

**Judgment reserved on : 03.01.2022**  
**Judgment delivered on : 25.02.2022**

**Case :- CRIMINAL APPEAL No. - 2957 of 2006**

**Appellant :- Ahsan And Others**

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

**Counsel for Appellant :- Madhur**

Prasad,Ashutosh,C.B.Prasad,Deepak Kumar Pandey,Lav  
Srivastava,Lokendra Kumar,Madan Singh,N I Jafri,Rakesh  
Kumar Mishra,Sanjay Kumar,Sarita Gupta,Shailendra Pratap  
Singh,Sudhir Solanki,Suresh Kumar Maurya,Syed Mohd.  
Fazal,T.I.Khan,V.K. Tripathi,V.K.Dwivedi,Vinod Kumar

**Counsel for Respondent :- Govt. Advocate,Irfan  
Hasan,M.I.Jafri,Varinder Singh**

**Hon'ble Mrs. Sunita Agarwal,J.**

**Hon'ble Om Prakash-VII,J.**

**(By Hon'ble Om Prakash-VII, J.)**

1. This Criminal Appeal has been preferred by appellants Ahsan, Naushey, Ahmad Hasan, Abdul Hasan and Sher Ali against the judgment and order dated 13.04.2006 passed by Sessions Judge, Rampur in Sessions Trial No.326 of 2004 (State Versus Ahsan & others) whereby accused-appellants were convicted for the offence under sections 147, 148, 302/149 IPC and sentenced for offence under section 302/149 IPC to imprisonment for life and a fine of Rs.15,000/-. Appellants were also directed to undergo one year additional R.I. in default of payment of fine. They were also sentenced for the offence under section 147 IPC to undergo one year R.I. and for the offence under section 148 IPC to undergo two years R.I. Further, in Sessions Trial No.327 of 2004 (State Versus Abdul Hasan), appellant Abdul Hasan was convicted and sentenced for the offence under section 25 Arms Act to undergo two years R.I. with a fine of Rs.5000/- and in default of payment of fine, he has to further undergo three months R.I. Further, in Sessions Trial

No.328 of 2004 (State Versus Sher Ali), appellant Sher Ali was convicted and sentenced for the offence under section 25 Arms Act to undergo two years R.I. with a fine of Rs.5000/- and in default of payment of fine, he has to further undergo three months R.I. All the sentences were directed to run concurrently.

2. Prosecution story, in nutshell, as unfolded in the written report (Ex.Ka.-1), is as follows:

On 29.12.2003, informant Shareef Ahmad (P.W.1) son of Chotey moved a written report (Ex.Ka.-1), scribed by Irshad (P.W.3), mentioning therein that on 29.12.2003, informant's cousin brother Abrar (deceased) along with Karamat was coming back to Rampur on a motorcycle and on another motorcycle, informant, Afsar and Ibrahim were following them. Due to muddy terrain, they slowed down their motorcycles as and when they reached at the fields of Navi Ahmad. At the same time, at about 8:30 A.M., from the shrubs standing on the East side, Ahsan, Naushey, Ahmad Hasan, Abdul Hasan and Sher Ali, who belong to same village, armed with firearms, appeared in front of them, dragged Abrar from the motorcycle and with common intention, all the accused persons fired upon him with their respective firearms with intention to kill, which resulted into the death of Abrar on the spot. When the informant's side raised alarm, accused persons ran away from the sugarcane field situated on the west side. Incident is of Jungle Kishanpur. Informant's side and accused persons were having old enmity and there were litigation pending between them.

3. On the basis of written report (Ex.Ka.-1), on the same day i.e. 29.12.2003 at 9:30 A.M., Chik First Information Report No.187 of 2003 at Crime No.480 of 2003 under Sections 147, 148, 149, 302 IPC was registered against accused-persons as Ex.Ka.-13.

