

Reserved on 30.11.2021

Delivered on 22.02.2022

**Court No. - 1**

**Case :-** CRIMINAL APPEAL No. - 595 of 1982

**Appellant :-** Babu Pasi alias Babu Lal Pasi and another

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

**Counsel for Appellant :-** J.N.Chaudhary, H B Singh, Harendra Pratap Singh, Ram Chandra Dwivedi, Saket Tiwari, Shilendra Kumar, Sumit K. Srivastava

**Counsel for Respondent :-** G.A.

**Hon'ble Ramesh Sinha, J.**

**Hon'ble Vivek Varma, J.**

**(The judgment is pronounced in terms of Chapter VII Sub-rule (2) of Rule (1) of the Allahabad High Court Rules, 1952 by Hon'ble Ramesh Sinha, J.)**

**( Per Ramesh Sinha, J. for the Bench)**

**(A) INTRODUCTION**

- (1) Eleven accused persons, namely, **Babu Pasi alias Babu Lal Pasi, Ringu Pasi, Ramesh, Madan Lal, Ram Swaroop, Ganga Sewak, Neta alias Kunni, Chandra Kishore, Lalaunoo, Ram Rup, Ram Chandra**, were tried by the VI Additional Sessions Judge, Unnao in Sessions Trial No. 210 of 1981 : *State Vs. Babu Lal and others.*
- (2) It is pertinent to mention here that during the trial, accused Babu Lal Master died, whereas accused Vinod Kumar and Babu Lal Dom were absconding, hence their trial was separated from aforesaid eleven accused persons and the trial Court had charged accused Ringu Pasi and Babu Lal Pasi under Sections 302 read

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with Section 34 I.P.C. for committing murder of Shiv Balak and Ram Balak and under Section 404 I.P.C. for having taken arms from the deceased persons; and accused Ramesh, Madan Lal, Ram Swaroop, Ganga Sewak, Neta alias Kunni, Chandra Kishore, Lalaunoo, Ram Roop and Ram Chandra were charged under Sections 201, 148, 302 read with Section 34 I.P.C. and Section 302 I.P.C. read with Section 114 I.P.C.

- (3) Vide judgment and order dated 17.07.1982, the VI Additional Sessions Judge, Unnao, acquitted nine accused persons, namely, Ramesh, Madan Lal, Ram Swaroop, Ganga Sewak, Neta alias Kunni, Chandra Kishor, Lalaunoo, Ram Roop, Ram Chandra and convicted two accused persons, namely, **Babu Pasi alias Babu Lal Pasi (appellant no.1 herein), Ringu Pasi (appellant no.2 herein)** under Section 302 read with Section 34 I.P.C. and Section 404 I.P.C. and sentenced them in the manner as stated hereinafter :-

“(i) Under section 302 read with Section 34 I.P.C. to undergo imprisonment for life; and

(ii) Under Section 404 I.P.C. to undergo one year's R.I.”

Both the sentences were directed to run concurrently.

- (4) Feeling aggrieved by their conviction and sentence above vide judgment and order dated 17.07.1982, **Babu Pasi alias Babu Lal Pasi (appellant no.1 herein )** and **Ringu Pasi (appellant no.2**

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**herein**) have preferred the instant criminal appeal under Section 374 (2) of the Code of Criminal Procedure.

- (5) It is pertinent to mention here that no appeal against the acquittal of nine accused persons, namely, Ramesh, Madan Lal, Ram Swaroop, Ganga Sewak, Neta alias Kunni, Chandra Kishor, Lalaunoo, Ram Roop, Ram Chandra, has been filed either by the State or by the complainant's side.
- (6) It transpires from the record that during pendency of the instant appeal, appellant no.1-*Babu Pasi alias Babu Lal Pasi* died on 12.07.2015, hence the instant criminal appeal filed on his behalf stands abated vide order dated 07.02.2019. Now the instant criminal appeal survives only in respect of **appellant no.2-Ringu Pasi**.

