorrhage as a result of ante mortem injuries.

Surendra

Ist and IInd degree burn of the face, right shoulder, upper and left fore

Arms and front of chest.

Death about one day prior to post mortem due to shock as a result of ante mortem injuries.

4. After the investigation of the case charge sheet against the accused persons were submitted and in the usual manner the case was committed to the Court of Sessions. The accused were charged under Sections 147/148/, 302/149, 436/149, and 404 IPC. and Rajendra was also charged under Section 302 IPC. The accused had pleaded not guilty and claimed to be tried. The Sessions Judge convicted and sentenced the appellant in the aforementioned sections. Criminal revision is filed against the acquittal of some accused by the Sessions Judge.

5. In order to prove its case the prosecution has examined 8 witnesses. P.W. 1 Kishan Lal and P.W. 2 Dinesh Kumar (complainant) are the witnesses of fact. P.W. 3 O.P. Varshney and P.W. 6 Dr. H. B. Singh had conducted the post mortem of the dead bodies. P.W. 4 Constable Babu Singh Parihar had prepared chick F.I.R. of this case. P.W. 5 S.I. Narendra Singh Tewatiya is the first Investigating Officer of the case. P.W. 8 S.I. Babu Ram Sharma is the Second Investigating Officer of the case. P.W. 7 S.I. Netra Pal had conducted the inquest on the dead bodies on the direction of P.W. 5 Narendra Singh Tewatiya.

6. P.W. 1 Kishan Lal is an eye witness of the case. He has fully supported the prosecution case. He has stated that marriage of daughter of Chhotey Lal was to be performed on 3-5-1993. The feast of the marriage was arranged on his Chabutara and food was cooked in side of his house. He has stated that dinner was to start at 6.00 P.M. He has stated that he along with Netra Pal, Kali Charan, Tej Singh and some other persons were sitting for having dinner. Balveer Singh was inside of his house where food was being cooked. Hari Singh, Manoj,

Surendra and Km. Guriya were also present there. At the same time Charam Pal having country made gun, Rajendra having 315 bore country made pistol and other accused persons were having with their Tamancha, stick etc. came to his Chabutara where feast were arranged. Dharam Pal and Rajendra started hurling abuses and threatened that they will not allow any body to enjoy feast. All the accused persons entered in the house and started committing mischief. Balveer was present there along with licensed gun of his father. All the accused persons caught him and assaulted him and fell him down and Rajendra lifted axe lying near fire place and inflicted 2-3 blows on the neck of Balveer Singh. Om Prakash and Ram Prakash inflicted axe blows from blunt side on Balveer Singh. He succumbed to his injuries on the spot. The gun of Balveer was also broken and its barrel and cartridges were taken away by the accused persons. Dharam Pal came out from his house and 4-5 fires were made and he fell down on Chabutara and died. Hari Singh along with his two grand sons and one grand daughter took shelter in his house and closed the door from inside. He has further stated that then Maharani, Urmila, Reshma, Dulari, Kalawati brought Kerosene oil from their respective house. Pushpa and Champa brought dry wheat plants and put them at the door of the house of Hari Singh. He has further stated that Bhudeo and Pati Ram poured Kerosene oil thereon and put them on fire. Thereafter the accused persons left the seen of occurrence leaving the house burning of Hari Singh. Hari Singh and three children died inside the house. Dinesh Singh reached to police station and lodged the report. The villagers removed the dead bodies of the deceased. He has further stated that the gun of Balveer Singh was recovered by the Investigating Officer.