4. After lodging the first information report, police rushed to the spot, prepared inquest report and after sealing the dead body on the spot sent the same for postmortem along with necessary papers. Police had also recovered 3 empty cartridges of 12 bore and 1 empty cartridge of 315 bore from the place of incident and prepared recovery memo Ex. Ka.-3. They also took blood stained and plain earth from the place of incident and prepared recovery memo as Ex.Ka.-4. Site plan were also prepared, which are Ex.Ka.-15, 16, 21 and 23. Police had also taken custody of the motorcycle of the deceased from the place of incident and prepared recovery memo as Ex.Ka.-5. During investigation, accused Abdul Hasan, Naushey and Sher Ali were arrested. On pointing out of accused Abdul Hasan, 1 live cartridge of 315 bore with country made pistol used in the crime was recovered on 6.1.2004. On the same day, 2 live cartridges of 12 bore along with country made pistol used in the crime was also recovered by the police on pointing out of accused Sher Ali, of which joint recovery memo was prepared as Ex.Ka.-6. On the basis of this recovery memo, a first information report was lodged at police station Kotwali, Rampur against accused Abdul Hasan at crime no.02 of 2004 under section 25 Arms Act and against accused Sher Ali at crime no.03 of 2004 under section 25 Arms Act. Police after interrogation of witnesses, fulfilling the formalities and completion of investigation, submitted charge-sheet in the aforesaid crime numbers as Ex.Ka.-19 and 20; respectively and also submitted charge-sheet in main crime no.480 of 2003, as Ex.Ka.-22 against all the named accused.

5. Postmortem on the dead body of the deceased Abrar was conducted on 29.12.2003 at 4:35 P.M. by Dr. Raj Kishore Tandon (P.W.5), Medical Officer at District Hospital, Rampur. Deceased was aged about 35 years. Probable time since death was about 6

– 8 hours. Deceased was an average built body. Rigor mortis was found present on neck and both extremities. No sign of decomposition was found. Eyes were closed.

On examination of body of the deceased, following antemortem injuries were found :

(i) Gunshot wound 11 cm. x 4 cm. x mouth cavity deep over right cheek. Blackening, tattooing and scorching present.

(ii) Gunshot wound 4 cm. x 3 cm. x mouth cavity deep below right nostril. Blackening, tattooing and scorching present.

(iii) Gunshot wound 1 cm. x 1 cm., below left angle of mouth. Blackening, tattooing and scorching present. Injury no. (i) and (iii) were connected to each other.

(iv) Gunshot wound 1 cm. x 1.5 cm. over left abdomen 1 cm. below umbilicus. Blackening, tattooing and scorching present.

(v) Gunshot wound 0.8 cm. x 0.6 cm. x abdominal cavity deep 6 cm. below umbilicus. Blackening was present and bullet was seen.

(vi) Gunshot wound 3 cm. x 6 cm. over right chest below shoulder, above clavicle. Blackening, tattooing and scorching present. One cork and 11 pellets were recovered.

(vii) Abrasion 5 cm. x 5 cm. over right chest below nipple.

(viii) Gunshot wound 3 cm. x 2 cm. over right side of buttock. 11 pellets, tickli and cork were recovered.

(ix) Lacerated wound 3 cm. x 2 cm. over right buttock.

On internal examination, under injury no. (vii), 5 – 6 ribs were found broken. 22 pellets, wadding cork and 2 bullets were recovered. Both chambers of heart were empty. Peritoneum was ruptured and bullet was recovered from it. Cavity was full of blood. Upper and lower jaws of baccal cavity were found broken. Cause of death of deceased was shown as shock and

haemorrhage due to antemortem injuries. Postmortem report is Ex.Ka.-12.

6. Live and empty cartridges as well as firearms used in the crime were sent to Forensic Science Laboratory for chemical examination. According to its Report, which is Ex.Ka.-26, empty cartridge of 315 bore, which was recovered from the place of incident, was fired from the country made pistol (Ex.-1) used in crime, but as far as empty cartridges of 12 bore are concerned, which was recovered from the place of incident, due to lack of personal characteristics, it could not be said that whether they were fired from the country made pistol (Ex.-3).

7. After submitting the charge-sheets by the concerned police, concerned Magistrate took cognizance in the matter and case being exclusively triable by the Sessions Judge was committed for trial to Sessions Court.

8. Accused were brought from jail. Learned trial court framed charge against the accused-appellants for the offences, as mentioned above, to which they denied and claimed their trial.

9. In order to prove its case, prosecution examined nine witness in total. They are P.W.1 Shareef Ahmad, the informant, P.W.2 Ibrahim, P.W.3 Irshad, scribe of the written report, P.W.4 Sunder Lal, the investigating officer who has conducted the inquest proceedings, P.W.5 Dr. Raj Kishore Tandon, who has conducted the postmortem on the body of deceased, P.W.6 Head Moharrir Dharamveer Singh, the chik writer, P.W.7 Inspector Vijay Kumar Sharma, the investigating officer who subsequently investigated the case, P.W.8 HCP Prempal Singh and P.W.9 Inspector Hardeo Singh, who investigated the main case. Statement of Karamat (C.W.1) was recorded as court witness. Out of them, P.W.1 Shareef Ahmad, P.W.2 Ibrahim and C.W.1 Karamat were examined as eye-account witnesses of the incident. Under

Section 311 Cr.P.C., statement of eye-account witness C.W.1 Karamat was recorded.

