THE HIGH COURT OF MADHYA PRADESH

Cr.A. No. 397 of 2005 Nathu Singh Vs. State of M.P.
Cr.A. No. 401 of 2005 Ghanshyam Singh Vs. State of M.P.
Cr.A. 425 of 2005 Ramvir Singh Vs. State of M.P.

HIGH COURT OF MADHYA PRADESH

BENCH GWALIOR

DB : G.S. Ahluwalia & Rajeev Shrivastava J.J.

Cr.A. No. 397 of 2005 Nathu Singh Vs. State of M.P.
Cr.A. No. 401 of 2005 Ghanshyam Singh Vs. State of M.P.
Cr.A. 425 of 2005 Ramvir Singh Vs. State of M.P.

Shri V.K. Saxena, Senior Advocate (through Video Conferencing) with Shri Ayush Saxena, Advocate for Appellants Nathu Singh and Ramvir Singh (Cr.A.s No. 397/2005 and 425/2005)
Shri Atul Gupta, Counsel for appellant Ghanshyam Singh (Cr.A. No. 401/2005)
Shri B.P.S. Chouhan, Public Prosecutor for State
Shri R.K. Sharma, Senior Advocate (through video conferencing) with Shri M.K. Choudhary, Advocate for the complainant.

Date of conclusion of hearing : 9-4-2021

Date of Judgment : 30.04.2021

Whether approved for reporting : Yes/No

Judgment

(Passed on 30/04/2021)

Per G.S. Ahluwalia J.

1. Cr.A. No. 584/2008 (State of M.P. Vs. Ramant Singh) has been filed by the State of M.P., against the acquittal of Ramant Singh in cross S.T. No. 229/2003. Similarly, State of M.P. has filed Cr.A. No. 790/2005 against the acquittal of 7 co-accused persons, in the present case. In the light of the judgment passed by the Supreme Court in the case of **Nathilal & Ors. Vs. State of U.P. & Anr.** reported in **1990**

Supp SCC 145 the present appeal as well as Cr.A. No. 790/2005 and Criminal Appeal No. 584/2008 arising out of cross case were heard simultaneously, and accordingly, judgments in all the cases are being pronounced on the same day.

2. By this common Judgment, Criminal Appeals filed by Nathu Singh (Cr.A. No. 397/2005), Ghanshyam Singh (Cr.A. No. 401/2005) and Ramvir Singh (Cr.A. No. 425/2005) shall be decided.

3. All the three Criminal Appeals have been filed under Section 374 of Cr.P.C., against the judgment and sentence dated 20-5-2005 passed by 2nd Additional Sessions Judge, Morena in Sessions Trial No. 37/2001, by which appellant Ramvir Singh has been convicted under Section 302 of I.P.C. (two counts), under Section 302/34 of I.P.C. (two counts) and under Sections 307/34 of I.P.C. (two Counts), whereas appellants Nathu Singh and Ghanshyam Singh have been convicted under Section 302/34 of I.P.C. (four counts) and 307/34 of I.P.C(two counts). Nathu Singh and Ghanshyam have been sentenced to undergo Life Imprisonment and a fine of Rs. 1000/- for offence under Section 302/34 of I.P.C. (four counts) and rigorous imprisonment of 7 years and fine of Rs. 500/- for offence under Section 307/34 of I.P.C. (two count). Similarly Ramvir Singh has been sentenced to undergo Life Imprisonment and a fine of Rs. 1000/- for offence under Section 302 of I.P.C. (two counts), & for 302/34 of I.P.C. (two counts), and

rigorous imprisonment of 7 years and fine of Rs. 500/- for offence under Section 307/34 of I.P.C. (two counts). All the sentences have been directed to run concurrently.

4. It is not out of place to mention here that on the report lodged by one Angad Singh, Crime No. 203/2000 was registered by Police Station Porsa, Distt. Morena, against unknown persons, for committing murder of Brajesh. The complainant party of the present case was tried for the said offence. By a separate judgment passed by the Trial Court, Ramant Singh (P.W.1) was extended the benefit of right of private defence and other 9 accused persons were acquitted. Accordingly, all the accused persons in S.T. No. 229/2003 (Arising out of Crime No. 203/2000, registered at Police Station Porsa, Distt. Morena) were acquitted. The State had challenged the acquittal of all the 10 persons in the cross case by filing M.Cr.C. No. 3966/2005 and by order dated 30-7-2008, this Court granted leave to file appeal against acquittal of Ramant Singh (P.W.1) only and the application for grant of leave to appeal against acquittal of other 9 co-accused persons was dismissed.

5. In the present case, total 10 persons were tried for committing murder of Keshav, Jaswant, Raghunath @ Chhote Singh, Mamta and for making an attempt to murder Smt. Gomati (P.W. 13) and Manohar Singh (P.W.16). Three persons, namely Nathu Singh (Cr.A. No.

397/2005), Ghanshyam Singh (Cr.A. No. 401/2005) and Ramvir Singh (Cr.A. No. 425/2005) have been convicted, whereas Mahendra @ Kallu Singh, Kaushlendra, Sindhi Singh, Dinesh Singh Tomar, Kallu @ Kalyan Singh, Mahesh Singh Tomar, Rajesh Singh Sikarwar have been acquitted.

6. It is the case of the prosecution that after F.I.R. in crime no. 203/2000 was lodged, the police party went to village Khoyala. During the investigation of the said case, the police party came to know that more persons have been killed in the village. Accordingly on 16-10-2000, at about 23:00, Dehati Nalishi, Ex. P.1 was lodged by Ramant Singh (P.W.1) on the allegations, that a function was going on in his house on the occasion of birth of his son. He was serving food. The sitting room *(Baithak)*of Ramvir Singh Tomar, is situated by the side of his house. Kaushlendra Singh, Bhanupratap Singh Tomar, Kallu Singh, Mahendra Singh Tomar, started bursting crackers towards the house of the complainant. It was objected by Manohar Singh. Thereafter, these persons, started pelting stones on the house. Nathu Singh, came there with .12 bore gun, whereas Ghanshyam Singh came there with .12 bore gun. Ramvir Singh also came there with his mouser gun. They started firing towards the house of the complainant. Ramvir Singh shot Jaswant and Keshav, whereas Ghanshyam Singh [Note : The name of Ramvir Singh has been substituted by mentioning

Ghanshyam Singh] shot Chhote Singh, as a result they expired on the spot. Nathu Singh caused gun shot injury to Manohar Singh, whereas Ghanshyam caused injury to Mamta, wife of Naresh Singh. Ladies were having their meals inside the house. The above mentioned persons, entered inside the house and started beating as well as also fired, as a result Gomati bai has also sustained injuries. The dead bodies of Keshav Singh, Jaswant Singh, Raghunath are lying in front of the door of his house and Gomati, Manohar Singh and Mamta are injured. Nathu Singh (another person), Sudesh Singh, Virendra Singh, Sultan Singh, Vinod Kumar came on the spot, and thereafter, the assailants ran away. While fleeing away, they also extended a threat that they would kill more persons. As he was scared, therefore, immediately did not go to the police station to lodge the report. For the last 2 years, they are not on visiting terms and on that issue they are on inimical terms.

7. Thereafter, the F.I.R., Ex. P.10 was lodged. The police sent the injured persons, namely Mamta, Gomati and Manohar Singh for medical treatment. On 17-10-2000, Smt. Mamta lost her life during her treatment. The postmortem of the dead bodies was conducted. The blood stained and plain earth was seized. Live, empty cartridges and misfired cartridges of .12 and .315 bore were seized from the spot. The accused persons were arrested. Fire arms were seized. Site plans

were prepared. The M.L.C. reports of the injured persons were obtained. The report from F.S.L. Sagar was obtained. The report from armorer was also obtained and after concluding investigation, the police filed charge sheet against Ghanshyam Singh, Nathu Singh, Kallu @ Kalyan Singh, Mahendra @ Kallu, Sindhi Singh, Rajesh Sikarwar, Dinesh Tomar, for offence under Sections 302,307,147,148,149,45 of I.P.C. and under Section 25/27 of Arms Act. **Bhanu Pratap Singh was a Juvenile.** Since, Ramvir, Kaushlendra and Mahesh were absconding, therefore, investigation against them was kept pending under Section 178(3) of Cr.P.C. The case was committed on 1-2-2001 against Ghanshyam Singh, Mahendra Singh @ Kallu, Rajesh Singh, Sindhi Singh, Kallu Singh @ Kalyan, Dinesh Singh and Nathu Singh. Lateron, Kaushlendra Singh was also arrested and accordingly, on 7-5-2001, supplementary charge sheet was filed against Kaushlendra Singh and the case was committed. Lateron, Ramvir Singh, and Mahesh Singh were also arrested and supplementary charge sheets were filed. The case against Mahesh Singh and Ramvir Singh was committed on 4-12-2001.

8. It is not out of place to mention here that it appears from the record of the Court of J.M.F.C., Ambah, Distt. Morena, that initially, Dinesh, Ghanshyam, Nathu Singh, Mahesh Singh, Kaushlendra Singh, and Ramvir were absconding, accordingly, proclamation under Section

82 of Cr.P.C. was issued against Ramvir Singh Tomar, Mahesh Singh, Kaushlendra Singh, Nathu Singh, and Ghanshyam Singh. On 26-2-2001, an application under Section 83 of Cr.P.C. was also filed for attachment of the property of Ramvir Singh.

9. Be that as it may.

10. The Trial Court by order dated 27-6-2001, framed charges against Mahendra @ Kallu Singh, for offence under Sections 148, 324 (for assaulting Ramant Singh by lathi), 302/149 (for causing murder of Mamta by Ghanshyam), 302/149 (for causing murder of Keshav by Ramvir), 302/149 (for committing murder of Jaswant by Ramvir), 302/149 (for committing murder of Chhotelal @ Raghunath by Ghanshyam), 307/149 (for making an attempt to commit murder of Manohar Singh by Nathu Singh), 307/149 (for making an attempt to commit murder of Manohar Singh by Kaushlendra Singh), 307/149 (for making an attempt to commit murder of Gomati by Nathu Singh).

11. By order dated 27-6-2001, the Trial Court framed charges against Rajesh Singh, Sindhi Singh, Dinesh Singh, Kallu @ Kalyan Singh, for offence under Sections 148, 324/149 (for assaulting Ramant Singh by lathi by Mahendra @ Kallu Singh), 302/149 (for causing murder of Mamta by Ghanshyam), 302/149 (for causing murder of Keshav by Ramvir), 302/149 (for committing murder of Jaswant by Ramvir), 302/149 (for committing murder of Chhotelal @ Raghunath

by Ghanshyam), 307/149 (for making an attempt to commit murder of Manohar Singh by Nathu Singh), 307/149 (for making an attempt to commit murder of Manohar Singh by Kaushlendra Singh), 307/149 (for making an attempt to commit murder of Gomati by Nathu Singh). Similar charges were framed against Mahesh Singh on 3-1-2002.

12. By order dated 27-6-2001, charges were framed against Kaushlendra Singh for offence under Sections 148 of I.P.C., 324 of I.P.C.(for assaulting Ramant Singh by lathi by Mahendra @ Kallu Singh), 302/149 of I.P.C.(for causing murder of Mamta by Ghanshyam), 302/149 of I.P.C. (for causing murder of Keshav by Ramvir), 302/149 of I.P.C.(for committing murder of Jaswant by Ramvir), 302/149 of I.P.C.(for committing murder of Chhotelal @ Raghunath by Ghanshyam), 307/149 of I.P.C.(for making an attempt to commit murder of Manohar Singh by Nathu Singh), 307 of I.P.C. (for making an attempt to commit murder of Manohar Singh , 307/149 of I.P.C. (for making an attempt to commit murder of Gomati by Nathu Singh).

13. By order dated 27-6-2001, charges were framed against Nathu Singh for offence under Sections 148 of I.P.C., 324/149 of I.P.C.(for assaulting Ramant Singh by lathi by Mahendra @ Kallu Singh), 302/149 of I.P.C.(for causing murder of Mamta by Ghanshyam), 302/149 of I.P.C. (for causing murder of Keshav by Ramvir), 302/149

of I.P.C.(for committing murder of Jaswant by Ramvir), 302/149 of I.P.C.(for committing murder of Chhotelal @ Raghunath by Ghanshyam), 307 of I.P.C. (for making an attempt to commit murder of Manohar Singh), 307/149 of I.P.C. (for making an attempt to murder Manohar Singh by Kaushlendra Singh), 307 of I.P.C. (for making an attempt to commit murder of Gomati).

14. By order dated 27-6-2001, charges were framed against Ghanshyam Singh for offence under Sections 148 of I.P.C., 324/149 of I.P.C.(for assaulting Ramant Singh by lathi by Mahendra @ Kallu Singh), 302 of I.P.C.(for causing murder of Mamta), 302/149 of I.P.C. (for causing murder of Keshav by Ramvir), 302/149 of I.P.C.(for committing murder of Jaswant by Ramvir), 302 of I.P.C.(for committing murder of Chhotelal @ Raghunath), 307/149 of I.P.C. (for making an attempt to commit murder of Manohar Singh by Nathu Singh), 307/149 of I.P.C. (for making an attempt to murder Manohar Singh by Kaushlendra Singh), 307/149 of I.P.C. (for making an attempt to commit murder of Gomati by Nathu Singh).

15. By order dated 24-7-2002, charges were framed against Ramvir Singh for offence under Sections 148 of I.P.C., 324/149 of I.P.C.(for assaulting Ramant Singh by lathi by Mahendra @ Kallu Singh), 302/149 of I.P.C. (for causing murder of Mamta by Ghanshyam), 302 of I.P.C. (for causing murder of Keshav), 302 of I.P.C.(for committing

murder of Jaswant), 302/149 of I.P.C.(for committing murder of Chhotelal @ Raghunath by Ghanshyam), 307/149 of I.P.C. (for making an attempt to commit murder of Manohar Singh by Nathu Singh), 307/149 of I.P.C. (for making an attempt to murder Manohar Singh by Kaushlendra Singh), 307/149 of I.P.C. (for making an attempt to commit murder of Gomati by Nathu Singh).

16. All the accused persons abjured their guilt.

17. The prosecution in support of its case, examined Ramant Singh (P.W.1), Rajveer Sharma (P.W.2), Surendra Singh (P.W.3), M.P. Shukla (P.W.4), Lalaram (P.W.5), Dr. Ravindra Singh Sikarwar (P.W.6), R. Kanhaiya Singh (P.W.7), Jitendra Singh Bhadauria (P.W.8), Dr. Meera Bandil (P.W.9), Mewaram (P.W.10), Dr. S.K. Sharma (P.W.11), Lakhan Singh (P.W.12), Gomati Bai (P.W.13), Dr. D.C. Parashar (P.W.14), Smt. Rajabeti (P.W.15), Manohar Singh Tomar (P.W.16), Kumher Singh (P.W. 17), Dinesh Sharma (P.W.18), D.R. Mishra (P.W.19) R.S. Ghuraiya (P.W. 20), and Vinod Kumar (P.W.21).

18. In defence, Ghanshyam Singh (D.W.1), Binda Singh Sengar (D.W.2), Parwat Singh Sengar (D.W.3), were examined by the accused persons.

19. The prosecution relied upon Dehati Nalishi, Ex. P.1/D.25, Crime Details Form, Ex. P.2, Safina Form, Ex. P.3, Safina Form, Ex. P.4, site plan, Ex. P.6, site plan, Ex. P.7, site plan, Ex. P.8, Seizure of Cloths,

Intestine, liver, Heart, Spleen, Kidney and Lungs of deceased Mamta, as well as bullet recovered from her body and other articles, Ex. P.9, F.I.R., Ex. P.10/D.26, Requisition for M.L.C. of Gomati, Ex. P.11,11A/D.8, Requisition for M.L.C. of Manohar Singh Ex. P.12,12A/D.9,D.10, Requisition for M.L.C. of Mamta, Ex. P.13/D.11, M.L.C. of Mamta, Ex. P.13A/D.12, Intimations under Section 174 of Cr.P.C., Ex. P.14,15,16, Seizure Memo, Ex. P.17, Sanction for prosecution, Ex. P.18, Report of Armorar, Ex. P.19, Intimation of death of Mamta, Ex. P.20, ……. P.21 Not in the paper book as well as in the original record, X-ray report, Ex. P.22, X-ray report, Ex. P.23, X-ray report Ex. P.25, Seizure Memo, Ex. P.26, Requisition for post mortem of Mamta, Ex. P.27, Post Mortem report of Mamta Ex. P.28, Seizure memo of 12 bore rifle, Ex. P.29, F.I.R., Ex. P.30, case diary statement of Sultan Singh,Ex. P.31, Requisition for Postmortem of Keshav Singh, Ex. P.32/D.1, Postmortem report of Keshav, Ex. P.33/D.2, Requisition of Postmortem of Raghunath Singh, Ex. P.34/D3, Postmortem report of Raghunath Singh, Ex. P.35/D.4, Requisition for Postmortem of Jaswant Singh, Ex. 36/D.5, Postmortem report of Jaswant Singh, Ex. P.37/D.6, Memo to F.S.L., Sagar, Ex. P.38, Report of F.S.L. Sagar, Ex. P.39, Seizure memo of Mouser Gun, Ex. P.40, Arrest Memo of Mahendra Singh Tomar, Ex. P.41, Arrest Memo of Rajesh Singh Sikarwar, Ex. P.42, Arrest Memo of Bhanupratap Singh

Tomar, Ex. P.43, Arrest Memo of Sindhi Singh Tomar, Ex. P.44, Memorandum under Section 27 of Evidence Act, Ex. P.45, Seizure Memo of Lathi, Ex. P.46, Arrest Memo of Kallu Singh Tomar, Ex. P.47, Arrest Memo of Ghanshyam Singh Tomar, Ex. P.48, Arrest Memo of Nathu Singh, Ex. P.49, Memorandum under Section 47 of Evidence Act, Ex. P.50, Memo to F.S.L. Sagar, Ex. P.51, Report of F.S.L. Sagar, Ex. P.52, Report of F.S.L. Sagar, Ex. P.53.

