

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
BEFORE D.B. HON'BLE MR. JUSTICE S.C. SHARMA & HON.MR.
JUSTICE ALOK VERMA, JUDGE

Criminal Appeal No.1303/2008

Arun & another . . . Appellant
Versus
State of Madhya Pradesh . . . Respondent

Criminal Appeal No.1324/2008

Rakesh . . . Appellant
Versus
State of Madhya Pradesh . . . Respondent

Criminal Appeal No.1338/2008

Vishnu @ Dabbu . . . Appellant
Versus
State of Madhya Pradesh . . . Respondent

Criminal Appeal No.1406/2008

Quayyum . . . Appellant
Versus
State of Madhya Pradesh . . . Respondent

Criminal Appeal No.175/2009

Neeraj . . . Appellant
Versus
State of Madhya Pradesh . . . Respondent

Criminal Appeal No.214/2009

Julphi @ Julphikar . . . Appellant
Versus
State of Madhya Pradesh . . . Respondent

CORAM

Hon'ble Shri Justice S.C. Sharma
Hon'ble Shri Justice Alok Verma

Whether approved for reporting ?

Shri Bhaskar Agrawal and Shri Virendra Sharma, learned counsel for the appellants in Cr.A. No.1303/2008, 1406/2008 and 214/2009.

Shri Jitendra Bajpai, learned counsel for the appellant in Cr.A. No.1324/2008.

Ms. Rekha Shrivastava, learned counsel for the appellant in Cr.A. No.1338/2008

Shri Vivek Phadke, learned counsel for the appellant in Cr.A. No.175/2009.

Shri Milind Phadke, learned counsel for the respondent/State.

Shri Vivek Singh, learned counsel for the complainant.

Judgment

.07.2017

Per : Alok Verma, Justice:

This common judgment shall govern disposal of Cr.A. No.1303/2008, 1324/2008, 1338/2008, 1406/2008, 175/2009 & 214/2009. Facts and circumstances as they emerge from Cr.A. No.1303/2008 are taken into consideration for all the appeals.

2. Aggrieved by conviction and sentence awarded on the appellants by the trial Court, these appeals are filed challenging the judgment passed in Session Trial No.288/2003 dated 13.10.2008

wherein the learned trial Court held the appellants guilty under Sections 120-B, 302/149 of IPC and the appellant Rakesh guilty under Section 27 of Arms Act. The sentences awarded on the appellants are as under:-

Conviction			Sentence		
Appellant	Section	Act	Imprisonment	Fine if deposited details	Imprisonment in lieu fine
All	120(B)	I.P.C	Life imprisonment	Rs.3,000/-	6 months S.I.
All	302/149 (on two counts)	I.P.C.	Life imprisonment	Rs.3,000/-	6 months S.I.
Rakesh	27	Arms Act	3 years R.I.	Rs.1,000/-	2 months S.I.

3. Prosecution story in brief is that Hitesh @ Hittu Sharma reached the police outpost Birlagram alongwith Bhuru @ Jitendra Yadav at 1:50 am in the intervening night of 22-23.06.2003 and lodged a report that on that day, party was arranged at circuit house by a corporator who successfully contested election and declared successful. In the party the deceased Dilip Sharma, Yogesh Dubey and prosecution witness Bhuru @ Jitendra Yadav were also present. When the party ended, the complainant Hitesh @ Hitu Sharma left the premises of circuit house a bit earlier than the deceased Yogesh Dubey and Dilip Sharma. According to the complainant, he was residing with the deceased Dilip Sharma as he was cousin brother of the deceased. He reached back house No.22, where the deceased

Dilip Sharma was residing with his family, and rang the door bell, on which, two sisters of deceased Dilip Sharma, Meena Sharma and Nisha Sharma opened the door and came out. They were standing at the door of the house waiting for the deceased Dilip Sharma and Yogesh Dubey to arrive. Deceased Yogesh Dubey and Dilip Sharma alongwith Bhuru @ Jitendra Yadav reached there on a motorcycle. Deceased Yogesh Dubey was driving the motorcycle while Bhuru @ Jitendra Yadav was sitting in the middle. The deceased Dilip Sharma was sitting on pillion after Bhuru @ Jitendra Yadav. When they reached in front of house of C.G. Anand (P.W-2), six or seven persons suddenly came in front of the motorcycle, they threw something on face of the deceased Yogesh Dubey, who was driving the motorcycle, on which, Dilip Sharma sitting on the pillion raised a cry. Accused Arun Nayer fired a gun-shot on the deceased Yogesh Dubey, due to which, the motorcycle got dis-balanced and all the three riders fell down. When the deceased Dilip Sharma tried to stand up, accused Rakesh fired on him due to which, he sustained gun-shot injury. Accused Julphi @ Julphikar also fired gun-shot from his revolver. Accused Vishnu @ Dabbu and accused Qayyum were armed with *Gupti*. They caused stab wound on deceased Yogesh Dubey and accused Vishnu @ Dabbu caused stab wound on deceased Dilip Sharma. When C.G. Anand (P.W-2), in front of whose house the incident took place, heard the commotion, he came

out of the house and saw the deceased lying injured. The deceased Dilip Sharma was alive at that time so he called his neighbour and in his car the deceased was shifted to Jan Seva Hospital. He also gave a phone call to Jan Seva Hospital to sent an ambulance for Yogesh Dubey who was already dead by that time. After shifting of the deceased Dilip Sharma in a car, the deceased Yogesh Dubey was also shifted in the ambulance that arrived after a while. According to prosecution story, the complainant Hitesh @ Hittu Sharma, Bhuru @ Jitendra Yadav and two sisters of deceased Dilip Sharma, Meena Sharma and Nisha Sharma, who were outside their house and witnessed the incident. This apart, according to prosecution story, Satyendra Singh (P.W-6) alongwith Ashwini also followed the deceased Yogesh Dubey and Dilip Sharma and they also saw the incident. It is also the case of the prosecution that Mohan Bhaya (P.W-15) who was also following the deceased on another motorcycle with one Sharad, also reached on the spot and saw the incident. The Investigating Officer S.K. Naseene (P.W-22) completed investigation and charge-sheet was filed before the Court of concerning Magistrate.

4. In all, eight persons were arraigned as accused who faced trial. The learned trial Court recorded the evidence of prosecution and defence and also statements of all the accused under Section 313 of Cr.P.C. and passed impugned judgment in which, appellants

were convicted and sentenced as aforesaid and the accused Pradeep Nayar was acquitted.