10. After completion of prosecution evidence, statement of accused-appellants were recorded under section 313 Cr.P.C. in which they have stated that entire prosecution case is false. They have taken the plea of false implication on account of animosity. They have also stated that witness have give false evidence due to rivalry. Fair investigation was not conducted in the matter. Accused Sher Ali and Abdul Hasan, have denied the recovery of live cartridges and firearms. According to accused, deceased Abrar was of criminal background, therefore, some one else has committed his murder. Some documentary evidence was also adduced by the accused-appellants in their defence.

11. Learned court below after hearing the parties vide impugned judgment and order convicted and sentenced the accused-appellants for the aforesaid offences. Hence, this Appeal.

12. We have heard Sri Vinod Kumar, learned advocate for the appellants and Sri Roopak Chaubey, learned Additional Government Advocate for State-respondent.

13. Learned counsel for appellants castigating prosecution evidence and finding recorded by Trial Court in impugned judgment and order has addressed the Court that prosecution was not able to prove its case beyond reasonable doubt. First information report said to have been lodged in the matter is ante-timed document. Presence of the scribe of the written report at the time of preparing the written report at the place of occurrence is improbable and unbelievable. He was the resident of another village. He has not clearly explained the reason for which he had gone to the place of occurrence. It was next argued that special report was not sent immediately after the registration of the F.I.R. This fact also shows that the first information report was not in

existence at the time mentioned in it. This fact also demolishes the whole prosecution story on this sole ground only. Referring to the entire evidence, it was further submitted that the written report was prepared at the concerned police station itself on the basis of advise of police. Witnesses said to be present at the place of occurrence at the time of incident were actually not present. They were procured later on. Present incident was committed by some unknown person. None has seen the incident. This fact finds support with the evidence of C.W.1 Karamat. It was next submitted that the recovery of weapon, said to have been used in commission of crime, on pointing out of the appellants / accused Abdul Hassan and Sher Ali is false. Same is not supported with the Forensic Science Laboratory Report. It was next argued that recovery is from the open place accessible to general public. Thus, it cannot be relied on. Learned counsel for the appellants further submitted that there was enmity between the parties. Owing to this reason, appellants were falsely implicated in this case. To substantiate this argument, learned counsel for the appellants placed reliance upon the statement of C.W.1 Karamat and further argued that the deceased Abrar and C.W.1 Karamat both were sitting on the same motorcycle. C.W.1 Karamat has not named the appellants in committing the present offence. Thus, this fact also shows that first information report was lodged on the basis of due consultation and advise for the reason stated here-in-above. It was next submitted that medical evidence does not support the oral version. Prosecution was not able to prove the specific role assigned to each and every accused. It was next contended that the motorcycle on which the informant and other witnesses were said to be going, had not been produced before the Court. Thus on this ground also, prosecution story becomes doubtful. Witnesses have made false statement before

the Court. Had they been present on the spot, they would have tried to save the deceased. Thus, conduct of said eye account witnesses itself shows that they were not present on the spot at the time of incident. It was next argued that motive has also not been proved in this case beyond reasonable doubt and is not supported by any independent evidence. It was next argued that appellants are in jail since from the date of their arrest i.e. for about 18 years. Punishment imposed upon the appellants is of life imprisonment. Thus, appellants are also liable to be extended benefit of Section 57 IPC. Referring to the entire facts and evidence of the case, it was further submitted that prosecution has failed to prove the date, time and place of the occurrence beyond reasonable doubt. Findings arrived at by the trial court on this point are perverse and illegal. Thus, prayer was made to allow the appeal setting aside the impugned judgment and order.