**(B) FACTS**

- (7) Shorn off unnecessary details, the case of the prosecution is as under :-

Gaya Prasad Singh (informant), son of Sheo Darshan Singh Kachi, who is the resident of village Hamirpur, Police Station Bihar, District Unnao, has lodged an F.I.R., alleging therein that in the year 1979, Chandrika Pasi of his village was murdered, in which his son Ram Balak (deceased), his nephew Raj Narayan son of Suryawali Kachi, Dinesh Chandra (injured) and Harish Chandra alias Kunne, sons of Udai Shanker Shukla, resident of village Bhagwant Nagar, Police Station Bihar, were challaned and

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in this case, on 30.09.1980, they were required to be present in Court. On that date i.e. on 30.09.1980, his another civil case was listed in Civil Court.

On 30.09.1980, his son Ram Balak (deceased), Shiv Balak (deceased) and his brother Vishnu Dutt came to *kachahari* (Court) for doing *pairvi* in both the cases. On the said date, the relatives of Chandrika Pasi and his companions, namely, Babu Lal Pasi Master, Ringu Pasi, Babu Pasi (accused), residents of Village Osiya, Police Station Bighapur, were also gone along with other 2-3 friends to *kachahari* (court) for doing *pairvi* of the case of Chandrika.

In the Court, some hot talk took place between his sons and Babu Lal Master etc. Thereafter, Babu Lal said that “खुन का बदला खुन से चुकाया जायेगा” (blood would be avenged for blood), which was also heard by Ram Narayan Kadi, who had gone there for *pairvi* of his brother Raj Narayan. On the said date, the case was posted for 06.10.1980.

On 06.10.1980, he (informant Gaya Prasad Singh), his sons Ram Balak (deceased), Shiv Balak (deceased), his nephew Raj Narayan and Shivdhar Singh sons of Ganga Singh, resident of village Bhunau Kheda, Ram Balak Yadav son of Kali Prasad resident of village Pitua Kheda, Ramdas Lohar son of Bhalu, Ram Balak son of Satya Narayan Pasi resident of Village Hamirpur, Police Station Bihar, District Unnao, were gone to *kachahari*

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(Court) but the case was posted for 07.10.1980, then, they were coming from Kanpur to Buxer through a bus, bearing registration No. U.T.T. 7367, upon which his grand-child Upendra Singh (P.W.1) son of Shiv Balak (deceased) was also returning from Kanpur. Babu Pasi, Ringu Pasi (appellants) of Usiya also boarded on the said bus from Unnao.

When the bus was started to go from Bighapur to Buxer, then, 3-4 men from Bighapur also boarded the said bus and when the bus moved ahead from तिराहा (a place where three road met with each other) of Usiya village at around 05:30 p.m., loud sound रोको रोको (stop stop) came inside the bus from its behind and 3-4 fire also happened in the bus. Thereafter, the bus, after running about 150 yard, stopped and then, they saw that Ram Balak (deceased) and Shiv Balak (deceased) got shot and fell on their seats and near to them, Babu Pasi, Ringu (appellants) and 24 year old wheatish colour boy wearing a red bushirt were holding a katta (pistol) in their hands and while abusing the passengers, asked them that bastard get out from the bus and ran away and if someone spoke, he too would be shot. Thereafter, while snatching the rifle of his son Ram Balak (deceased) and a single bore gun of Shiv Balak (deceased) by Babu Pasi and Ringu Pasi (appellants), respectively, they took it in their hands.

Thereafter, Dinesh Chandra Shukla (injured), who was sitting in front of the seat of the next gate with his rifle facing his face towards back, was caught holding his rifle by a wheatish man

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wearing Khakhi paint and bushirt and appeared to be a young age. Thereafter, Dinesh tried to escape from the grip of a wheatish man but he was jerked by him and then, while pulling over from bus with rifle, the said wheatish man snatched his rifle. Thereafter, all the passengers got out of the bus and hid under the trees here and there. They (informant Gaya Prasad Singh and Upendra Singh (P.W.1) also ran away and hid here and there under the cover.

