

Ramnarayan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-09-2003

Reported in : RLW2004(3)Raj1427

Judge : Rajesh Balia and; Sunil Kumar Garg, JJ.

Acts : [Arms Act, 1959](#) - Sections 25 and 27; Indian Penal Code (IPC) - Sections 149, 302, 307, 323, 324 and 341; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 378

Appeal No. : D.B. Criminal Appeal No. 798 of 2001

Appellant : Ramnarayan

Respondent : State of Rajasthan

Advocate for Def. : Doonger Singh, Adv. for Accused in Appeal No. 528/2002 and; A.R. Nikub, Public Prosecutor

Advocate for Pet/Ap. : Doonger Singh, Adv. for Accused in Appeal No. 798/2001 and; J.S. Choudhary, Adv. for Complainant

Disposition : Appeal dismissed

Judgement :

Sunil Kumar Garg, J.

1. The abovementioned two appeals are being decided by this common judgment as in both of them common questions of facts and law are involved and both of them have been preferred against the same judgment and order dated 7.9.2001 passed by the learned Addl. Sessions Judge (Fast Track), Bikaner in Sessions Case No. 24/2001.

2. It may be stated here that in that Sessions Case No. 24/2001, nine accused persons were tried and out of nine accused persons, the learned Addl. Sessions Judge (Fast Track), Bikaner through impugned judgment and order dated 7.9.2001 convicted and sentenced the four accused persons, namely, Ramnarayan, Banwari, Mohanlal and Bastiram (accused appellants of appeal No. 798/2001) in the following manner:-

Name of accused appellants

convicted under section

sentence awarded to each accused appellant.

1.

Banwari

302,

302/34 IPC

Life Imprisonment & fine of Rs. 1500/-, in default of payment of fine, to further undergo two months' RI.

2.

Bastiram

307/34 IPC

Five years' RI and fine of Rs. 500/-, in default of payment of fine, to further undergo one month RI.

3.

Mohanlal

302/34 IPC

Life Imprisonment & fine of Rs. 1500/-, in default of payment of fine, to further undergo two months' RI.

4.

Ramnarayan

307,

307/34 IPC

Five years' RI and fine of Rs. 500/-, in default of payment of fine, to further undergo one month RI.

All the above substantive sentences were ordered to run concurrently.

It may further be stated here that by the same judgment and order, the learned Addl. Sessions Judge (Fast Track) acquitted the above four accused appellants of appeal No. 798/2001 for the offence under Sections 148, 341, 323, 323/149, 324, 324/149 IPC and he also acquitted accused appellants Ramnarayan for the offence under Section 27 of the Indian Arms Act and accused appellant Banwari for the offence under Section 25 of the Indian Arms Act.

It may further be stated here that by the same judgment and order, the learned Addl. Sessions Judge (Fast Track) acquitted the remaining five accused persons, namely, Rampratap, Bhagwanaram, Mangilal, Ramjus and Hariram (accused respondents of appeal No. 528/2002) of all the charges framed against them i.e. for the offence under Sections 148, 323, 323/149, 324, 324/149, 341,

307/149,302/149 IPC. Against acquittal of these five accused persons, the State of Rajasthan has preferred appeal No. 528/2002.

D.B. Criminal Appeal No. 798/2001

3. The facts giving rise to this appeal, in short, are as follows:-

On 20.5.1995 at about 7.15 PM, PW17 Tara Chand, SHO Police Station Nokha District Bikaner received a cryptic telephonic message from unknown person to the effect that in Ward No. 2 village Nokha, Ram Pratap Bishnoi (accused, who was acquitted by the learned Addl. Sessions Judge (Fast Track)) and Sohan Lal Bishnoi (PW4), who are real brothers, were fighting and arms, lathies, barchiyas etc. were being used in that fighting and two persons had died. That information was reduced in writing by PW17 Tara Chand in Rojnamcha Ex.P/52 and thereafter, he alongwith Hardeep Singh, SI (PW13), Mangilal, ASI (PW6), Balraj Singh, ASI and other police officials reached at the place of occurrence.

The further case of the prosecution is that at the place of occurrence, PW4 Sohanlal gave a parcha bayan Ex.P/17 to PW17 Tara Chand at about 8.30 PM on 20.5.1995 stating inter-alia that they are four brothers and all the brothers had their own house adjacent to each other and sometime back, his brother Genaram (PW1) installed a Dharm-kanta on Roda road and thereafter, after five years of that, accused Rampratap (who has been acquitted by the learned Addl. Sessions Judge (Fast Track)) also installed a Dharm-kanta on that road and because of that, relations between them were not cordial. It was further stated in the parcha bayan Ex.P/17 by PW4 Sohanlal that at about 6.30-6.45 PM, he and Om Prakash (PW3) son of PW1 Genaram were sitting in the Jameshwar Temple, which was near to his house and at that time, his two sons, namely, Ramnarayan (hereinafter referred to as 'the deceased Ramnarayan') and Mohanlal (hereinafter referred to as 'the deceased Mohanlal') came out from his house and when they reached near the house of accused Rampratap, the accused appellants, namely, Bastiram, Mohanlal, Ramnarayan and Banwarilal (who have been convicted for the offence under Sections 302, 302/34 IPC by the learned Addl. Sessions Judge (Fast Track)) and other accused persons, namely, Mangilal, Ramjus, Hariram, Rampratap, Bhagwanaram (who have been acquitted by the learned Addl.

Sessions Judge (Fast Track)) and Maniram (hereinafter referred to as 'the deceased accused Maniram') came out from the house of accused Rampratap and at that time, the accused appellants, namely, Bastiram, Mohanlal, Ramnarayan and Banwarilal were having pistols; the accused Rampratap was having Jayee; the accused Bhagwanaram and Mangilal were having barchi and the accused Ramjus and Hariram were having Sela. It was further stated in the parcha bayan Ex.P/17 by PW4 Sohanlal that all these accused persons surrounded his sons deceased Mohanlal and deceased Ramnarayan and made hue and cry that they be killed and upon this, PW3 Om Prakash rushed towards the place of occurrence and at that time, his sons, namely, Rameshwarlal (hereinafter referred to as 'the deceased Rameshwarlal') and Rajaram (PW10) also came there from the side of Dharm-kanta and thereafter, the accused appellant Banwarilal made fire by pistol towards his son deceased Mohanlal, as a result of which, he fell down on the ground and the accused appellant Mohanlal also made fire by pistol towards deceased Ramnarayan and the accused appellant Ramnarayan also made fire by pistol towards PW10 Rajaram which struck on his leg and the accused appellant Bastiram made fire on deceased Rameshwarlal and the other accused persons also caused injuries by Sela, Barchi, etc. and thereafter, when the police came, all the accused persons ran away from the scene. It was further stated in the parcha bayan Ex.P/17 by PW4 Sohanlal that his son deceased Mohanlal died on the spot and deceased Ramnarayan, injured Rajaram (PW10) and deceased Rameshwarlal were taken in serious condition to the hospital. It was further stated in the parcha bayan Ex.P/17 that all the accused persons including deceased accused Maniram came there after forming an unlawful assembly.

On the parcha Ex.P/17, the police registered the case and chalked out regular FIR No. 96/95 (Ex.P/20) and started investigation.

During investigation, after inspecting the place of occurrence, the police prepared the site plan Ex.P/7 and description memo Ex.P/7A showing the details and position of place of occurrence.

It may be stated here that thereafter, deceased Rameshwarlal and deceased Ramnarayan succumbed to their injuries.

The post mortem of the dead body of the deceased Mohanlal was got conducted by the Medical Board and PW18 Dr. D.K. Purohit was one of the members of the Medical Board and the post mortem report of the deceased Mohanlal is Ex.P/87 where it was opined by the Medical Board that death has resulted from haemorrhagic shock because of the injuries to the vital organs.

The post mortem of the dead body of the deceased Rameshwarlal was also got conducted by the Medical Board and PW16 Dr. G.L. Jaipal was one of the members of the Medical Board and the post mortem report of the deceased Rameshwarlal is Ex.P/51 where it was opined by the Medical Board that the cause of death was shock and haemorrhage as a result from multiple intra abdominal injuries caused by pellets of short gun fire arm. It was further opined that injuries No. 4 and 5 collectively as well as individually were sufficient to cause death in ordinary nature of course. Before that, deceased Rameshwarlal was also got medically examined by PW16 Dr. G.L. Jaipal and his injury report is Ex.P/50. The X-ray report of deceased Rameshwarlal is Ex.P/41.

It may be stated here that deceased Rameshwarlal also gave a parcha bayan to PW17 Tara Chand and DW11 Rajendra Kumar Sharma also recorded his dying declaration and the same is Ex.D/63.

The post mortem of the dead body of the deceased Ramnarayan was also got conducted by the Medical Board and PW18 Dr. D.K. Purohit was one of the members of that Medical Board and the post mortem report of the deceased Ramnarayan is Ex.P/86 where it was opined by the Medical Board that the death has resulted from haemorrhagic shock.

PW10 Rajaram was also got medically examined by PW16 Dr. G.L. Jaipal and his injury report is Ex.P/49 and his X-ray report is Ex.P/38 and he received injuries caused by short gun fire arm, but the same were found simple in nature. The further report of PW10 Rajaram is Ex.P/48, which shows that rounded metallic shadow was found.