Learned counsel for the appellants in support of his contention placed reliance on the following case laws :

1. **Swamy Shraddananda (2) alias Murli Manohar Mishra Versus State of Karnataka, (2008) 13 Supreme Court Cases 767.**
2. **Vikas Yadav Versus State of Uttar Pradesh and Others, (2016) 9 Supreme Court Cases 541**
3. **Union of India Versus V. Sriharan alias Murugan and Others, (2016) 7 Supreme Court Cases 1**

14. On the other hand, learned A.G.A. appearing for the State submitted that the written report (Ex.Ka.- 1) was prepared at the place of occurrence by the Scriber Irshad (P.W.3). Presence of the scriber at the place of occurrence is not improbable and unbelievable. Referring to the inquest report and other papers prepared along with it, it was further argued that all the aforesaid documents were prepared at the place of occurrence itself. First

Information Report was lodged on the basis of written report at the time mentioned in it. Eye account witnesses were present at the place of occurrence at the time of incident. They have fully supported the prosecution case on each and every point. Medical evidence fully supports the oral version. Merely, non-sending the special report immediately, as required under section 157 Cr.P.C., will not be sufficient to disbelieve the statement of eye account witnesses. It was further contended that enmity is a double edge weapon which can be a motive for the crime and prosecution has established the enmity part. It was further submitted that recovery said to have been made on pointing out of the appellants Abdul Hassan and Sher Ali have also been proved by the prosecution beyond reasonable doubt. Prosecution launched against them on the basis of sanction accorded by the then District Magistrate, Rampur. Forensic Science Laboratory Report also shows the use of recovered weapon in the present crime. Thus, referring to the findings arrived at by the trial court in the impugned judgment and order, learned A.G.A. argued that there is no illegality, infirmity or perversity in the findings of the trial court. Punishment imposed upon the appellants are in accordance with law. Appellants cannot be released taking recourse to the provisions of Section 57 I.P.C., particularly when they committed the murder of the deceased in broad day light by opening indiscriminate fire upon him.

15. We have considered the rival contentions raised by learned counsel for the parties and have gone through the entire record.

16. Findings arrived at by the trial court in the impugned judgment and order are that the first information report is not ante-timed document. Presence of the scribe at the time of preparing the written report has been proved by the prosecution beyond reasonable doubt. Non-sending of special report

immediately after the incident by the police concerned is not sufficient to disbelieve the prosecution evidence. Prosecution was able to prove the date, time and place of incident, which is also supported by the statement of C.W.1 Karamat. Presence of eye account witnesses at the place of occurrence at the time of incident is not doubtful. Incident took place before them. Deceased was done to death on the date, time and place of occurrence by the appellants opening indiscriminate fire upon him. Medical evidence fully supports the oral version. Recovery of country made pistol has also been proved by the prosecution beyond reasonable doubt.

17. Now Court proceeds to discuss the submissions advanced by learned counsel for the parties in light of evidence adduced in the matter.

So far as lodging of the first information report on the date and time mentioned in it is concerned, offence is said to have been committed on 29.12.2003 at about 8:30 A.M. when deceased and one Karamat (C.W.1) both were going to Rampur on a motorcycle. Informant and other witnesses were also following the deceased on their motorcycle. Scribe of the written report (Ex.Ka-1) is P.W.3 Irshad. He has categorically explained the reason for his presence at the place of occurrence at the time of preparing the written report. He has stated that he was going towards the village concerned in connection with the recovery of his remuneration. Although he did not specify the name of the person from whom he had gone to recover the wages, yet he has clearly stated that what facts were stated by Sharif Ahmad P.W.1, the same were scribed by him in written report (Ex.Ka.-1). He has admitted his signature as well as signature of the informant on the written report. If the inquest report prepared in the matter is minutely perused, it reveals that its preparation started at 10:00

A.M., written report is said to have been lodged at 9:30 A.M. and distance between the place of occurrence and the police station concerned is about 10 Kms. P.W.1 has clearly stated that he went to the concerned police station on a motorcycle to lodge the first information report. If the time of incident, time of lodging the first information report and mode of travel to reach police station concerned are taken together, then also the submission raised by the learned counsel for the appellants that first information report is an ante-timed document, cannot be accepted. P.W.3 has clearly stated that when he reached near the place of occurrence, there was crowd of 20 – 25 persons over there. He also reached at the place of occurrence. Papers on which written report was prepared, were with him and on the request of the informant, he prepared the written report at the place of occurrence. If all these facts are taken in its entirety, it come out that the first information report was lodged at the time mentioned in it by P.W.1 on the basis of the written report (Ex.Ka-1) scribed by P.W.3 Irshad. Submission raised by learned counsel for the appellants contrary to this fact is not acceptable. Non-sending of the special report immediately after registration of the first information report is also not sufficient to disbelieve the content of the first information report. Since there are eye-account witnesses, thus entire prosecution evidence cannot be thrown out merely on this basis. Finding arrived at by the trial court regarding the existence of first information report at the time mentioned in it is in accordance with law. There is no illegality, infirmity or perversity in the finding recorded by the trial court on this point.