As soon as the bus stopped the side of the road, Babu Lal Pasi Master (accused), who was armed with one bore gun and along with him 10-12 persons, who armed with Katta (pistol) and shotguns (अद्धी बंदूके), started firing. When the passengers got down, Babu Lal Master (accused) had said that dead body of the bastard be taken out from the bus, thereupon 3-4 persons entered into the bus and took out the dead body of his two sons, who died on account of shot inside the bus and thereafter, took away the dead bodies of his two sons to the south of the road towards the field. Thereafter, on saying of Babu Lal Master (accused), one of his companion, after soaking his *angaucha* (towel) in water, entered into the bus and cleaned the blood that had fallen in it.

A passenger, who was running towards the east and fell into the water about seven yards east of the road, was too shot by the miscreants. Two miscreants picked up his body and took him towards south of the road towards agriculture. The miscreants

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fired 15-16 shots and all the miscreants went south through the fields.

Hearing the fire sound, the men working in the nearby fields came on the road and saw the incident and recognized the miscreants. After the miscreants ran away, the said people came near the bus. The passenger, who had boarded the bus from Bighapur, told his name as Lallu Yadav of Mardan Khera, Kishan Mohan of Usiya, Jagmohan Singh of Akwabad, Police Station Bighapur. The men, who had gathered on the spot and who had seen and recognized the miscreants, told that the red bushirt miscreant was Vinod Kumar Chamar; the name of the person wearing Khakhi paint and bushirt was Babal Lal Dom of village Usiya and the name of the other miscreants was Kunni alias Neta, Ram Chandra Ahir, Madan Pasi, Ramesh Pasi, Ram Swaroop Ahir, Ganga Sewak Ahir of Usiya, Lalaunu Pasi of village Bhagrar, Chandra Kishore Lohar of village Aram police station Bighapur Unnao. The name of 3-4 miscreants could not tell by them but they said they would recognize by seeing them.

It has further been stated by the informant Gaya Prasad Singh that his son Shiv Balak was wearing half black tericoat bushirt, in which big white check was made, one rainy shoe, one rose colour aunguacha having its corner green, H.M.T. Automatic white dial white Kesh and a watch connected with chain amounting to Rs.400/-; and Ram Balak was wearing tericot bellbottom and tericot bushirt, rainy shoe, Omax automatic of catechu color and a

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watch connected with chain amounting to Rs. 400/-. They were also having license of rifle and gun and cartridge. The window of the bus where his sons were sitting got broken on the shot of miscreants and the seat where his sons were sitting in the bus, were having entry of gun shot and blood stained. On account of the shot of the miscreants, Dinesh Shukla and 2-3 persons were also sustained injuries. The name of the miscreants told by the persons came there after the incident, has not been known by him prior to the incident. He, Upendra Singh, Shivdhar Singh, Ram Balak Yadav, Ram Balak Pasi, Ram Das Lohar had seen the miscreants and recognized them and when they came in front of them, he can recognized them. He and his family members can identify the belongings of his sons when they come in front of them.

- (8) Thereafter, informant Gaya Prasad Singh Kachi got the FIR scribed at Bighapur Bus Station through Upendra Singh (P.W.1), who after scribing it read it over to him and thereafter got his signature on it and subsequently handed it over to informant Gaya Prasad, who, then, proceeded to Police Station Bighapur and lodged it.
- (9) The evidence of Syed Ibtida Husain Rizvi (P.W. 8) shows that on 06.10.1980, he was posted as Constable Clerk at Police Station Bighapur and on the said date, at 07:15 p.m., informant Gaya Prasad came and filed his written FIR (Ext. Ka.1), on the basis of which he prepared the chik FIR (Ext. Ka.33).



(10) A perusal of the chik FIR shows that the distance between the place of incident and Police Station Bighapur was 3 miles. It is significant to mention that a perusal of the chik FIR also shows that on its basis, Case Crime No. 144 of 1980, under Sections 396, 201 I.P.C. was registered against appellants and 3-4 unknown persons.