7. P.W. 2 Dinesh Kumar is the complainant of the case. He has stated that on 3-5-93 feast of marriage of daughter of Chhotey Lal was to b performed at the Chabutara. Food was being cooked inside the house of Kishan Lal and dinner was arranged on his Chabutara. Chhotey Lal had invited him and his family members but he has not invited Dharam Pal and his family members. He had not invited Dharam Pal at the instance of Balveer Singh. He has stated that there is enmity between Dharam Pal and Balveer Singh. This had caused annoyance to Dharam Pal. At about 6.00 P.M. the dinner started on Chabutara. He Kali Charan, Tej Singh, Kishan Lal and other persons were going to sit for dinner. Balveer was inside the house and his father Hari Singh and his nephews Manoj, Surendra and

niece Km. Guriya were also present on the Chabutara. Dharam Pal armed with country made gun Rajendra armed with country made pistol along with all the appellants arrived at the Chabutara where feast was arranged. Dharam Pal and Rajendra hurling abuses challenged that they will not allowed any one to enjoy the feast. Dharam Pal opened fire in the air. Balveer Singh tried to convince Dharam Pal but they ignored and all accused persons entered inside the house. Balveer Singh sheltered inside the room and bolted it from inside. Phool Singh climbed on the roof of the room in which Balveer Singh had taken shelter and started digging the roof. Om Prakash pull down the thatch and accused persons set it on fire. Balveer came out from the room and Rajendra inflicted axe blows on his neck on account of which Balveer Singh fell down. Ram Prakash also caused blows from the same axe from blunt side. Balveer succumbed to his injuries. The gun of Balveer was also broken in two pieces by the axe blow and at the same moment 3-4 fires were made on the Chabutara which hit Dharam Pal and he fell down and died. He has further stated that Hari Singh along with his nephews Manoj and Surendra and niece Km. Guriya took shelter in his house. They chained the door from outside. All the accused persons had surrounded the house. Urmila, Kalawati, Dulari, Reshma and Maharani brought Kerosene oil from their respective houses. Champa and Pushpa collected dry stem of wheat plants. Pati Ram and Bhudeo set them on fire and poured Kerosene oil on the doors on account of which doors were also burning. They also put on fire scooter of Balveer. Natthu and Alah Singh climbed up the roof of his house and made a whole in the roof and threw the burning stems of wheat plants on the roof. Hari Singh along with three children were inside the room and they died due to burn injuries. He has proved the written report Ext. Ka-1.

8. P.W. 3 Dr. O. P. Varshney, Medical Officer of district hospital Etah has stated that he has found 9 ante mortem injuries on the dead body of Balveer Singh. Injuries No. 1, 3, 4 and 8 were incised wounds which might have been caused by sharp edged weapons like axe and rest of the injuries were caused by blunt object. In his opinion all the injuries were sufficient in the ordinary course of nature to cause the death. He has further stated that on the dead body of Surendra he has found burn injuries and he had died due to burn injuries.

9. P.W. 4 Head Constable Babu Singh Parihar has stated that on 3-5-93 he was posted as head Moharrir at police station Marehara district Etah. He has registered the case against the accused persons and prepared chick F.I.R. and also made entry in the G.D. and he had proved the chick F.I.R. and the copy of the G.D. Ext. Ka-4 and Ka-5.

10. P.W. 5 Narendra Singh Tevatiya is the Investigating Officer of the case. He has stated that on 3-5-93 he was posted as S.O. of Police station Marhera district Etah. He has stated that the case was registered in his presence at police station at 7.00 A.M. He had reached at the place of occurrence. He had prepared the site plan Ext. Ka-6 and recorded the statement of the witneses. He had instructed S.I. Netra Pal to prepare the inquest reports. He had seized axes from the place of occurrence and prepared the seizure memo Ext. Ka-9. He had collected blood stained and simple soil from near the dead body of Balveer Singh and prepared seizure memo Ext. Ka-7. He had recovered the broken butt of gun near the dead body of Balveer Singh and prepared seizure memo Ext. Ka-8. After the preparation of the inquest report of four dead bodies they were separately sealed and were handed over to constables Uma Shanker and Raghubir Singh. On 4-5-92 at about 10.30 A.M. he has arrested the accused Rajendra, Kunwar Pal, Tilak Singh, Pushpa, Dulari, Natthu, Bhudeo, Reshma. Maharani, Ram Khilari, Alah Singh, Narain Devi and Kunwar Pal. He also recovered barrel of DBBL gun No. 85010 which was hidden inside the heap of Patail inside the house of Kishan Lal and also recovered one empty shell and missed cartridge from the barrel of the said gun which was said to have been licensed gun of deceased Hari Singh. Its seizure memo is Ext. Ka-10. On 6-5-93 accused Phool Singh surrendered in court. On 7-5-93 accused Ram Prakash and Om Prakash surrendered in court. On 9-5-93 accused Urmila was arrested and also arrested the accused Radhey Shyam and Champa Devi. He had also arrested the accused Kehari and Pati Ram and accused Kalawati was surrendered in Court. On 15-5-93 accused Satyaveer and Netra Pal also surrendered in the Court. On 14-6-93 he was transferred and investigation was conducted by Babu Ram Verma S.O.