18. So far as the date, time and place of occurrence are concerned, when police reached at the place of occurrence and prepared the inquest report, empty cartridges said to have been

used by the accused persons lying on the spot were also recovered by them and same were taken into custody and fard was also prepared in this respect. Dead body of the deceased was lying at the place of incident. Inquest report was prepared at the same place, which bear the crime number and other details. Recovery of empty cartridges at the place of occurrence itself shows that the incident took place at the place of occurrence itself. If the statement of C.W.1 Karamat is taken into consideration, it is apparent that he has also supported the date, time and place of occurrence in his statement. A lengthy cross-examination was made from him, but nothing has come out in it to disbelieve the date, time and place of occurrence as stated by P.W.1 and P.W.2 or as disclosed in the first information report. If the medical evidence is also taken into consideration, the Doctor concerned, who had conducted the postmortem, has also opined that death of the deceased would have taken place on 29.12.2003 at 8:30 A.M. The trial court while analyzing the entire evidence was of the view that prosecution has proved the date, time and place of occurrence from its evidence beyond reasonable doubt. If the findings of the trial court arrived at on this point are minutely analyzed with the Statement of P.W.1 Shareef Ahmad, P.W.2 Ibrahim, P.W.3 Irshad, P.W.5 Dr. R.K. Tandon and C.W.1 Karamat, it cannot be termed to be illegal or perverse. Thus, we are of the view that prosecution was able to prove the date, time and place of incident beyond reasonable doubt.

19. As far as medical evidence is concerned, number of firearm injuries were found at the time of postmortem on the body of the deceased. Prosecution case is that when the deceased reached at the place of occurrence, he was pulled by the accused-persons and they opened indiscriminate fire upon him. Looking to the manner in which present incident was committed, it will not be

possible for any witness to collect the correct details of firing made by each and every accused. Since all the appellants were armed with firearms, they opened indiscriminate fire upon the deceased, this fact has been supported by the prosecution witnesses during trial, postmortem report also shows that number of firearm injuries were found on the body of the deceased, doctor concerned, who conducted the postmortem, has also opined that injuries found on the body of the deceased have come in the manner and style as stated by the prosecution witnesses and death of the deceased could take place at the time mentioned in the written report (Ex.Ka.-1). Thus, we are of the view that finding arrived at by the trial court on point of medical evidence cannot be termed to be illegal or perverse.

20. As far as presence of eye-account witnesses at the place of occurrence at the time of incident is concerned, prosecution case is that the deceased along with C.W.1 Karamat was going on a motorcycle to Rampur. Informant P.W.1 Shareef Ahmad, P.W.2 Ibrahim and one Afsar were following the motorcycle of the deceased on their motorcycle. When they reached at the place of occurrence, they slowed down the motorcycle as there was mud on the way. Then and there accused-persons reached and pulled out the deceased from the motorcycle and opened fire upon him. Although, none of the witnesses have sustained injuries nor they tried to save the deceased, yet in the facts and circumstances of the case and the manner in which present incident took place, if the witnesses said to be present at the place of occurrence did not try to save the deceased, this fact itself is not sufficient to disbelieve their presence at the place of occurrence. When number of accused are opening indiscriminate fire and the witnesses are unarmed, thus their conduct cannot be said to be unnatural and unbelievable and on this ground presence of the

witnesses at the place of occurrence cannot be doubted. The person, who was also sitting on the motorcycle of the deceased, namely, C.W.1 Karamat was also examined by the court. Except naming the appellants, he has clearly and categorically supported the prosecution case regarding the date, time, place and manner of incident. Although, in the examination, C.W.1 Karamat showed unawareness about the presence of witnesses at the place of occurrence, but this fact alone is not sufficient to hold that P.W.1 and P.W.2 were not present on the spot at the time of incident, particularly when the date, time, place and manner of incident have been categorically supported by C.W.1. It is pertinent to mention here that accused persons and C.W.1 both are resident of same locality, it might be possible due to this reason he has not named the accused-appellants in his statement. P.W.1, P.W.2 both have clearly and categorically stated that appellants have committed the present offence before them.