(11) The evidence of SI Hari Shanker Singh (P.W. 7), in short, shows as under :-

In October, 1980, he was posted as Station Officer at police station Bighapur. On 06.10.1980, this case was registered in his presence at the police station. He commenced the investigation and proceeded to the place of incident along with the informant (Gaya Prasad Singh) and other witnesses from police station, where Station Officer of police station Bihar and S.I. R.P. Shukla along with Constables were met at the place of the occurrence. He, thereafter, instructed them to search the dead bodies of the deceased and also to search the accused persons. Thereafter, he recorded the statements of Krishna Mohan and Lalloo etc.

On 07.10.1980, at 02:00 a.m., he again commenced the investigation and at the place of occurrence, he recorded the statement of witness Upendra Singh (P.W.1) etc. Subsequently, he inspected the place of occurrence and on the pointing out of the informant and other witnesses, he prepared the site plan (Ext. Ka.5). From the place of incident, he seized two empty cartridges,

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blood stained earth lying on the road on the side of the bus and plain earth near it in two containers under a recovery memo. He also seized four pellets, टिकली कारतूस, and a ticket of roadways bus in two containers under a recovery memo. He also seized the blood stained earth and plain earth from the places 'छ' and 'फ' shown in the site map in two separate containers under a recovery memo. He also seized blood stained ढैंचा, plain branch of ढैंचा, blood stained earth and plain earth from the place shown as 'झ' in the site plan in two separate containers under the recovery memo. Their recovery memo is Ext. Ka. 6 to Ext. Ka. 9.

On the date itself, the dead body of the deceased Shiv Balak was recovered on excavating the field of Devideen and he then prepared a recovery memo (Ext. Ka. 10). Thereafter, the dead body of another person was recovered from that field on excavating it but due to darkness, the Panchayatnama of any corpse could not be done. The dead body of Shiv Balak was identified by Upendra Singh (P.W.1). The accused persons were searched but they were not found at their home. He and other people remained on the spot for the supervision of the dead bodies.

On 08.10.1980, at about 07:00 a.m., he prepared panchayatnama of the dead body of the deceased Shiv Balak (Ext. Ka. 12), photo lash (Ext. Ka. 13), challan lash (Ext. Ka. 14) and a letter to C.M.O. (Ext. Ka. 15) and handed over the dead body of the deceased Shiv Balak in a sealed condition for post-mortem to

Constable Ram Vilash etc. To identify the dead body of the unknown person, it was brought from the field of Devideen to Urmiya Tiraha and got identified from the people who were coming and going there. But after not being identified, Ramdas Photographer was called from Janta Studio Bighapur and photo of the dead body of the unknown person was taken in his presence. Thereafter, photographer had handed over the positive photograph of the unknown person to him (Ext. Ka. 14 and Ext. Ka. 15). Thereafter, he prepared the panchayatnama of the dead body of the unknown person (Ext. Ka. 16), photo lash (Ext. Ka. 17), challan lash (Ext. Ka. 18) and a letter to C.M.O. (Ext. Ka. 19) and handed it over to aforesaid Constable Ram Bilas etc. in a sealed condition.

Thereafter, he came at Bighapur Bus Stand, where the bus was standing. From inside the bus, he seized one briefcase (Ext. Ka.16) and articles found inside of it under recovery momo (Ext. Ka. 20). The address was known from the letter found in the briefcase. He also recovered six pellets and 2 अदद टिकली from inside the bus, which was taken in possession and prepared its recovery memo. He seized the pieces of mirror of broken window inside the bus in a container under recovery memo (Ext. Ka. 23). He found blood on the rexine on the seat of the bus and therefore he cut the blood stained rexine and seized it under recovery memo (Ext. Ka. 24). He also prepared the site plan of the bus (Ext. Ka. 22). The injury report of Dinesh Chandra was received at the

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police station, which was copied and after that he came at police station, Bihar.

On 09.10.1980, he went to the house of Shiv Kumar Trivedi of village Babu Kheda along with recovered items Ext. Ka. 16 wherein his son Rama Shanker met and he identified the briefcase and clothes inside it and said it was his brother-in-law. Smt. Shail Kumari has said that the briefcase and its article were of his husband.