5. Aggrieved by their conviction and sentence as aforesaid these appeals are filed on following grounds *inter alia* (i) that the F.I.R. i.e. Exhibit-P/9 is ante-timed. The prosecution witnesses who were shown as eye-witnesses were all implanted witnesses. The incident was not witnessed by anybody and to falsely implicate the present appellants, eye witnesses were implanted by the prosecution and ante-timed F.I.R. was prepared. (ii) there were discrepancies in the statements of all the prosecution witnesses who were examined as eye witnesses by the prosecution and such discrepancies made their statement unreliable and further it also shows that they never witnessed the incident. (iii) the arm seized during the investigation did not match with the spent bullets recovered from bodies of the deceased by the prosecution and as such no benefit can be given to the prosecution on this aspect. (iv) Appellant Neeraj was implicated with the aid of section 120-B of IPC. It is alleged that he was seen sitting in the house of the co-accused Arun Nayyar and prosecution witness Meena Sharma who was residing in the house next to the accused Arun Nayer heard them talking about committing the offence and eliminating the deceased Dilip Sharma. This fact is not proved and he was implicated in the case as an after thought.

6. Learned counsel appearing on behalf of the State supported

the impugned judgment and submits that the impugned judgment was passed after considering the ocular and documentary evidence available on record and no interference is called for. He further submits that the conviction and sentence passed on the present appellants may be affirmed.

7. According to prosecution story there were seven eye-witnesses C.G. Anand (P.W-2), Bhuru @ Jitendra Yadav (P.W-3), Meena Sharma (P.W-4), Nisha Sharma (P.W-5), Satyendra Singh (P.W-6), Hitesh @ Hittu Sharma (P.W-7) and Mohan Bhaya (P.W-15). According to the counsel appearing for the accused persons, these witnesses are not eye-witnesses and they were shown as eye-witnesses to falsely implicate the present appellants. According to the counsel, these witnesses are either closely related to deceased Dilip Sharma or they were close political associates. The only exception is witness C.G. Anand, Who is P.W-2. According to learned counsel, Bhuru @ Jitendra Yadav residing in the house of the deceased Dilip Sharma and he was serving as a domestic help to the family. Meena Sharma (P.W-4) and Nisha Sharma (P.W-5) were real sisters of deceased Dilip Sharma. Hitesh @ Hittu Sharma, who lodged the First Information Report was cousin brother of deceased Yogesh. He was closely related and at the time of incident living in house of Yogesh Dubey. Satyendra Singh (P.W-6) and Mohan Bhaya (P.W-15) were close political associates and companion of

Dilib Sharma.

8. To appreciate evidence of these witnesses, we may begin with statement of B.S. Kadam (P.W-24). He was posted at outpost Birlagram in the intervening night of 22-23.06.2003. According to him Hitesh @ Hittu Shama (P.W-7) along with Bhuru @ Jitendra Yadav (P.W-3) reached the outpost and lodged the report, which he wrote in his own hand and which is Exhibit-P/9A. This report was registered as 0X108/03 at the outpost of Birlagram and sent the report to the Police Station-Nagda per messenger Constable Gambhir Singh for registration of regular crime. He also informed the Station In-charge of Police Station-Nagda on phone. Thereafter, he proceeded to the spot of incident from there, he went to Jan Seva Hospital. When he reached Jan Seva Hospital, Station In-charge S.K. Nassene (P.W-22) already reached there, thereafter, the matter was investigated by Station In-charge S.K. Nassene. Only part of the investigation was completed by this witness. His cross-examination shall be taken into consideration at an appropriate stage. In light of statement of other prosecution witnesses, who were presented by the prosecution as eye-witness.

9. Apart from these witnesses another witness, Dr. A.K. Dubey (P.W-18), who performed post-mortem on the dead body of Yogesh Dubey and Dilip Sharma. In his statement, he had stated that on the body of deceased Dilip Sharma two wounds were found of

following description:-

Injury No.1 – Gun shot injury, the entrance wound was located on right shoulder on frontal side. Almost circular 2cm x 2cm, which was bleeding. Margins were torn and inverted for about 2 cm. There was charring on the margins of exit wound. This gun shot injury was located on left side of back, size of which, was 1x1 cm and it was bleeding.

Injury No.2 – Stab wound 2.5 cm long and 0.5 cm wide depth of which could not be measured. This wound was located on the middle of back.

(Language supplied) Apart from these two injuries, no other injuries was found on the body. Direction of bullet No.1 was downwards from wound of entrance to wound of exit. Due to the bullet, the lung and heart of the deceased were damaged. The thoracic cavity was filled with blood. The bullet was found entangled in cloth of the deceased, which was sealed and handed over to the police. This witness also prepared a query report, which is Exhibit-P/31.

He also performed post-mortem on the body of deceased Yogesh Dubey and on his body three injuries were found as described below:-

Injury No.1- Gun shot injury entrance wound which was located at the back of head size of which was 8 cm. The margins

were torned and inverted. On the margins charing around the wound was present. The bone was cut and size of which was 1cm x 1cm. There were multiple fracture in the bone. Blood and bone tissue were coming out of this wound. There was no exit wound and the bullet found below the left eye due to this wound, the eye was swollen and blackened and his fact was also swollen.

Injury No.2 – Stab wound on side of abdomen on upper portion size of which was 2.5x0.5 cm. Depth could not be measured.

Injury No.3 – Stab wound on left side of back in lumber area of size of which was 3cm x 0.5 cm. Depth could not be measured. Due to the injury No.1, the bullet damaged and torn tissues and it also broke the facial bone and entangled below the left eye. The bullet was handed over to the police. (Language supplied)

10. From the statements of the present appellants, it is apparent that deceased Dilip Sharma sustained a gun shot injury, which entered from is right shoulder and entrance wound was located on the front side of his body while the bullet entered into the body of the deceased Yogesh Dubey from back and travel upwards in both cases. It is apparent that angle of bullet was such that bullet must have fired when the deceased were at lower side then the person firing gun shots on them.