20. The defence relied upon case diary statement of Ramant Singh, Ex. D.1, F.I.R., Ex. D.2, case diary statement of Gomati bai, Ex. D.3, case diary statement of Rajabeti, Ex. D.4, case diary statement of Manohar Singh, Ex. D.5, Certified copy of charge sheet, Ex. D.6, List of evidence, Ex. D.7, certified copy of Kaushlendra Singh, Ex. D.8, certified copy of statement of Rajesh Singh Sikarwar, Ex. D.9, certified copy of statement of Brajesh Singh Tomar, Ex. D.10, certified copy of order sheet, Ex. D.11, certified copy of order sheet Ex. D.12, ceritified copy of judgment dated 16-11-2002, Ex. D.13, certified copy of F.I.R., Ex. D.14, certified copy of Police charge sheet Ex. D.15, site plan, Ex.D.16, case diary statement of Kumher Singh, Ex. D.17, Dying Declaration, Ex. D.18, certified copy of requisition for postmortem of Brajesh, certified copy of postmortem report of Brajesh, certified copy of site plan, Ex. D.21, Copy of Rojnamcha Ex. D.22 and D.23, Certified copy of Judgment dated 30-11-1991, Ex. D.24, Certified

copy of Judgment dated 30-11-1991, Ex. D.25, Copy of Rojnamcha Ex. D.26, Certified copy of Habeas Corpus No. 2/2001, Certified copy of order dated 8-1-2001, Ex. D. 28, Certified copy of order sheet, Ex. D.29, and Certified copy of order sheet Ex. D.30.

21. The Trial Court, by impugned judgment and sentence dated 20-5-2005 acquitted Mahendra @ Kallu Singh, Kaushlendra Singh, Sindhi Singh, Dinesh Singh Tomar, Kallu @ Kalyan Singh,Mahesh Singh Tomar and Rajesh Singh Sikarwar. However, convicted and sentenced Nathu Singh, Ghanshyam Singh and Ramvir Singh for the Offences mentioned in para 3 of this judgment.

22. Challenging the conviction and sentence awarded by the Trial Court, it is submitted by the Counsels for the appellants, that the Trial Court has ignored the material omissions, contradictions, and embellishments. It is submitted that the witnesses are “related” and “interested witnesses”. The appellants have been falsely implicated, as Brajesh was killed by the complainant party and in order to mount pressure, they have falsely deposed against the appellants. The appellants and the complainant party were on inimical terms and the prosecution of the appellants is the outcome of said enmity. In support of their contention, the Counsels for the appellants have relied upon Para 3 to 7, 46, 53, 54, 82, 94, 96, 103, 105, 141, 142, 148, 150 of evidence of Ramant Singh (P.W.1), Para 4, 16, 23, 72 of Gomtibai

(P.W.13), Para 2, 5, 9, 16, 17, 23, 28, 53 and 54 of Rajabeti (P.W. 15), Para 3, 20, 22, 23, 31, 32, 34, 43, 52, 53, 76, 81, 96 and 97 of Manohar Singh (P.W. 16), Paa 3,8,11,13,23,37 and 78 of Kumher Singh (P.W. 17).

23. Per contra, the Counsel for the State and the complainant have supported the findings recorded by the Trial Court.

24. Heard the learned Counsel for the parties.

25. The First question for consideration is that whether Keshav, Raghunath @ Chhote Singh, Jaswant and Mamta died a homicidal death or not?

26. Dr. D.C. Parashar (P.W. 14) and team of other Doctors had conducted Postmortem of Keshav. The Requisition for postmortem of Keshav is Ex. P.32. The postmortem was conducted by a team of Doctors. The following injuries were found on the dead body of Keshav :

> 1. Entry Wound : On left side of chest measuring 2 x 1.5 cm oval shaped inverted margins blackening present, situated 6 cm below and lateral to the left nipple direction downward towards right side.
> 2. Exit Wound : Situated on back mid line 25 cm below neck, measuring 3 cma x 2.5 cm margins Everted. Wound lacerated. Blood clot present.

On internal examination, 9th and 10th vertebra were found broken. Left lung was burnt. Heart was empty.

The cause of death was excessive hemorrhage as a result of

injuries to vital organs. The Postmortem report is Ex. P.33.

27. The requisition for postmortem of Raghunath @ Chhote Singh is Ex. P.34. The postmortem was done by a team of Doctors. The following injuries were found on the body of deceased Raghunath @ Chhote Singh :

1. Entry Wound : Right side of chest on anterial axillary line 4 cm x 2 ½ cm direction downward. Inverted margins blackening present. Situated 7 cm below lateral to the right nipple
2. Entry Wound : On right chest measuring 3.x 2.5 x 2.5 cm below the injury no.1. Inverted margins. Blackening present.

On internal examination, chest wall, right lung were found lacerated, both chambers of heart were empty. There was a fracture of 9th and 10th thoracic vertebra. Three pallets were found lodged inside measuring 1.5x1cm, 1.5x1 and 1x1cm. Pallets were removed and were sealed and handed over to the Police Constable. The cause of death was excessive hemorrhage as a result of injuries to vital organs. The Postmortem report is Ex. P.35.

28. The requisition for postmortem of Jaswant is Ex. P. 36. The postmortem was done by a team of Doctors. The following injuries were found of the body of deceased Jawant Singh :

1. Entry Wound : Left side of chest measuring 1.8x1.5 cm oval in shape. Inverted margins. Blackening present 5.5 cm medial to the left nipple. Direction downward laterally.
2. Exit Wound : Measuring 3cm x 2 cm on the left side back 2 cm below the lnferior border of left scapula.

On internal examination, left lung was teared. Heart was teared and empty. Left 7th rib was fractured. The cause of death was excessive hemorrhage as a result of injuries to vital organs. The Postmortem report is Ex. P.37.

29. Dr. Meera Bandil (P.W.9) and Dr. S.K. Sharma (P.W. 11) had conducted Postmortem of Deceased Mamta. The requisition for postmortem is Ex. P. 27. This witness has stated that She along with Dr. S.K. Sharma had conducted the Postmortem. The postmortem report is in the handwriting of Dr. S.K. Sharma. This witness has proved her signatures on the Postmortem report of deceased Mamta, Ex. P.28.

30. Dr. S.K. Sharma (P.W. 11) had conducted the postmortem of deceased Mamta. As per the postmortem report, following injuries were found on the dead body of deceased Mamta :

1. One lacerated wound with charring ring around the 2.15 elliptical direction medially - posterior over right lumber abdominal part. Its track is going in abdomen puncturing internal loops, mesenteric aortic (Abd., Aorta and vein) punctured Left Illiac bone.
2. Exit wound : left upper outer hip, everted margins elliptical shape 2.5x3cm blood clot with slice of muscle and skin flap. .5x1 cm curved metallic material was seen in cavity which was sealed.
3. Three small 1/4x/14 cm charring injury spots seen over Right thigh, one over Right Trochanter and 2nd over upper thigh and third over thigh anterior and one small F.B. Metallic obtained and sealed.
4. Third charring injury was found on the front side of lower part of thigh and one 1/4x1/4 size small pellet was also recovered.

The cause of death was hemorrhage shock due to injuries due to gun shot (firearm). The Postmortem report is Ex. P.28.

31. Dr. D.C. Parashar (P.W.14) has also proved the postmortem report, Ex. D.20, of deceased Brajesh, in respect of which cross case i.e., Crime No. 203/2000 (S.T. No. 229/2003), was registered against Ramant Singh (P.W.1), Vinod, Girraj, Suresh Singh, Manohar Singh, Virendra Singh, Sultan Singh, Nathu Singh son of Madho Singh, Jaikaran Singh and Ran Singh. The following injuries were found on the dead body of Brajesh :

> The entry wound was on right side over sternum of chest at last border, 6 cms below the supra sternal notch, measuring 1.5x1.5cm oval shaped inverted margins, and blackening was present. The Exit wound was situated on left side of back of lower border of scapula measuring 3cmx2cm irregular margins everted edges. The certified copy of requisition for postmortem of Brajesh is Ex. D.19 and certified copy of Postmortem report of Deceased Brajesh is Ex. D.20.

32. Dr. Mamta Bandil (P.W.9) was not cross examined on the ground that Dr. S. K. Sharma (P.W.11) has also been cited as prosecution witness, and since, the postmortem report is in his handwriting, therefore, he will be cross examined by the Counsel for the accused. Dr. D.C. Parashar (P.W.14) was cross examined by the Counsel for the accused persons.

33. Dr. S.K. Sharma (P.W.11) was cross examined by the Counsel for the appellants. In cross-examination, it was clarified by this witness

that gun shot was fired from a parallel place and not from the roof.

34. The deaths of Keshav, Raghunath @ Chhote Singh, Jaswant and Mamta were homicidal in nature has not been challenged by the Counsel for the appellants. Therefore, it is not necessary to consider the evidence of Dr. D. C. Parashar (P.W.14) and Dr. S.K. Sharma (P.W.11) in detail.

35. From the postmortem reports of Keshav, Raghunath @ Chhote Singh, Jaswant and Mamta, Ex. P.33, P.35, P.37 and P.28 respectively, it is clear that all the four persons died due to gun shot injuries sustained by them and accordingly, it is held that all the four persons namely Keshav, Raghunath @ Chhote Singh, Jaswant and Mamta died homicidal death.

36. Now the next question for consideration is that whether Gomati and Manohar sustained any gun shot injury or not?

37. It is not out of place to mention here that Mamta died during her treatment in the hospital. Initially Mamta was also medically examined along with Manohar Singh (P.W. 16) and Gomati (P.W.13). Dr. D.C. Parashar (P.W.14) had examined all the injured persons. The requisition for M.L.C. of Gomati bai (P.W.13) is Ex. P.11. Gomati bai (P.W.13) was examined on 17-10-2000 at 12:35 A.M., in the night. Following injuries were found on her body :

> 1. Firearm wound of entrance with intermingle wound of exit on 2nd bone of right wrist. Margins are inverted and

everted. Blackening present
2. Lacerated wound on the mid of forearm of right side. Feeling of hardness on the internal side of writ of forearm. Hardness and Blackening present. X-ray was advised.

The M.L.C. report of Gomati bai (P.W.13) is Ex. P.11A.

38. The requisition for M.L.C. of Manohar Singh (P.W.16) is Ex. P.12. Manohar Singh (P.W.16) was medically examined on 17-10-2000 at 12:50 A.M., in the night and following injuries were found :

1 Multiple lacerated wounds present about 7 in number of various size. Inverted and everted margins present at the site all over the hip on lower part of back.
2. Lacerated wound in between the buttocks inverted and everted margins present. Blackening present. The M.L.C. report of Manohar Singh is Ex. P.12A.

39. The requisition for M.L.C. of Mamta (Died on 17-10-2000 itself) is Ex. P.13. She was medically examined on 17-10-2000 at 12:40 A.M. in the night and following injuries were found on her body :

1. Firearm gun shot injury wound of entrance on the right side of abdomen near (Not “legible” but as per evidence “Navel”) inverted margins oval shape. Slightly blackening present, blood cot with bleeding 1 cm x 1.5 in the abdomen surface. F.B. In abdomen.
2. Lacerated wound over the left buttock. Irregular margins, blood cot present 1 ½ cm x ¼ x ¼ x ¼ with diffuse swelling near wound. The M.L.C. report is Ex. P.13A.

40. Dr. Ravindra Singh Sikarwar (P.W.6) had conducted x-ray of Gomati bai (P.W.13), Manohar Singh (P.W. 16). The X-ray plate of Gomati bai (P.W.13) has been marked as Ex. P.21 (However, as per office noting, X-ray plate of Gomatibai (P.W.13) is missing in the

official file). In X-ray report of Gomatibai (P.W.13), fracture of distal 1/3rd of right ulna bone was seen. Multiple Metallic radio-opaque irregular size were present in the soft tissues under the muscles and laceration of blood vessels of Soft tissues was seen. The X-ray report of Gomatibai (P.W.13) is Ex. P.22.

41. The x-ray plate of Manohar Singh (P.W.16) is Ex. P.23 and P.24. In x-ray report, it was found that multiple radio-opaque foreign bodyshadows of metallic density of different sizes, shapes were present in both sides of lower abdomen. Right half of (not clear) in the lower abdomen F.B. Shadows are present. No bony injury was seen. The x-ray report of Manohar Singh is Ex. P.25.

42. As the Counsel for the appellants have not challenged the M.L.C. reports of Gomati bai (P.W.13) as well as Manohar Singh (P.W. 16), therefore, it is suffice to say, that Gomati bai (P.W.13) and Manohar Singh (P.W.16) sustained gun shot injuries and radio-opaque foreign bodies were also seen in x-ray.

43. Thus, it is held that Keshav, Raghunath @ Chhote Singh, Jaswant and Mamta died homicidal death, whereas Gomati bai (P.W.13) and Manohar Singh (P.W. 16) sustained gun shot injuries.

44. Now the next question for consideration is that who killed four persons and who caused injuries to the injured persons.

45. The prosecution case is based on direct evidence. The

prosecution has examined Ramant Singh (P.W.1), Gomati bai (P.W.13), Rajabeti (P.W. 15), Manohar Singh (P.W. 16) and Kumher Singh (P.W.17) as eye witnesses.

46. Ramant Singh (P.W.1) had lodged Dehati Nalishi, Ex. P.1, whereas Gomati bai (P.W.13) and Manohar Singh (P.W.16) are injured witnesses.

47. Since, four persons have died and two have sustained injuries and three persons have been convicted, therefore, the role assigned to each of the appellant shall be considered after deciding as to whether Ramant Singh (P.W.1), Gomati bai (P.W.13), Rajabeti (P.W. 15), Manohar Singh (P.W. 16) and Kumher Singh (P.W.17) are reliable witnesses or not?

48. Ramant Singh (P.W.1) is the son of deceased Keshav Singh and real brother of deceased Jaswant Singh. He is cousin brother of deceased Raghunath Singh @ Chhote Singh. Gomati bai (P.W.13) is not related to deceased Keshav but is the resident of same village. Thus, She is an independent witness. Rajabeti (P.W. 15) is the widow of Keshav and mother of deceased Jaswant and Ramant Singh (P.W.1). Deceased Raghnuath Singh was her nephew. Manohar Singh (P.W. 16) is the resident of village Khoyala and thus he is an independent witness. Further, Kumher Singh (P.W. 17) is the father-in-law of the deceased Mamta, but is not related to Ramant Singh (P.W.1).

49. Thus, the first question for consideration is that whether Ramant Singh (P.W.1), Rajabeti (P.W. 15), and Kumher Singh (P.W.17) are "interested witnesses" or not?

50. It is well established principle of law that the evidence of a "related witness" cannot be discarded only on the ground of relationship. The Supreme Court in the case of **Rupinder Singh Sandhu v. State of Punjab,** reported in **(2018) 16 SCC 475** has held as under :

> 50. The fact that PWs 3 and 4 are related to the deceased Gurnam Singh is not in dispute. The existence of such relationship by itself does not render the evidence of PWs 3 and 4 untrustworthy. This Court has repeatedly held so and also held that the related witnesses are less likely to implicate innocent persons exonerating the real culprits.

The Supreme Court in the case of **Shamim Vs. State (NCT of Delhi)** reported in **(2018) 10 SCC 509** has held as under :

> **9.** In a criminal trial, normally the evidence of the wife, husband, son or daughter of the deceased, is given great weightage on the principle that there is no reason for them not to speak the truth and shield the real culprit.....

The Supreme Court in the case of **Rizan v. State of Chhattisgarh,** reported in **(2003) 2 SCC 661** has held as under :

> **6.** We shall first deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse

evidence to find out whether it is cogent and credible.

7. In *Dalip Singh* v. *State of Punjab* it has been laid down as under: (AIR p. 366, para 26)

> "*26*. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

8. The above decision has since been followed in *Guli Chand* v. *State of Rajasthan* in which *Vadivelu Thevar* v. *State of Madras* was also relied upon.

9. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh case* in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed: (AIR p. 366, para 25)

> "*25*. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one

> which another Bench of this Court endeavoured to dispel in — '*Rameshwar* v. *State of Rajasthan*' (AIR at p. 59). We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel."
>
> **10.** Again in *Masalti* v. *State of U.P.* this Court observed: (AIR pp. 209-10, para 14)
>
> "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. … The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."
>
> **11.** To the same effect is the decision in *State of Punjab* v. *Jagir Singh* and *Lehna* v. *State of Haryana*.

51. Thus, it is clear that the evidence of a "related witness" cannot be discarded only on the ground of relationship. On the contrary, why a "related witness" would spare the real culprit in order to falsely implicate some innocent person? There is a difference between "related witness" and "interested witness". "Interested witness" is a witness who is vitally interested in conviction of a person due to previous enmity. The "Interested witness" has been defined by the Supreme Court in the case of **Mohd. Rojali Ali v. State of Assam,** reported in **(2019) 19 SCC 567** as under :

> **13.** As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an "interested" witness merely by virtue of being a relative of the victim. This Court

has elucidated the difference between "interested" and "related" witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see *State of Rajasthan* v. *Kalki*; *Amit* v. *State of U.P.*; and *Gangabhavani* v. *Rayapati Venkat Reddy*). Recently, this difference was reiterated in *Ganapathi* v. *State of T.N.*, in the following terms, by referring to the three-Judge Bench decision in *State of Rajasthan* v. *Kalki*: (*Ganapathi case*, SCC p. 555, para 14)

> "*14*. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested"."

14. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in *Dalip Singh* v. *State of Punjab*, wherein this Court observed: (AIR p. 366, para 26)

> "*26*. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person."

15. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in *Jayabalan* v. *State (UT of Pondicherry)*: (SCC p. 213, para 23)

> "*23*. We are of the considered view that in cases where

> the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

52. Thus, if a witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and has a strong motive to falsely implicate the accused, then he would be called an "interested witness". Therefore, the evidence of Ramant Singh (P.W.1), Rajabeti (P.W.15) and Kumer Singh (P.W.17) (as he is father-in-law of deceased Mamta) shall be considered in the light of the fact that being "related witness" whether they can be termed as "interested witness" having any strong motive to falsely implicate the appellants or not?

53. Dehati Nalishi, Ex. P.1 was lodged by Ramant Singh (P.W.1) at 11:00 P.M. on 16-10-2000. Dehati Nalishi, Ex. P.1 was recorded by D.R. Sharma (P.W.19). D.R. Sharma (P.W. 19) has stated that he was posted as S.H.O., Police Station Porsa, Distt. Morena, as the post of Town Inspector was vacant. On 16-10-2000, Angad Singh lodged a F.I.R.,Ex. D.2, regarding murder of Brajesh, and accordingly, he went to village Khoyala. After preparing inquest report, when he went to

the sitting room (*Baithak)* of Ramvir (a room situated away from the house of Ramvir Singh), then he found that the dead bodies of Keshav, Jaswant and Raghunath who were father, brother and relative of Ramant Singh were lying near the house of Ramant Singh (P.W.1). Mamta, Gomti and Manohar were found in an injured condition. All of them had sustained gun shot injuries. On 16-10-2000 itself at 11:00 P.M., he recorded the Dehati Nalishi, Ex. P.1 which was lodged by Ramant Singh (P.W.1). All the three injured persons were sent for medical examination. Police force was deployed for safety of dead bodies. Thereafter, R.S. Ghuraiya (P.W. 20) also came there along with police force and informed this witness, that the Superintendent of Police, Morena has instructed him to take over the investigation. Thereafter, the case diary of Crime No. 203/2000 (Cross case) and Crime No. 204/2000 (present case) was handed over to him. It was further admitted that on 17-10-2000, he was present along with Shri Ghuraiya to assist him in investigation. On 17-10-2000, requisition for postmortem of Keshav Singh, Ex. P.32, Raghunath Singh, Ex. P.34 and Jaswant Singh, Ex. P.36 were prepared.