The accused appellants Banwarilal, Ramnarayan, Mohanlal and Basti Ram were arrested through arrest memos Ex.P/57, Ex.P/61, Ex.P/90 and Ex.P/91 respectively.

It may be stated here that in the same incident, the accused appellant Ramnarayan has received injuries and his injury report is Ex.D/11A and furthermore, deceased-accused Maniram has also died. No doubt the post mortem report of deceased-accused Maniram is on the record of this case, but the same was not got exhibited.

After usual investigation, the police filed challan for the offence under Sections 302, 307, 323, 324, 341, 147, 148, 149 IPC and 25 and 27 of the Indian Arms Act against nine accused persons in the Court of Judicial Magistrate First Class, Nokha, Bikaner and from where the case was committed to the Court of Sessions and thereafter, it was transferred to the Court of Addl. Sessions Judge (Fast Track), Bikaner.

On 21.8.1996, the learned Addl. Sessions Judge No. 2, Bikaner framed the charges against the accused persons in the following manner:-

Charges	Accused
appellants-----	1. Banwari 148, 323, 323/149, 324, 324/149, 341, 302, 302/149, 307/149 IPC and 25 of the Arms Act.
	2. Mohanlal 148, 323, 323/149, 324, 324/149, 341,
	3. Bastiram 307/149, 302, 302/149 IPC
	4. Ramnarayan 148, 323, 323/149, 324, 324/149, 341, 302/149, 307 IPC and 27 of the Arms Act
	Other accused persons
	5. Rampratap 148, 323, 323/149, 324, 324/149, 341,
	6. Ramjus 307/149, 302/149 IPC.
	7. Hariram
	8. Mangilal
	9. Bhagwanaram-----

The charges were read over and explained to the accused persons. They denied the charges and claimed trial.

During the course of trial, as many as 21 witnesses were examined by the prosecution and many documents were got exhibited. Thereafter, statements of

the accused persons under Section 313 Cr.P.C. were recorded.

In the statements recorded under Section 313 Cr.P.C., the accused appellants Mohanlal and Bastiram took the plea of alibi stating that they were not involved in the alleged incident as they were not present at the place of occurrence.

It was further stated by the accused party in the statements recorded under Section 313 Cr.P.C. that the complainant party came there with arms and caused injuries to the accused appellants Banwari and Ramnarayan and also murdered deceased accused Maniram and further, the members of the complainant party are also facing trial in the Court for the murder of deceased accused Maniram. It was further stated that so far as the death of deceased Ramnarayan is concerned, he came under the wheel of that Truck which was being driven by the complainant party.

In defence, the accused persons examined as many as 12 witnesses and also got exhibited some documents.

Before proceeding further, it may be stated here that there is no dispute on the point that charge-sheet Ex.D/37 in FIR No. 95/95 for the murder of deceased-accused Maniram was filed by the police in the Court against members of the complainant party and PW4 Sohanlal, PW3 Om Prakash, PW9 Jagdish, PW10 Rajaram, PW1 Genaram' and others were accused in that cross case and in that case, members of the complainant party, who were accused of that case, have been acquitted of the charge for the murder of deceased-accused Maniram.

After conclusion of trial, the learned Addl. Sessions Judge (Fast Track), Bikaner through his impugned judgment and order dated 7.9.2001 acquitted five accused, namely, Rampratap, Ramjus, Hariram, Mangilal and Bhagwana Ram of all the charges framed against them, but convicted and sentenced the four accused appellants, namely, Ramnarayan, Banwari, Mohanlal and Bastiram in the manner as indicated above holding inter-alia:-

(i) That the alleged incident in which three members of the complainant party, namely deceased Mohanlal, deceased Rameshwarlal and deceased Ramnarayan

and one member of the accused party, namely, deceased accused-Maniram died, took place at the same place.

(ii) That the alleged eye witnesses of the occurrence are PW3 Om Prakash, PW4 Sohanlal, PW9 Jagdish and PW10 Rajaram.

(iii) That deceased Rameshwarlal and deceased Mohanlal died because of the injuries caused by short gun fire arm.

(iv) That PW10 Rajaram also received injuries by short gun fire arm.

(v) That from the evidence of the prosecution witnesses, the fact that deceased Ramnarayan also received injuries by short gun fire arm on his thigh is also established.

(vi) That so far as the presence of the four eye witnesses, namely, PW3 Om Prakash, PW4 Sohanlal, PW9 Jagdish and PW10 Rajaram at the place of occurrence is concerned, the same is very well established from the parcha bayan Ex.P/17 given by PW4 Sohanlal and not only this, the report of cross case Ex.D/34, which was lodged by the accused party, also reveals presence of the above four eye witnesses at the place of occurrence. Therefore, from every point of view, the above four witnesses' can be regarded as eye witnesses of the alleged occurrence.

(vii) That so far as the presence of PW10 Rajaram at the place of occurrence is concerned, apart from that, since he has received injuries in the alleged incident, therefore, his presence at the scene cannot in any manner be doubted.

(viii) That there is uniformity in the evidence of the prosecution witnesses that the accused appellant Bastiram, Mohanlal, Ramnarayan and Banwari came at the place of occurrence with fire arms.

(ix) That the accused appellant Banwari caused fire arm injuries to deceased Mohanlal.

(x) That the accused appellant Bastiram caused fire arm injuries to deceased Rameshwarlal.

- (xi) That the accused appellant Ramnarayan caused firearm injuries to injured PW10 Rajaram.
- (xii) That the accused appellant Mohanlal caused fire arm injuries to deceased Ramnarayan.
- (xiii) That the fact that deceased Mohanlal and deceased Rameshwarlal received injuries by short gun fire arm is also established from the statements of Dr. D.K. Purohit (PW18) and Dr. G.L. Jaipal (PW16) and similarly, the fact that injures PW10 Rajaram received gun shot injuries is also established by the evidence of PW16 Dr. G.L. Jaipal. Thus, the fact that deceased Mohanlal, deceased Rameshwarlal and injured Rajaram, PW10 received injuries by short gun fire arm stands established.
- (xiv) That in the cross-case lodged by the accused party, a parcha bayan Ex.D/13 was given by the accused Rampratap to the police in which, it was stated that the deceased accused Maniram was having a pistol and he died in the same incident, but the injuries, which were found on the body of the deceased accused Maniram were not gun shot injuries and, therefore, the learned Addl. Sessions Judge (Fast Track) drawn the inference that deceased accused Maniram was not having pistol at the time of occurrence.
- (xv) That the accused appellant Bastiram caused fire arm injuries to deceased Rameshwarlal; the accused appellant Banwari caused fire arm injuries to deceased Mohanlal; the accused appellant Ramnarayan caused fire arm injuries to injured PW10 Rajaram and the accused appellant Mohanlal caused fire arm injuries to deceased Ramnarayan and above facts are established from the medical evidence.
- (xvi) That on the point whether deceased Ramnarayan received fire arm injuries or not, the learned Addl. Sessions Judge (Fast Track), after discussing that point in his impugned judgment and order at para 70 onwards and after placing reliance on the statements of eye witnesses, came to the conclusion that the accused appellant Mohanlal made gun fire towards deceased Ramnarayan which struck on his thigh and since this fact that accused appellant Mohanlal made gun fire on

deceased Ramnarayan is found in the statements of eye witnesses, therefore, the learned Addl. Sessions Judge (Fast Track) came to the conclusion that the statement of eye witnesses would prevail over the medical evidence and thus, if in the post mortem report of the deceased Ramnarayan Ex.P/86, no gun shot injuries were found, it would not affect the testimony of the eye witnesses where they have categorically stated that accused appellant Mohanlal caused fire arm injuries to deceased Ramnarayan. Therefore, he positively came to the conclusion that injuries on the thigh of deceased Ramnarayan were caused by short gun fire arm by the accused appellant Mohanlal.

(xvii) That the post mortem report of the deceased Ramnarayan Ex.P/86 reveals that he did not receive any injury by sharp edged weapon. Furthermore, PW18 Dr. D.K. Purohit had admitted in his cross-examination that some injuries mentioned in the post mortem report Ex.P/86 of deceased Ramnarayan might have been caused by running over a Truck on his body and therefore, the suggestion of the accused party that some of the injuries on the body of the deceased Ramnarayan were not caused by the accused Ram Pratap, Ramjus, Hariram, Mangilal and Bhagwana Ram cannot be ruled out and for that reason, he have benefit of doubt to these five accused persons for the injuries of deceased Ramnarayan holding inter-alia that except the so-called injuries of fire arm alleged to have been caused by the accused appellant Mohanlal, rest injuries were not caused by the above five accused persons and the possibility that deceased Ramnarayan might have received some injuries by running over a truck over his body, cannot be ruled out.

(xviii) That so far as the dying declaration Ex.D/63 of deceased Rameshwarlal, which was recorded by DW11 Rajendra Kumar Sharma, Magistrate is concerned, the learned Addl. Sessions Judge (Fast Track) came to the conclusion that it was not believable as that dying declaration (Ex.D/63) does not get corroboration from the evidence produced by the prosecution and even from the case of the accused party themselves. Therefore, he disbelieved that dying declaration Ex.D/63 of deceased Rameshwarlal.

(xix) That similarly, the learned Addl. Sessions Judge (Fast Track) did not place any reliance on dying declaration Ex.P/18 of deceased Rameshwarlal as it does

not bear the fitness certificate of the doctor.