11. In light of above medical evidence, we may examine the

statements of eye-witnesses. The first eye-witness is C.G. Anand. He is the only witness in respect of whom neither the prosecution nor the defence alleged any connection with the deceased Dilip Sharma. He was working in the factory and living in colony where the incident occurred in front of his residence. This witness stated that at the time of incident, he was sleeping in his house at about 1:15 am, he heard a noise of something heavy fallen down outside his house. He came out of the house and saw a motorcycle i.e. Hero Honda lying in front of his house. One person was under the motorcycle and another was lying near the fencing of the garden in front of his house. He went near the motorcycle and saw the deceased Dilip Sharma lying under the motorcycle. He was unconscious. His eyes were open and he was convulsing. His neighbour Sharad Oswal also came out of his house. He called him and with his help brought out the deceased Dilip Sharma from under the motorcycle. After four houses, Kantilal Sharma was residing. He was having a Fiat car. He called him. He took sometime to get ready. Meanwhile, he rang up Jan Seva Hospital and requested them to send ambulance. When Kantilal Sharma came with his car, he put the deceased Dilip Sharma inside the car and took him to Jan Seva Hospital. While they were going to Jan Seva Hospital, they saw the ambulance coming to the spot. In Jan Seva Hospital, Dr. Sodani and Dr. Chaturvedi and two other

Doctors examined the deceased Dilip Sharma and declared him brought dead. This witness apparently reached on the spot immediately after the incident when even, Dilip Sharma was alive but he did not state that other eye-witnesses as per the prosecution story especially Bhuru @ Jitendra Yadav, who according to prosecution story, came on the same motorcycle and was there when the incident took place. No other eye-witnesses including Hitesh @ Hittu Sharma, Meena Sharma, Nisha Sharma and Satyendra Singh were mentioned by him. His statement under Section 161 of Cr.P.C. was also the same, and therefore, he was not declared hostile. In cross-examination of this witness, no important fact came. Only important aspect was that when they reached Jan Seva Hospital, the the real brother of deceased Yogesh Dubey, Ashok Sharma (P.W-12) reached there within five minutes.

12. Next important eye-witness is Hitesh @ Hittu Sharma. This witness according to prosecution after the incident, went to police outpost Birlagram, and lodged the report. In his examination-in-chief, this witness had stated that after the party at circuit house was over, deceased Dilip Sharma and Yogesh Dubey left for their home on a motorcycle on which Bhuru @ Jitendra Yadav (P.W-3) was also sitting in the middle. This witness was also at circuit house. He also started with him on another motorcycle, however, motorcycle got punctured before the Grasim School, and therefore, the

deceased moved away. He parked his motorcycle only and walked towards the house of the deceased Dilip Sharma because he was residing with him. After stating this story, when he was examined on 07.04.2005, he was declared hostile and he was cross-examined by prosecution and defence counsel. His statement was over and he was discharged. About after one year, thereafter, he filed an application on 05.08.2006, in which, he stated that he and accused persons were lodged in the same jail. The accused persons were threatening him. His younger brother Gagan Sharma came to meet him on 22.02.2005. On this, Pradeep Nayyar, Anil Nayyar and other persons beat him and due to which, he was afraid. When he brought to the Court for recording his statement, the accused threatened him while they were on way to Court. He was under pressure to change his version, and therefore, he gave wrong statement. After he filed this application, the prosecution also filed an application under Section 311 of Cr.P.C. for re-examination of the witnesses. A written reply was filed on this application and after hearing both the sides, the learned trial Court allowed the application and directed that the witnesses may be re-examined. The defence counsel sought time to file an application for challenging the order before this Court. An application under Section 482 of Cr.P.C. was filed before this Court. In this matter, proceedings before the trial Court were stayed. The application filed by the accused persons was disposed

of by this Court in M.Cr.C. No.1079/2007 by order dated 10.05.2007 and the application was dismissed and order passed by the trial Court on 01.09.2006 was affirmed. In compliance of this order the witness agains examined by the Court.

13. In these circumstances, it is apparent that his earlier statement was considered to be given under threat and duress, and therefore, this Court permitted the trial Court to reexamine this witness, as such, his earlier statement is of no relevance and has to be disregarded. Accordingly, his earlier statement is not being taken into consideration by this Court. We shall proceed to examine his statement given on 29.11.2006 and also his cross-examination that was recorded on 31.05.2007 and onwards.

14. In examination-in-chief recorded on 29.11.2006, he narrated the incident that took place at the gate of the jail, in which, it was alleged that the relatives of co-accused Arun Nayer beat his brother Gagan Sharma. They also threatened them that if he would give statement against them, they would kill Gagan Sharma. Under that threat and due to fear, he gave his earlier statement and also filed copy of complaint, which is marked as Exhibit-P/51. Stating that his earlier statement was not correct, he narrated the actual story that he reached his brother Dilip Sharma's residence before the incident took place. He rang the bell and his sisters Meena Sharma (P.W-4) and Nisha Sharma (P.W-5) opened the door. Subsequently,

they saw the deceased Yogesh Dubey, Dilip Sharma and Bhuru @ Jitendra Yadav (P.W-3) coming on the motorcycle, on which, Bhuru was sitting in the middle. Describing the incident he stated that suddenly six to seven persons came in front their motorcycle, they threw some substance in their eyes, on which, his brother Dilip Sharma raised cry, thereafter Arun Nayer fired gun shot on Yogesh Dubey, which hit him and the motorcycle fell down. When deceased Dilip Sharma again stood up, he was fired upon by Julphi @ Julphikar by both the hands (in evidence it was stated that accused Julphi @ Julphikar had some finger missing in his hand, and therefore, he could not fire the gun from one single hand, therefore, according to this witness, he fired gun from both the hands). Accused Vishnu @ Dabbu and Qayyum were armed with Gupti and another accused who threw something on the deceased, was also armed with Gupti, that accused inflicted injury on Yogesh Dubey. He also inflicted stab wound on Dilip Sharma. Accused Neeraj was inciting them to kill the deceased. According to this witness, the incident was witnessed by Mohan Bhaya (P.W-15), Satyendra Singh (P.W-6), Ashwini and Sharad and also by Meena Sharma (P.W-4) and Nisha Sharma (P.W-5), who were also standing with him. When the accused persons saw them, they ran away towards accused Arun Nayer's house. Other resident of the locality also woke up, and thereafter, they took Dilip Sharma as he was

alive at that time, to Jan Seva Hospital. Also Mohan Bhaya and Satyendra Singh followed the car and went to Jan Seva Hospital. Witness Bhuru @ Jitendra Yadav went to outpost of Birlagram with him. There, he lodged the report.