54. Thus, it is clear that when this witness reached village Khoyala, he found that dead bodies of three persons, namely Keshav, Jaswant and Raghunath were lying near the house of Ramant Singh (P.W.1) and Ramant Singh (P.W.1) was present and he lodged the Dehati Nalishi,

Ex. P.1. Thus, it is clear that Ramant Singh (P.W.1) did not abscond after the incident. In cross examination, this witness denied that earlier one Ramlakhan was also detained but thereafter, he was released by Ghuraiya (P.W. 20). He further stated that he had found the dead body of Brajesh outside the house (different from sitting room *[Baithak])*of Ramvir. On cross-examination by Court, this witness stated that the house of Ramvir Singh is situated near field, garden, School and pond. He further clarified that in Crime No. 203/2000, he issued S*afina form* at 21:55 and prepared inquest report, Ex. D.21 at 22:00 and he took only 15-20 minutes to do so. Requisition for postmortem of Brajesh Ex. P.19 was prepared. He further stated that the dead body of Brajesh was sent along with Constable Kaushal Pratap. He denied that this witness also went back to Police Station Porsa, along with the dead body of Brajesh. The sitting room (*Baithak*) of Ramvir is about 60-70 yards away from the place where the dead body of Brajesh was kept. At the time of preparation of inquest report, he was not aware of the fact that some more persons have been killed. In further cross examination, this witness in para 20 has stated that the dead body of Brajesh was sent to Police Station Porsa at 22:15 and thereafter, he called the father and brother of the deceased Brajesh, but they did not turn up and accordingly, he went to the sitting room (*Baithak*) of Ramvir. (Here it

is not out of place to mention here that as Brajesh had already lost his life, but still his father, brother and other relatives were not there, which indicates that they had already absconded indicating their guilty mind). On further cross examination, this witness clarified that when he interrogated the persons who were present, then all of them replied, that Ramvir will disclose the names of the assailants, but he has gone to Porsa. He further denied the suggestion that he was knowing that Ramvir was in Distt. Jalon. He further denied that F.I.R., Ex. D.2 was not lodged on the information of Angad Singh, but his signatures were obtained on blank papers. He further denied that Angad Singh had disclosed, that Ramant Singh (P.W.1) has killed Brajesh.

55. R. S. Ghuraiya (P.W. 20) has investigated the matter. According to this witness, the post of S.H.O., Police Station Porsa, Distt. Morena was vacant, therefore, by wireless message, the Superintendent of Police, Morena, instructed him to take over the investigation. At about 12:30 A.M., in the night, he reached village Khoyala and took over the investigation of Crime No. 203/2000 (cross case) and Crime No. 204/2000 (present case). This witness has further stated that three dead bodies were lying in front of the door of the house of Ramant Singh (P.W.1). The persons, who had allegedly killed three persons were not found in the village. On 17-10-2000, he issued notice, Ex. P.5 to the witnesses for preparation of inquest report. Requisition for

postmortem of Keshav Singh, Ex. P.4, of Raghunath Singh, Ex. P.3 were prepared. Inquest report, E. P.8 was prepared in the presence of Ramant Singh (P.W.1), Nathu Singh son of Madho Singh, Ashok Singh, Manoj Singh and Siyaram Upadhyaya. The inquest report of dead body of Keshav Singh, Ex. P.8 was prepared at 6:50 A.M., inquest report of dead body Jaswant Singh, Ex. P.7 was prepared at 7:00 A.M. and inquest report of dead body of Raghunath Singh Ex. P.6 was prepared at 7:10 A.M. The blood stained earth and plain earth was seized from the spot where dead bodies were lying. Three empty cartridges of .315 bore gun, three live cartridges of .315 bore (out of which two had misfired but were having fire marks, whereas one cartridge was live), one empty cartridge of .12 bore gun, 5 pieces of paper of fired .12 bore cartridge, one blood stained pant of Jaswant, one blood stained white coloured *safi* of Raghunath, one *Taihmad* and one black coloured sleeper from the roof of house of Keshav Singh were seized. The blood stained and plain earth found near the dead body of Keshav, Jaswant and Raghunath were also seized. Blood stained and plain earth from the place, where Mamta had suffered gun shot was also seized. The seizure proceedings were completed at 8:30 A.M. vide seizure memo Ex. P.40 in the presence of Ashok Singh Bhadoria and Nathu Singh. Thereafter, site plan, Ex. P.2 was prepared showing the houses of different persons as well as the places where

dead bodies of Keshav, Raghunath and Jaswant were found. At serial No. 15, he had found blood on the dilapidated house of Brijlal. Site plan D.16 was also prepared, in which he had also shown the places from where empty cartridges, misfired cartridges, as well as live cartridges were seized. The spot where the witnesses were standing was also shown. Ramant Singh (P.W. 1) also participated in other police proceedings on 17-10-2000, like preparation of Crime Detail Form, Ex. P.2, Inquest Reports, Ex. P.6,7, and 8, site plan Ex. D.16 etc. The Statement of Ramant Singh (P.W.1) was recorded on 17-10-2000 and on the same day, the statements of Kumher Singh, Vinod Singh, were recorded. On 18-10-2000, the statements of Rajakumari, Ranikumari, were recorded. On 19-10-2000, the statements of Rajabeti (P.W.15), Lakhan Singh were recorded. On 2-11-2000, the statements of Suresh, Sultan Singh, Ashok, Laxmi devi and Gomti bai (P.W. 13) were recorded.

56. Thus, it is clear that Ramant Singh (P.W.1) was not only present on the spot on 16-10-2000 at 11:00 P.M., but also lodged the Dehati Nalishi, Ex. P.1 and also participated in the police proceedings on 17-10-2000. Thus, the conduct of Ramant Singh (P.W.1) clearly indicates, that there was no intention on his part to abscond. Further, the presence of Ramant Singh (P.W.1) on the spot is also natural, because not only the incident took place in front of his house, but a function

was also going on in his house on the occasion of birth of his son. Further, the mental condition of a person, who all of sudden lost his father, brother, cousin brother and other persons in a shoot out during the celebration of his son, can be presumed.

57. So far as the reliability and credibility of Ramant Singh (P.W.1) is concerned, the Counsel for the appellants have attacked the evidence of this witness on the ground that this witness has admitted that there was no enmity between the appellants and the complainant party. Further, the allegation that Brajesh died due to gun shot fired by Ramvir Singh is missing in the Dehati Nalishi, Ex. D.1, therefore, it is an improved version, made with an intention to save himself in the cross case. Further, there are material contradictions and omissions. In para 46 of his evidence, this witness has stated, that no litigation, either civil or criminal has taken place between him and the appellants. It is further stated that they were on visiting terms, and this witness had no apprehension that the appellants may commit an offence. Further, in para 53 and 54, this witness has stated about serving of meals. It is submitted that in para 54, this witness has admitted that about 50-60 independent witnesses were there, but not a single independent witness has been examined. It is submitted that although Gomati (P.W. 13) and Manohar Singh (P.W. 16) are independent witnesses, but they are injured witnesses and not a single eye witness

who did not sustain any injury has been examined. It is contended by the Counsel for the State that since, in the Dehati Nalishi, Ex. P.1, this witness had disclosed enmity with the appellants, therefore it is clear that he is an "interested witness". Under these circumstances, non-examination of independent witnesses assume importance. An attempt was also made to substantiate the plea of false allegation, by submitting that although one Ramlakhan had fired, thereby killing four persons and injuring two, but due to animosity, the appellants have been falsely implicated.

58. Considered the submission made by the Counsel for the appellants.

59. It is well established principle of law that it is the quality of a witness which counts and not quantity of witnesses. The Supreme Court in the case of **Sarwan Singh v. State of Punjab,** reported in **(1976) 4 SCC 369** has held as under :

> 13..... The onus of proving the prosecution case rests entirely on the prosecution and it follows as a logical corollary that the prosecution has complete liberty to choose its witnesses if it is to prove its case. The court cannot compel the prosecution to examine one witness or the other as its witness. At the most, if a material witness is withheld, the court may draw an adverse inference against the prosecution. But it is not the law that the omission to examine any and every witness even on minor points would undoubtedly lead to rejection of the prosecution case or drawing of an adverse inference against the prosecution. The law is well-settled that the prosecution is bound to produce only such witnesses as are essential for unfolding of the prosecution narrative. In other words, before an

adverse inference against the prosecution can be drawn it must be proved to the satisfaction of the court that the witnesses who had been withheld were eyewitnesses who had actually seen the occurrence and were therefore material to prove the case. It is not necessary for the prosecution to multiply witnesses after witnesses on the same point; it is the quality rather than the quantity of the evidence that matters.....

The Supreme Court in the case of **Yanob Sheikh Vs. State of W.B.** Reported in **(2013) 6 SCC 428** has held as under :

20. We must notice at this stage that it is not always the quantity but the quality of the prosecution evidence that weighs with the court in determining the guilt of the accused or otherwise. The prosecution is under the responsibility of bringing its case beyond reasonable doubt and cannot escape that responsibility. In order to prove its case beyond reasonable doubt, the evidence produced by the prosecution has to be qualitative and may not be quantitative in nature. In *Namdeo* v. *State of Maharashtra*, the Court held as under: (SCC p. 161, para 28)

> "*28.* From the aforesaid discussion, it is clear that Indian legal system does not insist on plurality of witnesses. Neither the legislature (Section 134 of the Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on *value, weight* and *quality* of evidence rather than on *quantity, multiplicity* or *plurality* of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eyewitness, therefore, has no force and must be negatived."

(emphasis in original)

21. Similarly, in *Bipin Kumar Mondal* v. *State of W.B.*, this Court took the view: (SCC p. 99, para 31)

> "*31*. … In fact, it is not the number [and] quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy [and reliable]."

The Supreme Court in the case of **Mahesh v. State of Maharashtra,** reported in **(2008) 13 SCC 271** has held as under :

> **55.** As regards non-examination of the independent witnesses who probably witnessed the occurrence on the roadside, suffice it to say that testimony of PW Sanjay, an eyewitness, who received injuries in the occurrence, if found to be trustworthy of belief, cannot be discarded merely for non-examination of the independent witnesses. The High Court has held in its judgment and, in our view, rightly that the reasons given by the learned trial Judge for discarding and disbelieving the testimony of PWs 4, 5, 6 and 8 were wholly unreasonable, untenable and perverse. The occurrence of the incident, as noticed earlier, is not in serious dispute. PW Prakash Deshkar has also admitted that he had lodged complaint to the police about the incident on the basis of which FIR came to be registered and this witness has supported in his deposition the contents of the complaint to some extent. It is well settled that in such cases many a times, independent witnesses do not come forward to depose in favour of the prosecution. There are many reasons that persons sometimes are not inclined to become witnesses in the case for a variety of reasons. It is well settled that merely because the witnesses examined by the prosecution are relatives of the victim, that fact by itself will not be sufficient to discard and discredit the evidence of the relative witnesses, if otherwise they are found to be truthful witnesses and rule of caution is that the evidence of the relative witnesses has to be reliable evidence which has to be accepted after deep and thorough scrutiny.

The Supreme Court in the case of **Nagarjit Ahir v. State of Bihar,** reported in **(2005) 10 SCC 369** has held as under :

> **12.** It was then submitted that in spite of the fact that a

large number of persons had assembled at the bank of the river at the time of occurrence, the witnesses examined are only those who are members of the family of the deceased or in some manner connected with him. We cannot lose sight of the fact that four of such witnesses are injured witnesses and, therefore, in the absence of strong reasons, we cannot discard their testimony. The fact that they are related to the deceased is the reason why they were attacked by the appellants. Moreover, in such situations though many people may have seen the occurrence, it may not be possible for the prosecution to examine each one of them. In fact, there is evidence on record to suggest that when the occurrence took place, people started running helter-skelter. In such a situation it would be indeed difficult to find out the other persons who had witnessed the occurrence. In any event, we have the evidence of as many as 7 witnesses, 4 of them injured, whose evidence has been found to be reliable by the courts below, and we find no reason to take a different view.

The Supreme Court in the case of **Vijendra Singh Vs. State of U.P.** reported in **(2017) 11 SCC 129** has held as under :

35. The next plank of argument of Mr Giri is that since Nepal Singh who had been stated to have accompanied PW 2 and PW 3 has not been examined and similarly, Ram Kala and Bansa who had been stated to have arrived at the tubewell as per the testimony of PW 2, have not been examined, the prosecution's version has to be discarded, for it has deliberately not cited the independent material witnesses. It is noticeable from the decision of the trial court and the High Court, that reliance has been placed on the testimony of PWs 1 to 3 and their version has been accepted. They have treated PW 2 and PW 3 as natural witnesses who have testified that the accused persons were leaving the place after commission of the offence and they had seen them quite closely. The contention that they were interested witnesses and their implication is due to inimical disposition towards accused persons has not been accepted and we have concurred with the said finding. It has come out in evidence that witnesses and the accused persons belong to the same village. The submission of Mr Giri is that non-examination of Nepal Singh, Ramlal and Kalsa is

quite critical for the case of the prosecution and as put forth by him, their non-examination crucially affects the prosecution version and creates a sense of doubt. According to Mr Giri, Nepal Singh is a material witness. In this regard we may refer to the authority in *State of H.P.* v. *Gian Chand* wherein it has been held that: (SCC p. 81, para 14)

> "*14*. Non-examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses were available for being examined in the court and were yet withheld by the prosecution."
>
> The Court after so holding further ruled that it is the duty of the court to first assess the trustworthiness of the evidence available on record and if the court finds the evidence adduced worthy of being relied on and deserves acceptance, then non-examination of any other witnesses available who could also have been examined but were not examined, does not affect the case of the prosecution.

36. In *Takhaji Hiraji* v. *Thakore Kubersing Chamansing*, it has been held that: (SCC p. 155, para 19)

> "*19*. … if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand, if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. … If the witnesses

> already examined are reliable and the testimony coming from their mouth is unimpeachable, the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses."
>
> **37.** In *Dahari* v. *State of U.P.*, while discussing about the non-examination of material witness, the Court expressed the view that when he was not the only competent witness who would have been fully capable of explaining the factual situation correctly and the prosecution case stood fully corroborated by the medical evidence and the testimony of other reliable witnesses, no adverse inference could be drawn against the prosecution. Similar view has been expressed in *Manjit Singh* v. *State of Punjab* and *Joginder Singh* v. *State of Haryana*.

The Supreme Court in the case of **Sadhu Saran Singh v. State of U.P.,** reported in **(2016) 4 SCC 357** has held as under :

> **29.** As far as the non-examination of any other independent witness is concerned, there is no doubt that the prosecution has not been able to produce any independent witness. But, the prosecution case cannot be doubted on this ground alone. In these days, civilised people are generally insensitive to come forward to give any statement in respect of any criminal offence. Unless it is inevitable, people normally keep away from the court as they find it distressing and stressful. Though this kind of human behaviour is indeed unfortunate, but it is a normal phenomena. We cannot ignore this handicap of the investigating agency in discharging their duty. We cannot derail the entire case on the mere ground of absence of independent witness as long as the evidence of the eyewitness, though interested, is trustworthy.

60. Enmity is a double edged weapon. If the appellants claim that there was an enmity between them and the complainant party, then such enmity may also provide motive to commit offence. The Supreme Court in the case of **Kunwarpal v. State of Uttarakhand,**

reported in **(2014) 16 SCC 560,** has held as under :

> **16.** According to the complainant there was litigation between them and the accused persons leading to enmity. PW 3 Atmaram has also stated that there was litigation between them and it culminated in the occurrence. Animosity is a double-edged sword. While it can be a basis for false implication, it can also be a basis for the crime (*Ruli Ram* v. *State of Haryana* and *State of Punjab* v. *Sucha Singh*). In the instant case there is no foundation established for the plea of false implication advanced by the accused and on the other hand evidence shows that enmity has led to the occurrence.

61. The appellants themselves have filed copies of judgment dated 30-11-1991, Ex. D.24, passed by 1st Add. Sessions Judge, Morena in S.T. No. 194/1988 by which Ramant Singh (P.W.1), his father and other persons were held guilty for offence under Section 326, 324,323, 147,148 of I.P.C. for causing injuries to Ramlakhan. Similarly by judgment dated 30-11-1991, Ex. D.25, passed by 1st Add. Sessions Judge, Morena in S.T. No. 202/1988, Ramlakhan was convicted for offence under Section 307 of I.P.C. for causing gun shot injuries to Suresh Singh. Thus, it is clear that Ramlakhan and complainant party were convicted for causing injuries to each other. If the judgments, Ex. D.24 and D. 25 are considered, then it is clear that the said offence was committed in the year 1988 and judgments were passed in the year 1991. The offence in question was committed on 16-10-2000. By no stretch of imagination, it can be said that Ramlakhan might have killed four persons and injured 2 persons, because of criminal case which

was decided in the year 1991. It also appears that some civil dispute is also going on between Ramlakhan and complainant. Thus, for the sake of arguments, if it is accepted that there was an enmity between Ramlakhan and complainant party, even then there was no good reason for the complainant party to spare Ramlakhan. Thus, it is incorrect to say that the appellants have been falsely implicated due to enmity.

62. It is next contended by the Counsel for the appellants, that since, Ramant Singh (P.W.1) had suppressed the fact of murder of Brajesh, in Dehati Nalishi, Ex. P.1, therefore, it is clear that he had suppressed very genesis of the incident, thereby making him unreliable.