11. P.W. 6 Dr. H. B. Singh who has conducted the post mortem on the dead bodies of Manoj, Hari Singh and Km. Guriya has stated that on 4-5-93 he was

posted as Sr. T.B. Specialist in district hospital, Etah. On that day at about 3.55 P.M. he conducted post mortem of deceased Manoj which was brought by constables Umashanker and Raghubir Singh of Police station Marehara. He found Ist and IInd degree burn injury all over face, chest, upper limbs back and face of the deceased. Blisters were present all over the chest and face. On internal examination membranes of brain, pleura, lungs were found congested and cherry black colour blood was present in the heart. Spleen, lever and kidney were also congested. In his opinion the deceased might have died one day prior due to burn and haemorrhage. This witness has proved post mortem report as Ext. Ka-11. On the same day at 3.00 P.M. this witness has also examined the dead body of Hari Singh which was also brought by the said two constables. He found Ist and IInd degree of burn injuries all over face, upper limbs, legs of the deceased. On internal examination membranes of his brain were found congested. Lever, Gall bladder, heart, all were pale in colour. In his opinion the deceased might have died one day prior due to burn injuries. He has also proved the post mortem report Ext. Ka-12. On the same day at about 3.25 P.M. he also examined the dead body of Km. Guriya which was also brought by the aforesaid two constables. He found Ist and IInd degree burn injuries. Blisters were present on her face, upper limbs, bosom and both thighs, On internal examination membrances of her brain and pleura were found congested. In his opinion the deceased might have died one day prior due to burn injuries. He has proved the post mortem report Ex. Ka-13.

12. P.W. 7 Netra Pal prepared the inquest report on the direction of P.W. 5, Narendra Singh Tevatiya. He had prepared inquest report of deceased Surendra and also prepared the relevant papers Challan lash, letter to C.M.O. Photo lash and this witness has proved the papers Ext. Ka-15 to Ka-17. He has also prepared the inquest of the dead body of Balveer Singh and other necessary papers which he has proved Ext. Ka-18 to Ka-21. He has also prepared the inquest report of deceased Hari Singh and relevant papers which he proved as Ext. Ka-22 to Ka-25. He had also prepared the inquest report of deceased Guriya and also proved other relevant papers as Ext. Ka-26 to Ka-29. He has also prepared the inquest report of deceased Manoj and has proved it as Ext. Ka-30 to Ka-33. He has further stated that after completing the inquest reports he has sealed the dead bodies in separate cloth and handed over to constables Uma Shankar and Raghubir Singh

for being taken to the mortuary for post mortem.

13. P.W. 8 Babu Ram Verma, Second Investigating Officer of this case has submitted the charge sheet. He has stated that investigation of the case was previously conducted by Narendra Singh Tevatiya and on his transfer he has investigated the case. On 26-6-93 he had recorded the statement of S.L. Netra Pal who had prepared the inquest report. On 29-6-93 he had recorded the statement of witnesses Natthoo, Netra Pal, Kali Charan and Kishan Lal and submitted charge sheet against the accused persons on 29-6-93 which is Ext. Ka-34.