On 11.10.1980, he handed over the custody of the bus to Sri R.P.Singh, Station Officer, Unnao and got receipt thereof (Ext. Ka. 24). On the date itself, another dead body was found in the field of aforesaid Devideen on excavating (Ext. Ka. 26) but it could not be identified at that time, therefore, informant Gaya Prasad was called. He prepared the site map of that place (Ext. Ka.25). He, thereafter, left the unknown dead body under the supervision of S.I. R. P. Shukla and came to Unnao and informed the S.P.

On 12.10.1980, informant Gaya Prasad came there, identified the dead body and told that it was his son Ram Balak. He, thereafter, prepared panchayatnama of the dead body of Ram Balak (Ext. Ka. 27), photo lash (Ext. Ka. 28), challan lash (Ext. Ka 29) and a letter to C.M.O. (Ext. Ka. 30). He thereafter sealed the dead body of Ram Balak and handed it over to Constable Ram Pal etc. for post-mortem.

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On 14.10.1980, he recorded the statements of Head Moharrir Ram Asre Tiwari, Constable Ram Bilas Yadav and Ram Pal. On 15.10.1980, he came to Unnao and under the order of the Court, Kunni alias Neta was taken in police custody for 48 hours and brought him to police, where he recorded his statement. On 20.10.1980, at about 03:30 a.m., he arrested Madan Pal Cheddi from the Tiraha of Unnao-Raibareli road and Maiku Teli road at the east of village Sikandarpur. On the search of accused Chheddi, he recovered a country-made pistol, four live cartridges and a wrist watch and prepared two separate recovery memo. On the pointing out of accused Madan and Cheddi, he recovered a bag (Ext. Ka. 26), which was buried in the ground under the water in the field of Ludhai Pasi, in which one angaucha (towel) was found (Ext. Ka. 31).

On 23.10.1980, he went to Kanpur and searched other accused persons but he could not find them. On 24.10.1980, photographer Ram Baran had given him five photograph.

On 24.10.1980, he came to know that accused Babu Lal Master, Babu Lal, Ringu, Ramesh, Vinod Kumar and Chandra Kishore (accused) were surrendered themselves in the Court of Chief Judicial Magistrate, Lucknow. On 28.10.1980, he received information from the Court of J.M.-8, Unnao that aforesaid accused persons came to Unnao Jail from the Lucknow Jail on 26.10.1980. On 31.10.1980, he learnt that accused Ramroop, Ram Swaroop and Gram Sewak surrendered themselves in the

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Court of Unnao on 28.10.1980 and accused Babu Lal Dom surrendered himself in Court on 29.10.1980. On 02.11.1980, the property of the accused Lalaunoo and Chandra Kumar was attached and handed it over to Munni Lal. On 06.11.1980, he came to know that accused Ram Chandra surrendered himself on 03.11.1980. On 10.11.1980, he conducted the proceedings for reporting the identification of aungaucha and watch and on 12.11.1980, he conducted the proceedings for reporting the identification of accused persons. Thereafter, he was transferred to Kotwali and further investigation was done by Jora Singh (P.W.15).

- (12) The evidence of H.C. Ram Asre (P.W.9) shows that in the month of October, 1980, he was posted as Head Moharrir at Police Station Bighapur. On 09.10.1980, Devideen, son of Lalloo, resident of Ibrahimpur, P.S. Saraini, District Raibareli, came at the police station. He stated that Devideen was sent for medical examination along with Constable Sriram with *chithi majroobi* (letter for medical examination) at Primary Health Centre, Bighapur. On 20.10.1980, he took accused Madan Lal and Chheddi Lal from police station Bighapur at 11:10 a.m. and detained them at District Jail, Unnao.

In cross-examination, P.W.9 H.C. Ram Asrey had deposed before the trial Court that accused Madan and Cheddi were arrested on 20.10.1980 and at 10:15 a.m., they were brought at police station.

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The injuries of Devideen, which he had seen, were mentioned in the G.D.