(xx) That for the alleged fateful incident, there was a motive.

(xxi) That so far as the recovery part is Concerned, the learned Addl. Sessions Judge (Fast Track) came to the conclusion that recovery of pistol only from accused appellant Banwari has been established and so far as recovery from other accused appellants is concerned, since they were arrested after so many days, therefore, if no recovery was made from them, it would not affect the case of the prosecution.

(xxii) That the plea of alibi taken by the accused appellant Bastiram and Mohanlal was disbelieved by the learned Addl. Sessions Judge (Fast Track), after discussing defence evidence on that point.

(xxiii) That on the point that no pallet was found in the body of the deceased Ramnarayan, though eye witnesses have stated that the accused appellant Mohanlal caused fire arm injuries to deceased Ramnarayan on his thigh, in such circumstances, after placing reliance on the decision of the Hon'ble Supreme Court in Suraj Pal v. State of UP (1), the learned Addl. Sessions Judge (Fast Track) preferred the evidence of the eye witnesses over the medical evidence and held that accused appellant Mohanlal caused fire arm injuries on the thigh of deceased Ramnarayan.

(xxiv) That for the gun shot injuries, which were caused to injured PW10 Rajaram by the accused appellant Ramnarayan, the learned Addl. Sessions Judge (Fast Track) came to the conclusion that by causing that fire arm injuries to PW10 Rajaram, a case for the offence under Section 307 1PC was found proved irrespective of the fact that these injuries were found simple in nature.

(xxv) That the accused appellant Banwari was acquitted of the charge for the offence under Section 25 of the Arms Act as sanction for that offence was not obtained.

Aggrieved from the said judgment and order dated 7.9.2001 passed by the learned Additional Sessions Judge (Fast Track), Bikaner, the accused appellants have

preferred this appeal.

4. In this appeal, the following submissions have been made by the learned counsel for the accused appellants:-

(1) That on the same set of evidence when the five other accused persons, namely, Ram Pratap, Ramjus, Hariram, Mangi Lal and Bhagwana Ram have been acquitted by the learned Addl. Sessions Judge (Fast Track), the conviction of the present accused appellants, namely, Ramnarayan, Banwari, Mohanlal and Bastiram for various offences cannot be maintained in the eye of law because the prosecution has not given the true and correct version about the genesis of occurrence.

(2) That since the statements of eye witnesses, namely, PW3 Om Prakash, PW4 Sohanlal, PW9 Jagdish and PW10 Rajaram have not been believed in its entirety and their statements have been disbelieved by the learned Addl. Sessions Judge (Fast Track) in respect of five accused persons, namely, Ram Pratap, Ramjus, Hariram, Mangilal and Bhagwana Ram qua deceased Ramnarayan, therefore, in such circumstances, believing of statements of these four eye witnesses for the rest accused persons (accused appellants) was against the well established principle of law.

(3) That the findings of the learned Addl. Sessions Judge (Fast Track) that the accused appellant Mohanlal caused fire arm injuries to the deceased Ramnarayan are absolutely erroneous one as that fact is not corroborated by the medical evidence.

(4) That since in the same incident, accused appellant Ramnarayan has also received injuries and his injuries have not been explained . by the prosecution witnesses and furthermore, in the same incident, deceased accused Maniram from the side of the accused party had also died and the prosecution witnesses have falsely stated that the deceased-accused Maniram was murdered by the accused party, therefore, in these circumstances, genesis of the occurrence has been suppressed by the prosecution and thus, the present four accused appellants are also entitled to acquittal of all the charges framed against them.

5. On the other hand, the learned Public Prosecutor and the learned counsel appearing for the complainant have supported the impugned judgment and order passed by the learned Addl. Sessions Judge (Fast Track), Bikaner.

6. We have heard the learned counsel for the accused appellants, learned Public Prosecutor and the learned counsel for the complainant and gone through the record of the case.

7. Before proceeding further, we would like to discuss first the medical evidence.

Injuries found on the person of injured Rajaram, PW10

8. PW16 Dr. G.L. Jaipal in his statement recorded in Court has stated that on 20.5.1995 he was Medical Jurist in P.B.M. Hospital, Bikaner and on that day, he medically examined injured Rajaram (PW10) and found the following injuries on his person:-

'(1) ?G.S. wound 0.8x0.8cmx?deep on left leg lower 1/4 medially.

(2) ?G.S. wound 0.8x0.8cmx?deep on left leg lower 1/3 posteriorly (12cm above the heel).

(3) ?G.S. wound 0.6x0.6cmx?deep on left ankle joint heel posteriorly.'

He has further stated that for ascertaining whether the above injuries were grievous or simple, X-rays of above injuries were got conducted and the X-ray report is Ex.P/38 and further report of the Radiologist Dr. Satish Kachawaha (PW15) is Ex.P/48 and after seeing the X-ray report Ex.P/38 and further report of the Radiologist Ex.P/48, he opined that the above injuries were simple in nature and caused by short gun fire arm. He has proved the injury report Ex.P/49.

9. PW15 Dr. Satish Kachawaha stated in his statement recorded in Court that on 22.5.1995 he was Radiologist in P.B.M. Hospital, Bikaner and on that day, he got conducted the X-rays of leg of PVV10 Rajaram and rounded metallic shadow was seen. He has proved the X-ray report Ex.P/38.

10. Thus, from the statements of PW16 Dr. G.L. Jaipal and PW15 Dr. Satish Kachawaha and the injury report Ex.P/49, X-ray report Ex.P/38 and further Radiologist's report Ex.P/48, it is very much clear that injured PW10 Rajaram received three injuries by short gun fire arm, but the same were of simple nature.

Injury report and post mortem report of deceased Rameshwarlal

11. PW16 Dr. G.L. Jaipal has further stated in his statement recorded in Court that on 20.5.1995 at about 11.15 PM, he medically examined deceased Rameshwarlal and found the following injuries on his body:-

- (1) Gun shot wound 0.8x0.8cmx? deep on Rt. thigh lower 1/3 anteriorly 15 cm above knee joint.
- (2) G.S. wound 0.8x0.8cmx? deep on Rt. thigh 5cm above knee joint anteriorly.
- (3) G.S. wound 3.4x1cmx? deep on Rt. buttock at middle 1/3 on lateral aspect.
- (4) G.S. wound 0.8x0.8cmx? deep on abdomen 3cm below and Rt. side to umbilicus.
- (5) G.S. wound 0.8x0.8cmx? deep on hypochondrium region.

He has further stated that for the above injuries, he advised for X-rays and thereafter, X-rays were got conducted and the X-ray report is Ex.P/41. He has proved the injury report Ex.P/50.

He has further stated that thereafter, on 22.5.1995 at about 10.10 AM, the deceased Rameshwarlal died and the post mortem of his dead body was conducted on 23.5.1995 at about 11.05 AM by the Medical Board and he was one of the members of that Medical Board and following injuries were found on his body:-

- (1) Wound of entrance 0.8x0.8cmx? deep on Rt. thigh at lower 1/3 anteriorly 15 cm above the knee joint.

(2) Wound of entrance 3.4cmx1cmx? deep on Rt. thigh Buttock of its upper aspect laterally.

(3) Wound of entrance 0.8x0.8cmx? deep on right thigh just above the knee joint anteriorly.

(4) Stitched wound about 1cm long on abdomen 3 cm below and Rt. side to the umbilicus.

(5) Wound of entrance 0.8x0.8cmx? deep in Rt. hypochondrium region.

On dissection

Injury No. 1

There is extravasation of clotted blood is present in the subcut tissue and muscles. The track traced running obliquely, downward, inwards and in the muscular plane Anterior to the thigh bone. The pellet recovered just underneath the skin in medial side of thigh. The total depth of track is measuring about 14cm.

Injury No. 2

There is extravasation of clotted blood underneath subcut tissue and muscles. The track is traced running obliquely downwards and inwards. The depth of track is about 2.5cm. The pellet is recovered at its above depth i.e. 2.5 cm. Further on seeing the extravasation of the clotted blood in soft tissue the track was further traced and at a distance of 3.2cm from the 1 pellet of this track the 11 pellet is recovered and thus total depth of track is 5.7 cm.

Injury No. 3

There is extravasation of clotted blood in the subcut tissue and the muscles. The track is running obliquely downward, inward at a depth of 3.2cm from its entrance, in the muscle mass a pellet is recovered. In the region there was extravasation of clotted blood is seen in muscular plane of thigh anterior medially in its distal 1/2 of the thigh. So in the same plane dissection were carried out along the course of major vessels of thigh. In view of X-Ray findings and on palpation it was found to

be a pellet like hard mass in the saphanous vein. The saphanous vein in situ dissected and the pellet was recovered in the luman of the vein just distal to the sapheno femoral junction, the pellet is found to be surrounded by blood clots, lower down the pellet the dissection of saphanous vein was made and in the level of popliteal fossa there was a tear in the saphenous vein measuring about 0.7x0.7cm is found.

Injury No. 4

On dissection it is directed downwards inwards backwards upto paritoneal cavity. Peritoneum is seen stitched. There is extravasation of clotted blood is present in soft tissue underneath the injury.