21. Presence of P.W.1 and P.W.2 at the place of occurrence can also not be doubted on this ground that third person sitting on the motorcycle of Shareef Ahmad has not been examined. It is golden rule of the criminal jurisprudence that if the statement of solitary witness is reliable, the conviction can be held. Thus, quantity of the witnesses is not material, rather quality of the statement is material.

22. So far as the enmity between the parties is concerned, P.W.1 Shareef Ahmad has clearly disclosed the enmity on which ground present incident was committed by the appellants. It is pertinent to mention that enmity is a double edged weapon. At one point of time, it may be a reason to falsely implicate the person, but it may also be a reason to commit an offence. Thus, on the ground of enmity only, the entire prosecution case where there are eye account witnesses and prosecution case is supported

by medical evidence, cannot be disbelieved.

23. If the statement of P.W.1 and P.W.2 are taken into consideration, although nothing specific has been mentioned in the written report regarding the enmity and only this fact was mentioned in the written report that present incident was committed due to old enmity and litigation pending between the parties, same has been proved by the prosecution beyond reasonable doubt and in the present matter, it can safely be held that present incident was committed by the appellants due to enmity disclosed in the first information report and as stated by the prosecution witnesses. Thus, motive part has also been proved by the prosecution. Submission raised on this score by the learned counsel for the appellants is not acceptable.

24. So far as the interestedness of the witnesses are concerned, P.W.1 is the the family member of the deceased, but P.W.2 has clearly admitted on question put by the defense in cross-examination that he is not the relative or friend of P.W.1 Shareef Ahmad or the deceased. Witness, who is the relative of the deceased, may always not be categorized in the category of interested witness. In the present matter, presence of P.W.1 Shareef Ahmad and P.W.2 Ibrahim at the place of occurrence at the time of incident is clearly established. First information report was lodged promptly at the time mentioned in it. Thus, submission raised on behalf of the appellants in this respect is not acceptable. Witnesses claiming themselves to be eye account witnesses were actually present at the place of occurrence. Their statement made before the Court during trial which have been tested by lengthy cross-examination, cannot be disbelieved only on this ground that P.W.1 Shareef is the family member of the deceased.

25. When appellants Abdul Hassan and Sher Ali were arrested,

they disclosed to the police that they can recover the weapon said to have been used in commission of the crime. On their disclosure statement made before the police, arresting officer took them to the place disclosed by them for recovery of weapon said to have been used in commission of the crime and on pointing out of the appellant Abdul Hassan, one country made pistol of 315 bore and one live cartridge was recovered by the police concerned. Similarly, on pointing out of appellant Sher Ali, one country made pistol of 12 bore and two live cartridges were also recovered from the place disclosed by them. Empty cartridges recovered from the place of occurrence and the country made pistol and live cartridges recovered on pointing out of the aforesaid accused had been sent for examination at Forensic Science Laboratory. Report of Forensic Science Laboratory, which is Ex.Ka.-26, clearly reveals that empty cartridges recovered from the place of occurrence had been used from the country made pistol 315 bore. Although no definite opinion was given in the FSL Report regarding the use of country made pistol 12 bore in commission of the crime, yet recovery said to have been made in the matter of country made pistol 12 bore on pointing out of Sher Ali cannot be doubted. The place from where the aforesaid country made pistol and live cartridges have been recovered was not an open place nor accessible to general public. Thus, finding arrived at by the trial court regarding recovery of country made pistols on pointing out of the appellants Abdul Hassan and Sher Ali cannot be doubted, because this fact has been proved by the prosecution from their evidence beyond reasonable doubt, which is also supported to some extent with the FSL Report. If the statement of prosecution witnesses are compared with the findings arrived at by the trial court on this issue, the Court is of the opinion that finding of the

trial court regarding recovery of country made pistol 315 and 12 bore along with live cartridges on pointing out of the aforesaid accused cannot be doubted.

26. In this matter, prosecution for the offence under section 25 Arms Act has also been started after obtaining sanction / permission from the then District Magistrate. Thus, Court is of the view that prosecution was able to prove its case against the appellants Abdul Hassan and Sher Ali for the offence under section 25 Arms Act beyond reasonable doubt. Finding arrived at by the trial court in this respect is not interfereable.

