

State of U.P. Vs. Daroga

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Court : Allahabad

Decided On : Sep-16-2005

Reported in : 2005CriLJ4547

Judge : M.C. Jain and ;M. Chaudhary, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149, 302, 307 and 452;
Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Govt. A. No. 744 of 1982

Appellant : State of U.P.

Respondent : Daroga

Judgement :

M. Chaudhary, J.

1. This Government appeal has been filed on behalf of State of U. P. from the judgment and order dated 14th of December, 1981 passed by Sessions Judge Basti in Sessions Trial No. 14 of 1981 State of U. P. v. Daroga and Ors. acquitting the accused of the charge levelled against them under Sections 147, 148 and Section 302 read with Section 149 IPC.

2. Since accused Daroga was reported having died State appeal with regard to him stood abated vide order dated 4-3-2005.

3. Brief facts giving rise to this appeal are that Lal Bahadur Singh and his brother Jeet Bahadur Singh were on inimical terms with Daroga, the Village Pradhan and others due to litigation going on between them. Akbar Ali @ Ghagghu, Anwar Ali, Hazrat Ali and Rauab Ali are sons of Daroga and Satlu is his son-in-law. Lais Mohammad, Hanif and Razzak are cousins of Daroga. Ayub Mohammad and Akbar Ali are sons of Lais Mohammad. Sabir @ Sadiq and Shafakat are sons of Hanif. Insan Ali is son of Razzak. At about 8.30 a. m. on 13th of September 1980 Jeet Bahadur Singh was returning back from his fields to his house; that on the way he sat with Triyugi Narain Mishra near 'Dheki' (Paddy thrashing machine) in the verandah of his house and started talking to him and his family members; that, at that very time, Sabir alias Sadiq reached there and started talking to Jeet Bahadur Singh in connection with going to Bombay and went back. After a little while Daroga along with his sons Ghagghu alias Akbar Ali, Anwar Ali, Rauab Ali and Hazrat Ali accompanied with Lais Mohammad, Ayub Mohammad, Akbar Ali, Shafakat Ali, Insan Ali, Sabir alias Sadiq Satlu and one unknown person who had come from Bombay-armed with lathis, ballams, bogda, knives and country made pistols reached there and entered the verandah; that Anwar Ali and his brother Akbar Ali @ Ghagghu gave 'ballam' blows to Jeet Bahadur Singh and sustaining the injuries he fell down and that then Daroga and his sons Anwar Ali, Akbar Ali and Hazrat Ali along with Ayub Mohammad and Akbar Ali took injured Jeet Bahadur Singh dragging him inside the room abutting thereto towards north. Immediately Daroga, Hazrat Ali, Ayub Mohammad and Akbar Ali gave him 'Bogda' and knife (chhuri) blows and rest of the miscreants standing near the place of occurrence were shouting that he should be killed. Sighting the assault Ferai and Sipahi rushed to the scene of occurrence. On hearing the hue and cry raised by Triyugi Narain and others and shrieks of the injured Lal Bahadur and his brother Samar Bahadur rushed to the scene of occurrence. After causing injuries to Jeet Bahadur Satlu and the unknown person accompanying him firing with country made pistols in order to scare away the co-villagers collected there took to their heels and all the remaining miscreants also fled away with them. Sustaining the fatal injuries injured Jeet Bahadur Singh became unconscious and then Lal Bahadur with the help of others took him on a cot to the Civil Hospital Shohratgarh 'but by the time they reached the Hospital Jeet Bahadur Singh succumbed to the

injuries sustained by him in the said incident. Immediately leaving the dead body at the Hospital in supervision of his family members Lal Bahadur Singh, brother of the deceased went to police station Bilahiya situate at a distance of some six miles from the village and lodged an FIR of the said incident with the police there at 11:15 a. m. the same noon. The Police registered a crime against the accused and one unknown person under Sections 452, 307 and 302 IPC accordingly.