63. Considered the submission made by the Counsel for the appellans.

64. The appellants have relied upon site plan, Ex. D.16 prepared by R.S. Ghuraiya (P.W.20) in the presence of D.R. Sharma (P.W. 19). From the said site plan, it is clear that blood was found on the roof of dilapidated house of Brajlal and one shoe of deceased Brajesh was also found near the dilapidated house of Brajlal. As per site plan, Ex. D.16, the dilapidated house of Brajlal is shown at Sr. No. 1 and one shoe of deceased Brajesh is shown at Sr. No.2. The dead body of Brajesh was shifted to the house of Ramvir Singh, which is shown at Sr. No.5, which is approximately 365 steps away from the dilapidated house of Brajlal. In the cross case, it was the stand of the appellants that

Brajesh was shot by Ramant Singh (P.W.1) in front of the sitting room (*Baithak*) of Ramvir Singh (which is shown in site plan Ex. D.16) and from there, the dead body of Brajesh was shifted by his father and others to the house of Ramvir Singh which is 365 steps away from dilapidated house of Brajlal, shown at Sr. No.1. Further, from the site plan, Ex. D.16, as well as from the evidence of R.S. Ghuraiya (P.W.20), it is clear that empty cartridges, misfired cartridges, and live cartridges were lying near the house of Ramvir Singh (appellant), whereas the dead bodies of Keshav, Jaswant and Raghunath @ Chhote Singh were lying in front of the house of Keshav Singh. The fact that .12 bore and .315 bore cartridges were found near the house of Ramvir Singh (appellant), it is clear that the assailants were standing near the house of Ramvir Singh (appellant) and they were firing towards the house of Ramant Singh (P.W.1). The Site Plan, Ex. D.16 throws sufficient light in this regard. Site plan is an important document. A part of site plan which has been prepared by the investigating officer, on the basis of what he had seen and observed, would be a substantive evidence, and a part of site plan which is prepared on the information given by a witness, would be admissible, if the witness giving such information is also examined. The Supreme Court in the case of **Jagdish Narain v. State of U.P.,** reported in **(1996) 8 SCC 199** has held as under :

> 9.....While preparing a site plan an Investigating Police Officer can certainly record what he sees and observes, for

that will be direct and substantive evidence being based on his personal knowledge; but as, he was not obviously present when the incident took place, he has to derive knowledge as to when, where and how it happened from persons who had seen the incident. When a witness testifies about what he heard from somebody else it is ordinarily not admissible in evidence being hearsay, but if the person from whom he heard is examined to give direct evidence within the meaning of Section 60 of the Evidence Act, 1872 the former's evidence would be admissible to corroborate the latter in accordance with Section 157 CrPC (*sic* Evidence Act).....

The Supreme Court in the case of **Rameshwar Dayal v. State of U.P.,** reported in **(1978) 2 SCC 518** has held as under:

36. Apart from the inquest report Ex. K-a-10 there is another document which throws a flood of light on this question—Ex. Ka-18 which is the site plan prepared by the Investigating Officer at the spot from where the empty cartridges of.12 bore were recovered. This is also a record of what the Investigating Officer himself found at the spot. The learned counsel for the appellants submitted that the site plan was also not admissible in evidence because it was based on information derived by the Investigating Officer from the statement of witnesses during investigation. Reliance was placed on a judgment of this Court in the case of *Jit Singh* v. *State of Punjab* where this Court observed as follows:

> "It is argued that presumably this site plan also was prepared by the Investigating Officer in accordance with the various situations pointed out to him by the witnesses... We are afraid it is not permissible to use the site plan Ex. P-14 in the manner suggested by the counsel. The notes in question on this site plan were statements recorded by the Police Officer in the course of investigation, and were hit by Section 162 of the Code of Criminal Procedure. These notes could be used only for the purposes of contradicting the prosecution witnesses concerned in accordance with the provisions of Section 145 of the Evidence Act and for no other purpose."

> In our opinion, the argument of the learned counsel is based on misconception of law laid down by this Court. What this Court has said is that the notes in question which are in the nature of a statement recorded by the Police Officer in the course of investigation would not be admissible. There can be no quarrel with this proposition. Note No. 4 in Ex. Ka-18 is not a note which is based on the information given to the Investigating Officer by the witnesses but is a memo of what he himself found and observed at the spot. Such a statement does not fall within the four corners of Section 162 CrPC. In fact, documents like the inquest reports, seizure lists or the site plans consist of two parts one of which is admissible and the other is inadmissible. That part of such documents which is based on the actual observation of the witness at the spot being direct evidence in the case is clearly admissible under Section 60 of the Evidence Act whereas the other part which is based on information given to the Investigating Officer or on the statement recorded by him in the course of investigation is inadmissible under Section 162 CrPC except for the limited purpose mentioned in that section. For these reasons, therefore, we are of the opinion that the decision cited by the counsel for the appellants has no application to this case.

65. One thing is clear that the dead body of Brajesh was immediately removed by his family members. On the contrary, Ramant Singh (P.W.1) had already lost 3 members of his family i.e., father, real brother and cousin brother and three persons were injured. Under these circumstances, if Ramant Singh (P.W.1) at the time of lodging Dehati Nalishi, Ex. P.1, could not notice that Brajesh has also expired, then it cannot be said that there was a deliberate suppression by Ramant Singh (P.W.1) about murder of Brajesh in his Dehati Nalishi, Ex. P.1. Further, this Court while deciding Cr.A. No. 584/2008 (arising out of cross case) has come to a conclusion that Ramant Singh (P.W.1)

did not kill Brajesh. As per the postmortem report of deceased Brajesh, Ex. D.20, a bullet injury was found on his body. It was Ramvir Singh (appellant) who was having .315 bore mouser, in which bullet cartridge is used. As per site plan Ex. D.16, one shoe of Brajesh was found near the dilapidated house of Brajlal. Further, the subsequent conduct of Ramant Singh (P.W.1) in not absconding from the place of incident, and thereafter, participating in police proceedings, also indicates his innocence. Therefore, non-disclosure of murder of Brajesh in Dehati Nalishi, Ex. P.1, would not give any dent to the prosecution story as well as to the reliability and credibility of Ramant Singh (P.W.1).

66. It is further submitted that since, Ramant Singh (P.W.1) absconded at subsequent stage, therefore, he has suppressed the very genesis of murder of Brajesh and in fact, Ramant Singh (P.W.1) had killed Brajesh and only thereafter, it appears that the appellants retaliated either in exercise of their right of private defence or due to sudden and grave provocation.

67. Considered the submission made by the Counsel for the appellants.

68. Abscondence by itself cannot be said to be an incriminating circumstance to indicate the guilty mind of a suspect. An innocent person, under an apprehension of false implication, may also abscond.

In the present case, R.S. Ghuraiya (P.W. 20) in para 2 of his examination-in-chief, has specifically stated that on 17-10-2000, no suspect who was alleged to have committed the present offence was found in the village. Further, it is clear from the evidence of D. R. Sharma (P.W.19), Angad Singh, had lodged F.I.R., Ex. D.2 in relation to murder/death of Brajesh. It is not out of place to mention here that Angad Singh was not the eye witness of murder of Brajesh. In F.I.R. Ex. D.2 he had merely informed that he was in the field. After hearing the noice of gun shots, he came back to village and found that the dead body of Brajesh was lying on *Kharanja* (Street made up of stones) in front of the sitting room (*Baithak*) of Ramvir Singh. Kallu Singh, Mahesh Singh, Rajesh Singh were near the dead body and the names of the assailants would be disclosed by Mahesh Singh, Ramvir Singh and Rajesh Singh. Thus, F.I.R. regarding murder of Brajesh Singh was lodged against unknown persons. It is really surprising that although the dead body of Brajesh was lying in front of the sitting room (*Baithak*) of Ramvir Singh, but the father of the deceased namely Ram Singh, Ramvir Singh himself and other persons were not there. Further the information given in F.I.R., Ex. D.2, that names of the assailants would be disclosed by Ramvir Singh, clearly indicates, that Angad Singh knew this fact that Ramvir Singh had witnessed the incident and even then, if Ramvir Singh, along with Ram Singh (father

of deceased Brajesh) and others absconded from the spot, then it clearly indicates the guilty mind of Ramvir Singh. Whereas Ramant Singh (P.W.1) against whom it was alleged that he had shot Brajesh, did not abscond and remained with the dead bodies of his father Keshav, brother Jaswant and cousin brother Raghunath @ Chhote Singh and not only lodged the Dehati Nalishi, Ex. P.1, but also participated in the police proceedings which took place on 17-10-2000. As the appellants were alleging that it was Ramant Singh (P.W.1) who had shot Brajesh, therefore, subsequent abscondence of Ramant Singh (P.W.1) would not amount to an incriminating circumstance against him. The Supreme Court in the case of **Kundula Bala Subrahmanyam v. State of A.P.,** reported in (**1993) 2 SCC 684** has held as under :

> 23. A closer link with the conduct of the appellants both at the time of the occurrence and immediately thereafter is also the circumstance relating to their absconding.....

69. The Supreme Court in the case of **Matru Vs. State of U.P.** reported in **(1971) 2 SCC 75** has held that where the appellant had gone to the police station to lodge F.I.R. about the incident, then such behavior of the appellant by normal standards is not suggestive of his involvement in a heinous offence like murder, unless and until he is an experienced criminal with extra ordinary balance of mind and disciplined control over his senses and faculties. Therefore, the

immediate conduct of a person after the incident, also indicates his guilty mind/innocence. Under these circumstances, the subsequent abscondence of Ramant Singh (P.W.1) would not lead to any conclusion.

70. Thus, viewed from every angle, it is held that Ramant Singh (P.W.1) is a reliable witness and has narrated the truth.

71. Gomati bai (P.W. 13) is an independent witness who had come to attend the function. Attacking her evidence, it is submitted by the Counsel for the appellants that Gomati bai (P.W. 13) in her evidence has stated that Ramvir Singh shot Keshav, Jaswant and Raghunath and Ghanshyam shot Mamta. However, Gomati bai (P.W. 13) in her police statement, Ex. D.3 had stated that Ghanshyam shot Mamta and "She came to know" that Ramvir has killed Keshav and Jaswant whereas Ghanshyam has killed Raghunath also. It is submitted that since, the attention of this witness was drawn to the said statement, therefore, her evidence that Ramvir Singh had shot Keshav and Jaswant is not reliable and similarly, her evidence that Ghanshyam killed Raghunath is also not reliable. Considered the submissions made by the Counsel for the appellants.

72. Gomati bai (P.W.13) in her police statement Ex. D.3, had not claimed that She had seen Ramvir Singh or Ghanshyam causing any gunshot injury to Keshav, Jaswant and Raghuvir. On the contrary, She

had stated that "She came to know" that Ramvir Singh has killed Keshav and Jaswant, whereas Ghanshyam has killed Raghunath. When She was confronted with her police statement, Ex. D.3, then in para 26 of her cross examination, She claimed that She never disclosed to police that "She came to know" and could not explain as to how, "She came to know" was mentioned in her Police statement, Ex. D.3. Thus in view of vital contradiction in the evidence of Gomati bai (P.W.13), it is held that She did not see that who caused gun shot injuries to Keshav, Jaswant and Raghunath @ Chhote Singh. However, it is held that immediately after the incident, she came to know that Ramvir Singh has killed Keshav and Jaswant, whereas Ghanshyam has killed Raghunath @ Chhote Singh.

73. But so far as her evidence that gun shot injury was caused to her by Nathu Singh, and Ghanshyam Singh shot Mamta is concerned, her evidence is consistence. Thus, it is held that Gomati bai (P.W. 13) did not see that who caused death of Keshav, Jaswant and Raghunath Singh @ Chhote Singh.

74. It is further submitted that one Doctor had recorded the statement of Gomati bai (P.W.13) as dying-declaration, Ex. D.18 in which She had stated that Ramvir Singh had caused injuries to her, therefore, her evidence that Nathu Singh had caused gun shot injuries to her cannot be accepted.

75. In the dying declaration of Gomati bai (P.W.13) Ex. D.18, which was recorded by a Doctor, Gomatibai (P.W. 13) had stated that Ramvir has caused injury to her, but on confrontation, She explained that since She was not fully conscious, therefore, She might have committed mistake in disclosing the name of the assailant to the Doctor. In the present case, the Doctor who had recorded the dying declaration, Ex. D.18 has not been examined. Since, Gomati bai (P.W.13) has survived, therefore, so called Dying-declaration, Ex. D.18 is not admissible under Section 32 of Evidence Act. Further, in the light of the explanation given by Gomati bai (P.W. 13) in para 72 of her cross-examination, it is held that her statement which was recorded as Dying declaration, would not give any dent to her evidence, that Nathu Singh had caused gun shot injury to her. Further, She is an independent witness having no enmity with Nathu Singh.

76. By referring to Para 16 of her cross-examination, it is submitted by the Counsel for the appellants, that this witness has admitted that firstly, Brajesh (deceased in cross case) suffered gun shot injury and thereafter, the victims/deceased of this case suffered gun shot injuries. Thus, it is clear that since, Brajesh was killed by Ramant Singh (P.W.1) therefore, the prosecution has suppressed the very genesis of the incident.

77. Considered the submission made by the Counsel for the

appellants. This Court has already considered the fact that the dead body of Brajesh was immediately removed by his family members and was taken to a place which was 365 steps away from the place of incident. Why the dead body of Brajesh was removed has not been explained by the appellants. Although in the light of the judgment passed by the Supreme Court in the case of **Nathilal (Supra)**, in case where there is a cross case, then both the cases should be tried by one judge and should be decided on one day, without getting influenced by evidence or arguments in cross case. In the present case, in S.T. No. 229/2003 (Cross case), Mahesh was cited as a witness and was examined as Prosecution Witness No. 3. It is not out of place to mention here, that Mahesh is Accused No. 9 in the present case. He had admitted in S.T. No. 229/2003, that gun shot was firstly fired by Brajesh. Although it is the case of the Counsel for the appellants, that any evidence led in cross case should not be read, but the very purpose of deciding both the cases on one day by same judge is, to avoid any contradictory findings with regard to the manner in which incident took place. Further there is a difference between "Admission" and "Evidence". This Court by judgment in Cr.A. No. 584/2008 State of M.P. Vs. Ramant Singh, passed today, has held that in fact Ramant Singh (P.W.1) did not cause death of Brajesh. In the case of **Nathilal (Supra)** it has not been held that the same Court can give

contradictory findings. Under these circumstances, it is held that the very genesis of the incident, has not been suppressed by the prosecution. Thus, it is held that Gomati bai (P.W. 13) is a reliable witness, who not only got injured but is also an independent witness.

78. Rajabeti (P.W. 15) is an eye witness and is the widow of Keshav and mother of deceased Jaswant as well as mother of Ramant Singh (P.W.1). By referring to para 5 of evidence of this witness, it is submitted by the Counsel for the appellants, that this witness was not in a position to depose that who caused injury to Gomati bai (P.W.13).

79. Considered the submission made by the Counsel for the appellants.

80. In para 2 of the examination-in-chief, this witness has narrated the role played by each and every accused, however, she did not say anything as to who caused injuries to Gomati bai (P.W.13). Thereafter, in para 5, She stated that She cannot say, that who caused injuries to Gomatibai (P.W.13). Immediately thereafter, She was cross-examined by the Court and in that cross-examination, this witness clarified that Nathu Singh had caused gun shot injury to Gomati bai (P.W.13). This witness is aged about 60 years and is a rustic villager. It is true that initially She did not recollect that who caused injury to Gomati bai (P.W.13), but on question put by the Court immediately after examination-in-chief, this witness clarified that Nathu Singh caused

injury to Gomati bai (P.W.13). Thus, this Court is of the considered opinion, that looking to the fact that not only this witness is aged about 60 years, but She had lost her husband and one child in her front of her and her evidence was recorded after almost 3 years of incident, this witness is a natural witness and is clear that She is narrating the truth and therefore, some lapses of minor in nature, are bound to occur. Further, it is clear from the deposition sheet of this witness, that her examination-in-chief and cross examination by Court was recorded in one session only, therefore, this witness had no time to improve her version. Accordingly, it is held that this witness has duly proved that Nathu Singh had caused gun shot injury to Gomatibai (P.W. 13).

81. Further, by referring to para 9,16 and 17 of this witness, it is submitted that although this witness had stated that her statement was recorded in the night of the incident itself, but infact the police case diary doesnot contain any such statement. On the contrary, her police statement was recorded on 22-10-2000.

82. Heard the learned Counsel for the appellants.

83. Looking to the trauma under which this witness must have undergone, such lapses in the evidence of the witness are natural. While appreciating the evidence of a witness, a Court is required to consider all the circumstances, including the trauma under which a witness must have undergone due to the incident. As already pointed

out, since, this witness had lost her husband and a son in front of her, therefore, some minor omissions and contradictions are bound to occur and that shows that the witness is a truthful witness. In para 17, a suggestion was also given by the appellants, to this witness that her police statement was recorded on 22-10-2000. The police statement of this witness is Ex. D.4, which was recorded on 22-10-2000. Looking to the fact that four persons, including the husband and son of this witness were killed on 16-10-2000, this Court is of the considered opinion, that even if the police statement of this witness was recorded on 22-10-2000, it cannot be said that there was any delay in recording of the same. In para 23, this witness had stated that Nathu Singh had fired on Gomati bai (P.W.13), from front and denied that Nathu Singh was standing on the roof of her house. Accordingly, she was confronted with her police statement Ex. D.4, in which She had stated that Nathu Singh fired from the roof of her house. On confrontation, this witness replied that She had never disclosed to the S.H.O. that Nathu Singh had fired from the roof.

84. It is well established principle of law, that only material contradictions makes the evidence of a witness unreliable. The Supreme Court in the case of **Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra,** reported in **(2010) 13 SCC 657** has held as under :

> **30.** While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide *State* v. *Saravanan*.)

85. Nathu Singh was carrying .12 bore gun which uses cartridge having pellets in it. Therefore, whether the gun shot was fired from the roof or from front while standing on the ground, would not make much difference, because after a gun shot is fired from .12 bore gun, the pellets get spread and it is very difficult to trace out the track or direction unlike in the case of bullet injury. If the evidence of all the witnesses including Gomati bai (P.W.13) is considered along with this witness, then it is clear that the contradiction as to whether Nathu Singh had fired from the roof of her house or from front of Gomati bai (P.W. 13) is of minor in nature and doesnot adversely effect the credibility and reliability of this witness.

86. By referring to para 23, 54 and 55 of this witness, it is submitted that since, this witness has stated that there was no enmity between the complainant party and accused party, where as Ramant Singh (P.W.1) has stated in his Dehati Nalishi, P.1, that there was an enmity between the parties, therefore, it is clear that this witness is not trustworthy.

87. Considered the submission made by the Counsel for the appellants.

88. The word "enmity" is a relative term and is a double edged weapon. In Dehati Nalishi, Ex. P.1, it was stated by Ramant Singh (P.W.1), that for the last two years, the accused party and complainant party were not inviting each other and therefore, the accused party was aggrieved by it. Minor differences between the parties, cannot be termed as "enmity". Therefore, the suggestion which was given to this witness as to whether there was any enmity between accused party and complainant party cannot be equated with non-inviting of each other in their functions. Further, it is clear that this witness is not trying to exaggerate any thing, which makes her a natural and truthful witness. Thus, it is held that Rajabeti (P.W. 15) is a reliable witness and is not an "interested witness".