14. The accused has stated that they are falsely implicated in this case on account of party faction of the village. Accused Kunwar Pal has examined one witness in defence.

15. D.W. 1 Dr. H. J. Loyal stated that on 3-5-93 he was posted as Medical Superintendent of Christian Hospital, Kasganj. He has stated that as per the record of the hospital on the date of occurrence at about 8.43 A.M. Km. Geeta daughter of Kunwar Pal resident of Nagla Nandey police station Marehra district Etah was admitted in the hospital as a case of head injury. Her general condition was very poor. Registration Card of said patient was prepared by Dr. Pradeep Kumar. He has filed original admission Card and Bed Head Ticket and proved them as Ext. Kha-4 and Kha-5. He has also proved death certificate of deceased Km. Geeta as Ext. Kha-6. The defence has also filed copy of the post mortem report of deceased Dharam Pal Ext. Kha-1 and copy of F.I.R. of cross case Ext. Kha-2. Copy of G.D. No. 42 time 19.15 hours Ext. Kha-3 at case Crime No. 36-A of 1993 P.S. Marhera district Etah.

16. We have heard Sri V. C. Tewari for the appellants and A.G.A. for the prosecution.

17. The appellants' counsel has submitted that the prosecution is suppressing the origin of the occurrence and the appellants are falsely implicated in this case. The prosecution has not properly explained the death of Dharam Pal and the witnesses are not coming with true version. In this occurrence date time and place of occurrence is not disputed. It is submitted by the counsel for the defence that

Dharam Pal was firstly murdered and after the murder of Dharam Pal villagers had committed the murder of the deceased in retaliation. It was further submitted that there are several infirmities in the prosecution case. The manner of assault clearly indicates that it was a retaliatory act of the villagers after the murder of Dharam Pal. It was further submitted that prosecution failed to prove its case beyond reasonable doubt.

18. The prosecution in order to prove its case has examined two eye witnesses of the occurrence. P.W. 1 Kishan Lal has supported the prosecution case. The counsel for the appellants has submitted that he has stated that Dharam Pal and Rajendra were armed with country made pistol and he has further stated that Rajendra had assaulted Balveer with Kulhari and when he fell down had assaulted Balveer with the blunt side of the Kulhari and Om Prakash had broken the gun of Balveer in two parts. The counsel for the appellants submits that this version of the occurrence is not in the F.I.R. and he has changed the role of Om Prakash in order to explain the lacerated wounds and abrasion found by the doctor in the post mortem of Balveer Singh. The counsel for the appellants further submitted that when the Investigating Officer had recovered the gun of Balveer lying at the place of occurrence one fired cartridge was also recovered from the barrel of the gun. In order to explain this P.W. 1 has stated that when Balveer came out of the room of his house he had fired in the air. This part of firing by Balveer is not in the F.I.R. P.W. 2 has also stated about firing by Balveer. Counsel for the appellants submits that this part of firing of Balveer when he was coming out of the room cannot be believed. In their statements witnesses had stated that Bhudeo and his two sons were at the place of occurrence and in the morning of the date of occurrence daughter of Kunwar Pal had fallen from the roof and all the three had taken her to cause them hospital for treatment but she had not survived and her dead body was brought to the village at 2.00 P.M. and she was hurried near the river on the same day. In his statement he has stated that he cannot specify as to which of the accused was armed with Farsa. He has further stated that two persons were armed with fire arm.

19. P.W. 2 is the complainant of the case. He has stated that accused Dharam Pal was armed with country made gun and Rajendra was armed with country made