4. Station Officer Vidhya Sagar Mishra who took up investigation of the case in his hands sent SI B. D. Mishra to Civil Hospital Shohratgarh for drawing inquest proceedings on the dead body. SI B. D. Mishra who drew inquest proceedings on the dead body prepared the inquest report (Ext ka 4) and other necessary papers (Exts Ka 5 to Ka 7) and entrusted the dead body in a sealed cover along with necessary papers to constables Radhey Shyam and Ram Kinkar Pandey for its post mortem. Station Officer Vidhya Sagar Mishra rushed to the scene of occurrence and recorded statements of the witnesses including Lal Bahadur. He also collected blood stained and simple earth from the scene of occurrence and prepared its memo (Ext Ka 9). Then he inspected the place of occurrence and prepared its site plan map (Ext Ka 8).

5. Autopsy on the dead body of Jeet Bahadur conducted by Dr. D. P. Mishra Medical Officer District Hospital Basti on 14th of September 1980 at 3:30 p. m. revealed below noted ante mortem injuries on the dead body :

1. Punctured wound 5 cm x 2 cm x bone deep on right side neck 6 cm below right ear. Direction medially downwards underneath. Nerve and large vessels cut right side through and through. Extravasation of blood present in the neck under the injury. Both ends of the wound tapering.

2. Contusion 3 cm x 3 cm on right side back of head 2 cm behind right ear.

3. Contused swelling 8 cm x 5 cm on left side forehead outer part just above left eye brow .

4. Contusion 4 cm x 3 cm on right side face 4 cm lateral to the right angle of mouth.

5. Abrasion 6 cm x 6.3 cm on outer aspect of right forearm upper part 2 cm below right elbow joint.
6. Abraded contusion 1.5 cm x 0.5 cm on back of right thumb just above the nail.
7. Lacerated wound 5 cm x 4 cm x bone deep on back of left forearm 15 cm below left elbow joint.
8. Abraded contusion 6 cm x 4 cm on back of left forearm 3 cm above injury No. 7.
9. Abrasion 1 cm x 1 cm on outer aspect of left forearm 5 cm below left elbow joint.
10. Abrasion 1.5 cm x 1 cm on outer aspect of left forearm just below left elbow joint.
11. Abrasion 1 cm x 0.5 cm on front of right hand (palmar aspect) just above the root of right little finger.
12. Punctured wound 3 cm x 2 cm x bone deep outer aspect of right leg 2 cm above lateral malleolus. Direction downwards medially.
13. Punctured wound 1.5 cm x 1 cm x bone deep outer aspect of right leg 0.5 cm above injury No. 12. Direction medially.
14. Incised wound 6 cm x 1 cm x skin deep right leg on outer aspect 10 cm above right ankle joint.
15. Incised wound 8 cm x 1 cm x muscle deep on right leg outer aspect 15 cm above right ankle joint.
16. Incised wound 6 cm x 1 cm x muscle deep on front of right knee joint lower part.
17. Incised wound 5 cm x 0.75 cm x muscle deep on front of right leg upper part 0.5cm below injury No. 16.
18. Linear abrasion 5 cm in length on lower part right thigh front 8 cm above right knee joint.

19. Linear abrasion curved 6 cm in length on front of right thigh 10 cm above right knee joint.

20. Linear abrasion curved 10 cm in length on front of right thigh 17 cm above right knee joint.

21. Linear abrasion 5.5 cm in length on back of right knee joint.

22. Lacerated wound 2 cm x 1 cm x skin deep on front of left foot 3 cm above root of left greater toe.

23. Incised wound 2.5 cm x 0.5 cm x skin deep on front of left foot in middle 6 cm below left ankle joint.

24. Incised wound 3.5 cm x 1 cm x muscle deep on medial aspect of left ankle joint.

25. Incised wound 4 cm x 1 cm x muscle deep on front of left leg 12 cm above left ankle joint.

26. Incised wound 8 cm x 4 cm x bone deep on front of left knee joint outer part.

Joint capsule of left knee joint divided.

27. Abrasion 7 cm x 0.5 cm on anterior lateral aspect of left leg 5 cm below left knee joint.

28. Incised wound 7 cm x 2 cm x muscle deep on left thigh upper and outer part 3 cm below the highest point of left iliac crest.