Injury No. 5

There is extravasation of blood is present in the subcut tissue and muscles of the abdominal wall. The track is entering in the peritoneal cavity. There is a through and through lac. wound 0.7x0.6cm in the Rt. lobe of liver just above the inferior border on antero lateral surface and coming out through the inferior surface in the region of fundus of gall bladder. The total thickness transversed in the substance of liver tissue is 0.5cmx Adjacent part of fundus of gall bladder found to be stitched than the track is passing through transverse colon, jejenum, omentum in these the stitched wound are seen which is repaired during leprotomy operation. Then the track is reaching to the pelvic cavity on left side where a pellet was recovered from soft tissue just anterior to the illiac bone. The whole track is directed downwards, inwards (Rt. to left) & backwards. The peritoneal cavity is containing clotted and floud blood about 1 litre. On further dissection of retroperitoneal space there was markedly extravasation of clotted blood is found in the both peri nephric region. The Aorta is found to be ligated at 3 places about its bifurcation.'

He has further stated that for above injuries, X-rays of various parts of the body of the deceased Rameshwarlal were taken and six pellets were recovered from his body during the post mortem. The cause of death of the deceased Rameshwarlal was opined in the following manner:-

'The cause of death is due to shock and haemorrhage as a result from multiple intra abdominal injuries caused by pellets of short gun fire arm. The injuries No. 4 and 5 are collectively as well as individually are sufficient to cause death in ordinary nature of course.'

He has proved the post mortem report Ex.P/51.

12. Thus, from the statement of PW16 Dr. G.L. Jaipal, it is very much clear that the deceased Rameshwarlal received injuries by short gun fire arm and six pellets were recovered from his body and he died due to shock and haemorrhage as a result of multiple intra abdominal injuries caused by pellets of short gun firm arm and furthermore, his injuries No. 4 and 5 collectively and individually were sufficient in the ordinary course of nature to cause death.

13. Hence, the death of the deceased Rameshwarlal was not natural one, but it was homicidal and the findings of the learned Addl. Sessions Judge (Fast Track) in this respect are liable to be confirmed one.

Post Mortem Report of the deceased Ramnarayan S/o Sohanlal

14. PW18 Dr. D.K. Purohit in his statement recorded in Court has stated that on 21.5.1995, he was Medical Officer in the C.H.C. Nokha and on that day, post mortem of the dead body of the deceased Ramnarayan was conducted by the Medical Board and he was one of the members of that Medical Board and the following injuries were found on his body:-

(1) Abrasion extending from lateral aspect of the lower abdominal wall, left inguinal region, whole of gluteal region and antero lateral aspect of the upper 1/3 of thigh. Fluctuating haematoma present underneath the whole length of abrasion. On section about 1.5 litre blood drained and whole length of gluteal and lower back muscles found to be lacerated.

(2) Lacerated wound oval shaped measuring 7cmx5cmxmuscled deep on the antero lateral aspect of the thigh to the mid inguinal region. On dissection, femoral vein was found to be torn.

- (3) Abrasion 7cmx2cm on right posterior axillary line of the chest wall.
- (4) Fracture-dislocation of the Right meta carpo plalangeal joint of the Right index finger.
- (5) Abrasion 5cmx2cm on dorsum of right hand.
- (6) Lacerated wound on the base of Right middle finger on palmar aspect measuring 2.5cmx1cmxmuscled deep.
- (7) Lacerated wound measuring 2.5cmx1cmxmuscled deep in the centre of the Right little finger on the palmar aspect.
- (8) Abrasion measuring 3cmx1.5cm on left elbow.'

In cross-examination, PW18 Dr. D.K. Purohit has admitted the following facts:-

- (1) That the injuries No. 1 and 2 of deceased Ramnarayan were sufficient in the ordinary course of nature to cause death.
- (2) That all the injuries mentioned in the post mortem report Ex.P/86 of deceased Ramnarayan could have been caused by running over a Truck over his body. But, he has further made clear that except injuries No. 1 and 2, rest could have been caused by running over a Truck over his body.
- (3) That he did not find any fire arm injury on the body of the deceased Ramnarayan.

The cause of death of deceased Ramnarayan has been opined in the following manner:-

'In our opinion, on the basis of forementioned post mortem findings, we have come to a conclusion that the death has resulted from haemorrhage shock.'

He has proved the post mortem report Ex.P/86.

15. Thus, from the statement of PW18 Dr. D.K. Purohit, it is clear that the deceased Ramnarayan received 8 injuries on his body and the cause of his death

was haemorrhagic shock and furthermore, injuries No. 1 and 2 of deceased Ramnarayan were sufficient in the ordinary course of nature to cause death. Furthermore, injuries except No. 1 and 2 found on his body could have been caused by running over a Truck over his body. This excludes the possibility of death being caused by truck, even it be believed.

16. Hence, the death of the deceased Ramnarayan was not natural one, but it was homicidal and the findings of the learned Addl. Sessions Judge (Fast Track) in this respect are liable to be confirmed one.

Post Mortem Report of deceased Mohanlal S/o Sohan Lal

17. PW18 Dr. D.K. Purohit has further stated in his statement recorded in Court that on 21.5.1995 at about 11.30 AM, the post mortem of the dead body of the deceased Mohanlal was also conducted and the following injuries were found on his body:-

(1) Circular 1cmx1cm diameter margins inverted surrounded by . 5cm of dark brown coloured abrasions, situated below left clevical midway below ear from left nipple below ant. of lateral 1/3rd and medial 2/3 of the clevical (L). On further dissection of the wound under lying nis showed wound 1.75x1.5cm, under lying # 2nd rib #. Muscle (intercostal) corresponding to injury showed haematoma. Wound extended with the thoracic cavity.

(2) Circular .75cmx.75cm in diameter surrounded by oval shaped collar of 2cmx1cm dark brown abrasion around the wound situated between the (L) nipple and mid sternal line in the lower of nipple. On further dissection wound 1cmx1cm on the underlying intercostal muscle with haemorrhage corresponding costochondral junction # and. There was a corresponding would inside the thoracic cavity. Margins slightly inverted.

(3) Oval shaped .5cmx.3cm cavity deep. In mid axillary line on the lateral wall of chest at the level of nipple. On dissection, Hs showed 1cmx.5cm wound with surrounding haematoma.

(4) Circular .75cmx.75cm diameter surrounded by .5cm broad collar of dark brown coloured. Stitched in 7th intercostal space in anterior axillary. Wound towards cavity deep. Surrounding Hs underneath the wound shown 1cmx1cm wound with haematoma all around. Margins inverted.

(5) Oval shaped 1cmx.5cm surrounded by .5cm broad dark brown coloured abrasions. 3cm below the injury number 4. On dissection intercostal muscle underneath showed wound 1.75cmx.1cm cavity deep lowered the abdominal cavity. Surrounding intercostal muscle showed haematoma. Margins slightly inverted.

(6) Oval shaped .5cmx.3cm margin inverted surrounded by .3cm broad dark brown margin of abrasion situated 3cm above and lateral to injury No. 4. It was cavity deep directed lowered the abdominal cavity underlying intercostal Hs showed 1cmx.75cm wound.

(7&8) Two circular each measuring .3cmx.3cm with .3cm broad dark brown coloured abraded collar. About 2.5cm about on the upper 1/3rd of (L) upper arm on the ant. lateral aspect. On dissection 2 pellet measuring .75cmx.5cm.3cm weighting 1.500 gms. were recovered.

(9) Circular .3cmx.3cm cavity deep surrounded by .3cm broad dark coloured abraded collar. Margins inverted.'

He has further stated that eight pellets were recovered from the body of the deceased Mohanlal. He has further stated that except injuries No. 7 and 8, all other injuries were sufficient in the ordinary course of nature to cause death. The cause of death was opined in the following manner:-

'In our opinion, on the basis of fore mentioned post mortem findings, we have come to a conclusion that the death has resulted from haemorrhagic shock because of the injuries to the vital organs.'

He has proved the post mortem report Ex.P/87

18. Thus, from the statement of PW18 Dr. D.K. Purohit, it is clear that the deceased Mohanlal received 9 injuries by fire arm and except the injuries No. 7 and 8, all other injuries were sufficient in the ordinary course of nature to cause death and 8 pellets were recovered from his body and the cause his death was haemorrhagic shock because of the injuries to the vital organs.

19. Hence, the death of the deceased Mohanlal was not natural one, but it was homicidal and the findings of the learned Addl. Sessions Judge (Fast Track) in this respect are liable to be confirmed one.

20. Before proceeding further, it may be stated here that in the same incident, the accused appellant Ramnarayan has also received some injuries and deceased accused Maniram had also died in the same incident and therefore, injuries of accused appellant Ramnarayan and post mortem report of deceased accused Maniram may also be mentioned here.

Injuries of accused appellant Ramnarayan

21. PW16 Dr. G.L. Jaipal has also stated in his statement recorded in Court that on 20.5.1995 he has also medically examined the accused appellant Ramnarayan S/o Mokhram and found the following injuries:-

(1) Incised wound 3x0.5cmxbone deep at forehead upper 1/3 on Rt. side.

(2) Incised wound 2x0.5cmxbone deep on forehead upper 1/3 left side.

(3) Sucking wound on chest upper 1/3 Rt. side which is dressed and sealed as per B.H.T. the wound is not indicated clinically to open for examination.