89. In order to attack the evidence of Manohar Singh (P.W. 16), the Counsel for the appellants has drawn the attention of this Court, to para 20 of his evidence, to contend that since, this witness was also an accused in cross case, therefore, he is an "interested witness".

90. Considered the submissions made by the Counsel for the appellants.

91. Manohar Singh (P.W. 16) is also an injured witness who had suffered gun shot injuries on his back in the same incident. Therefore,

the presence of this witness on the spot is undisputed. The Supreme Court in the case of **Chandrasekar v. State,** reported in **(2017) 13 SCC 585** has held as under :

> **10.** Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though the law is well settled and precedents abound, reference may usefully be made to *Brahm Swaroop* v. *State of U.P.* observing as follows: (SCC p. 302, para 28)
>
> "*28*. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone."

The Supreme Court in the case of **Abdul Sayeed v. State of M.P.,** reported in **(2010) 10 SCC 259** has held as under :

> **28.** The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh* v. *State of Bihar*, *Malkhan Singh* v. *State of U.P.*, *Machhi Singh* v. *State of Punjab*, *Appabhai* v. *State of Gujarat*, *Bonkya* v. *State of Maharashtra*, *Bhag Singh*, *Mohar* v. *State of U.P.* (SCC p. 606*b-c*), *Dinesh Kumar* v. *State of Rajasthan*, *Vishnu* v. *State of Rajasthan*, *Annareddy Sambasiva Reddy* v. *State of A.P.* and *Balraje* v. *State of Maharashtra*.]
>
> **29.** While deciding this issue, a similar view was taken in *Jarnail Singh* v. *State of Punjab*, where this Court reiterated the special evidentiary status accorded to the testimony of

an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

> "*28*. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa* v. *State of Karnataka* this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.
>
> *29*. In *State of U.P.* v. *Kishan Chand* a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan* v. *State of Haryana*). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below."
>
> **30.** The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

92. Thus, it is clear that an injured witness enjoys a special status and the injury found on his body indicates his undoubted presence on

the scene of occurrence.

93. Further more, Manohar Singh (P.W. 16) was already acquitted by the Trial Court and application for grant of leave to appeal has already been rejected by this Court.

94. By referring to paragraphs 22, 23 of evidence of this witness, it is submitted that his police statement was recorded belatedly. However, the answer to the submission lies in the same paragraph, in which this witness has clarified that he remained hospitalized at Gwalior for 9 days and thereafter, he went to Indore, and stayed with his son and was getting treatment. From the M.L.C.,Ex.P. 12A, it is clear that this witness had suffered gun shot injuries on his buttock and if he did not return back to the village and went to Indore to take further treatment, while staying with his son, then this act of this witness cannot be said to be unrealistic.

95. By referring to para 31,32 and 34 of his evidence, it is submitted that since, Brajesh had died due to gun shot injury and since, this witness was also being tried for murder of Brajesh, therefore, this witness is not reliable.

96. Considered the submissions made by the Counsel for the appellants.

97. Manohar Singh (P.W. 16) has stated that although he had not seen Brajesh sustaining gun shot but the accused party had started

shouting that Brajesh has sustained a gun shot injury and thereafter, the accused party took the body of Brajesh to their house. This evidence of Manohar Singh (P.W.16) is in accordance with site plan, Ex. D.16, according to which the dead body of Brajesh was taken by his family members to the house of Ramvir Singh, which was at a distance of 365 steps from the dilapidated house of Brajlal. It is also clear from the site plan, Ex. D.16, that the sitting room *(Baithak)* of Ramvir Singh and dilapidated house of Brajlal are situated at nearby places. This Court has already held that the accused persons have not explained as to why they shifted the dead body of Brajesh from the place where he sustained gun shot injury? It is also clear from F.I.R., Ex. D.2, that the F.I.R., in respect of murder of Brajesh was lodged by Angad Singh against unknown persons. Further, Brajesh had suffered bullet injury and Ramvir Singh was carrying .315 bore gun and according to the witnesses, the gun shot fired by Ramvir Singh had hit hit his own nephew Brajesh. Thus, it cannot be said that the evidence of Manohar Singh (P.W.16) is unreliable on account of non-explanation of manner in which Brajesh was killed. Further, by a separate judgment passed by this Court in Cr.A. No. 229/2003 (State of M.P. Vs. Ramant Singh [Cross Case]), this Court has already held that Ramant Singh did not shot Brajesh.

98. By referring to para 43 of his evidence, it is submitted by the

Counsel for the appellants that there are material omissions and contradictions in the evidence of this witness with regard to who caused injury Gomati bai (P.W.13) and this witness (P.W. 16), therefore, he is a unreliable witness.

99. Considered the submissions made by the Counsel for the appellants.

100. Manohar Singh (P.W. 16) in his evidence has stated that Nathu Singh shot Gomati, whereas Kaushlendra Singh (acquitted) shot this witness. Whereas in his police statement, Ex. D.5, this witness had stated that Kaushlendra Singh fired at him, and as he bent down, therefore, the gun shot hit Gomati bai (P.W.13), and gun shot fired by Nathu Singh hit him. On confrontation, this witness could not explain as to how, the above fact was mentioned in his police statement, Ex. D.5. If the manner in which the incident in question had taken place is considered, then it is clear that as number of gun shots were fired, therefore, the persons who had come to attend the function must have run helter-skelter. In this circumstance, some discrepancies in the evidence of the witnesses are bound to happen. Even otherwise, this case is not based on the solitary evidence of this witness. Kaushlendra Singh has already been acquitted by the Trial Court in cross S.T. No. 37/2001. Since, the State has also filed an appeal against the acquittal of Kaushlendra Singh, therefore, whether he has been rightly acquitted

or not shall be considered separately while deciding the State Appeal. However, looking to the contradictions in the police statement and Court evidence of this witness, at the most, it can be said that this witness has failed to prove that who caused gun shot injury to Gomatibai (P.W. 13) as well as to himself.

101. By referring to para 52 of evidence of this witness, it is contended by the Counsel for the appellants that there are material improvements in the evidence of this witness. By referring to police statement, Ex. D.5 of this witness, it is submitted that there was no allegation that "after he requested the accused party not to burst crackers, then Ramvir, Ghanshyam, Kaushlendra, Nathu Singh, Bhanupratap, Rajesh, Dinesh Singh, Chhote Singh, Sindhi and Kallu started pelting stones". Thus, it is submitted that since, this witness has improved his version, therefore, his evidence is liable to be rejected in toto.

102. Considered the submissions made by the Counsel for the appellants.

103. The maxim *falsus in uno falsus in omnibus* has no application in India. The Supreme Court in the case of **Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble,** reported in **(2003) 7 SCC 749** has held as under :

> **25.** It is the duty of the court to separate the grain from the chaff. Falsity of a particular material witness or a material

particular would not ruin it from the beginning to end. The maxim "*falsus in uno falsus in omnibus*" has no application in India and the witnesses cannot be branded as liars. The maxim "*falsus in uno falsus in omnibus*" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See *Nisar Ali* v. *State of U.P.*)

26. The doctrine is a dangerous one especially in India for if a whole body of the testimony were to be rejected, because the witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate an exaggeration, embroideries or embellishment. (See *Sohrab* v. *State of M.P.* and *Ugar Ahir* v. *State of Bihar.*) An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See *Zwinglee Ariel* v. *State of M.P.* and *Balaka Singh* v. *State of Punjab*.) As observed by this Court in *State of Rajasthan* v. *Kalki* normal discrepancies in the evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition

> such as shock and horror at the time of occurrence and those are always there, however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in *Krishna Mochi* v. *State of Bihar*, *Gangadhar Behera* v. *State of Orissa* and *Rizan* v. *State of Chhattisgarh*.

104. Therefore, merely because a witness has been disbelieved on some part of his evidence, would not result in discarding of his entire evidence. The Court must try to remove grain from the chaff. As the major part of the evidence of this witness is in consonance with his previous version as well as the prosecution story and also medical evidence, therefore, the same cannot be discarded only on the ground that on some issue, this witness has been disbelieved.

105. By referring to para 54 of evidence of this witness, it was once again submitted by the Counsel for the appellants, that since, this witness has stated that there was no enmity between the parties, therefore, it is impossible for the accused party to kill four persons and to injure 2 persons.

106. Considered the submissions made by the Counsel for the appellants.

107. It is the case of the complainant party, that the gun shot fired by Ramvir Singh had hit the deceased Brajesh and thereafter, they started firing at the complainant party. While deciding the Cr.A. No.

584/2008 (State of M.P. Vs. Ramant Singh [cross case]), this Court has already held that the prosecution has failed to prove, that Brajesh was killed by Ramant Singh (P.W.1). Further, where a case is based on direct evidence, absence of motive is not material. The Supreme Court in the case of **Saddik v. State of Gujarat,** reported in **(2016) 10 SCC 663** has held as under :

> 21. It is settled legal position that even if the absence of motive, as alleged, is accepted, that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence cannot be discarded only on the ground of absence of motive, if otherwise the evidence is worthy of reliance. (See *Hari Shanker* v. *State of U.P.*; *Bikau Pandey* v. *State of Bihar*; *Abu Thakir* v. *State of T.N.*; *State of U.P.* v. *Kishanpal* and *Bipin Kumar Mondal* v. *State of W.B.*)

The Supreme Court in the case of **Yogesh Singh Vs. Mahabeer Singh** reported in **(2017) 11 SCC 195** has held as under :

> **46.** It has next been contended by the learned counsel for the respondents that there was no immediate motive with the respondents to commit the murder of the deceased. However, the trial court found that there was sufficient motive with the accused persons to commit the murder of the deceased since the deceased had defeated accused Harcharan in the Pradhan elections, thus putting an end to his position as Pradhan for the last 28-30 years. The long nursed feeling of hatred and the simmering enmity between the family of the deceased and the accused persons most likely manifested itself in the outburst of anger resulting in the murder of the deceased. We are not required to express

> any opinion on this point in the light of the evidence adduced by the direct witnesses to the incident. It is a settled legal proposition that even if the absence of motive, as alleged, is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of the witnesses as to commission of an offence, motive loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only on the ground of absence of motive, if otherwise the evidence is worthy of reliance. (*Hari Shanker* v. *State of U.P.*, *Bikau Pandey* v. *State of Bihar*, *State of U.P.* v. *Kishanpal*, *Abu Thakir* v. *State of T.N.* and *Bipin Kumar Mondal* v. *State of W.B.*)

108. Motive always remains in the mind of the wrongdoer. Therefore, merely because the witnesses have not alleged any motive, would not make their evidence unreliable.

109. By referring to para 76 of his evidence, it is submitted by the Counsel for the appellants, that the prosecution has failed to prove that this witness had sustained gun shot injury.

110. Considered the submissions made by the Counsel for the appellants.

111. M.L.C. of Manohar Singh (P.W. 16) is Ex. 12A. This witness was medically examined on 17-10-2000 at 1:50 A.M. in the night. Thus, it is clear that this witness was medically examined immediately after the incident, without there being any undue delay. From the M.L.C., Ex. P.12A, it is clear that this witness had suffered gun shot injury on his back. Therefore, there is every likelihood, that this

witness might not have authoritatively noticed that, who had caused gun shot injury to him. Further, according to this witness, Kaushlendra Singh had caused gun shot injury to him, whereas Kaushlendra Singh has been acquitted and whether the acquittal of Kaushlendra Singh is in accordance with law or not, shall be decided in the Criminal Appeal No.790/2005 filed by State.

112. By referring to para 96 and 97 of evidence of this witness, it is contended that this witness has admitted that it was a dark night, and without any source of light, it was not possible to see the faces of any persons. Although it is claimed by this witness, that Gas Patromax were burning, but since, the same has not been mentioned in his police statement, Ex. D.5, therefore, it is clear that there was no source of light on the spot. It is further submitted that even in the site plan Ex. D.16, the gas patromax have not been shown therefore, it is clear that there was no source of light.

113. Considered the submissions made by the Counsel for the appellants.

114. Gomati bai (P.W.13), this witness and Kumher Singh (P.W. 17) [Although his daughter-in-law namely Mamta was killed] are independent witnesses. Since, Gomati bai (P.W.13) and this witness are injured witnesses, therefore, their presence on the spot is doubtful. It is the case of the prosecution, that a function was going on in the

house of Ramant Singh and lot of persons had gathered there. Therefore, under these circumstances, it is clear that there cannot be any function without light. If the investigating Officer, R.S. Ghuraiya (P.W. 20) did not show Gas Patromax in the site plan, Ex. D.16, then at the most, it can be said to be a faulty investigation and the trustworthy evidence of prosecution witness cannot be thrown out. In an identical situation, the Supreme Court in the case of **Prithvi (minor) Vs. Mamraj** reported in **(2004) 13 SCC 279** has held as under :

> **17.** A further reason for disbelieving the evidence of Prithvi is that, while Prithvi stated that he could see the assailants because there was light on the spot coming from a bulb fitted in an electric pole near the *chakki* of Birbal (which was situated about fifteen steps from the place of occurrence) the investigating officer (PW 36) when cross-examined said that he did not remember anything about it nor did he include any electric pole in his site plan. Assuming that this was faulty investigation by the investigating officer, it could hardly be a ground for rejection of the testimony of Prithvi which had a ring of truth in it. We may recount here the observation of this Court in *Allarakha K. Mansuri* v. *State of Gujarat*, SCC at p. 64, para 8, that:
>
> > "The defects in the investigation holding it to be shaky and creating doubts also appears to be the result of the imaginative thought of the trial court. Otherwise also, defective investigation by itself cannot be made a ground for acquitting the accused."

115. Thus, it is held that Manohar Singh (P.W. 16) is a trustworthy and reliable witness.

116. Kumher Singh (P.W. 17) is the father-in-law of the deceased Mamta. However, he is not related to Ramant Singh (P.W.1) and

accordingly, he is an independent witness. This witness has stated that a function in the house of Ramant Singh (P.W.1) was going on. He was having his meal. He further stated that Ramvir shot Jaswant and Keshav. Nathu Singh, Kaushlendra Singh, and Ghanshyam started firing. Gun shot fired by Kaushlendra hit Gomati bai (P.W. 13). Immediately thereafter, he corrected himself and stated that gun shot fired by Kaushlendra hit Manohar Singh (P.W.16) and gun shot fired by Nathu Singh hit Gomati bai (P.W. 13). However, he could not see that who shot Mamta. He further stated that gun shot fired by Nathu Singh hit Raghunath. Kumher Singh (P.W. 17) was confronted with his police statement, Ex. D.17 in which it was stated that "Ghanshyam shot Raghunath", but in reply this witness insisted that he had informed the Investigating Officer, that it was Nathu Singh, who shot Raghunath. Thus, there is a material contradiction as to who shot Raghunath. Under these circumstances, it is held that the evidence of this witness that Nathu Singh shot Raghunath cannot be accepted.

117. By referring to para 8 of evidence of this witness, it is submitted that this witness has clearly stated that none of the assailant had entered inside the house of Ramant Singh (P.W.1).

118. Considered the submissions made by the Counsel for the appellants.

119. This incident has taken place in a most gruesome manner.

Multiple firing had taken place. As number of persons had gathered to attend the function, therefore, they must have run helter-skelter. In these circumstances, if a witness could not notice some part of the incident, then he cannot be disbelieved in toto.

120. By referring to para 11 of evidence of this witness, it is submitted that the allegation that Nathu Singh shot Raghunath cannot be accepted. This aspect of the matter has already been considered in the previous paragraph and it has already been held that the evidence of this witness that Nathu Singh shot Raghunath cannot be relied upon.

121. By referring to para 23 of evidence of this witness, it is submitted that some of the residents of the village had telephones in their houses, in spite of that no information was given to police. Therefore, the entire prosecution story is unreliable.

122. Considered the submissions made by the Counsel for the appellants.

123. Where three persons had already died and three more were injured, then the reaction of each and every person would be different. Their conduct cannot be considered with a particular and uniform yardstick.

124. By referring to suggestion given in para 78 of his evidence, it is submitted that in fact this witness and members of other complainant party were creating ruckus under the influence of alcohol and since,

Brajesh had come to lodge his objection, therefore, he was chased by this witness and others and Brajesh was killed by Ramant Singh (P.W.1). It is further submitted that in fact all the four persons died due to gun shots fired by Ramlakhan and the injured also sustained injuries due to gun shot fired by Ramlakhan, therefore, it is prayed that the appellants have been falsely implicated.

125. This defence of the appellants has already been considered in detail in the previous paragraphs of this judgment. Further, this defence cannot be accepted for other reason also. The deceased persons namely, Keshav, Jaswant and Mamta had suffered bullet injuries, whereas Raghunath @ Chhote Singh suffered pellet injuries. Gomati bai (P.W.13) and Manohar Singh (P.W. 16) had suffered pellet injuries. Thus, it is clear that two types of guns were used in the incident. Therefore, it is clear that the entire incident was not committed by one person, but more than one assailants were involved in the incident. Further, why the witnesses would spare Ramlakhan in order to falsely implicate the appellants, specifically when some civil dispute is already going on between Ramlakhan and the complainant party?

126. Thus, considering the submissions made by the Counsel for the appellants, this Court is of the considered opinion, that minor omissions, contradictions, embellishment in the evidences of the

prosecution witnesses, would not make them unreliable, therefore, it is held that Ramant Singh (P.W.1), Gomati bai (P.W.13), Rajabeti (P.W.15), Manohar Singh (P.W. 16) and Kumher Singh (P.W.17) are reliable witnesses and their testimony is worth reliance.

127. Now, the next question for consideration is that what offence was committed by the appellants Nathu Singh, Ramvir Singh and Ghanshyam.

128. For the sake of clarity, the role played by each and every appellant shall be considered separately.

Nathu Singh (Cr.A. No. 397/2005)

129. Ramant Singh (P.W.1), has lodged Dehati Nalishi, Ex. P. 1 and F.I.R., Ex. P.10 was lodged on the basis of Dehati Nalishi, Ex. P.1. As Per Dehati Nalishi Ex. P.1, the appellant Nathu Singh was also armed with 12 bore gun and caused injuries to Manohar.