15. The most important eye-witness is Bhuru @ Hitendra Yadav, who according to prosecution story was travelling on the motorcycle. He was examined as P.W-3. He described the incident stating that when some substance was thrown towards the motorcycle, deceased Dilip Sharma raised a cry. On this, Arun Nayer fired gun shot on Yogesh Dubey due to which, the motorcycle got disbalanced and Yogesh Dubey fell on barbed wire fencing of the garden. The motorcycle fell on other side and he was entangled with the motorcycle. Deceased Dilip Sharma fell down near him, he stood up, on which, Rakesh fired gun shot on him. Accused Julphi @ Julphikar fired another shot on Dilip Sharma, Qayyum inflicted stab wound on Yogesh Dubey and another stab wound was inflicted by that fellow who threw some substance. This person was identified by this witness before the Court as accused Jitendra Singh. Vishnu @ Dabbu inflicted stab wound on back of Dilip Sharma. Accused Neeraj was standing there and inciting the other accused persons to kill them. Meena Sharma (P.W-4) and Nisha Sharma (P.W-5), who were living in Ambala alongwith Hitesh @ Hittu Sharma reached on the spot, thereafter, the accused

ran towards the house of accused Arun Nayer. This witness is only eighteen years of age. He was living with deceased Yogesh Dubey and was helping them in house hold work. Meena Sharma (P.W-4) is real sister of Dilip Sharma. According to prosecution story, she was standing with Hittu Sharma (P.W-7) after opening the door, when Hittu Sharma rang the bell. Another sister Nisha Sharma (P.W-5) who was also with her described the incident that somebody threw some substance on motorcycle, on which, Yogesh Dubey raised cry. She and Hittu Sharma ran towards the spot. They saw Arun Nayer firing gun shot on Yogesh Dubey due to which, the motorcycle got disbalanced and Yogesh Dubey fell down on barbed wire fencing on the garden. Bhuru @ Jitendra Yadav (P.W-3) and deceased Dilip Sharma also fell down. When Dilip Sharma stood up, accused Rakesh fired gun shot on him and second shot was fired by Julphi @ Julphikar. After that Mohan Bhaya, Sharad Neema also came and the accused persons ran away towards the house of Arun Nayer. Before running away, accused Qayyum inflicted injury on Yogesh Dubey on right side of his abdomen, on left side Jitu inflicted stab wound and Vishnu @ Dabbu inflicted stab wound on back of her brother Dilip Sharma. When they raised cry, C.G. Anand came and he took out his car and took his brother to Jan Seva Hospital. According to this witness, she followed the car on her motorcycle. Subsequently, she stated that she called her son,

who brought motorcycle and drove her to hospital.

16. Nisha Sharma (P.W-5) is also an eye-witness. She is also sister of deceased Dilip Sharma. She came out of the house, when Hittu Sharma (P.W-7) rang the bell before the incident. They according to prosecution story, were in front of their house when the incident took place. She narrated the story as told by her sister Meena Sharma (P.W-4). She was also examined on the same day i.e. on 18.02.2005. Apart from other facts stated by another prosecution witnesses, this witness also said that she alongwith Bhuru @ Jitendra Yadav (P.W-3), Hitesh @ Hittu Sharma (P.W-7) and her maternal aunt Toshi bua went to Jan Seva Hospital in the Ambassador car, in which, Yogesh Dubey was shifted to the Hospital.

17. Satyendra Singh (P.W-6) is also an eye-witness according to prosecution story. The spot map was prepared by the Investigating Officer before him and seizure of blood stained soil and plain soil etc. were seized before him. This witness had stated that after deceased Yogesh Dubey, Dilip Sharma and Bhuru @ Jitendra Yadav (P.W-3) left circuit house, where party was going on, he and Ashwini also followed them on another motorcycle. They stopped for sometime near petrol pump to light a cigarette, and thereafter, they followed them. They also took turn towards B-block. He wanted to discuss something with Dilip Sharma. He said that when

motorcycle on which deceased Dilip Sharma was proceeded towards his house, six to seven persons came before the motorcycle and threw something on them. They encircled the motorcycle and Arun Nayer fired gun shot on Yogesh Dubey. Due to injury that Yogesh Dubey sustained, motorcycle got disbalanced and they fell down. When Dilip Sharma stood up, he was fired upon by Rakesh Nema and Julphi @ Julphikar. Accused Qayyum inflicted stab wound on Yogesh Dubey, which caused a stab wound on right side of his abdomen. Accused Qayyum inflicted a stab wound on back of Dilip Sharma. Another accused inflicted stab wound on Dilip Sharma and Yogesh Dubey. Accused Neeraj was also there, he was inciting the other accused persons to kill the deceased. Both the sisters Meena Sharma (P.W-4) and Nisha Sharma (P.W-5), came there and Mohan Bhaya, Sharad and Hittu Sharma reached on the spot. C.G. Anand took Dilip Sharma in his Ambassador to Jan Seva Hospital, thereafter, ambulance came from Jan Seva Hospital, in which, Yogesh Dubey shifted to Jan Seva Hospital. Maternal aunt of Dilip Sharma, Toshi Bua, also went to the hospital in the Ambulance. Bhuru @ Jitendra Yadav (P.W-3) also went to the hospital. In hospital, both were declared dead.

18. Mohan Bhaya is also examined as an eye-witness. According to him, he was in the party which was arranged by Ravindra Yadav as his wife successfully contested election for corporator. In the

party, about seventy persons were there. Hittu Sharma left the party with Kuldip, thereafter, Dilip Sharma, Yogesh Dubey and Bhuru @ Jitendra Yadav (P.W-3) left the party. He and Sharad Nema followed them. They heard the gun shot being fired and they stopped. According to them, Arun Nayer fired gun shot on temporal bone of Yogesh Dubey and then he described that Vishnu @ Dabhu inflicted stab injury on Dilip Sharma and Rakesh and Julphi @ Julphikar fired gun shot on Dilip Sharma. The other persons who were identified by him before the Court as accused Jitendra Sharma, inflicted stab wound by Gupti. He went with the car to Jan Seva Hospital on his own motorcycle then he went back to his house to inform about the incident to his wife and when he was coming back, he met the police personnel at Chambal Bridge and they told him that Yogesh Dubey died.

19. In light of statements of these important witnesses, which were presented by the prosecution as eye-witnesses, we may proceed to examine their statements in detail to determine whether their statements are reliable. To begin with, we may start with the Investigating Officer S.K. Naseene (P.W-22). According to him, he received Dehatinalishi (Exhibit-P/9) from outpost Birlagram on the basis of which, the First Information report was prepared and Crime No.343/2003 was registered. According to this witness, thereafter, he proceeded to the spot where he came to know that the deceased

were shifted to Jan Seva Hospital, and therefore, leaving one Constable there, he proceeded to Jan Seva Hospital. In Jan Seva Hospital, he recorded statements of Bhuru @ Jitendra Yadav (P.W-3), C.G. Anand (P.W-2). Sharad and Ashwini Siroliya. Sharad and Ashwini Siroliya were not examined by the prosecution. He further submits that he prepared seizure memo, by which, he seized blood stained soil and plain soil. He seized one motorcycle bearing registration No.MP-13J-9254 and prepared the seizure memo (Exhibit-P/50) and further he also seized one more motorcycle CD100 bearing registration No.MP-13Y-7415 and one Priya scooter bearing registration No.Y6049. He also seized one aluminium sheet, on which, a bullet mark was present by seizure memo (Exhibit-P/8). He further submits that he prepared the spot map (Exhibit-P/9). In this map, he showed the spot and place where the Splendor motorcycle belonging to deceased was lying. He also found the blood near house Nos.B-3 and B-4 and aluminium sheet was seized from house No.B-5 and during investigation, he seized *Gupti*, country made revolver, arrested the persons and completed the investigation.