29. Punctured wound 6 cm x 2 cm x 7 cm on left buttock upper part. Directed laterally downwards. Both ends of the wound are tapering.

6. On internal examination the doctor found that stomach contained 6 oz. digested food material. Small intestine contained pasty material and large intestine faecal matter and gases. The doctor opined that the death was caused due to shock and hemorrhage as a result of ante mortem injuries about one and a quarter day ago.

7. After completing investigation the police submitted charge-sheet against all the accused named in the FIR accordingly (Ext Ka 10).

8. After framing of charge against the accused the prosecution against Lal Bahadur (PW 1), Triyugi Narain (PW 2), Sipahi (PW 3) and Ferai (PW 4) as eye-witnesses of the occurrence. PW 5 Station Officer Vidhya Sagar Mishra who investigated the crime has proved the police papers.

9. PW 2 Triyugi Narain at whose house the said incident took place deposed all the facts of the said occurrence from the beginning to the end as stated above deposing that at about 8.30 a. m. the alleged morning all the accused above-named along with one unknown person armed with ballams, knives, bogda etc. reached in the verandah of his house and accused Anwar Ali and Ghaggu alias Akbar All gave 'ballam' blows to Jeet Bahadur Singh sitting on the 'dheki' kept there, that sustaining the injuries Jeet Bahadur Singh fell down; and then accused Daroga, Anwar Ali, Akbar Ali alias Ghagghu, Hazrart Ali, Ayub and Akbar Ali son of Lais; Mohammad took him dragging inside the room abutting the verandah where Akbar Ali son of Lais Mohammad, Hazrat Ali, Ayub and Daroga gave him knife and 'bogda' blows and that on hearing the: hue and cry raised by the injured and others Lal Bahadur Singh along with his brother Samar Bahadur and others including Ferai and Sipahi rushed to the scene of occurrence. After giving knife and 'Bogda' blows to Jeet Bahadur Singh the miscreants bolted away. PW 1 Lal Bahadur, brother of the deceased and the first informant corroborated him stating likewise deposing that on hearing the hue and cry when he reached the house of Triyugi Narain he saw all the accused above named along with one unknown person present there and at that time accused Daroga, Hazrat ali, Akbar Ali son of Lais Mohammad and Ayub were giving 'bogda' and knife blows to his brother Jeet Bahadur in the room and Ghagghu alias Akbar Ali and Anwar Ali armed with ballams were standing there and rest of the miscreants were standing in the verandah shouting that he should be killed. PW 3 Sipahi and PW 4 ferai corroborated them standing likewise.

10. The accused denied the alleged occurrence altogether stating that they were got implicated in the case falsely on account of enmity. They did not adduce any

evidence in their defence.

11. On an appraisal of the evidence and material on record the trial Judge disbelieved the prosecution case and evidence and acquitted the accused giving them benefit of doubt.

12. Feeling dissatisfied with the impugned judgment, and order the State preferred this appeal assailing acquittal of the accused respondents.

13. We have heard learned AGA Sri. K. P. Shukla for the State appellant and Sri. Madhur Prakash learned Counsel for the accused respondents.

14. This much is not seriously disputed that the victim was murdered at the time, date and place alleged by the prosecution. The main question to be looked into is if the accused respondents participated in the said crime and the incident occurred in the manner alleged by the prosecution. Learned AGA for the State appellant vehemently argued that since the impugned judgment is perverse and unreasonable as relevant and convincing evidence regarding participation of the accused in the said crime has been unjustifiably eliminated resulting in miscarriage of justice evidence should be reappreciated. On the other hand learned Counsel for the accused respondents contended that the learned trial Judge has given cogent and convincing reasons for acquitting the accused and: hence findings arrived at by the Court below need not be interfered with.

15. After going through the impugned judgment and record of the case we do not find ourselves in agreement with the findings arrived at by the Court below and we are of the opinion that the Court below has failed to appreciate the evidence adduced by the prosecution in its true perspective.