He has further stated that on 22.5.1995 at about 10.15 AM, he examined above injury No. 3 in Emergency Operation Theatre when dressing of wound was done and one wound was seen just above I intercostal space of chest on Rt. side medial end 2cm away from midline and the wound was 3.5cm below the carvicle bone. The size of wound 4.5x1.5x? deep underneath muscle was seen. The margin of wound was clear cut and there was no sucking.

He has further stated that for the above injuries, X-rays were got conducted and thereafter, he opined that all the above injuries were simple in nature, though caused by sharp edged weapon.

22. Thus, from the statement of PW16 Dr. G.L. Jaipal, it is very much clear that the accused appellant Ramnarayan received three injuries by sharp edged weapon, but the same were found simple in nature.

Post Mortem Report of deceased accused Maniram

23. There is no dispute on the point that deceased accused Maniram from the side of the accused party died in the same incident as all the prosecution witnesses had admitted that fact.

24. The post mortem report of the deceased accused Maniram is on the record of this case, but the same was not got exhibited at all either by the prosecution or by the defence, but since the fact that deceased accused Maniram died in the same incident is not in dispute, therefore, it should be taken for granted that he died in the same incident and as per his post mortem report, he received eight injuries, out of which, six were incised wounds, but he did not receive any fire arm injuries as is evident from the impugned judgment and order of the learned Addl. Sessions Judge (Fast Track).

25. What would be the effect of the injuries received by the accused appellant Ramnarayan and death of deceased accused Maniram in the same incident, the same would be discussed later on at the appropriate place.

26. In this case, the alleged parcha bayan Ex.P/17 was given by PW4 Sohanlal just after the occurrence and the facts stated in that parcha bayan had already been mentioned above and at the cost of repetition, it may be stated here that in that parcha bayan Ex.P/17 PW4 Sohan Lal has stated that when he and Om Prakash (PW3) son of PW1 Genaram were sitting in the Jameshwar Temple, at that time, his two sons, namely, deceased Ramnarayan and deceased Mohanlal came out from his house and when they reached near the house of accused Rampratap, accused appellants Bastiram, Mohanlal, Ramnarayan and Banwarilal

and other accused persons, namely, Mangilal, Ramjus, Hariram, Rampratap and Bhagwanaram (who have been acquitted by the learned Addl. Sessions Judge (Fast Track)) and deceased accused Maniram came out from the house of accused Rampratap and at that time, the accused appellants, namely, Bastiram, Mohanlal, Ramnarayan and Banwarilal were having pistols; the accused Rampratap was having Jayee; the accused Bhagwanaram and Mangilal were having barchi and the accused Ramjus and Hariram were having Sela and all the accused persons surrounded his sons deceased Mohanlal and deceased Ramnarayan and made hue and cry that they be killed and upon this, PW3 Om Prakash rushed towards the place of occurrence and at that time, his sons, namely, deceased Rameshwarlal and Rajaram (PW10) also came there from the side of Dharm-kanta and thereafter, the accused appellant Banwarilal made fire by pistol towards his son deceased Mohanlal, as a result of which, he fell down on the ground and the accused appellant Mohanlal S/o Mokhram also made fire by pistol towards deceased Ramnarayan S/o Sohanlal and the accused appellant Ramnarayan S/o Mokhram also made fire by pistol towards PW10 Rajaram which struck on his leg and the accused appellant Bastiram made fire on deceased Rameshwarlal and the other accused persons also caused injuries by Sela, Barchi etc. and thereafter, they all ran away from the scene. The deceased Mohanlal died on the spot and deceased Ramnarayan, injured Rajaram (PW10) and deceased Rameshwarlal were taken in serious condition to the hospital.

27. It may be stated here that in this case, there are four eye witnesses, namely, PW3 Om Prakash, PW4 Sohanlal, PW9 Jagdish and PW10 Rajaram and their presence at the place of occurrence is evident from the parcha bayan Ex.P/17 given by PW4 Sohanlal just after the occurrence and not only this, in the cross case lodged by the accused party, these four witnesses and other persons have been implicated as accused persons.

28. Apart from this, so far as the presence of PW10 Rajaram at the place of occurrence is concerned, since he is injured witnesses, therefore, his presence on the scene cannot be doubted, as held by the Hon'ble Supreme Court in *Avdesh and Ors. v. State of UP* (2). In this respect, the decision of the Hon'ble Supreme Court in *Ram Kumar v. State of Haryana* (3), may also be referred to.

29. Thus, the findings of the learned Addl. Sessions Judge that PW3 Om Prakash, PW4 Sohanlal, PW9 Jagdish and PW10 Rajaram are the eye witnesses, are liable to be confirmed.

30. PW10 Rajaram (injured witness) in his statement recorded in Court has stated that deceased Mohanlal, deceased Rameshwarlal and deceased Ramnarayan were his real brothers and the alleged incident took place on 20.5.1995 at about 6.45-7.00 PM. He has further stated that the accused Rampratap was having jeyee in his hand, the accused Bhagwana Ram was having barchi in his hand, the accused appellants Banwarilal, Bastiram, Mohanlal and Ramnarayan were having pistols in their hands, the accused Mangilal was having barchi in his hand, the accused Hariram and Ramjus were having Sela in their hands. He has further stated that his brothers deceased Ramnarayan and deceased Mohanlal were encircled by the members of the accused party and thereafter, the accused appellant Banwarilal made fire towards deceased Mohanlal which struck on his chest, as a result of which deceased Mohanlal fell down on the ground and blood came out from his body. He has further stated that thereafter, the accused appellant Mohanlal made fire towards deceased Ramnarayan which striking his thigh went away. He has further stated that the accused appellant Bastiram made fire towards deceased Rameshwarlal, which struck on his abdomen and the accused appellant Bastiram made another fire towards deceased Rameshwarlal which struck on his thigh. He has further stated that accused appellant Banwarilal made two fire which struck on the body of deceased Mohanlal. He has further stated that the accused appellant Ramnarayan also made fire towards him. He has further stated that thereafter, deceased accused Maniram came there and he was killed by the accused Rampratap, Bhagwanaram, Harirarn, Ramjus and Mangilal.

In cross-examination, he has admitted the following facts:-

(1) That for the murder of deceased accused Maniram, he was arrested and he is facing trial.

(2) That for the murder of deceased accused Maniram, PW4 Sohanlal, PW3 Om Prakash, PW2 Bhagchand, PW1 Genaram, PW9 Jagdish are also facing trial.

(3) That the suggestion that PW3 Om Prakash, after driving the Truck, dashed the wall of the house of the accused Rampratap was denied.

(4) That he did not see any injury on the person of the accused appellants Banwarilal and Ramnarayan.

(5) That he saw the injuries on the person of the deceased accused Maniram.

31. The statement of injured witness PW10 Rajaram in all material particulars has been corroborated by the statements, of other eye witnesses, namely, PW3 Om Prakash, PW4 Sohanlal and PW9 Jagdish.

32. PW3 Om Prakash in his statement recorded in Court has admitted that for the murder of deceased accused Maniram, he is also facing trial. He has also denied the suggestion that the deceased accused Maniram was beaten by the members of the complainant party. He has further admitted that he also saw the dead body of the deceased accused Maniram at the place of occurrence.

33. PW4 Sohanlal, who gave the parcha bayan Ex.P/17, has also admitted in his statement recorded in Court that deceased accused Maniram was also killed at the same place of occurrence where his three sons, namely, deceased Rameshwarlal, deceased Mohanlal and deceased Ramnarayan were killed.

34. PW9 Jadish has also admitted in his statement recorded in Court that he did not see any injury on the person of the accused appellant Ramnarayan, but he has stated that deceased accused Maniram received injuries at the hands of the accused party.

Place of occurrence, site plan Ex.P/7 & description memo Ex.P/7A

35. The site plan Ex.P/7 and description memo Ex.P/7A, which have been proved by I.O. PW17 Tara Chand, reveal that at place X- 2 deceased Mohanlal was beaten, at place X-1, deceased accused Maniram received injuries and at place X-3, deceased Ramnarayan received injuries.

Thus, the site plan Ex.P/7 and description memo Ex.P/7A reveal the place where the deceased Mohanlal, deceased accused Maniram and deceased Ramnarayan

received injuries. The same position has been shown in the site plan Ex.D/14 and description memo D/15 of cross case.

36. From the statements of the above four eye witnesses, namely, PW3 Om Prakash, PW4 Sohanlal, PW9 Jagdish and PW10 Rajaram, the case of the prosecution that deceased accused Maniram was killed by the members of the accused party cannot be accepted because of the simple reason that the name of the deceased accused Maniram was mentioned as one of the accused persons in the parcha bayan Ex.P/17 given by PW4 Sohanlal just after the occurrence and therefore, it is impossible that the accused party would kill their own man and on that point, the prosecution witnesses have not come with true picture and rather they are telling lie on the point that deceased accused Maniram was murdered by the members of the accused party themselves and apart from this, the prosecution witnesses have not explained the injuries of accused appellant Ramnarayan and what would be effect of these two aspects on the testimony of these four eye witnesses, that would be discussed just later on.

37. However, from the statements of the above, four eye witnesses, namely, PW3 Om Prakash, PW4 Sohanlal, PW9 Jagdish and PW10 Rajaram, the following facts have established:-

(1) That three persons, namely, deceased Mohanlal, deceased Rameshwarlal and deceased Ramnarayan from the side of the complainant party and one person, namely, deceased accused Maniram from the side of accused party died in the same incident.