20. During his cross-examination in Para-15, he said that he was not sure that how he came to know about the incident. Then he said that so far he remembered, he came to know about the incident when Dehatinalish was received from outpost Birlagram. He said

that he reached on the spot at 2:45 and left a Constable there, however this Constable was not examined by the prosecution because if this witness was to be believed, from 2:45 onwards the Constable must have been on the spot, and therefore, he was the best person to describe the spot as it was immediately after the incident. This witness further said that till 6:00 am in the morning, he was in Jan Seva Hospital, and thereafter, he left the hospital to search the accused Arun Nayer, Vishnu @ Dabbu and Qayyum. Thereafter, he reached on the spot at 7:30-7:45 am. He found that Hittu Sharma, Ashwini Siroliya and Satendra all three were there and they were standing in front of house of the deceased Dilip Sharma. He called C.G. Anand but he was not there. After he finished preparation of all the documents at the spot, he recorded statements of C.G. Anand, and thereafter, referring to the case-diary, he stated that he also recorded statements of Satyendra, Ashwini and Sharad. He remained on the spot till 11:00 am. In end of Para-15 when he was asked whether he recorded statement of these witnesses in Jan Seva Hospital or at the spot, he said that he recorded their statements on the spot on 22.06.2003. This part of his statement makes his earlier statement doubtful and also makes recording of Dehatinalishi at 1:50 am doubtful because if he was having F.I.R. with him, when he reached the spot and recorded statement of C.G. Anand on the spot, he would have definitely

sought his explanation as to who were on the spot, when he first reached and saw the deceased Dilip Sharma under the motorcycle. However, C.G. Anand was examined as P.W-2. His police statement is also available. He stated the same facts in his statement before the Court that he stated in his statement under Section 161 of Cr.P.C. and in both the statements, presence of other eye-witnesses were not mentioned. He was not declared hostile and no question was asked by the prosecution about the presence of other prosecution witnesses. This apart, he did not mention that Bhuru @ Jitendra Yadav (P.W-3) was under the motorcycle, but on the contrary, he said that Sharad who was living in the neighbourhood, helped him to extricate the deceased Dilip Sharma from under the motorcycle. Then they called Kantilal Sharma who was having Fiat car and then Kantilal Sharma, he himself and Sharad shifted Dilip Sharma to Jan Seva Hospital and also rang up the Jan Seva Hospital for sending an ambulance for deceased Yogesh Dubey, who according to him was already dead by that time. He mentioned that at the hospital, Dilip Sharma was examined by Dr. Sodani and Dr. Chaturvedi. These two doctors were not examined by the prosecution. No medical papers were also produced by the prosecution to show that at the time when Dilip Sharma was brought to the hospital and what history of the incident was given to the doctors, who examined him on his arrival at Jan Seva Hospital.

21. In the spot map, the Investigation Officer did not show the residence of Dilip Sharma though, in the F.I.R., it was mentioned that the eye-witnesses Hitesh @ Hittu Sharma (P.W-7), Meena Sharma (P.W-4) and Nisha Sharma (P.W-5) were standing and they saw the deceased coming towards their house. When their house is not shown in the spot map, it is not clear whether the spot which was in front of the residence of C.G. Anand, was visible from the house of the deceased...

22. Two vehicles, which was described were seized from front of house of the accused Arun Nayer, number of which was B-60. This house was also not shown in the spot map. No explanation was given about ownership of these two vehicles, however, in Para-17, he admitted that statement of Sharad is available in the case-diary, which was marked during his examination as Exhibit-D/8. In this statement, the said Sharad gave an information to the Police on 27.06.2003 about four days after the incident that the motorcycle CD100 bearing registration No.MP-13Y-7415 belonged to him. On the date of incident at about 2:00 pm, he first went to Jan Seva Hospital where he met real brother of deceased Dilip Sharma, Ashok Sharma (P.W-12). He informed him that Dilip Sharma had expired and he asked him to bring his brother-in-law, husband of Meena Sharma (P.W-4), and therefore, he went to the house of Meena Sharma, who lives in house No.B-61, next to the house of

accused Arun Nayer. There the door was open and he found husband of Meena Sharma in the house. They came out of the house, tried to start the motorcycle, but its kick broke down, and therefore, the motorcycle could not be started. They left the motorcycle and went to Jan Seva Hospital. This statement makes that part of statement of Meena Sharma (P.W-4) doubtful, in which she said that at time of incident, her husband was not at home because he was on night shift, and therefore, she was at her brother's house alongwith another sister Nisha Sharma (P.W-5), who came from Ambala. After the incident, according to her, she proceeded to the hospital on motorcycle driven by her son. She first went to her house, took her son and went to Jan Seva Hospital. But her son was not examined and it is also unnatural that if her husband was at home, she instead of going to the hospital with her husband called her son to go to the hospital. The husband of this witness was also not examined, though, he was real brother-in-law of deceased Dilip Sharma and if he was present in his house, he must have come to know about the incident immediately after the incident. Similarly, wife of deceased Dilip Sharma and mother who were admittedly in the house, were not examined by the prosecution. Apart from having so many material contradictions in the statements of prosecution witnesses, there is remarkable contradiction in their statements to the police and before the Court

and also in the medical evidence available on record.

23. Bhuru @ Jitendra Yadav (P.W-3), who was as per prosecution story, travelling on the motorcycle stated that Yogesh Dubey was fired upon when he was driving the motorcycle and due to the injury he sustained, motorcycle fell down and he fell down near the barbed wire fencing, however, the gun shot wound found on the body of Yogesh Dubey, was on his back. The entry wound was found below his head and the bullet travelled onwards damaging extensively his brain tissue and also broke his facial bone. The bullet was found entangled in his right eye. The similar statements were given by other eye-witnesses and they were contrary to the medical evidence available on record. Similarly, the wound on body of deceased Dilip Sharma was found on left shoulder on front side. The bullet travelled downwards from front to the back. Exit wound was found on right side of his back. In both cases, it is apparent that the gun shot was fired on them, when they were already on the ground and the assailants were in standing position. This fact is also confirmed by the medical evidence as no abrasion or no other injuries which would have caused, if they fell down from running motorcycle on the ground, were found on their body.