pistol and rest of the accused persons were armed with lathi, Kulhari and Farsa. He has stated that Dharam Pal had fired but the fire had not caused injury to any one. In his statement he has further stated that Balveer was assaulted by Rajendra and thereafter Ram Prakash had assaulted with blunt side of Kulhari. This witness could not specify as to who caused the death of Dharampal. As regard death of Hari Singh and children he has stated that ladies brought the Kerosene oil and other accused had set on fire. In the Court for the first time he had specified that Champa and Pushpa had brought the dry leaves and Pati Ram and Bhudeo had set the fire in the house. As regard absence of specific role of accused in 161 statement he has stated that this part of the role of ladies is not in his statement under Section 161 Cr.P.C. Why the Investigating Officer has not mentioned this fact in his statement he could not tell. He has further stated that he could not say as to how in his statement under Section 161 Cr.P.C. the investigating officer has mentioned that Shesh Kumar and Ganga Ram had fired from their pistol to save Balveer which hit Dharam Pal. So far as the origin of the case is concerned it is not disputed that Chhotey Lal had invited Hari Singh and Balveer in the marriage but he had not invited Dharam Pal, Rajendra and others. Dharam Pal and Rajendra had reached on the Chabutara of Kishal Lal and asked that why they have not been invited. According to the defence version they had gone there just to lodge their protest. They were unarmed and in the meantime Dharam Pal was shot dead by Shesh Kumar and Ganga Ram. The allegation of the prosecution that appellant was armed with a gun is not supported by cogent evidence as the Investigating Officer had not recovered any fire arm near the dead body of Dharam Pal. According to the prosecution case firstly Balveer was murdered with axe is highly improbable. Admittedly Balveer was armed with fire arm. If Dharam Pal was armed with fire arm and Rajendra was armed with country made pistol but none of them had caused any injury by their weapons to Balveer. So far as the injuries of Balveer are concerned according to the prosecution case none of the accused was armed with axe and it is stated by the witnesses that when Balveer came out from the room axe which was lying near by the house accused assaulted Balveer. This clearly suggests that accused were unarmed and Balveer was assaulted after the murder of Dharam Pal. The Investigating Officer had not recovered any weapon carried by any of the accused. On the other hand

the allegation of the F.I.R. is that gun of Balveer was taken away by the accused was found false and it was recovered by the Investigating Officer from the place of occurrence itself. The contention of the counsel for the appellants is that the defence version is more probable than the prosecution case. The appellants' counsel submits that firstly Dharam Pal was murdered and thereafter in retaliation Balveer was assaulted by the villagers and his house was set on fire. The story of the prosecution that ladies brought Kerosene oil from their house is also very improbable. According to the prosecution case the appellants had reached the place of occurrence variously armed. According to the prosecution they are armed with fire arm, lathi and Farsa but surprisingly none of the accused had assaulted the deceased with their respective weapons.

20. The report of the cross case was lodged by Rajendra. The copy of the first information report and chick has been filed by the defence as Ext. Kha-2 and Kha-3. According to this report marriage party of the daughter of Chhotey Lal of his village was to reach and there was enmity of his cousin Dharam Pal against Hari Singh and Balbir. Chhotey Lal did not invite them at the instance of Hari Singh and in order to complain about it he and his cousin Dharam Pal went to Chhotey Lal at about 6.00 P.M. and when they reached the place where feast was arranged Dharam Pal asked him why he invited Hari Singh and Balbir Singh on which Hari Singh Balbir Singh, Netra Pal, Shesh Kumar, Dinesh Kumar and Ganga Ram abused them and Shesh Kumar and Ganga Ram fired at Dharampal with 315 bore country made pistol and he died instantaneously on the spot.

21. It has to be seen that how the occurrence was originated. It is not disputed that Dharam Pal, Rajendra and other accused were not invited in the feast. The contention of the defence is that they had reached at the place of occurrence only to lodge their protest. They were empty hands. Subsequently Balveer Singh Bari Singh, Dinesh Kumar, Shesh Kumar. Natthu, Netra Pal and Ganga Ram abused him and Shesh Kumar and Ganga Ram shot him dead with the pistol. In support of this contention the counsel for the appellants has stated that in the post mortem report there was no fire arm injury nor there is allegation that deceased Dharam Pal who was alleged to be armed with a gun had fired at Balveer Singh. Secondly it is also pointed out that the Investigating Officer had not recovered the said gun