(i) Ramant Singh (P.W.1) has stated that on the date of incident, a function on the occasion of birth of his son was going on. The invitees were having their meals. Kaushlendra (acquitted), Sindhi (acquitted), Rajesh (acquitted), Mahendra (acquitted), Kallu (acquitted), and Bhanupratap started bursting crackers by the side of the platform of his house. Ladies were having their meals on the roof of the house, and Jaswant (deceased) and Suresh were serving food. Manohar requested the accused persons, to burst crackers after 10-15 minutes. On this

issue, all the accused persons started abusing and also started pelting stones and bricks. Kaushlendra (acquitted) left the place and came back with his .12 bore gun, Ramvir (appellant) also came there with his mouser, whereas Ghanshyam (appellant) came there with .12 bore gun and Nathu Singh (appellant) also came there with .12 bore gun. Ramvir Singh (appellant) shot Keshav and Jaswant, whereas Ghanshyam (appellant) shot Raghunath @ Chhote Singh. This witness went inside the house. Thereafter, all the accused persons surrounded the house and started pelting stones. Mamta (deceased) scolded from inside, as to why they are killing all the persons, then Ramvir (appellant) shot Mamta, who fell down. Kaushlendra (acquitted) caused injury to Manohar Singh (P.W.16). Nathu Singh (appellant) caused gun shot injury to Gomati bai (P.W.13). Ramant Singh (P.W.1) ran to the roof of the house, where he was assaulted by Mahendra Singh (acquitted) by lathi and had scuffle with him. As Ramant Singh (P.W.1) got scared, therefore, he continued to sit by the side of the dead bodies. The police party came to his house at about 11-11:30 P.M., and thereafter, he lodged the Dehati Nalishi, Ex. P.1.

(ii) Thus, if the evidence of Ramant Singh (P.W.1) is considered, then it appears that Nathu Singh was armed with .12 bore gun and caused injury to Gomati bai (P.W.13).

(iii) Although Ramant Singh (P.W.1) was confronted with some

portion of his statement recorded under Section 161 of Cr.P.C., Ex. D.1, but there is no discrepancy with regard to the role allegedly played by Nathu Singh (appellant). However, in Dehati Nalishi, Ex. P.1, this witness had stated that Nathu Singh had caused gun shot injury to Manohar Singh. He was confronted with said contradiction and in para 61 of his cross-examination, this witness has stated that he never disclosed to the police that Nathu Singh had caused injury to Manohar Singh.

(iv) It is not out of place to mention here that three persons, had already lost their lives and three were injured, therefore, the mental condition and the trauma under which this witness must be going can be understood. Further, the Dehati Nalishi, Ex. P.1 was lodged within 2.30 hours of the incident. However, in his police statement, Ex. D.1, which was recorded on the next date of incident i.e., 17-10-2000, this witness had specifically stated that Nathu Singh caused injury to Gomatibai (P.W. 13). Therefore, under these circumstances, the evidence of Ramant Singh (P.W.1) that Nathu Singh caused injuries to Gomati bai (P.W.13) can be relied upon, provided the evidence of other witnesses is found in consonance with said allegation.

(v) Gomati bai (P.W.13) has also stated in her evidence, that gun shot injury was caused to her by Nathu Singh. Although Gomati bai (P.W.13) was confronted with her police statement, Ex. D.3, but there

is no discrepancy with regard to the role allegedly played by Nathu Singh (appellant). Further, the dying declaration, Ex. D.18 of Gomatibai (P.W. 13) was recorded by a Doctor, in which She had stated that Ramvir had caused injury to her, but on confrontation, She explained that since She was not fully conscious, therefore, She might have committed mistake in disclosing the name to the Doctor. In the present case, the Doctor who had recorded the dying declaration, Ex. D.18 has not been examined. Since, Gomati bai (P.W.13) survived, therefore, so called Dying-declaration, Ex. D.18 is not admissible under Section 32 of Evidence Act. Further, in the light of the explanation given by Gomati bai (P.W. 13) in para 72 of her cross-examination, it is held that her Court evidence cannot be discarded in the light of the statement which was recorded as Dying declaration, Ex. D.18.

(vi) Rajabeti (P.W. 15), is an eye witness and is widow of Keshav and mother of deceased Jaswant. Rajabeti (P.W. 15) has also stated that the Nathu Singh (appellant) caused gun shot injury to Gomati bai (P.W.13). Although in para 2 of her examination-in-chief, this witness had earlier stated that Nathu Singh had caused injury to Manohar, but in cross examination by Trial Court, this witness in para 5 of her cross examination, clarified that Gomatibai (P.W. 13) sustained injuries due to gun shot fired by Nathu Singh. Although Rajabeti (P.W.15) was

confronted with her police statement, Ex. D.4, but there is no discrepancy with regard to the role allegedly played by Nathu Singh (appellant).

(vii) Manohar Singh (P.W.16) is an injured witness. He has also stated that Nathu Singh, caused injury to Gomati bai (P.W.13). This witness was confronted with his statement, Ex. D.5, in which he had stated that Kaushlendra (acquitted) fired a gun shot on this witness, but as this witness bent down, therefore, the said shot hit Gomati bai (P.W.13). In reply it was stated by this witness that he had not given the statement " then Kaushlendra fired.....hit Gomati bai".

(viii) Kumher Singh (P.W.17) is an eye witness. Initially in para 4, he stated that Kaushlendra (acquitted) caused injury to Gomatibai (P.W.13) but immediately thereafter, he corrected himself in the same para, and stated that Nathu Singh (appellant) caused gun shot injury to Gomatibai (P.W.13). He also stated that Nathu Singh shot Raghunath. However, in his police statement, Ex. D.17, it was stated by him that it was Ghanshyam who shot Raghunath. When the attention of this witness was drawn to his previous police statement, Ex. D.17, then he replied that he cannot explain as to how the police has written that "Ghanshyam had fired gun shot causing injury to Raghunath", but in fact Nathu Singh had shot Raghunath Singh. Since, there is a material contradiction in the evidence of this witness and his police statement,

Ex. D.17 of this witness, therefore, the evidence of this witness that Nathu Singh had shot Raghunath Singh, cannot be accepted.

(ix) Thus, it is clear that as per Dehati Nalishi, Ex. P.1, F.I.R., Ex. P.10, Nathu Singh was armed with .12 bore gun and had also fired, whereas Ramant Singh (P.W.1), Gomati bai (P.W.13), Rajabeti (P.W.15), and Kumher Singh (P.W.17) have stated that the appellant Nathu Singh (appellant) caused gun shot injuries to Gomatibai (P.W.13).

Ramvir Singh (Cr.A. No. 425/2005)

130.(i)Ramant Singh (P.W.1) in his Dehati Nalishi, Ex. P.1 and F.I.R., Ex. P.10 has stated that Ramvir Singh shot Keshav and Jaswant.

(ii) Ramant Singh (P.W.1) in his Court evidence, stated that Keshav, Jaswant and Mamta were shot by Ramvir Singh.

(iii) Ramant Singh (P.W.1) was confronted with his police statement, Ex. D.1, in which he had stated that it was Ghanshyam, who shot Mamta. In para 94 of his cross-examination, it was clarified by this witness that since, various persons had already died, therefore, he was un-confortable. Accordingly, it was claimed that he had wrongly disclosed in his police statement, Ex. D.1, that Ghanshyam had shot Mamta. In para 96 of his cross examination, this witness replied that in fact he had disclosed to the S.H.O., that Ramvir had shot Mamta. Thus, according to this witness, Ramvir Singh also shot Mamta.

(iv) Gomati bai (P.W. 13) has stated that Ramvir Singh shot Keshav and Jaswant. Further, it is stated that Ghanshyam shot Raghunath @ Chhote Singh. Gomati bai (P.W.13) in her police statement Ex. D.3, had not claimed that She had seen Ramvir Singh or Ghanshyam causing any gunshot injury to Keshav, Jaswant and Raghuvir. On the contrary, She had stated that "She came to know" that Ramvir Singh, killed Keshav and Jaswant, whereas Ghanshyam killed Raghunath. When She was confronted with her police statement, Ex. D.3, then in para 26 of her cross examination, She claimed that She never disclosed to police that "She came to know" and could not explain as to how, "She came to know" was mentioned in here Police statement, Ex. D.3. Thus in view of vital contradiction in the evidence of Gomati bai (P.W.13), it is held that She did not see that who caused gun shot injuries to Keshav, Jaswant and Raghunath @ Chhote Singh. However, it is held that immediately after the incident, she came to know that Ramvir Singh has killed Keshav and Jaswant, whereas Ghanshyam has killed Raghunath @ Chhote Singh.

(iv) Rajabeti (P.W.15) has stated that Ramvir Singh (appellant) shot Jaswant, Keshav and Mamta. Rajabeti was not confronted with her police statement Ex. D.4, in which She had stated that it was Ghanshyam who shot Mamta. It is well established principle of law that unless and until, the contradiction is pointed out to the witness, the

defence cannot take advantage of such discrepancy. The Supreme Court in the case of **V.K. Mishra Vs. State of Uttarakhand** reported in **(2015) 9 SCC 588** has held as under :

> 93. **19.** Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction.

Since, the attention of this witness was not drawn to her previous statement with regard to contradiction on the issue as to who caused gun shot injury to Mamta, therefore, this Court cannot look into

the previous statement i.e., police statement of this witness. Accordingly, as per evidence of Rajabeti (P.W. 15) it was Ramvir who shot Mamta also. Thus, according to this witness, Ramvir Singh, shot Keshav, Jaswant and Mamta.

(v) Manohar Singh (P.W. 16) has stated in his court evidence that it was Ramvir (appellant) who shot Keshav and Jaswant. Thus, according to this witness, Ramvir Singh killed Keshav and Jaswant.

(vi) Kumher Singh (P.W. 17) has stated that he could not see as to who caused gun shot injury to Mamta. However, it was specifically stated by him that Ramvir Singh shot Jaswant Singh and Keshav Singh.

(vi) Thus, from the evidence of Ramant Singh (P.W.1), Rajabeti (P.W. 15), Manohar Singh (P.W. 16) and Kumher Singh (P.W. 17), it is clear that Ramvir Singh (appellant) shot Keshav and Jaswant.

(vii) There is some discrepancy as to who caused gun shot injury to Mamta. Ramant Singh (P.W.1) and Rajabeti (P.W. 15) says, that it was Ramvir who caused gun shot injury to Mamta, whereas Gomati bai (P.W.13), and Manohar Singh (P.W.16) have stated that in fact Ghanshyam caused gun shot injury to Mamta.

(viii) According to the witnesses, Ramvir Singh was carrying .315 bore gun, whereas Ghanshyam was carrying .12 bore gun. As per postmortem report of Mamta, Ex. P.28, as well as F.S.L. report, Ex.

P.39, one piece of .315 bullet was recovered from the dead body of Mamta. As per postmortem report, Ex. P.28, one pellet was also recovered from the dead body of Mamta. Thus, it is clear that deceased Mamta had suffered two gun shots, i.e., one by .315 bore gun and another by .12 bore gun. Accordingly, whether Ramvir Singh shot Mamta or not shall be considered in the following paragraphs. Further, Raghunath @ Chhote Singh had suffered pellet injuries, whereas Ramvir Singh was carrying .315 bore mouser. Therefore, whether Raghunath @ Chhote Singh died due to gun shot fired by Ramvir Singh or not shall also be considered in the following paragraphs.

Ghanshyam (Cr.A. 401/2005)

131.(i)Ramant Singh (P.W.1) in his Dehati Nalishi, Ex. P.1 and F.I.R., Ex. P.10 had informed that Ghanshyam shot Raghunath @ Chhote Singh and Mamta, whereas in his Court evidence, Ramant Singh (P.W.1) has stated that Ghanshyam shot Raghunath @ Chhote Singh, whereas Ramvir Shot Mamta. Ramant Singh (P.W.1) in his police statement, Ex. D.1 had stated that Ghanshyam had shot Mamta and accordingly, he was confronted with such contradiction in his police statement Ex. D.1. In para 94 of his cross-examination, it was clarified by this witness that since, various persons had already died, therefore, he was un-confortable. Accordingly, it was claimed that he had

wrongly disclosed in his police statement, Ex. D.1 that Ghanshyam had shot Mamta. In para 96 of his cross examination, this witness replied that in fact he had disclosed to the S.H.O., that Ramvir had shot Mamta. Thus,it is held that Ramant Singh (P.W.1) has claimed that Ghanshyam had shot Raghunath.

(ii) Gomati bai (P.W. 13) has stated that Mamta was standing along with her, when Ghanshyam shot Mamta. Although Gomati bai (P.W.13) was confronted with her police statement, Ex. D. 3 in respect of other aspects, but there is no discrepancy regarding causing injury to Mamta, because in her police statement, Ex. D.3, She had stated that it was Ghanshyam who shot Mamta. Thus, it is clear that the evidence of Gomati bai (P.W.13) is consistent so far it relates to the allegation that Ghanshyam shot Mamta. So far as the allegation of killing Raghunath @ Chhote Singh by Ghanshyam is concerned, this witness in her police statement, Ex. D.3 had stated that lateron, “She came to know” that Ghanshyam killed Raghunath @ Chhote Singh. Thus, according to Gomati bai (P.W.13), Ghanshyam shot Mamta, and also came to know immediately after the incident, that Ghanshyam killed Raghunath @ Chhote Singh also. However, in the light of evidence of Gomatibai (P.W.13) it can be held that it is her claim that Ghanshyam shot Mamta.

(iii) Rajabeti (P.W. 15) has stated in her Court evidence that

Ghanshyam shot Raghunath and Kaushlendra (acquitted) shot Mamta. On cross examination by Court, this witness in para 5 of her evidence stated that Mamta was shot by Ramvir, whereas in her police statement, Ex. D.4, She has stated that Ghanshyam shot Raghunath and Mamta. However, She was not confronted with contradiction in causing injury to Mamta. As statement recorded under Section 161 of Cr.P.C. is not a substantial piece of evidence, therefore, her police statement cannot be read against Ghanshyam with regard to causing death of Mamta. Thus, the evidence of Rajabeti (P.W.15) can be read only to the extent that Ghanshyam caused death of Raghunath.

(iv) Manohar Singh (P.W. 16) has stated that Ghanshyam shot Raghunath @ Chhote Singh and Mamta. Manohar Singh (P.W.16) was confronted with his police statement, Ex. D.5, in respect of certain contradictions regarding other aspects, but there is no contradiction with regard to the role played by Ghanshyam. Thus, according to Manohar Singh (P.W.15), Ghanshyam shot Raghunath and Mamta.

(v) Kumher Singh (P.W. 17) in para 7 of his cross examination by Court, has stated that Nathu Singh shot Raghunath Singh. So far as the role played by Ghanshyam Singh is concerned, it was stated by this witness that Ghanshyam Singh was also armed with gun and was firing.

132. For the sake of convenience, chart showing the allegations made

by the witnesses, of causing injuries to different persons, is as under :

	Jaswant (D)	Keshav (D)	Raghunath (D)	Mamta (D)	Gomati (I)	Manohar (I)
Ramant Singh (P.W.1)						
Dehati Nalishi Ex. P.1	Ramvir Singh	Ramvir Singh	Ghanshyam	Ghanshyam		Nathu Singh
Case Diary Statement, Ex. D.1	Ramvir Singh	Ramvir Singh	Ghanshyam	Ghanshyam	Nathu Singh	Kaushlendra Singh
Court Evidence	Ramvir Singh	Ramvir Singh	Ghanshyam	Ramvir Singh	Nathu Singh	Kaushlendra Singh
Gomati bai (P.W.13)						
Case Diary Statement Ex. D.4	Ramvir Singh (Came to know)	Ramvir Singh (Came to know)	Ghanshyam (Came to know)	Ghanshyam	Nathu Singh	
Dying Declaration Ex. D.18					Ramvir Singh	
Court Evidence	Ramvir Singh	Ramvir Singh	Ramvir Singh	Ghanshyam	Nathu Singh	Kaushlendra Singh
Rajabeti (P.W. 15)						
Case Diary Statement Ex. D.4	Ramvir Singh	Ramvir Singh	Ghanshyam	Ghanshyam	Nathu Singh	Kaushlendra Singh
Court Evidence	Ramvir Singh	Ramvir Singh	Ghanshyam	Ramvir Singh	Nathu Singh	Kaushlendra Singh
Manohar Singh (P.W. 16)						
Case Diary Statement Ex. D. 5	Ramvir Singh	Ramvir Singh	Ghanshyam	Ghanshyam	Kaushle -ndra Singh	Nathu Singh
Court Evidence	Ramvir Singh	Ramvir Singh	Ghanshyam	Ghanshyam	Nathu Singh	Kaushlendra Singh
Kumher Singh (P.W.16)						
Case Diary Statement Ex. D. 17	Ramvir Singh	Ramvir Singh	Ghanshyam	Ghanshyam	Nathu Singh	Kaushlendra Singh

Court Evidence	Ramvir Singh	Ramvir Singh	Nathu Singh		Nathu Singh	Kaushlendra Singh

133. Before proceeding further, this Court thinks to apposite to consider the defence of the appellants Ghanshyam and Ramvir Singh.

Defence of Appellants Ghanshyam and Ramvir Singh

134. The appellant Ghanshyam and Ramvir have taken a defence of plea of alibi. It is well established principle of law that plea of alibi is required to be proved by the accused by leading cogent evidence. The Supreme Court in the case of **Jitender Kumar Vs. State of Haryana** reported in **(2012) 6 SCC 204** has held as under :

> 71. Once PW 10 and PW 11 are believed and their statements are found to be trustworthy, as rightly dealt with by the courts below, then the plea of abili raised by the accused loses its significance. The burden of establishing the plea of alibi lay upon the appellants and the appellants have failed to bring on record any such evidence which would, even by reasonable probability, establish their plea of alibi. The plea of alibi in fact is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence and in the house which was the home of their relatives. (Ref. *Sk. Sattar* v. *State of Maharashtra*.)

The Supreme Court in the case of **Om Prakash v. State of Rajasthan,** reported in **(2012) 5 SCC 201** has held as under :

> **32.** Drawing a parallel between the plea of minority and the plea of alibi, it may be worthwhile to state that it is not uncommon to come across criminal cases wherein an accused makes an effort to take shelter under the plea of alibi which has to be raised at the first instance but has to be subjected to strict proof of evidence by the court trying the offence and cannot be allowed lightly in spite of lack of evidence merely with the aid of salutary principle that an

innocent man may not have to suffer injustice by recording an order of conviction in spite of his plea of alibi.

The Supreme Court in the case of **Jumni Vs. State of Haryana** reported in **(2014) 11 SCC 355** has held as under :

> **23.** On the standard of proof, it was held in *Mohinder Singh* v. *State* that the standard of proof required in regard to a plea of alibi must be the same as the standard applied to the prosecution evidence and in both cases it should be a reasonable standard. *Dudh Nath Pandey* goes a step further and seeks to bury the ghost of disbelief that shadows alibi witnesses, in the following words: (*Dudh Nath case*, SCC p. 173, para 19)
>
> "*19*. … Defence witnesses are entitled to equal treatment with those of the prosecution. And, courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses."