16. The learned trial Judge had rejected the sworn testimony of the four eye-witnesses and chosen to rely upon some trifling and insignificant circumstances to discard the prosecution case. He observed that the investigating officer did not collect blood stained earth from the verandah nor did he mention in the side plan map that there were blood stains on the ground in the verandah and from the verandah to the room abutting thereto where Jeet Bahadur after being given two

ballam blows was dragged and given several blows with knives and 'Bogda'. It is true that the investigating officer did not show the places in the site plan map where he saw bloodstains in the verandah and from the verandah to the room to which the victim was dragged and given several knife and 'Bogda' blows. However, due to the said lapse on the part of the investigating officer sworn testimony of three eye-witnesses namely PW 2 Triyugi Narain, PW 2 Sipahi and PW 4 Pherai who consistently deposed that as Jeet Bahadur was sitting on the 'Dheki' the assailants who were armed with various weapons reached there and Akbar Ali @ Ghagghu and Anwar Ali gave him ballam blows; that sustaining the ballam injuries Jeet Bahadur fell down and that then Daroga, Akbar Ali @ Ghagghu Anwar Ali, Hazrat Ali, Ayub and Akbar Ali son of Lais Mohammad took him dragging inside the room abutting thereto where Daroga, Hazrat Ali, Ayub and Akbar Ali gave him knife and Bogda blows cannot be thrown overboard. Further, the testimony of these three eye-witnesses on the point stands corroborated by medical evidence. The doctor conducting autopsy on the dead body of Jeet Bahadur found contusions, lacerated wounds and abrasions on back of head and outer aspects of forearm, linear abrasions on thighs and lateral aspect of leg. Lacerated wounds, abrasions and contusions could be caused by falling down on the 'Dheki' after receiving ballam injuries and thereafter while being dragged due to collision with the doorsill of the room or some other hard object and due to friction. A perusal of the ante mortem Injuries goes to show that most of the lacerated wounds, contusions and abrasions were received by the victim on right side outer aspect at his head, right hand and right leg. PW 2 Triyugi Narain also stated in his cross-examination that while being dragged from the verandah to the room abutting thereto Jeet Bahadur had fallen by his right side. Further PW 1 Lal Bahadur, brother of the victim deposed that at about 8.30 a. m. the alleged morning on hearing the hue and cry as he rushed from his house and reached in front of the house of Triyugi Narain situate at a short distance he saw accused Daroga, Hazrat Ali, Akbar Ali son of Lais Mohammad and Ayub Mohammad giving knife and 'bogda' blows to Jeet Bahadur inside the room and Anwar Ali and Akbar Ali alias Ghagghu holding ballams standing there and that the remaining five miscreants taking lathis and Satlu along with one unknown person who had come from Bombay armed with country made pistols standing near the verandah and

shouting that he should not be permitted to go alive therefrom. All the four eyewitnesses were subjected to gruelling and rambling cross-examination but nothing tangible could be brought on the record to shake their credibility.

17. Further, the learned trial Judge observed that since no incriminating article was recovered from the possession of any of the accused nor any blood was found on their clothes it probabalizes the defence version that they did not commit the offence and were implicated in the case falsely. A perusal of the record goes to show that for about twelve days after the crime there was no trace of any of the accused. Had any of the accused been arrested soon after the occurrence and made any disclosures with regard to concealing of any of the incriminating articles then that incriminating article might be recovered but none of the accused made any such disclosures. None of the accused was arrested soon after the occurrence. Had any of the accused attack rig the victim with ballam, knife or 'Bogda' been apprehended on the spot or arrested soon after the occurrence blood stained clothes put on by him could be recovered but nothing of the sort happened in this case. A perusal of the record goes to show that accused Daroga and his sons Ghagghu alias Akbar Ali, Hazrat All and Rauab Ali surrendered in the Court of Magistrate concerned on 25-9-80. Accused Ayub Mohammad son of Lais Mohammad also surrendered in the Court of Magistrate that very day. Accused Anwar Ali was arrested by the police on 26-9-80. Lais Mohammad, Insan Ali and Shafakat Ali surrendered in the Court of Magistrate concerned on 27-9-80. Akbar Ali son of accused Lais Mohammad surrendered in the Court of Magistrate concerned on 30- 9-80 and accused Sabir alias Sadiq on 9- 10-80. Accused Satlu surrendered in the Court of Magistrate concerned on 4-11-80. Under these circumstances there was no question of finding any incriminating article or blood-stained clothes from the possession of any of the accused.