(2) That deceased Rameshwarlal died because of the fire arm injuries caused to him by the accused appellant Bastiram.

(3) That deceased Mohanlal died because of the fire arm injuries caused to him by the accused appellant Banwarilal.

(4) That deceased Ramnarayan also received fire arm injuries on his thigh and the same were caused to him by the accused appellant Mohanlal.

(5) That the injured Rajaram, PW10 received fire arm injuries at the hands of the accused appellant Ramnarayan.

38. Thus, the findings of the learned Addl. Sessions Judge (Past Track) that the accused appellant Bastiram caused fire arm injuries to deceased Rameshwarlal; the accused appellant Banwarilal caused fire arm injuries to deceased Mohanlal; the accused appellant Mohanlal caused fire arm injuries on the thigh of deceased Ramnarayan and the accused appellant Ramnarayan caused fire arm injuries to injured PW10 Rajaram are liable to be confirmed as they are based on correct appreciation of evidence available on record. It cannot be said that they are perverse or based on no evidence or material.

39. No doubt the learned Addl. Sessions Judge (Fast Track) came to the conclusion that the possibility that the deceased Ramnarayan would have received some injuries by running over a Truck over his body cannot be ruled out, but his findings that deceased Ramnarayan also received fire arm injuries on his thigh at the hands of the accused appellant Mohanlal are correct one as the above mentioned four eye witnesses have categorically stated that the accused appellant Mohanlal made fire towards deceased Ramnarayan and that fact is also found in the parcha bayan Ex.P/17 given by PW4 Sohanlal just after the occurrence. Therefore, it cannot be said that it was after thought act on the part of the prosecution witnesses.

40. Apart from this, the learned Addl. Sessions Judge has observed in the impugned judgment and order that when there is inconsistency between the evidence of eye witnesses and medical evidence, the evidence of eye witnesses can prevail over the medical evidence in some cases and for that he has placed reliance on the decision of the Hon'ble Supreme Court in the case of Suraj Pal (supra), and thus, though no pellet was found in the body of the deceased Ramnarayan as per medical evidence, but since the eye witnesses have categorically stated that the accused appellant Mohanlal caused fire arm injuries on the thigh of the deceased Ramnarayan, therefore, after placing reliance on the decision of the Hon'ble Supreme Court in the case of Suraj Pal (supra), he gave preference to the evidence of eye witnesses over the medical evidence and held

that the accused appellant Mohanlal caused firm arm injuries on the thigh of the deceased Ramnarayan.

41. In Suraj Pal's case (supra), in the FIR which was filed immediately after incident, it was mentioned that the appellant Suraj Pal and Ram Larety, accused Fired with gun and country made pistol and it was specifically stated that the appellant was armed with gun and he fired the same and that deceased fell down after receiving the injury. However, the medical evidence did not state that the injury was caused by fire arm and it showed that no pellet was found in the body of the deceased. A like contention was raised on the basis of discrepancy in the medical evidence and statements of eye witnesses that the testimony of the eye witnesses about gun shot injury be rejected. However, repelling the contention, the Hon'ble Supreme Court said:-

'It is true that the version of the eye witnesses is that injury to PW2 was caused by pistol shot. The medical evidence only shows that no pellet was found but the description of the injury that the margins were inverted would show that it could have been an injury caused by country made pistol shot. In any event the prosecution case is that three or four shots were fired and it is quite possible that the witnesses thought that this injury is due to one of the shots by country made pistol and on the basis of the opinion that the injury might have been caused by a fire arm, the evidence of the eye witnesses cannot be rejected. At the most it can be said to be an embellishment.

The FIR in this case was given at the earliest moment and all the necessary particulars were mentioned there. Learned counsel for the appellant, however, strenuously contended that it is not specifically mentioned that fire arm shot by the appellant caused the death of the deceased. In the FIR it is mentioned that the appellant and Ram Larety accused fired with a gun and a country made pistol. It is specifically stated that the appellant was armed with a gun and he fired the same. Then it is mentioned that the deceased fell down after receiving the injury. We do not think that there is any inconsistency between the recitals in the FIR and the present version in this regard.'

The position in the present case is not different so far as the assertion made in the FIR, statements by eye witnesses and the nature of injury No. 2 of deceased Ramnarayan caused by fire-arm. His injury No. 2 was oval shaped wound as in the case of other two deceased, namely, deceased Mohanlal and deceased Rameshwarlal in whose bodies, pellets have been found and the same was testified to be a fire-arm injury. It is perhaps because pellets were not found in the body of deceased Ramnarayan that opinion about injury No. 2 was distinct from other injured/deceased persons. In these circumstances, if the findings of trial court, based on reliable eye witnesses and attending circumstances, as well as on comparison of nature of gun shot injuries received by other deceased and injury of deceased Ramnarayan, has given credence to eye witnesses notwithstanding discrepant medical evidence, it cannot be held to be erroneous.

42. The Hon'ble Supreme Court in *Bijwa v. State of UP* (4), held that the evidence of the eye witnesses cannot be rendered untrustworthy because of inconsistency with the medical evidence.

43. In *State of UP v. Krishna Gopal and Anr.* (5), the Hon'ble Supreme Court has observed that where the eye witnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive.

44. In this respect, it may also be stated here that too much reliance cannot be placed upon medical evidence as it indicates an estimate. Apart from this, witnesses are the eyes and ears of justice. Furthermore, discrepancy between medical and ocular testimony is not always fatal. But a glaring inconsistency might be fatal to prosecution case.

45. Thus, in our considered opinion, looking to the law laid down by the Hon'ble Supreme Court in the above cases, if the learned Addl. Sessions Judge (Fast Track) has given preference to the evidence of eye witnesses over the medical evidence in respect of causing of fire arm injuries to the deceased Ramnarayan, he has committed no illegality or irregularity in doing so and he has rightly held that the fire arm injuries to the deceased Ramnarayan were caused by the accused appellant Mohanlal.

Apart from this, PW18 Dr. D.K. Purohit has categorically stated that except injuries No. 1 and 2 found on the body of deceased Ramnarayan, rest could have been caused by running over a truck over his body meaning thereby injuries No. 1 and 2 could have not been caused by running over a truck over his body and the injury No. 2 is that for which the eye witnesses have specifically stated that fire was made by the accused appellant Mohanlal which struck on the thigh of the deceased Ramnarayan and the injury No. 2 is also found at the same place. Thus, there is possibility that injury No. 2 on the person of the deceased Ramnarayan might have been caused by fire arm, though Dr. D.K. Purohit, PW18 states otherwise. Furthermore, there is possibility that pellet fired by the accused appellant Mohanlal would have passed after touching the thigh of the deceased Ramnarayan and thus, in such manner, full-fledged fire arm injury was not found on the body of the deceased Ramnarayan.

The argument that deceased Ramnarayan received injuries after coming under the truck driven by the complainant party intentionally, cannot be accepted, but the possibility that he came under the truck driven by the complainant party accidentally cannot be ruled out as the wall belonging to the house of the accused party was hit by the truck, which was being driven by the complainant party.

46. Even if for the sake of argument, the defence version is that deceased Ramnarayan did not receive any fire arm injuries meaning thereby accused appellant Mohanlal did not cause any fire arm injuries to deceased Ramnarayan, but the fact that the accused appellant Mohanlal was armed with pistol cannot be doubted in any manner as the eye witnesses, namely, PW3 Om Prakash, PW4 Sohanlal, PW9 Jagdish and PW10 Rajaram have categorically stated in their statements recorded in Court that the accused appellant Mohanlal was armed with pistol and when other accused appellants, namely, Banwari, Ramnarayan and Bastiram were firing, therefore, it can easily be said that the accused appellant Mohanlal was sharing common intention with the other accused appellants, namely, Banwari, Ramnarayan and Bastiram and thus, Section 34 IPC would be applicable and that is why, he was convicted for the offence under Section 302 with the aid of Section 34 IPC by the learned Addl. Sessions Judge (Fast Track) and the findings of the learned Addl. Sessions Judge (Fast Track) in this respect

are liable to be confirmed one.

Furthermore, in this case, two accused appellants, namely, Banwarilal and Bastiram have been convicted simpliciter for the offence under Section 302 IPC and the accused appellants Ramnarayan and Mohanlal have been convicted for the offence under Section 302 with the aid of Section 34 IPC. Since it is the case of the prosecution that accused appellant Ramnarayan caused fire arm injuries to PW10 Rajaram and when other co-accused appellants were firing, therefore, he was convicted for the offence under Section 302 IPC with the aid of Section 34 IPC for the murder of other deceased persons and in the same manner accused appellant Mohanlal was also rightly convicted for the offence under Section 302 IPC with the aid of Section 34 IPC.

47. As already stated above, in the same incident, the accused appellant Ramnarayan has received three injuries on his person and the same have not been explained by the prosecution witnesses and apart from this, the deceased accused Maniram had also received injuries and died in the same incident and for that, the prosecution has not come with true picture and rather the prosecution witnesses are telling lie on the point that deceased accused Maniram was murdered by the accused party themselves.

48. The question for consideration is what would be the effect of the above two aspects on the veracity and testimony of the abovementioned four eye witnesses, namely, PW3 Om Prakash, PW4 Sohanlal, PW9 Jagdish and PW10 Rajaram and on prosecution case as a whole.