from the possession of any of the accused. The prosecution witnesses had stated that the accused had taken away the gun of Dharam Pal. According to the allegation of the prosecution deceased Balveer Singh assaulted by an axe and this axe was picked up from the place of occurrence and a perusal of the F.I.R. indicates that none of the accused is alleged to be armed with an axe. If the appellants were aggressor they should have used their weapons which they are alleged to be armed with. The absence of use of the weapons which the accused persons are alleged to be carried creates doubt whether the accused persons were variously armed. The defence version with regard to origin seems more probable. The contention of the defence counsel is that firstly Dharam Pal was murdered thereafter villagers attacked Balveer Singh and his family members. The allegations of the prosecution is that the accused had taken away the gun of Balveer Singh was found false as one of the constables had recovered gun under the leaves and in the barrel of the gun one empty cartridge and one lives cartridge were also recovered. The counsel for the appellants further submitted that in the F.I.R. general allegations made against the accused persons and later on specific roles have been assigned in their statements. According to the F.I.R. only use of axe was assigned but later on when blunt object injuries were found in the post mortem report the version is changed and it is also stated that the deceased was assaulted by the blunt side of the axe. The story of collecting Kerosene oil from the houses by the ladies is highly improbable. The house of Hari Singh was set on fire after the murder of Balveer Singh is very unnatural. In order to rope all the ladies in these occurrence individual roles have been assigned which were not mentioned in the F.I.R.

22. The contention of the defence counsel is that the prosecution has not explained the death of Dharmapal. In the first information report it is not mentioned that Dharampal is killed in the occurrence. In the first version of the occurrence prosecution has suppressed this important feature of the case that one of the accused is also killed in the occurrence. The investigating officer, P.W. 5 has stated that in this statement under Section 161, Cr.P.C. Dinesh Kumar P.W. 2 had said that in his statement under Section 161, Cr.P.C. Dinesh Kumar P.W. 2 has said that 'Hamarey khandani shesh Kumar wa Ganga Ram ney Balbeer ko Bachaney Key liye tamancho sey fire kiye jis sey fire Dharam Pal ko Lagey wa

Dharampal bhi mauke par mritu ho gaee. P.W 1 has denied to have given this statement to investigating officer. Now in court he has stated that three four persons had fired from chabutra which hit Dharampal and he died on the chabutra. This witness is changing his version only because body of Dharampal was found on the chabutra.

23. P.W. 2 Dinesh Kumar is the complainant of the case and he has admitted that he had not mentioned in the report about the death of Dharampal. Absence of this important feature of the case in the report shows that this witness also suppressing the genesis of the occurrence. As regard the specific roles of the ladies he has admitted that he had not mentioned the specific roles in the report and he has further stated that he had disclosed specific roles of the ladies in his statement under Section 161, Cr. P.C. to the Investigating Officer, but he could not tell the reason why investigating officer had not mentioned in his statement under Section 161, Cr. P.C. In this way his statement about the role of ladies is an after thought and mentioned only first time in court and this cannot be accepted and is liable to be rejected.

24. There are only two witnesses of fact and both of them are suppressing the truth and no reliance can be placed on their testimony. On a careful analysis of the evidence on record, we are unable to sustain the order under appeal as in our opinion the prosecution has not succeeded in establishing its case beyond reasonable doubt against the appellants and they get benefit of doubt.

25. In view of the above both the appeals are allowed.

26. All appellants Smt. Champa, Smt. Urmila, Smt. Kalawati, Smt. Pushpa, Smt. Dulari, Smt. Reshma, Smt. Naraini & Kehari except Rajendra, Bhudeo and Pati Ram are on bail. Their conviction and sentence as recorded by the learned Sessions Judge are set aside and they are acquitted of the offences charged for. They need not surrender. Their bail bonds are cancelled and sureties discharged.

27. Appellants Rajendra, Bhudeo and Pati Ram shall be released forthwith unless required in any other case.

28. Reference is dismissed.

29. Cri. Revision is also dismissed.

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