24. Presence of Bhuru @ Jitendra Yadav (P.W-3) is doubtful because C.G. Anand (P.W-2), who reached on the spot was not found him under the motorcycle instead found the deceased Dilip

Sharma under the motorcycle. If he was already available uninjured on the spot, there was no need for him to call Sharad. From this, it is apparent that his presence was doubtful, and therefore, witness C.G. Anand had take help of another neighbour Sharad on the spot. This apart, Sanjeev Kundi (P.W-11), who was also in the party held at circuit house, stated that after the party was over, he left the premises of the circuit house on a two-wheeler and Hitesh @ Hittu Sharma (P.W-7) came on his motorcycle up to Bloce-B. He left him about eight to ten steps before the turn towards Block-B and then left for is own residence. This statement makes his statement doubtful that he came on his motorcycle which was punctured on way and after leaving his motorcycle, he came on foot to the house of the deceased Dilip Sharma. We are aware that this creates a doubt only on that part of his statement, in which, he stated that he reached the house of the deceased Dilip Sharma before the incident, which does not have bearing on the events that took place subsequently. However, fact remains that he had no reason to lie as to how he came on the spot.

25. All the witnesses said that one Toshi Bua, who was maternal aunt of deceased Yogesh Dubey and went to the hospital in the ambulance in which, Hittu Sharma and Yogesh Dubey also travelled, however, the driver of the ambulance was not examined. Even no evidence was produced regarding the ambulance, which

came to pick up the deceased Yogesh Dubey. If according to statement of Bhuru @ Jitendra Yadav (P.W-3), he alongwith Hitesh @ Hittu Sharma (P.W-7) and Toshi Bua, who was not examined, went to the hospital alongwith the body of the deceased Yogesh Dubey, they would have met Ashok Sharma, real brother of Dilip Sharma, who reached at Jan Seva Hospital within five minutes after the prosecution witness C.G. Anand reached the hospital. However, in his statement, Ashok Sharma only accepted that he received body of his brother Yogesh Dubey. He did not say anything about the incident though, it is very natural that being real brother of the deceased, he must have come to know about the incident from Bhuru @ Jitendra Yadav (P.W-3), who according to him, reached Jan Seva Hospital in the ambulance.

26. Bhuru @ Jitendra Yadav (P.W-3) stated that Dilip Sharma was shifted in Ambassador car, another witness C.G. Anand (P.W-2) stated that it was a Fiat car. Regarding make of car, there are important discrepancy. It was not possible as both the makes of car in those days were well known to even common people.

27. Apart from this, next important witness is Mohan Bhaya (P.W-15). He was also presented by the prosecution as an eye-witnesses. He stated that he started from circuit house after the deceased Dilip Sharma and Yogesh Dubey left for their residence on a motorcycle alongwith Sharad. Statement of this witness Sharad

is admittedly recorded by the police during investigation and his statement under Section 161 of Cr.P.C. is available in the case-diary as Exhibit-D/8, which was referred earlier also. The statement of this witness can be read in favour of the accused persons though, he was not examined by the prosecution. Going through the statement of this witness, it is apparent that he did not inform the police that he was with the witness Mohan Bhaya (P.W-15) on his motorcycle after party at the circuit house was over, and therefore, the statement of this witness is, on very face of it, becomes unreliable.

28. This apart, he stated that after the incident when the deceased Dilip Sharma was shifted by C.G. Anand (P.W-2) in a car, he followed him on motorcycle and went to Jan Seva Hospital but he did not wait there and proceeded to his house where her wife was alone caution her about the incident. Subsequently, when he was coming back, police met him and they brought him to Jan Seva Hospital. But surprisingly his statement under Section 161 of Cr.P.C was recorded only on 26.06.2003, though, he was available to the police from the very beginning. There was also discrepancy in his statement regarding who told him in Jan Seva Hospital about the incident especially about accused Neeraj who was implicated in the case with aid of Section 120-B of IPC.

29. This apart, another important eye-witness is Ashok Sharma (P.W-12), the real brother of deceased. He reached on the spot

within five minutes after bodies of Dilip Sharma and Yogesh Dubey were shifted to Jan Seva Hospital. He was the real brother of deceased and still no statement was recorded by the police. When the police reached to Jan Seva Hospital, he remained in Jan Seva Hospital till post mortem on the bodies was over. He must be knowing full details of the incident by then, still in his statement, he only stated that he received body of Dilip Sharma and nothing more than that. He further said that when he signed Exhibit-P/22, which is a receipt for receiving dead body of Dilip Sharma, S.K. Naseene (P.W-22) was also present in Jan Seva Hospital, however, the Investigating Officer S.K. Naseene (P.W.22) said that he proceeded to the spot at 07:45 am and remained there till 11 am. This contradicts statement of Investigating Officer S.K. Naseene (P.W.22).

30. We may now refer to the statement of eye-witnesses to examine the contradictions and omissions that occurred in their statements. Hitesh @ Hittu Sharma (P.W-7), the complainant, who lodged the F.I.R. Exhibit-P/9. The two omissions pointed out by the defence counsels are that fact that deceased Dilip Sharma stood up after falling down from the motorcycle, and thereafter, Julphi @ Julphikar fired on him with both hands. This fact was not mentioned in Exhibit-P/9 and Exhibit-P/11. Thereafter, it is also not mentioned that after the incident, the assailant ran towards the

house of Arun Nayer. Further it is stated by him that he remained at police outpost Birlagram only for four minutes. In those four minutes only, he lodged the report and this fact is contradicted by S.I .- B.S. Kadam (P.W-24). Further he stated in para-19 that Bhuru @ Jitendra Yadav (P.W-3) went to Jan Seva Hospital with C.G. Anand (P.W-2), however, in Exhibit-P/9, it is specifically mentioned that Bhuru @ Jitendra Yadav (P.W-3) went to Jan Seva Hospital alongwith dead body of Yogesh Dubey. C.G. Anand (P.W-2) also did not mention in his statement that Bhuru @ Jitendra Yadav (P.W-3) accompanied him to Jan Seva Hospital. This is also a major discrepancy in the statement of prosecution witnesses.