Non-explanation of injuries of accused appellant Ram Narayan and death of the deceased accused Maniram

49. It may be stated here that in criminal trial, if the injuries are received by the accused party and they are not discussed, that trial is incomplete in true sense and may also affect the case of the prosecution and, therefore, it is the bounden duty of the prosecution that in criminal trial, it should explain the injuries received by the accused party and it is also the duty of the court that it must also keep this aspect in mind while finalising the guilt of the accused.

50. In *Gajendra Singh v. State of UP* (6), the Hon'ble Supreme Court has observed that when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:-

'(i) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self-defence.

(ii) That it makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(iii) That it does not affect the prosecution case at all.'

51. In *Lakshmi Singh and Ors. v. State of Bihar* (7), the Hon'ble Supreme Court has further observed that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:-

(i) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.

(ii) That the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and their evidence is unreliable.

(iii) That in case there is defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.'

52. In this respect, the decisions of the Hon'ble Supreme Court in *Bhagwan v. State of Maharashtra* (8), *Omkarnath Singh and Ors. v. State of UP* (9), *Jagdish v. State of Rajasthan* (10) and *State of Karnataka v. Jinappa Payappa Kudachi* (11), may also be referred to.

53. Thus, from the above authorities, the law on the point of non-explanation of injuries on the person of accused party may be summarised in the following manner:-

(1) That failure to explain injuries on the person of the accused is not always fatal to the prosecution case.

(2) That no doubt the prosecution is bound to explain injuries on the accused, but before this obligation is placed it must be proved that first, the injuries on the accused are very serious, secondly, these injuries had been caused at the time of the occurrence in question.

(3) That the effect of non-explanation of injuries on the person of the accused is not a question of law but a question of fact and therefore, non-explanation is not always fatal to the prosecution case, but the fact of failure to explain is to be taken into account to test the truth of the prosecution case and the veracity of the prosecution witnesses.

(4) That the effect of non-explanation by the prosecution about the injuries on the accused persons depends on the facts and circumstances of each case and no hard and fast rule can be laid down in such matter.

(5) That normally if there is such non-explanation, it may at the most give scope to argue that the accused had the right of private defence or in general that the prosecution evidence should be rejected as they have not come with the whole truth, particularly regarding the genesis of the occurrence.

(6) That in some cases, if the accused party had caused murder of some members of the complainant party and in the scuffle by way of reprisal some accused got injuries at the hands of the complainant party, in such a situation, the obligation on the part of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise.

54. Keeping the above principles in mind, it is to be seen whether non-explanation of injuries on the person of the accused appellant Ramnarayan and death of the deceased accused Maniram by the prosecution has affected the case of the prosecution or not.

55. In the present case, we should not forget that from the side of complainant party, three persons, namely, deceased Mohanlal, deceased Ramnarayan and

deceased Rameshwarlal died and one person, namely, PW10 Rajaram received fire arm injuries and there is also no doubt on the point that in the same incident, from the side of accused party, one person, namely, deceased accused Maniram died and accused appellant Ramnarayan received simple injuries.

56. There is also no dispute on the point that deceased accused Maniram did not receive any fire arm injuries meaning thereby the members of the present complainant party were not armed with fire arms. The fact that three deceased persons, namely, deceased Mohanlal, deceased Ramnarayan and deceased Rameshwarlal and one injured PW10 Rajaram from the side of complainant party received fire arm injuries itself reflects that the accused appellants were armed with fire arms.

57. Thus, looking to the entire facts and circumstances just narrated above, when from the side of the complainant party, three persons, namely, deceased Rameshwarlal, deceased Mohanlal and deceased Ramnarayan were murdered and one person, namely, injured PW10 Rajaram received fire arm injuries and in the same incident, one person deceased accused Maniram died and the accused appellant Ramnarayan received simple injuries and further, the members of the complainant party were not armed with fire arms while the members of the accused party were armed with fire arms, therefore, in these circumstances, if the prosecution has not explained how the deceased accused Maniram received injuries and died and how the accused appellant Ramnarayan received injuries, in our considered opinion, it would not affect the case of the prosecution as the facts narrated above clearly revealed that it cannot be ruled out that in the scuffle, when three persons from the side of complainant party were murdered by the accused appellants, by way of reprisal, the injuries would have been caused to the deceased accused Maniram and the accused appellant Ramnarayan by the members of the complainant party and in such a situation, the obligation on the part of the prosecution to explain injuries sustained by the accused appellant Ramnarayan and the deceased accused Maniram in the same incident would not arise and apart from this, from the above facts, it appears that the accused appellants were aggressors and they had acted in cruel and unusual manner in murdering the three deceased namely, deceased Mohanlal, deceased

Ramnarayan and deceased Rameshwarlal.

Furthermore, from the aforesaid facts, it appears to us that there was no reason to proceed on the footing that there was an occasion of self-defence on the part of the accused appellants.

58. Thus, for the reasons stated above, it is held that in the present case, non-explanation of injuries and death of deceased accused Maniram and injuries of accused appellant Ramnarayan by the prosecution would not affect the case of the prosecution at all and it cannot be regarded as fatal to the prosecution case.

59. The next question for consideration is when the statements of eye witnesses, namely, PW3 Om Prakash, PW4 Sohanlal, PW9 Jagdish and PW10 Rajaram have been disbelieved by the learned Addl. Sessions Judge (Fast Track) in respect of five accused persons, namely, Ram Pratap, Ramjus, Hariram, Mangilal and Bhagwana Ram and their statements were partly believed in respect of present accused appellants, namely, Ramnarayan, Banwari, Mohanlal and Bastiram and further not believed on the point how accused deceased Maniram died, whether in such circumstances a conviction can be based on such statements of eye witnesses PW3 Om Prakash, PW4 Sohanlal, PW9 Jagdish and PW10 Rajaram as recorded by the learned Addl. Sessions Judge (Fast Track) or not or their statements should have been rejected in toto.

60. Before proceeding further, some thing should be said about the maxim 'falsus in uno falsus in omnibus'.

falsus in uno falsus in omnibus

61. The maxim 'falsus in uno falsus in omnibus' is in itself worthless; first in point of validity and secondly, in point of utility because it merely tells the jury what they may do in any event, not what they must do or must not do, and, therefore, it is a superfluous form of words. It is also in practice pernicious. (Wigmore on Evidence, Vol. III, para 1008).

62. This maxim-falsus in uno falsus in omnibus-has not received general acceptance in different jurisdictions in India; nor has this maxim come to occupy

the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded.

63. The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) is neither a sound rule of law nor a rule of prudence. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the Court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff.

64. On this point, the decisions in *Bhe Ram v. State of Haryana* (12), *State of Punjab v. Surja Ram* (13), and *Jeevan v. State of M.P.* (14), may be seen.

65. In *Swaran Singh v. State of Punjab* (15), while interpreting the maxim '*falsus in uno falsus in omnibus*' the Hon'ble Supreme Court has observed that merely because one portion of evidence of eye witnesses is disbelieved does not mean that court is bound to reject all of it. Non acceptance of eye witnesses' account regarding involvement of the co-accused in the offence would not render their evidence in respect of involvement of the accused suspect.

66. In *Gangadhar Behera and Ors. v. State of Orissa* (16), the Hon'ble Supreme Court while interpreting the maxim '*falsus in uno falsus in omnibus*' observed that this principle is not applicable in India. It is only a rule of caution. Even when major portion of evidence of a witness is found unreliable, if the remaining part of the evidence inspires confidence and is sufficient to prove the guilt of the accused, conviction can be based thereon. Court has to separate chaff from grain and to find in each case as to what extent the evidence is acceptable. If separation cannot be done, the evidence has to be rejected *In toto*. The same view has been reiterated by the Hon'ble Supreme Court in the latest judgment in *Sucha Singh v. State of Punjab* (17).

67. Thus, the law is well settled that evidence of a witness need not necessarily be true in all respects. It may be partly true and partly untrue and the said maxim '*falsus in uno falsus in omnibus*' is not applicable in India and it is open to the

Court in India to accept a part of evidence of a witness while rejecting the rest of it.

68. In our considered opinion, keeping in mind the law laid down by the Hon'ble Supreme Court on the maxim 'falsus in uno falsus in omnibus', if the learned Addl. Sessions Judge (Fast Track) has partly disbelieved the statements of eye witnesses, namely, PW3 Om Prakash, PW4 Sohanlal, PW9 Jagdish and PW10 Rajaram in respect of five accused persons, namely, Ram Pratap, Ramjus, Hariram, Mangilal and Bhagwana Ram and partly believed their statements in respect of accused appellants Ramnarayan, Banwari, Mohanlal and Bastiram, he has committed no illegality in doing so.

69. As already stated above, there is uniformity in the evidence of the above eye witnesses PW3 Om Prakash, PW4 Sohanlal, PW9 Jagdish and PW10 Rajaram that the accused appellant Bastiram caused fire arm injuries to deceased Rameshwarlal; the accused appellant Banwarilal caused fire arm injuries to the deceased Mohanlal; the accused appellant Mohanlal caused fire arm injuries on the thigh of the deceased Ramnarayan and the accused appellant Ramnarayan caused fire arm injuries to the injured Rajaram, PW10 and their evidence about causing injuries by the accused appellants to the three deceased and injured PW10 Rajaram appears to be consistent and corroborated by the parcha bayan Ex.P/17 given by PW4 Sohanlal just after the occurrence and also by the medical evidence.