27. Trial court has convicted and sentenced the appellants for the offence under sections 147, 148, 302/149 IPC. Since appellants were five in numbers, they committed the present offence in furtherance of common object forming an unlawful assembly armed with deadly weapons. Thus, conviction and sentence of the appellants for the offence under section 147 IPC cannot be termed to be illegal or perverse. Similarly, all the appellants were armed with deadly weapon, thus their conviction and sentence for the offence under section 148 IPC is also not interfereable. All the appellants have actively participated in commission of the crime in furtherance of common object of an unlawful assembly formed by them, thus conviction and sentence for the offence under section 302 / 149 IPC is also in accordance with law and it does not require any interference.

28. As regards sentence imposed upon the appellants is concerned, it is always a difficult task requiring balancing of various considerations. The question of awarding sentence is a matter of discretion to be exercised on consideration of circumstances aggravating and mitigating in the individual cases.

29. It is settled legal position that appropriate sentence should be awarded after giving due consideration to the facts and

circumstances of each case, nature of offence and the manner in which it was executed or committed. It is obligation of court to constantly remind itself that right of victim, and be it said, on certain occasions person aggrieved as well as society at large can be victims, never be marginalised. The measure of punishment should be proportionate to gravity of offence. Object of sentencing should be to protect society and to deter the criminal in achieving avowed object of law. Further, it is expected that courts would operate the sentencing system so as to impose such sentence which reflects conscience of society and sentencing process has to be stern where it should be. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against individual victim but also against society to which criminal and victim belong. Punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality which the crime has been perpetrated, enormity of crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'. **[Vide : (Sumer Singh vs. Surajbhan Singh and others, (2014) 7 SCC 323, Sham Sunder vs. Puran, (1990) 4 SCC 731, M.P. v. Saleem, (2005) 5 SCC 554, Ravji v. State of Rajasthan, (1996) 2 SCC 175].**

In view of above propositions of law, the paramount principle that should be the guiding laser beam is that punishment should be proportionate to gravity of offence.

30. Appellants were convicted and sentenced for the offence under section 302 / 149 IPC for life imprisonment and a fine of Rs. 15000/- and in default of payment of fine, one year rigorous imprisonment. Hence, applying the principles laid down by the Apex Court in the aforesaid judgments and having regard to the

totality of facts and circumstances of case, nature of offence and the manner in which it was executed or committed, in our view, sentence imposed upon the appellants is neither exorbitant nor excessive and same is adequate and also proportionate to gravity of offence. They have been awarded minimum sentence for the offence under Section 302 / 149 IPC.

31. Considering entire aspects of the matter and looking to the circumstances, under which present offence has been committed, we are of the view that impugned judgment and order passed by trial court is well thought and well discussed and trial court has rightly held that prosecution has succeeded to prove guilt of accused-appellants beyond reasonable doubt. As such, impugned judgment and order passed by trial court is liable to be upheld.

32. So far as submission raised on behalf of the appellants to release the appellants taking recourse to the Section 57 IPC is concerned, looking to the manner in which present offence was committed by the appellants, the Court is the view that benefit provided under section 57 IPC cannot be extended to the appellants merely on this ground that they are languishing in jail in this matter for about 18 years. It is not a fit case to release the appellants on the aforesaid ground. Thus submission raised by learned counsel for the appellants on this ground is also not acceptable.

33. Thus Appeal filed by the appellants, for the reason discussed here-in-above, finding no merit, is liable to be dismissed and impugned judgment and order convicting and sentencing accused-appellants is liable to be confirmed.

34. Resultantly, Appeal is dismissed. Impugned judgment and order dated 13.04.2006 passed by Sessions Judge, Rampur in Sessions Trial No.326 of 2004 (State Versus Ahsan & others)

convicting and sentencing all the appellants for the offence under sections 147, 148, 302/149 IPC, in Sessions Trial No.327 of 2004 (State Versus Abdul Hasan) convicting and sentencing the appellant Abdul Hasan for the offence under section 25 Arms Act and in Sessions Trial No.328 of 2004 (State Versus Sher Ali) convicting and sentencing the appellant Sher Ali for the offence under section 25 Arms Act is upheld. Appellants are in jail. They shall serve out the sentences awarded by the trial court until and unless remission is granted by the competent Authority.

35. Copy of this judgment alongwith lower court record be sent forthwith to the Court concerned for compliance and compliance report be sent to this Court.

**Order date : 25.02.2022**

SS