31. About this witness, Meena Sharma (P.W-4) stated in paragraph-3 of her statement that father of this witness was also working in Grasim Factory. Subsequently, he expired and after his death, the house allotted to him was vacated, and thereafter, Hitesh @ Hittu Sharma (P.W-7) was living with Toshi Bua. This makes statements of prosecution witnesses highly doubtful as he was not living in the house of deceased Dilip Sharma then there was no occasion for him to go to his house first, ring the bail and wait there for him. He was in the party with Dilip Sharma, and thereafter, he could have proceed directly to his aunt's house, where he was living according to Meena Sharma (P.W-4).

32. Next important eye-witness is Bhuru @ Jitendra Yadav

(P.W-3), who was on motorcycle with the deceased. He said that he went to Jan Seva Hospital in the ambulance. This contradicts the fact stated in the F.I.R. that he went with C.G. Anand (P.W-2) in the car. The important omission shown during his cross-examination is the fact that the accused Neeraj was instigating the other accused persons and asking them to kill the deceased. This fact was not mentioned in his statement i.e. Exhibit-D/1 and was an improvement in his Court statement.

33. Before reaching to any conclusion regarding reliability of these eye-witnesses, we may also take into consideration the evidence produced by defence in this matter. The defence in this matter raised various points with a view to demolishing the evidence produced by the prosecution. Krishna Gohar (D.W-1) is SDO in Public Works Department, Khachrod. He was examined to prove that as per the government instructions and rules, no party could be arranged in the premises of a circuit house. He stated that Pradeep Nayer submitted an application which is Exhibit-D/9 seeking information under the provisions of Right to Information Act. The reply was given by his predecessor which is Exhibit-D/10. He had also brought the register, in which, no entry was made that any party was arranged in the premises of the circuit house. In the information supplied to the accused Pradeep Nayer which is filed as Exhibit-D/10, it was mentioned that only official functions could

be arranged with the permission of senior officer of Public Working Department. As per the register, no programme was arranged on the evening of 21.06.2003. Babulal Sharma (D.W-2) is examined to prove that Mukesh Khatana (P.W-11) and Sachin Pradhan (P.W-14) were working in the Grasim Industry. The general shift starts from 8:00 am to 12:00 pm. There used to be a lunch break, and thereafter, from 1:00 to 5:00 pm second shift starts. According to him, on 17.07.2017, from 6:00 am to 2:00 pm, Mukesh Khatana (P.W-11) was on duty. On 17.07.2003, Sachin Pradhan (P.W-14) on duty from 8:00 am to 12:00 pm and after lunch, he left. H.S. Tuteja (D.W-3) is handwriting expert. He examined the photocopy of police statement of Meena Sharma (P.W-4), Nisha Sharma (P.W-5), Mohan Bhaya (P.W-15) and Shailendra Shrivastava (P.W-13) to prove that their statements were recorded in different handwriting than the statements of other prosecution witnesses. The defence also tried to prove that these statements were recorded by B.S. Kadam (P.W-24). Brijlal, Head Constable who deposed regarding some dispute in respect of Hitesh @ Hittu Sharma (P.W-7), who initially turned hostile, and subsequently, deposed against the present appellants. He deposed that before him, the present appellants did not give any threat to that witness. Pradeep Nayer is P.W-5 and he is also accused himself. He was examined under the provisions of Section 315 of Cr.P.C. and he filed statement of his mother Vidya

Nayer recorded in Session Trial No.331/2003, which are Exhibit-P/26 and P/27. He also filed some documents to show that mother of Hitesh @ Hittu Sharma (P.W-7), who was also in jail, met with Pradeep Nayer and other co-accused, after which, Hitesh @ Hittu Sharma turned hostile.

34. The two aspects in the evidence produced by the defence are important. One is difference in handwriting of statements recorded of some prosecution witnesses during the investigation. The Investigating Officer S.K. Naseene (P.W-22) was cross-examined on this aspect. In para-16 of his statement, a suggestion was made to him that on second day after the incident, he recorded statements of Meena Sharma (P.W-4) and Nisha Sharma (P.W-5). However, those statements were removed from the case-diary, and subsequently, B.S. Kadam (P.W-24) prepared statements of these two witnesses and also of Mohan Bhaya (P.W-15) and Shailendra Shrivastava (P.W-23) and they were placed in the case-diary. Apparently, handwriting of Exhibit-P/41, Exhibit-D/2, Exhibit-D/3 and Exhibit-D/5 are different than Exhibit-P/1, Exhibit-P/11, Exhibit-D/1 and Exhibit-D/4, which are recorded by S.K. Naseene (P.W-22). This witness denied all the suggestion made to him, however, there appears no reason not to accept and indicate the person who recorded statements as writing on this statement is apparently different.

35. B.S. Kadam (P.W-24) was also cross-examined on this aspect. He admitted in para-9 of his statement that the scrutiny of case-diary was made by the public prosecutor and he raised an objection that statements of Meena Sharma (P.W-4), Nisha Sharma (P.W-5) and Mohan Bhaya (P.W-15) were not available in the case-diary, however, he denied that he recorded statement of Meena Sharma (P.W-4), Nisha Sharma (P.W-5) and Mohan Bhaya (P.W-15). The handwriting expert who examined the photocopy of these statements gave a finding against the prosecution, however, as this witness is private handwriting expert not much weight can be given to this opinion still through the naked-eye, it appears to be a different handwriting. There was onus on Investigating Officer to explain the difference.

36. Second aspect is murder of father of accused Arun Nayer in which, Hitesh @ Hittu Sharma (P.W-7), Meena Sharma (P.W-4) and Ashwini Siroliya were arraigned as accused. This fact was admitted by Investigating Officer S.K. Naseene (P.W-22) in para-16 of his statement but said that he was not sure that brother of Ashwini Siroliya was an accused in that case. Meena Sharma (P.W-4) also admitted this fact. Copy of statement of Vidya Nayer, mother of Pradeep Nayer is produced which is Exhibit-D/26. In her statement, she narrated the story which form the prosecution story in Session Trial No.331/2003. According to her statement, Jagdish,

Shivnarayan Choudhary, Lokendra Sharma, Ashwini Siroliya, Hitesh @ Hittu Sharma (P.W-7) and Meena Sharma (P.W-4) came to their house. They broke open the door and severely beaten her and her husband. Hitesh @ Hittu Sharma (P.W-7) extracted eyes of her husband with a knife. They inflicted serious injuries by iron rod on his head and due to which, subsequently, he died.

37. Unfortunately no other evidence was produced by the defence during cross-examination of prosecution witnesses. However, taking into consideration the statement of mother of accused Pradeep Nayer, it is apparent that some incident took place in the intervening night of 21-22.06.2003 i.e. on the same day on which, incident took place in the present case.