Therefore, the evidence led by Ghanshyam and Ramvir Singh in support of their plea of Alibi shall be considered in the light of the degree of proof as pointed out by the Supreme Court in the above mentioned judgments.

135. Ghanshyam (D.W.1) has examined himself under Section 315 of Cr.P.C. He has stated that he is a teacher in Govt. School and from the date of his appointment, he is residing in village Kheriya, in the house of one Rajendra Singh Tomar as his tenant. He further stated that only on special occasions, he goes to village Khoyala, where incident took place. It is further stated by him that on 27-10-2000, when he went to Porsa to collect his salary, then he came to know that some people have been killed. He has further stated that he was illegally detained

by R.S. Ghuraiya (P.W. 20) and accordingly, he had also filed a writ petition in the nature of Habeas Corpus. He has also stated that on 18-7-2000 some dispute arose between Kaushlendra Singh and Virendra, Sultan Singh, Manohar Singh (P.W. 16), Dinesh and Ramesh. Accordingly, a complaint Ex. D.6 was filed for offence under Section 323,294,506(B), 427,336 of I.P.C. The statement of Kaushlendra recorded under Section 200 of Cr.P.C. is Ex. D.8, statement of Rajesh under Section 202 of Cr.P.C. is Ex. D.9, statement of Brajesh under Section 202 of Cr.P.C. is Ex. D.10 and the copies of the ordersheets are Ex. D.11 and D.12. He also stated that a false F.I.R., Ex. P.14 was lodged by Sultan Singh on the basis of which the police filed charge sheet, Ex.D.15 and by judgment, Ex. D.13, Ghanshyam, Kaushlendra and Ramvir have been acquitted. Since, the complaint was filed, therefore, Sultan, Manohar, Dinesh, Ramesh and Ramant (P.W. 1) were having grudge against him. In cross-examination, Ghanshyam claimed that distance between village Kheriya and Khoyala, where incident took place, is about 116-17 Km.s and not 1-2 Km. He accepted that he has not filed any document to show that he was on duty from 16-10-2000 to 26-10-2000. He denied that on the date of incident, he was in village Khoyala.

136. Thus, if the defence of Ghanshyam regarding plea of alibi is considered, then it is clear that he had never claimed that on 16-10-

2000, he was in village Kheriya. He has not filed any document to show that he was on duty from 16-10-2000 till 26-10-2000. Further, in criminal complaint Ex. D.6 and his statement Ex. D.8, this witness had disclosed his address as village Khoyala and not village Kheriya. Further according to Ghanshyam himself, the distance between village Kheriya and village Khoyala is only 16-17 Kms. Thus, it cannot be said that it was physically impossible for him to remain present in village Khoyala at the time of incident. Further, this witness has not examined Rajendra Singh Tomar, in whose house, Ghanshyam was claiming that he was residing as a tenant. Thus, it is held that Ghanshyam has failed to prove his plea of alibi. Further, he has claimed that because of some incident which took place on 18-7-2000, there was an enmity between the parties. As already held, enmity is a double edged weapon and it also provides motive for committing offence.

137. Further, taking a false plea of alibi, would also be an additional link to the circumstances, although false plea of alibi cannot be a sole criteria to record conviction. The Supreme Court in the case of **Subramaniam v. State of T.N.,** reported in **(2009) 14 SCC 415** has held as under :

> 34.....Failure to prove the plea of alibi and/or giving of false evidence itself may not be sufficient to arrive at a verdict of guilt; it may be an additional circumstance. But before such additional circumstance is taken into

> consideration, the prosecution must prove all other circumstances to prove his guilt.....

138. Ramvir Singh has examined Binda Singh Tomar (D.W.2) and Parvat Singh Sengar (D.W.3). Ramvir Singh is the brother-in-law *(Jija)* of Binda Singh Tomar (D.W.2). He has stated that Ramvir was arrested from village Patrai. Ramvir is residing in village Patrai for the last 6-7 years back and is cultivating lands on *Batai.* He has further claimed that in the night of *Karvachouth*, Ramvir and his sister Ishnokumari were in village Patrai. In cross-examination, this witness accepted, that Ishnokumari was elected as Sarpanch of Gram Panchayat Khoyala. He further claimed that most probably, Ishnokumari had shifted to village Patrai in the year 1999.

139. Considered the evidence of Binda Singh Tomar (D.W.2). Ishnokumari, the wife of Ramvir was elected as Sarpanch of Gram Panchayat, Khoyala, therefore, there was no reason for Ramvir to shift to village Patrai. Ramvir has not clarified the reason for his shifting to village Patrai. Further, Ramvir has not examined any witness, in whose house, he was residing as tenant, because Binda Singh Tomar (D.W.2) has not claimed that Ramvir Singh was residing in his house. Thus, it is clear that Binda Singh Tomar (D.W.2) is not a reliable witness.

140. Parvat Singh Sengar (D.W.3) has claimed that he is having 25 acres of land and Ramvir Singh was cultivating the same on *batai.*

However, this witness has not filed any document to show that he is the owner of 25 acres of land in village Patrai. He further admitted that his grand father Jahar Singh and father-in-law of Ramvir, Kamal Singh are real brothers. Therefore, it is clear that Parvat Singh Sengar (D.W.3) is not an independent witness. Further, this witness has not clarified the residential address of Ramvir Singh in village Patrai. Thus, in absence of any evidence that Parvat Singh Sengar (D.W.3) is having any agricultural land in village Patrai, coupled with the fact that he is a near relative of Ramvir Singh, this Court is of the considered opinion, that Ramvir Singh has failed to prove that he had ever shifted to village Patrai and was not present in village Khoyala at the time of incident.

141. By referring to para 144 and 149 of the impugned judgment, it is submitted by the Counsel for the appellants, that the Trial Court, itself has come to a conclusion that there are certain improvements in the evidence of the witnesses, and they have tried to over implicate other accused persons, therefore, the evidence of the witnesses are not reliable.

142. This Court has already held that the principle of *falsus in uno falsus in omnibus* has no application in India and the Court must try to remove grain from the chaff. The Trial Court after appreciating the evidence has already acquitted some of the co-accused persons.

143. By referring to the findings given by the Trial Court in para 165, 166, 169, 175, 177, 178, 179, 181, 182 and 194 of Judgment, it is submitted by the Counsel for the appellants, that the Trial Court, itself has found that the incident cannot take place only on the question of bursting of crackers and thus, the witnesses and investigating officer have tried to suppress some part of the incident.

144. It is suffice to say, that this Court while deciding the Cr.A. No. 584 of 2008 filed by the State of M.P. against the acquittal of Ramant Singh (P.W.1), has already held that Ramant Singh (P.W.1) did not commit murder of Brajesh. In fact, by shifting the dead body and by improving their version, specifically in the light of the fact that F.I.R., by Angad Singh in cross S.T. No. 229/2003 was lodged against unknown persons, the appellants have tried to suppress the very genesis of the incident. Therefore, in the light of findings recorded by this Court in Cr.A. No. 584 of 2008, the findings given by the Trial Court in the above mentioned paragraphs loses its importance.

145. No other argument was advanced by the Counsel for the appellants.

146. If the evidence of all the witnesses along with the weapons used by the appellants are considered, then the following conclusion would emerge :

(a) So far as the murder of Keshav and Jaswant is conerned, all the

witnesses have stated in single voice that Ramvir Singh, killed Keshav and Jaswant. The ocular evidence is supported by Postmortem report. Further, Ramvir Singh was allegedly having .315 bore gun and bullet injuries were found in the dead bodies of Keshav and Jaswant. Accordingly, it is held that Ramvir Singh killed Keshav and Jaswant.

(b) So far as the murder of Raghunath @ Chhote Singh is concerned, Ramant Singh (P.W. 1), Rajabeti (P.W. 15) and Manohar Singh (P.W. 16) have stated in single voice that it was Ghanshyam who shot Raghunath @ Chhote Singh. Kumher Singh (P. 17) has also stated that Ghanshyam was having gun and he too had fired. Although, the Trial Court has held that it was Ramvir Singh who killed Raghunath @ Chhote Singh, but the said finding recorded by the Trial Court is contrary to record. As per the Postmortem report of Raghunath @ Chhote Singh, Ex. P.35, no exit wound was found and three pellets were also recovered from the dead body of Raghunath @ Chhote Singh, which were seized vide seizure memo Ex. P. 26. Ghanshyam Singh was armed with .12 bore gun and cartridge having pellets are used in the said gun. Since, Raghunath @ Chhote Singh had suffered pellet injuries, and Ghanshyam was having .12 bore gun, therefore, it is clear that Raghunath @ Chhote Singh, died of gun shot fired by Ghanshyam. A charge under Section 302 of I.P.C. was also framed against Ghanshyam for killing Raghunath. Under these circumstances,

it is held that it was Ghanshyam who killed Raghunath @ Chhote Singh.

(c) There is some discrepancy as to who caused gun shot injuries to deceased Mamta. According to Ramant Singh (P.W.1) and Rajabeti (P.W. 15), it was Ramvir Singh who shot Mamta, whereas according to Gomati bai (P.W. 13) and Manohar Singh (P.W. 15), Mamta was shot by Ghanshyam Singh. Under these circumstances, it becomes necessary to verify the ocular evidence with medical evidence as well as ballistic evidence. As per Postmortem report, Ex. P.28, one piece of .315 bore bullet and one pellet were recovered from the dead body of Mamta. Thus, it is clear that deceased Mamta had suffered gun shots from two different guns. One injury was caused by bullet and a piece of .315 bore bullet was also recovered from her dead body and another gun shot injury (three charring injuries) were caused by pellets and one pellet was also recovered from her dead body. Ramvir Singh was having .315 bore gun whereas Ghanshyam was having .12 bore gun. Thus, it is clear that in fact there is no discrepancy in the evidence of the witnesses. Thus, it is held that Mamta suffered injuries from gun shots fired by Ramvir Singh and Ghanshyam Singh. According to Postmortem report, the cause of death was shock due to injuries due to gun shot (firearm). The three charring injuries from which one pellet was recovered were found on the thigh of Mamta. Thus, in all

probabilities, those three charring injuries were not sufficient to cause death. Accordingly, it is held that gun shot fired by Ramvir Singh, caused death of Mamta. However, no charge under Section 302 of I.P.C. for committing murder of Mamta was framed, but a charge under Section 302/149 of I.P.C. for committing murder of Mamta was framed. Thus, it is held that the appellant Ramvir Singh cannot be held guilty for offence under Section 302 of I.P.C. for committing murder of Mamta.

(d) So far as the injury sustained by Manohar Singh (P.W. 16) is concerned, it is the evidence of the witnesses, that it was Kaushlendar Singh who caused gun shot injury to Manohar Singh. However, in Dehati Nalishi, Ex. P.1, although, the presence of Kaushlendra on the spot was mentioned, but it was alleged that Kaushlendra Singh along with others was bursting crackers. When it was objected by Manohar Singh, then he abused him. However, no role after the opening of fire was attributed to him. Further, there was no allegation that Kaushlendra was having any firearm or had fired any gun shot. Since, the Trial Court has already acquitted Kaushlendra Singh, and the State Appeal No. 790/2005 against his acquittal has also been dismissed by this Court by a separate judgment passed today, therefore, in absence of any specific allegation against any of the appellants, it is held, that Ramvir Singh, Nathu Singh and Ghanshyam Singh were sharing

common intention to make an attempt to commit murder of Manohar Singh.

(e) So far as the injuries sustained by Gomati bai (P.W. 13) is concerned, it is clear from her M.L.C., Ex. P. 11A, as well as x-ray report, Ex. P22, multiple metallic radio-opaque irregular size foreign body Shadows were found in the soft tissue under the muscles. Thus, it is clear that Gomatibai (P.W.13) had suffered pellet injuries which could have been caused by .12 bore gun. According to the evidence of witnesses, Nathu Singh was having .12 bore gun and he had caused gun shot injury to Gomatibai (P.W.13).

A .12 bore gun was also seized from the possession of Nathu Singh vide seizure memo, Ex. P. 29. Although independent witnesses of seizure namely Mewaram (P.W.10) and Lakhan Singh (P.W. 12) have turned hostile and have not supported the prosecution story, but they have admitted their signatures on seizure memo, Ex. P.29. Why they put their signatures on the seizure memo, Ex. P.29 has not been explained by them. The Supreme Court in the case of **Ramesh Harijan Vs. State of U.P.** Reported in **(2012) 5 SCC 777** has held as under :

> **22.4.** The recovery of part of the sheet and white clothes having blood and semen as per the FSL report has been disbelieved by the trial court in view of the fact that Ram Prasad alias Parsadi (PW 5) and Bhikari (PW 10) did not support the prosecution case like other witnesses who did not support the last seen theory. The trial court failed to

appreciate that both the said witnesses, Ram Prasad alias Parsadi (PW 5) and Bhikari (PW 10) had admitted their signature/thumb impression on the recovery memo. The factum of taking the material exhibits and preparing of the recovery memo with regard to the same and sending the cut out portions to the serologist who found the blood and semen on them vide report dated 21-3-1996 (Ext. Ka-21) is not disputed. The serological report also revealed that the vaginal swab which was taken by the doctor was also human blood and semen stained.

23. It is a settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examine him.

> "*6*. … The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof."
>
> [Vide *Bhagwan Singh* v. *State of Haryana*; *Rabindra Kumar Dey* v. *State of Orissa*; *Syad Akbar* v. *State of Karnatak* and *Khujji* v. *State of M.P.*(SCC p. 635, para 6).]

24. In *State of U.P.* v. *Ramesh Prasad Misra* (SCC p. 363, para 7) this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde* v. *State of Maharashtra*, *Gagan Kanojia* v. *State of Punjab*; *Radha Mohan Singh* v. *State of U.P.*, *Sarvesh Narain Shukla* v. *Daroga Singh* and *Subbu Singh* v. *State*.

> "*83*. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence."
>
> [See also *C. Muniappan* v. *State of T.N.* (SCC p. 596, para 83) and *Himanshu* v. *State (NCT of Delhi)*.]

25. Undoubtedly, there may be some exaggeration in the evidence of the prosecution witnesses, particularly that of Kunwar Dhruv Narain Singh (PW 1), Jata Shankar Singh

(PW 7) and Shitla Prasad Verma (PW 8). However, it is the duty of the court to unravel the truth under all circumstances.

26. In *Balaka Singh* v. *State of Punjab*, this Court considered a similar issue, placing reliance upon its earlier judgment in *Zwinglee Ariel* v. *State of M.P.* and held as under: (*Balaka Singh case*, SCC p. 517, para 8)

> "*8*. … the court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation, the court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply."

27. In *Sukhdev Yadav* v. *State of Bihar* this Court held as under: (SCC p. 90, para 3)

> "*3*. It is indeed necessary, however, to note that there would hardly be a witness whose evidence does not contain some amount of exaggeration or embellishment—sometimes there would be a deliberate attempt to offer the same and sometimes the witnesses in their over anxiety to do better from the witness box detail out an exaggerated account."

28. A similar view has been reiterated in *Appabhai* v. *State of Gujarat* (SCC pp. 246-47, para 13) wherein this Court has cautioned the courts below not to give undue importance to minor discrepancies which do not shake the basic version of the prosecution case. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness for the reason that witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. However, the courts should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.

29. In *Sucha Singh* v. *State of Punjab* (SCC pp. 113-14, para 51) this Court had taken note of its various earlier

> judgments and held that even if major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, it is the duty of the court to separate grain from chaff. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim *falsus in uno, falsus in omnibus* has no application in India and the witness cannot be branded as a liar. In case this maxim is applied in all the cases it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of credence, and merely because in some respects the court considers the same to be insufficient or unworthy of reliance, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well.

Further, V.K. Sharma (P.W.21) has stated that on 24-12-2000, he had arrested Nathu Singh and his confessional statement, Ex. P.50 was recorded. On production of .12 bore gun by Nathu Singh, the same was seized vide seizure memo, Ex. P.29.

It is well established principle of law that the evidence of Police personal cannot be discarded only because of the fact, that either he is an investigating officer or his evidence is not corroborated by independent witness. The Supreme Court in the case of **Rohtash Kumar v. State of Haryana,** reported in **(2013) 14 SCC 434** has held as under:

> **35.** The term witness, means a person who is capable of providing information by way of deposing as regards relevant facts, via an oral statement, or a statement in writing, made or given in the court, or otherwise. In *Pradeep Narayan Madgaonkar* v. *State of Maharashtra*

> this Court examined the issue of the requirement of the examination of an independent witness, and whether the evidence of a police witness requires corroboration. The Court therein held that the same must be subject to strict scrutiny. However, the evidence of police officials cannot be discarded merely on the ground that they belonged to the police force, and are either interested in the investigating or the prosecuting agency. However, as far as possible the corroboration of their evidence on material particulars, should be sought. (See also *Paras Ram* v. *State of Haryana*, *Balbir Singh* v. *State*, *Kalpnath Rai* v. *State*, *M. Prabhulal* v. *Directorate of Revenue Intelligence* and *Ravindran* v. *Supt. of Customs*.)

The Supreme Court in the case of **Mukesh Singh Vs. State (NCT of Delhi),** reported in **(2020) 10 SCC 120** has held as under :

> 11.....The informant/investigator concerned will be cited as a witness and he is always subject to cross-examination. There may be cases in which even the case of the prosecution is not solely based upon the deposition of the informant/informant-cum-investigator but there may be some independent witnesses and/or even the other police witnesses. As held by this Court in a catena of decisions, the testimony of police personnel will be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses his testimony cannot be relied upon. [See *Karamjit Singh* v. *State (NCT of Delhi)*.] As observed and held by this Court in *Devender Pal Singh* v. *State (NCT of Delhi)*, the presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefor.

One fired cartridge was also found embedded in the barrel. Thus, it is held that one .12 bore gun and fired cartridge were seized from the possession of Nathu Singh.

Lalaram (P.W.5) had examined the .12 bore gun. Lalaram (P.W.

5) is an armorer working in the police department and according to the report of the armorer, Ex. P.19, the said gun was found in working condition. Therefore, it is held that Nathu Singh (Cr.A. No. 397/2005) caused gun shot injuries to Gomati bai (P.W.13).