18. The learned trial Judge disbelieved the testimony of PW 2 Triyugi Narain, PW 3 Sepahi and PW 4 Feral doubting their presence at the scene of occurrence as they stated that they did not assist Lal Bahadur and his brother Samar Bahadur when they picked up injured Jeet Bahadur from the scene of occurrence on the cot. That is absurd. Since real brothers of the injured were present at the scene of occurrence these witnesses might not have assisted them when they kept injured

Jeet Bahadur lifting him from the spot on the cot as the injured was lying in pool of blood having received so many injuries but that does not mean that neither of these three witnesses was present at the scene of occurrence and did not witness the assault. All these witnesses are named in the FIR lodged by Lal Bahadur, brother of the victim promptly at the police station without loss of any time.

19. Learned trial Judge also doubted the presence of PW 1 Lal Bahadur, brother of the victim observing that he did not show his blood-stained clothes to the investigating officer nor the latter saw blood stains at his hands, clothes etc. This observation of the trial Judge is utterly baseless. PW 1 Lal Bahadur stated that at about 8.30 a. m. the alleged morning on hearing the hue and cry he rushed from his house towards the house of Triyugi Narain situate at a short distance and on reaching there he saw accused Daroga, Hazrat Ali, Akbar Ali son of Lais Mohammad and Ayub giving knife and 'Bogda' blows to Jeet Bahadur inside the room and Anwar Ali, Akbar Ali alias Ghagghu holding ballams standing there and that the remaining five miscreants taking lathis and Satlu along with one unknown armed with country made pistols standing in the verandah and shouting that he should be killed and that they should not let him go alive. He also stated that when the miscreants bolted away he and his brother Samar Bahadur while lifting his injured brother from the scene of occurrence on a cot the clothes put on by them got bloodstained and their hands also got stained with blood and that subsequently they washed their hands and he changed his clothes at the Hospital before going to the police station. A perusal of the site plan map goes to show that house of Lal Bahadur is situate at a distance of some 150 paces from the house of Triyugi Narain and hence there is nothing strange if on hearing the hue and cry of so many persons who were present at the scene of occurrence he rushed from his house to the scene of occurrence and witnessed the incident as deposed by him. Failure of the investigating officer to seize the clothes put on by the witnesses which got smeared with blood would not provide a handle to the defence to attack the prosecution case. Normally, the investigating officer does not take the trouble of taking the clothes worn by witnesses at the time they witnessed the occurrence and got blood stains on their clothes during post event activities. At any rate the said omission on the part of the investigating officer is not a flaw to invite the consequence of jettisoning his testimony.

20. Since the incident took place at the house of Triyugi Narain (PW 2) at about 8 : 30 a. m. his presence at the scene of occurrence cannot be doubted. Presence of PW 3 Sephai at the scene of occurrence can also not be doubted as at the alleged time he was working at his barn situate at a distance of some 40 paces from the house of Triyugi Narain. A perusal of the site plan map goes to show that there is no obstruction between these two places. PW 4 Ferai deposed that at the alleged time he went to the house of Triyugi Narain to call him for reciting 'Katha' at his house and as he reached at the scene of occurrence he witnessed the incident.

21. The learned trial Judge also observed erringly that none of the clothes put on the deceased at the time of occurrence got torn at the time of dragging. It is not at all necessary that in the course of dragging from the verandah to the room abutting thereto the clothes put on by the victim must have got torn.