38. It is a trite law that defence need not to prove its case beyond reasonable doubt but only expected to create doubt on the basis of preponderance of probability. In the present case, there are several shortcomings, which indicate unreliability of eye-witnesses. The Investigating Officer S.K. Naseene (P.W-22) reached on the spot in the morning on 22.06.2003. He prepared the spot map, however, in this spot map, the house of deceased Dilip Sharma was not shown. Prosecution witness Hitesh @ Hittu Sharma (P.W-7), Meena Sharma (P.W-4) and Nisha Sharma (P.W-5) were standing and according to them, they saw the deceased coming on motorcycle on with Bhuru @ Jitendra Yadav (P.W-3), who was sitting in the

middle. But in their cross-examination, they said that there was sodium water lamp lighted on the spot and due to which, there was enough light to recognize the assailants, however, such source of light was shown in the spot map by them and this apart, the distance from house of Dilip Sharma to spot which is in front of C.G. Anand (P.W-2) was shown in that spot map and this created doubt in the prosecution story that these three witnesses saw the incident and ran towards the spot. As said earlier, their presence was also not accepted by C.G. Anand (P.W-2).

39. Apart from that, there are evidence available on record to show that some incident took place after death of deceased Yogesh Dubey and Dilip Sharma. There were two more vehicles seized from front of house of Pradeep Nayer. Both of them were damaged. One of the motorcycle was claimed by one Sharad, whose statement admittedly recorded and available in the case-diary, which was marked as Exhibit-D/8. This witness was not examined and presence of these two wheelers was not explained by the Investigating Officer S.K. Naseene (P.W-22). Similarly, the blood was found in front of house No.B-5. Presence of blood in front of house No.B-5 is also not explained by the prosecution. Further the bullet marked aluminium plate, which was removed and seized from house No.B-5 was also not explained by the prosecution. All these discrepancies indicate that after the incident, something more

happened around same place. It was duty of the prosecution to bring all the facts before the trial Court but the prosecution suppressed these facts which create doubt in the story of the prosecution.

40. Learned counsel appearing for the defence cited case law which may also be taken into consideration. The first case cited by them is *Rohit and other Vs. State of Madhya Pradesh 2014(2) M.P.L.J. (Cri.) 690* judgment of Division Bench of this Court and in which, it was held that when there was a discrepancy of ocular evidence and medical evidence, the statement of such witnesses were not reliable. The second judgment cited by them is *Hemraj Vs. State of Haryana AIR 2005 SC 2110*, in which, it was held that when evidence of closely related witnesses was not found reliable and independent eye-witnesses were not examined, placing conviction on such statements was not proper. Next judgment cited by him is *Nalabothu Ramulu @ Seetharamaiah and others Vs. State of Andhra Pradesh 2014 Cri.L.J. 2487*. In this case, when availability of light was not mentioned in the inquest report and it was not possible to identify the persons amongst the fifty persons gathered there, such evidence was not considered proper. They also cited the judgment of Hon'ble the Apex Court in case of *Javed Masood and Another Vs. State of Rajasthan 2010 Cri.L.J. 2020*. In that case, an independent witness deposed that all other witnesses

arrived after body of the deceased was shifted to hospital. That created doubt in testimonies of other witnesses. They further placed reliance on judgment of *Raja Ram Vs. State of Rajasthan 2005 SCC (Cri.) 1050* on the point that when prosecution witness was not declared hostile, his statement should be accepted without any doubt

41. Learned counsel appearing for appellant Rakesh cited the judgment of this Court in case of *Nawab Khan @ Nawab & others Vs. State of Madhya Pradesh 2003 (I) MPJR 66* and also cited judgment of Hon'ble the Apex Court on behalf of appellant Vishnu @ Dabhu, in case of *Harchand Singh Vs. State of Haryana* in Criminal Appeal No.32/2017 decided on 31.08.1973 AIR **1974 (SC) 344**. In these cases, it was held that when two stories emerge from the prosecution case, the story in favour of the accused persons should be relied upon.

42. Taking into consideration the principles laid down by Division Bench of this Court and also by the Hon'ble Apex Court, we are of the view that the eye-witnesses produced by the prosecution in this case are not reliable. The first eye-witness Bhuru @ Jitendra Yadav (P.W-3) who was sitting on pillion is also not reliable. There is doubt that he was sitting in the middle on the same motorcycle. Further the other three eye-witnesses Hitesh @ Hittu Sharma (P.W-7), Meena Sharma (P.W-4) and Nisha Sharma (P.W-

5) were also unreliable. Taking into consideration the contradictions and omissions that occurred in their evidence. F.I.R. also appeared antetimed and statement of Investigating Officer S.K. Naseene (P.W-22) created serious doubt on the fact that in the morning of 22.06.2003, he was aware of the fact that the present appellants caused death of the deceased.

43. Apart from this, some more evidence is available on record. We may now examine the remaining evidence available on record. Two *Gupties* were recovered on the basis of disclosure memos given by appellant Vishnu Shrivastava @ Dabbu and Qayyum. They were sent to serological examination and only human blood was found present on them, however, it was not established that human blood was found on them, were of the deceased, and therefore, this evidence is of no use to the prosecution. This apart, one pistol was recovered from accused Rakesh Neema. Two bullets were also recovered from bodies of the deceased. These bullets were sent for examination by ballistic expert. The ballistic expert's report is Exhibit-P/47. According to this report, it was possible to fire the bullets recovered from bodies of the deceased from this gun, however, no firm opinion was expressed by the ballistic expert that the bullets were fired from the gun recovered on the disclosure memo of Rakesh Neema. Another gun was allegedly in the hand of accused Arun Nayer, who according to prosecution story, fired on

deceased Dilip Sharma, however, this gun was recovered in another case by Police Station-Gajiabad, Uttar Pradesh. This gun was not taken in possession of the Investigating Officer in this case and was not sent for examination by ballistic expert, and therefore, on this aspect also, no benefit can be given to the prosecution.

44. In light of the aforesaid, we are of the considered opinion that the trial Court erred in holding that the prosecution witnesses reliable and in holding that the present appellants were guilty of offence under the aforementioned provisions of law. The present appellants therefore, deserves to be given benefit of doubt.

Accordingly, these appeals are allowed. The conviction of the appellants under Sections 302/149, 120-B of IPC are set aside. Also conviction of appellant Rakesh Neema under Section 27 of Arms Act is set aside. They should be released forthwith if their presence is not required in any other case. The bail and bond of appellant Vishnu Shrivastava @ Dabbu, who is on bail during pendency of these appeals, stands discharged.

The order passed by the trial Court in respect of disposal of property is hereby affirmed

(S.C. Sharma)
Judge

(Alok Verma)
Judge

Ravi