70. Thus, after placing reliance on that part of the statements of the eye witnesses, namely, PW3 Om Prakash, PW4 Sohanlal, PW9 Jagdish and PW10 Rajaram where they have categorically stated that the accused appellant Bastiram caused fire arm injuries to deceased Rameshwarlal; the accused appellant Banwarilal caused fire arm injuries to the deceased Mohanlal; the accused appellant Mohanlal caused fire arm injuries on the thigh of the deceased Ramnarayan and the accused appellant Ramnarayan caused fire arm injuries to the injured Rajaram, PW10, which is consistent through out and corroborated by the parcha bayan Ex.P/17 given by PW4 Sohanlal just after the occurrence and also by the medical evidence, if the learned Addl. Sessions Judge (Fast Track) has convicted the accused appellants for various offences, he has committed no

illegality in doing so.

71. For the reasons stated above, all the contentions raised by the learned counsel for the accused appellants stand rejected and no interference is called for with the findings of conviction recorded by the learned Addl. Sessions Judge (Fast Track) against the accused appellants, namely, Ramnarayan, Banwari, Mohanlal and Bastiram as they are based on correct appreciation of evidence on record and it cannot be said that the findings of conviction recorded by the learned Addl. Sessions Judge (Fast Track) are perverse or erroneous or based on no material or evidence. It also cannot be said that the approach of the learned Addl. Sessions Judge (Fast Track) in dealing with the evidence and in convicting the accused appellants was manifestly erroneous or perverse one and therefore, this appeal is liable to be dismissed.

D.B. Criminal Appeal No. 528/2002

72. This appeal has been filed by the State of Rajasthan against the judgment and order of acquittal dated 7.9.2001 passed by the learned Addl. Sessions Judge (Fast Track), Bikaner by which he acquitted the accused respondents Ram Pratap, Ramjus, Hariram, Mangilal and Bhagwana Ram of all the charges framed against them i.e. for the offence under Sections 148, 323, 323/149, 324, 324/149, 341, 307/149, 302/149 IPC.

73. In this State appeal, the learned Public Prosecutor has submitted that since there is evidence against the accused respondents Ram Pratap, Ramjus, Hariram, Mangilal and Bhagwana Ram in the parcha bayan Ex.P/17 given by PW4 Sohanlal just after the occurrence and the presence of these five accused respondents at the place of occurrence have categorically been stated by the eye witnesses, namely, PW3 Om, Prakash, PW4 Sohanlal, PW9 Jagdish and PW10 Rajaram, therefore, findings of acquittal of these five accused respondents on the ground that some injuries to deceased Ramnarayan could have been caused by running over a Truck over his body, are erroneous one and should be set aside and the accused respondents should have been convicted with the aid of Section 149 IPC.

74. On the other hand, the learned counsel appearing for the accused respondents has submitted that the findings of acquittal are based on correct appreciation of evidence and furthermore, findings of acquittal can be interfered with only when the same are perverse, but in the present case, the findings of acquittal cannot be said to be perverse or based on no material or evidence. Hence, no interference is called for with the findings of acquittal recorded by the learned Addl. Sessions Judge (Fast Track) and this State appeal be dismissed.

75. We have heard the learned Public Prosecutor and the learned counsel for the accused respondents and gone through the findings of acquittal recorded by the learned Addl. Sessions Judge (Fast Track).

76. The learned Addl. Sessions Judge (Fast Track) has acquitted the five accused respondents mainly on the ground that the injuries except No. 1 and 2 found on the body of the deceased Ramnarayan might have been caused by running over a Truck over his body, which was driven by the complainant party and furthermore, PW18 Dr. D.K. Purohit had admitted in his cross-examination that some injuries mentioned in the post mortem report Ex.P/86 of deceased Ramnarayan might have been caused by running over a Truck over his body and therefore, the suggestion of the accused party that some of the injuries on the body of the deceased Ramnarayan were not caused by the accused respondents Ram Pratap, Ramjus, Hariram, Mangilal and Bhagwana Ram cannot be ruled out and for that reason, he gave benefit of doubt to these five accused persons for the injuries of deceased Ramnarayan holding inter-alia that except the so-called injuries of fire arm alleged to have been caused by the accused appellant Mohanlal, rest injuries were not caused by the above five accused persons.

77. The question for determination is whether above findings of facts regarding acquittal of accused respondents, namely, Ram Pratap, Ramjus, Hariram, Mangilal and Bhagwana Ram are correct or not.

78. Before deciding the above question, something should be said about the scope of interference by the High Court in appeal against the order of acquittal.

79. In *Molu v. State of Haryana* (18), the Hon'ble Supreme Court has observed that the High Court should be alive to the following propositions regarding interference in an appeal against an order of acquittal:-

(i) the slowness of the Appellate Court to disturb a finding of fact;

(ii) the non-interference with the order of acquittal where it is indeed only a case of taking a view different from the one taken by the High Court.

80. It is well settled that if two views of the evidence are reasonably possible one favouring acquittal and the other conviction, the High Court should not reverse the order of acquittal and for that, the decisions of the Hon'ble Supreme Court in *Dhan Kumar v. Municipal Corporation of Delhi* (19), *Dinanath Singh v. State of Bihar* (20), and *Tara Singh v. State of Madhya Pradesh* (21), may be referred to.

81. It may be stated here that in appeal against an order of acquittal, the powers of the High Court are not different from its powers in an ordinary appeal against conviction. The additional burden which is placed on the High Court is that it has to consider each of the grounds which had prompted the trial court to pass the order of acquittal and to record its own reasons for not agreeing with the trial court. In this respect, the decisions of the Hon'ble Supreme Court in *Ajit Savant Majaqavi v. State of Karnataka* (22), *Hassan Ahmad Mai Ishav v. State of Gujrat* (23), and *Ram Chander v. State of Haryana* (24), may be referred to.

82. Although in an appeal from an order of acquittal the powers of the High Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against an order of conviction, yet as a rule of prudence, it should always give proper weight and consideration to such matters as (i) the views of the trial Judge as to the credibility of the witnesses; (ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (iii) the right of the accused to the benefit of any doubt; and (iv) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. Where two reasonable conclusions can be drawn on the evidence on record the High Court should as a matter of judicial caution, refrain from interfering with the order of

acquittal recorded by the court below. In other words, if the main grounds on which the court below has based its order acquitting the accused, are reasonable and plausible and cannot be entirely and effectively dislodged or demolished, the High Court should not disturb the acquittal. In this respect, the decision of the Hon'ble Supreme Court in *Ganesh Bhavan Patel v. State of Maharashtra* (25), may be referred to.

83. It is well settled that in appeal against acquittal the High Court is entitled to reappreciate the evidence if it is found that the view taken by acquitting court was not a possible view or that it was a perverse or infirm or palpably erroneous view. For that the decision of the Hon'ble Supreme Court in *Harichand v. State of Delhi* (26), may be referred to.

84. Thus, the principles governing and regulating the hearing of appeal by the High Court against an order of acquittal passed by the trial court, as set out in innumerable cases, may be summarised in the following manner:-

(1) That in an appeal against an order of acquittal, the High Court possesses all the powers and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

(2) That the High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by trial Court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) That before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds not subscribing to the view expressed by the trial Court that the accused is entitled to acquittal.

(4) That in reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial Court.

(5) That if the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) That the High Court has also to keep in mind that the trial Court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court, especially in the witness box.

(7) That the High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.

(85). Keeping in mind the above principles, if the findings of facts recorded by the learned Addl. Sessions Judge (Fast Track) acquitting the accused respondents Ram Pratap, Ramjus, Hariram, Mangilal and Bhagwana Ram, which have been mentioned above at para 76 of this judgment, are examined, it does not appear that they are perverse or based on no material or evidence. It cannot be said that the approach of the learned Addl. Sessions Judge (Fast Track) in acquitting the accused respondents was manifestly erroneous and the conclusions were wholly perverse. The main grounds, on the basis of which, the learned Addl. Sessions Judge (Fast Track) has passed the order of acquittal of above five accused respondents, appear to be reason able and plausible, if they are examined in broad perspective looking to the evidence available on record including the defence version. Hence, the findings of acquittal recorded by the learned Addl. Sessions Judge (Fast Track) do not require any interference by this Court.

86. Apart from this, if two reasonable conclusions can be drawn on the evidence on record the High Court should refrain from interfering with the order of acquittal recorded by the court below. From this point of view also, no interference is called for with the findings of acquittal recorded by the learned Addl. Sessions Judge (Fast Track).

87. For the reasons stated above, no interference is called for with the findings of acquittal recorded by the learned Addl. Sessions Judge (Fast Track) and this State

appeal is liable to be dismissed.

Accordingly, in the result, both the above mentioned appeals one filed by the four accused appellants, namely, Ramnarayan, Banwari, Mohanlal and Bastiram against their conviction and the other filed by the State of Rajasthan against the order of acquittal of five accused persons, namely, Ram Pratap, Ramjus, Hariram, Mangilal and Bhagwana Ram are dismissed, after confirming the impugned judgment and order dated 7.9.2001 passed by the learned Addl. Sessions Judge (Fast Track), Bikaner.

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