22. The learned trial Judge also observed wrongly that the doctor did not find any injury on the dead body which could be attributed to dragging of victim from the verandah to the room by the accused. He was also mistaken in observing that injuries Nos. 2 to 11 and 18 to 22 could be caused by giving lathi blows. It is not the case of the prosecution that any of the accused armed with lathis gave any lathi blow to the victim. Ante mortem lacerated wounds, contusions and abrasions could very well be received by the victim while falling down after receiving the ballam injuries sitting at the 'Dheki' and in the course of dragging by the accused from the verandah into the room abutting thereto. Thus the observation by the learned trial Judge that ocular testimony is in conflict with medical evidence is based on conjectures and surmises.

23. The learned trial Judge also observed that since the investigating officer did not find any empty cartridge or pellet at the scene of occurrence it negates the firing by two of the miscreants with country made pistols at the scene of occurrence. It has come in evidence that while the miscreants were running away from the scene of occurrence accused Satlu and one unknown person accompanying them fired with country made pistols in order to scare away the villagers collected there. Hence it was not possible for the investigating officer to find pellets or empty cartridges etc. at the scene of occurrence where Jeet

Bahadur was assaulted and caused fatal Injuries with ballam, knife and 'bogda' resulting in his death. Thus the said observation made by the learned trial Judge is fallacious.

24. The learned trial judge also observed that since Triyugi Narain was an old person aged about 58 years and his wife was quite young aged about 25-30 years Jeet Bahadur used to visit his house which was not relished by Triyugi Narain and he was annoyed with him and that in spite of desisting Jeet Bahadur continued to visit his house and therefore he was murdered by Triyugi Narain or got murdered by some one at his instance inside his house at some dark hour of night. These observations made by the learned trial Judge are erroneous based on surmises and conjectures. This defence case suggested to few prosecution witnesses regarding murder of Jeet Bahadur is too dressed up and artificial to merit credence. It has been coined just in an effort to create doubt in the prosecution case and evidence and get the accused acquitted. None of the accused had the courage to state that said fact in his statement recorded under Section 313 of the Code of Criminal Procedure. PW 1 Triyugi Narain denied emphatically that his wife was aged about 25-30 years. He categorically stated that he was aged about 58 years and his wife was younger to him by two years and they had got a son aged about 24-35 years out of the wedlock. Besides it autopsy on the dead body of Jeet Bahadur revealed that stomach contained six ooze digested food material and small intestine pasty material. Autopsy on the dead body was conducted on 14th of September at 3:30 p. m. i. e. about thirty one hours after the death. At that time rigor mortis had passed off from upper extremities but present in lower extremities. Had Jeet Bahadur been done to death at some hour during the night rigor mortis would not have been found present in lower extremities. This clinching piece of medical evidence goes a long way to establish that Jeet Bahadur was murdered on 13th September at about 8: 30 a.m.

25. The learned trial Judge also observed that since the eye-witnesses were inimical to the accused their testimony could not be relied upon and obviously the deceased had several enemies and he was murdered by any of them. This observation made by the learned trial judge is perverse. The incident took place in broad day-light. There is no reason as to why Lal Bahadur, brother of the victim

and the first informant would substitute the accused falsely letting the real assailants of his brother go scot free. The fact of his having other enemies would not eclipse or overshadow the sworn testimony of four eye-witnesses that the victim was given fatal blows with ballam, knife and 'Bogda' by accused Daroga, Hazrat Ali Akbar Ali son of Lais Mohammad, Ayub Moharnmad, Anwar Ali and Akbar Ali alias Ghagghu.