Whether, the appellants Nathu Singh, Ramvir Singh and Ghanshyam were sharing common intention

147. The Supreme Court in the case of **Chhota Ahirwar v. State of M.P.,** reported in **(2020) 4 SCC 126** has held as under :

> **21.** It is a settled principle of criminal law that only the person who actually commits the offence can be held guilty and sentenced in accordance with law. However, Section 34 lays down a principle of joint liability in a criminal act, the essence of which is to be found in the existence of common intention, instigating the main accused to do the criminal act, in furtherance of such intention. Even when separate acts are done by two or more persons in furtherance of a common intention, each person is liable for the result of all the acts as if all the acts had been done by all of these persons.
>
> **22.** Section 34 is only a rule of evidence which attracts the principle of joint criminal liability and does not create any distinct, substantive offence as held by this Court in *B.N. Srikantiah* v. *State of Mysore*; *Bharwad Mepa Dana* v. *State of Bombay* and other similar cases. To quote Arijit Pasayat, J. in *Harbans Kaur* v. *State of Haryana*; the distinctive feature of Section 34 is the element of participation in action.
>
> **23.** Common intention can only be inferred from proved facts and circumstances as held by this Court in *Manik Das* v. *State of Assam*. Of course, as held in *Abdul Mannan* v. *State of Assam*, the common intention can develop during the course of an occurrence.
>
> **24.** Section 34 is only attracted when a specific criminal act is done by several persons in furtherance of the common intention of all, in which case all the offenders are liable for

that criminal act in the same manner as the principal offender as if the act were done by all the offenders. This section does not whittle down the liability of the principal offender committing the principal act but additionally makes all other offenders liable. The essence of liability under Section 34 is simultaneous consensus of the minds of persons participating in the criminal act to bring about a particular result, which consensus can even be developed at the spot as held in *Lallan Rai* v. *State of Bihar*. There must be a common intention to commit the particular offence. To constitute common intention, it is absolutely necessary that the intention of each one of the accused should be known to the rest of the accused.

25. Mere participation in crime with others is not sufficient to attribute common intention. The question is whether, having regard to the facts and circumstances of this case, it can be held that the prosecution established that there was a common intention between the appellant-accused and the main accused Khilai to kill the complainant. In other words, the prosecution is required to prove a premeditated intention of both the appellant-accused and the main accused Khilai, to kill the complainant, of which both the appellant-accused and the main accused Khilai were aware. Section 34 of the Penal Code, is really intended to meet a case in which it is difficult to distinguish between the acts of individual members of a party and prove exactly what part was played by each of them.

26. To attract Section 34 of the Penal Code, no overt act is needed on the part of the accused if they share common intention with others in respect of the ultimate criminal act, which may be done by any one of the accused sharing such intention [see *Asoke Basak*, SCC p. 669]. To quote from the judgment of the Privy Council in the famous case of *Barendra Kumar Ghosh*, "they also serve who stand and wait".

27. Common intention implies acting in concert. Existence of a prearranged plan has to be proved either from the conduct of the accused, or from circumstances or from any incriminating facts. It is not enough to have the same intention independently of each other.

148. Thus, it is clear that common intention can develop during the

course of occurrence also. If the facts of this case are considered, then it is clear that Ramvir Singh, Nathu Singh and Ghanshyam Singh, fired indiscriminately, thereby causing death of Keshav, Jaswant, Raghunath @ Chhote Singh and Mamta and causing gun shot injuries to Gomati bai (P.W. 13) and Manohar Singh (P.W. 16). Further, coming to the place of occurrence with their .12 bore or .315 bore guns, clearly establishes that all the three appellants were sharing common intention.

No charge under Section 34 of I.P.C. was framed, but charge under Section 149 of I.P.C. was framed and its effect

149. It is well established principle of law that if charge under Section 149 of I.P.C. has been framed and if it is found that some of the accused persons were not guilty and some of the accused had participated in the occurrence and were sharing common intention then, they can be convicted with the aid of Section 34 of I.P.C. and non-framing of charge under Section 34 of I.P.C. would not cause any prejudice to them.

The Supreme Court in the case of **Mala Singh v. State of Haryana,** reported in **(2019) 5 SCC 127** has held as under :

> **40.** Now coming to the question regarding altering of the charge from Section 149 to Section 34 IPC read with Section 302 IPC, this question was considered by this Court for the first time in *Lachhman Singh* v. *State* where Fazl Ali, J. speaking for the Bench held as under: (AIR p. 170, para 13)

"*13*. It was also contended that there being no charge under Section 302 read with Section 34, Penal Code, the conviction of the appellants under Section 302 read with Section 149 could not have been altered by the High Court to one under Section 302 read with Section 34, upon the acquittal of the remaining accused persons. The facts of the case are however such that the accused could have been charged alternatively, either under Section 302 read with Section 149 or under Section 302 read with Section 34. The point has therefore no force."

41. This question was again examined by this Court in *Karnail Singh* v. *State of Punjab* wherein the learned Judge Venkatarama Ayyar, J. elaborating the law on the subject, held as under: (AIR p. 207, para 7)

"*7*. Then the next question is whether the conviction of the appellant under Section 302 read with Section 34, when they had been charged only under Section 302 read with Section 149 was illegal. The contention of the appellants is that the scope of Section 149 is different from that of Section 34, that while what Section 149 requires is proof of a common object, it would be necessary under Section 34 to establish a common intention and that therefore when the charge against the accused is under Section 149, it cannot be converted in appeal into one under Section 34. The following observations of this Court in *Dalip Singh* v. *State of Punjab* were relied on in support of this position: (AIR p. 366, para 24)

'*24*. Nor is it possible in this case to have recourse to Section 34 because the appellants have not been charged with that even in the alternative and the common intention required by Section 34 and the common object required by Section 149 are far from being the same thing.'

It is true that there is substantial difference between the two sections but as observed by Lord Sumner in *Barendra Kumar Ghosh* v. *King Emperor*, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. If the common object which is the subject-matter of the charge under Section 149 does not necessarily involve a common intention, then the

substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not therefore to be permitted. But if the facts to be proved and the evidence to be adduced with reference to the charge under Section 149 would be the same if the charge were under Section 34, then the failure to charge the accused under Section 34 could not result in any prejudice and in such cases the substitution of Section 34 for Section 149 must be held to be a formal matter.

We do not read the observations in *Dalip Singh* v. *State of Punjab* as an authority for the broad proposition that in law there could be no recourse to Section 34 when the charge is only under Section 149. Whether such recourse can be had or not must depend on the facts of each case. This is in accord with the view taken by this Court in *Lachhman Singh* v. *State*, where the substitution of Section 34 for Section 149 was upheld on the ground that the facts were such 'that the accused could have been charged alternatively either under Section 302 read with Section 149, or under Section 302 read with Section 34' (AIR p. 170, para 13)."

42. The law laid down in *Lachhman Singh* and *Karnail Singh* was reiterated in *Willie (William) Slaney* wherein Vivian Bose, J. speaking for the Bench while referring to these two decisions, held as under: [*Willie (William) Slaney case*, AIR p. 129, para 49]

> "*49*. The following cases afford no difficulty because they directly accord with the view we have set out at length above. In *Lachhman Singh* v. *State*, it was held that when there is a charge under Section 302 of the Penal Code read with Section 149 and the charge under Section 149 disappears because of the acquittal of some of the accused, a conviction under Section 302 of the Penal Code read with Section 34 is good even though there is no separate charge under Section 302 read with Section 34, provided the accused could have been so charged on the facts of the case.
>
> The decision in *Karnail Singh* v. *State of Punjab* is to the same effect and the question about prejudice was also considered."

43. This principle of law was then reiterated after referring to law laid down in *Willie (William) Slaney* in *Chittarmal* v. *State of Rajasthan* in the following words: (*Chittarmal*

case, SCC p. 273, para 14)

"*14*. It is well settled by a catena of decisions that Section 34 as well as Section 149 deal with liability for constructive criminality i.e. vicarious liability of a person for acts of others. Both the sections deal with combinations of persons who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent overlap. But a clear distinction is made out between common intention and common object in that common intention denotes action in concert and necessarily postulates the existence of a pre-arranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or preconcert. Though there is substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. Thus, if several persons numbering five or more, do an act and intend to do it, both Section 34 and Section 149 may apply. If the common object does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not, therefore, to be permitted. But if it does involve a common intention then the substitution of Section 34 for Section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case. The non-applicability of Section 149 is, therefore, no bar in convicting the appellants under Section 302 read with Section 34 IPC, if the evidence discloses commission of an offence in furtherance of the common intention of them all. (See *Barendra Kumar Ghosh* v. *King Emperor*; *Mannam Venkatadari* v. *State of A.P.*; *Nethala Pothuraju* v. *State of A.P.* and *Ram Tahal* v. *State of U.P.*)"

The Supreme Court in the case of **Dhaneswar Mahakud Vs. State of Orissa** reported in **(2006) 9 SCC 307** has held as under :

12. Recently in *Gurpreet Singh* v. *State of Punjab* this Court has relied upon *Ramji Singh* v. *State of Bihar* for the

proposition that charges framed under simpliciter Section 302 can be changed to Section 302 read with Section 34 IPC. The relevant portion of the judgment in *Ramji Singh case* is extracted below: (SCC pp. 533-34, paras 14-16)

> "*14*. Legal position as to whether in the absence of charge under Section 34 conviction could be maintained under Section 34 was cleared by the Constitution Bench in *Willie (William) Slaney* v. *State of M.P.* where this Court observed at para 86: (AIR p. 137)
>
> '*86*. Sections 34, 114 and 149 of the Penal Code provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; "and the charge is a rolled-up one involving the direct liability and the constructive liability" without specifying who are directly liable and who are sought to be made constructively liable.
>
> In such a situation, the absence of a charge under one or other of the various heads of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for the substantive offence, without a charge, can be set aside, prejudice will have to be made out. In most of the cases of this kind, evidence is normally given from the outset as to who was primarily responsible for the act which brought about the offence and such evidence is of course relevant.'

This was reiterated by the Supreme Court a number of times. We may refer to *Dhanna* v. *State of M.P.* where this position is reiterated after referring to the other cases. It held: (SCC pp. 82-83, para 9)

> '*9*. It is, therefore, open to the court to take recourse to Section 34 IPC even if the said section was not specifically mentioned in the charge and instead Section 149 IPC has been included. Of course a finding that the assailant concerned had a common intention with the other accused is necessary for resorting to such a course. This view was followed by this Court in later decisions also. (*Amar Singh* v. *State of Haryana*, *Bhoor Singh* v. *State of Punjab*.) The first submission of the learned counsel for the appellant has no merit.'
>
> Accordingly it is held that even in the absence of the charge under Section 34 the conviction could be

maintained by the courts below.

15. The counsel for the appellants could not show that any prejudice was caused to either of the accused persons because of the non-framing of charge under Section 34.

16. It is true that the two injuries which proved to be fatal were not specifically attributed to either of the accused. The common intention can be formed at the spot. At times it is difficult to get direct evidence of preconcert of minds. The common intention can be gathered from the circumstances and the manner in which assault is carried out. The manner in which assault was carried out leaves no manner of doubt in our mind that the appellants had come with the intention to kill the deceased. Their intention was not to cause injuries alone."

13. It is apparent from the decisions rendered by this Court that there is no bar on conviction of the accused-appellants with the aid of Section 34 IPC in place of Section 149 IPC if there is evidence on record to show that such accused shared a common intention to commit the crime and no apparent injustice or prejudice is shown to have been caused by application of Section 34 IPC in place of Section 149.

150. However, there is basic difference between common intention and common object. Common intention requires pre-oriented minds and concerted plans whereas, Common object has no such requirement of meeting of minds of the members of unlawful assembly before commission of offence. However, common intention may also develop during the course of occurrence, provided there is clear proof and cogent evidence to prove common intention. Thus, if the facts of this case are considered, then it is clear that all the three appellants came on the spot with their respective guns and fired multiple gun shots. Even empty, live and misfired cartridges of .12 and .315 bore guns

were found on the spot. Both the injured persons as well as deceased Mamta (three charring injuries with one pellet inside such injury) and Raghunath @ Chhote Singh had suffered injuries due to gun shot fired from .12 bore guns. Thus, it is clear that all the three appellants were sharing common intention. Since, some of the elements of common intention and common object overlap each other, therefore, due to acquittal of remaining accused persons, the appellants can be convicted with the aid of Section 34 of I.P.C.

Whether the conviction of Ghanshyam and Nathu Singh can be converted into under Section 302 and 307 of IPC respectively instead of 302/34 of I.P.C. and 307/34 of I.P.C. as awarded by Trial Court.

151. The Trial Court has convicted Ghanshyam Singh for offence under Section 302/34 of I.P.C. for murder of Raghunath @ Chhote Singh, whereas this Court has found that the findings given by the Trial Court in this regard are not correct and in fact Raghunath @ Chhote Singh died because of gun shot fired by Ghanshyam.

The Trial Court had framed charge under Section 302 of I.P.C. against Ghanshyam Singh for murder of Raghunath @ Chhote Singh. The State has not filed any appeal against the findings given by the Trial Court in this regard. However, it is clear that Ghanshyam Singh has already been convicted under Section 302/34 of I.P.C. for murder

of Raghunath @ Chhote Singh and has already been awarded Life Imprisonment and a fine of Rs. 1000 for offence under Section 302/34 of I.P.C. It is true that conviction with the help of Section 34 of I.P.C. and conviction for offence under Section 302 of I.P.C. stands on a different footing, but since, no prejudice is caused to the appellant Ghanshyam due to alteration of his conviction from under Section 302/34 of I.P.C. to under Section 302 of I.P.C. for murder of Raghunath @ Chhote Singh, specifically when a specific charge was framed against Ghanshyam Singh, and he faced the criminal trial knowing fully well that he is being tried for committing murder of Raghunath @ Chhote Singh, therefore, it is held that even in absence of any appeal against acquittal of Ghanshyam for offence under Section 302 of I.P.C., the findings recorded by the Trial Court thereby convicting Ghanshyam Singh for offence under Section 302/34 of I.P.C. can be altered to conviction under Section 302 of I.P.C.

Similarly, the conviction of Nathu Singh for offence under Section 307/34 of I.P.C. can be altered to conviction under Section 307 of I.P.C., because a specific charge was framed against him under Section 307 of I.P.C. for making an attempt to murder Gomatibai (P.W.13).

Accordingly, it is held as under :

(i) **Ramvir Singh (Cr.A. of 425 of 2005)** caused death of Keshav,

and Jaswant, therefore, he is held guilty of committing offence under Section 302 of I.P.C. on two counts. He is further held guilty of offence under Section 302/34 of I.P.C. for murder of Raghunath @ Chhote Singh and Mamta. He is further held guilty for committing offence under Section 307/34 of I.P.C. i.e., for making an attempt to commit murder of Gomati bai (P.W. 13).

(ii) **Nathu Singh (Cr.A. 397/2005)** is held guilty for offence under Section 302/34 of I.P.C. on four counts. Since, he also caused gun shot injury to Gomatibai (P.W. 13), therefore, it is held that he had knowledge and intention that by his act, if death of Gomati bai (P.W.13) had occurred then he would have been guilty of murder. Accordingly, he is held guilty for committing offence under Section 307 of I.P.C. for making an attempt to commit murder of Gomatibai (P.W.13).

(iii) **Ghanshyam Singh (Cr.A. No. 401/2005)** is held guilty for committing offence under Section 302 of I.P.C. for killing Raghunath @ Chhote Singh. He is further held guilty of offence under Section 302/34 of I.P.C. on three counts i.e., for murder of Keshav, Jaswant and Mamta. He is also held guilty for committing offence under Section 307/34 of I.P.C. i.e., for making an attempt to commit murder of Gomati bai (P.W. 13).

(iv) By a separate judgment passed today in Cr.A. No. 790/2005, this

Court has upheld the acquittal of Kaushlendra Singh and others. Accordingly, **Nathu Singh, Ramvir Singh and Ghanshyam Singh** are also held guilty for committing offence under Section 307/34 of I.P.C., for making an attempt to commit murder of Manohar Singh.

152.(i) Accordingly, following sentence is awarded to the appellants :

(a) Ramvir Singh :

Life Imprisonment with fine of Rs. 1000/- for offence under Section 302 of I.P.C. on two counts (for murder of Keshav, and Jaswant) and under Section 302/34 of I.P.C. for murder of Raghunath @ Chhote Singh and Mamta awarded by Trial Court is hereby affirmed.

Rigorous imprisonment of 7 years and fine of Rs. 500/- awarded by Trial Court for offence under Sections 307/34 of I.P.C. (on two counts) for making an attempt to murder Gomati bai and Manohar Singh is hereby affirmed.

All sentences shall run concurrently.

(b) Nathu Singh :

Life imprisonment with fine of Rs. 1000/- awarded by Trial Court for offence under Section 302/34 of I.P.C. on four counts i.e., for murder of Keshav, Jaswant, Raghunath @ Chhote Singh and Mamta is hereby affirmed.

Rigorous Imprisonment of 7 years with fine of Rs. 500/- is awarded for offence under Section 307 of I.P.C., i.e., for making an attempt to kill Gomati bai (P.W.13) [As awarded by Trial Court for offence under Section 307/34 of I.P.C.]

Rigorous Imprisonment of 7 years with fine of Rs. 500/- awarded by the Trial Court for offence under Section 307/34 of I.P.C. for making an attempt to murder Manohar is hereby affirmed.

All sentences shall run concurrently.

(c) Ghanshyam :

Life Imprisonment with fine of Rs. 1000/- for offence under Section 302/34 of I.P.C. on three counts (for murder of Keshav, Jaswant and Mamta) awarded by Trial Court is hereby affirmed.

Life imprisonment with fine of Rs. 1000/- is awarded for offence under Section 302 of I.P.C. for murder of Raghunath @ Chhote Singh.

Rigorous Imprisonment of 7 years with fine of Rs. 500/- awarded by Trial Court for offence under Section 307/34 of I.P.C. (on two counts) for making an attempt to murder Gomati bai and Manohar Singh is hereby affirmed.

All sentences shall run concurrently.

153. Accordingly, with aforementioned modification, the judgment and sentence dated 20-5-2005 passed by 2nd Additional Sessions Judge, Morena in S.T. No. 37/2001 is hereby affirmed.

154. The appellants Ghanshyam Singh and Ramvir Singh are in jail. They shall undergo the remaining jail sentence. They be intimated about the judgment.

155. The appellant Nathu Singh is on bail. His bail bonds are hereby cancelled. He is directed to immediately surrender before the Trial Court, for undergoing the remaining jail sentence.

156. The record of the Trial Court be returned back. The appeals fail and are hereby **Dismissed.**

(G.S. Ahluwalia)
Judge

(Rajeev Shrivastava)
Judge