26. For the foregoing discussion, we are of the view that the findings arrived at by the learned trial Judge that the testimony of the four eye-witnesses cannot be relied upon as they were inimical to the accused and that a false case was concocted against them are manifestly erroneous and contrary to the evidence on record. The incident took place in broad day light. Lal Bahadur, brother of the victim with the help of others first took his injured brother Jeet Bahadur on a cot on foot through village pathways and alleys to the Civil Hospital Shohratgarh situate at a distance of some five miles from the scene of occurrence and by the time they reached the Hospital Jeet Bahadur succumbed to the fatal injuries sustained by him in the incident. Then leaving the dead body in the supervision of his family members at the Hospital Lal Bahadur got the FIR scribed by his brother Samar Bahadur and then went to police station Bilahiya District Basti and handed over written report of the occurrence to the police there at 11: 15 a. m. Under the circumstances, FIR of the occurrence lodged by Lal Bahadur, brother of the deceased was quite prompt as virtually there was no time for spinning out a false story. Presence of PW 2 Triyugi Narain, PW 1 Lal Bahadur and PW 3 Sepahi at the scene of occurrence cannot be doubted. So far as presence of PW 4 Feral at the scene of occurrence is concerned he is resident of same village Jogibari and he deposed that he used to reside at a distance of about one and a half furlong from the place of occurrence, that at about 8:30 a. m. the alleged morning he was going to the house of Pandit Triyugi Narain to call him at his house for recital of 'Katha'; that he saw accused Daroga and others armed with weapons going to the house of Triyugi Narain and that thereafter he witnessed the incident. Virtually this witness Feral has not been cross-examined on the main occurrence. No doubt that it has come in evidence that PW 2 Triyugi Narain and PW 4 Feral stood as witnesses in a criminal case against accused Daroga and others as they had beaten Raj Narain, son of Lal Bahadur, but that by itself is not sufficient to discard

their testimony. Testimony of all the four eye-Wit-nesses is of unimpeachable character as they withstood the test of their cross-examination firmly. Shorn of few contradictions and inconsistencies which are of very trivial nature or insignificant nothing useful to the accused could be elicited in their cross-examination. All the eye-witnesses have given truthful and honest account of the occurrence witnessed by them. Therefore, sworn testimony of the eye-witnesses above-named which is otherwise convincing and consistent on material aspects cannot be discarded simply on the ground that any of them was related to the deceased or was closely associated with the deceased or his family members or was inimical with the accused.

27. However, since no overt act was attributed to accused Rauab Ali, Shafakat Ali, Sabir @ Sadiq, Insan Ali, Lais Mohammad and Satlu in the commission of murder of Jeet Bahadur they should be given benefit of doubt resulting in their acquittal. In villages at times when the parties are on inimical terms there is tendency of roping all the male members of a family of the opposite party as accused of the crime committed only by some of them.

28. Having given over careful consideration to the material on record, we are clearly of the opinion that the benefit of doubt rendered by the trial Court in respect of accused Daroga, Anwar Ali, Ghagghu @ Akbar Ali, Hazrat Ali, Ayub Mohammad and Akbar Ali son of Lais Mohammad runs straight in the teeth of ocular evidence adduced by the prosecution. On appreciation of oral evidence of the four eye-witnesses and other material on the record we are of the view that the prosecution have proved satisfactorily participation of the accused above-named in the said crime beyond reasonable doubt. The trial Court acquitted them giving benefit of doubt on tenuous grounds. However accused Daroga died during the pendency of appeal and the appeal abated in respect of him as observed above.

29. The appeal is allowed in part. Acquittal of accused Daroga, Anwar Ali, Ghagghu @ Akbar Ali, Hazrat Ali, Ayub Mohammad and Akbar Ali son of his Lais Mohammad is hereby set aside. Since accused Daroga has died, the remaining five named above are held guilty of the charge levelled against them under Section 148 IPC and Section 302 read with Section 149 IPC. Each of them

convicted under Section 148 IPC and Section 302 read with Section 149 IPC is sentenced to two years' rigorous imprisonment and imprisonment for life respectively thereunder. Both the sentences shall run concurrently. They are on bail. Their bail bonds are hereby cancelled.

30. Acquittal of accused Rauab Ali, Shafakat Ali, Sabir @ Sadiq, Insan Ali, Lais Mohammad and Satlu is hereby affirmed. They are on bail. Their bail bonds are discharged.

31. Let judgment be certified to the Court below immediately. CJM, Basti shall take all steps available in law to take accused Anwar Ali, Ghagghu @ Akbar Ali, Hazrat Ali, Ayub Mohammad and Akbar Ali in custody and send to jail to serve out the sentence imposed upon them.

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