- (13) The evidence of Sri Janardan Singh (P.W.10) shows that on 29.12.1980 and also on 03.01.1980, he was posted as Executive Magistrate at District Unnao. On 03.01.1981, he conducted the identification parade of accused Vinod Kumar, Babulal son of Dhannu Dom and Ramesh and Ram Chandra, Ram Swaroop, Ramroop, Ganga Sewak, Madan Lal, Lalaunu alias Chandra Kumar and Chandra Kishore at District Jail, Unnao. A separate parade consisting of 10-10 undertrial prisoners with each accused was prepared and the witnesses were called one by one. During identification, they were made to sit in such a place where they would not have a conversation with the coming witnesses nor made any indication. The result of the identification parade was that the accused Babu Lal was correctly recognized by the witness Gaya Prasad Singh; accused Chandra Kishore was correctly recognized by the witness Upendra Singh; accused Vinod Kumar and Madan Lal were corrected recognized by the witness Ramdas. He prepared the proceedings of identification directly, which is in his handwriting and signed (Ext. Ka.38)

Similarly, on 29.12.1980, he conducted the identification parade of blood stained aungaucha (Ext.1) at his office. The result of such identification was that witnesses Gaya Prasad Singh, Upendra Singh, Gajendra Singh and Devendra Singh had correctly identified the said aungaucha. He had prepared the

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proceedings in respect of the identification, which is in his handwritten and signature (Ext. 39)

In cross-examination, P.W.10 has stated that at the time of identification of goods, they did not get information who is the accused in this case and who is his lawyer, hence the accused was not informed about the identification proceedings. Witness Gaya Prasad had made one mistake in identifying the other accused; witness Upendra Singh also made nine mistakes in identifying other accused; witness Dinesh Chandra made ten mistakes in identifying ten accused. The statements given by the witness to him were “डकैती व कल्ल करते वक्त मौके पर देखा था”. Witness Upendra was also given the same statement to him.

- (14) The evidence of Constable Shiv Charan Mishra (P.W.11) shows that on 29.12.1980, he was posted as Court Moharrir in the Court of Special Executive Magistrate. On that date, he brought out a sealed bundle good from Sadar Malkhana, Unnao to the Court and after completion of identification proceedings, he brought the sealed bundle good from the Court and lodged it to Sadar Malkhana. The goods belonged to this case.
- (15) The evidence of Head Constable Annirudh Prasad (P.W.13) shows that on 21.10.1980, he was posted as Moharrir at Sadar Malkhana. On the said date, two sealed bundle of this case was deposited by Constable CP 31 Jagdish Prasad in Sadar Malkhana. He also stated that on 29.12.1980, one sealed and stamped



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bundle, in which bag and angaucha were there, was brought by Constable Shiv Charan Mishra (P.W.11) to the Court for identification and after identification of the aforesaid goods, Constable Shiv Charan Mishra (P.W.11) deposited it in a sealed condition in Sadar Malkhana.

- (16) The evidence of Ram Baran Verma (P.W.14) shows that in the year 1977, he was doing the work of photography at Bighapur, where he has a studio. On 08.10.1980, he took the negative of Ext. 14, 15, 17, 18 and 19 and he also brought it. He further stated that the same has been filed by him in the Court, in which Ext. 27, 28, 29, 30 and 31 were mentioned. He further stated that for this negative, he prepared the positive photograph print (Ext. 14, 15, 17, 18 and 19) and gave it to the Inspector.

In cross-examination, P.W.14 has stated that the bazar (market) of Bighapur is closing once in a week i.e. on Monday. On that day when he prepared the photo, bazar (market) was also closing on Monday. He clicked the photo of the dead body at the *tiraha* of Usiya and also clicked the photo of the bus at Bus Stand Bighapur.

- (17) The evidence of P.W.15 Jora Singh shows that on 29.11.1980, he was posted as Station Officer at Police Station Bighapur. He took the investigation of the case himself after transfer of the Investigating Officer Sri Hari Shanker (P.W.7). After completion of the investigation, the appellants and the acquitted accused

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were charge-sheeted vide charge-sheet dated 11.01.1981 (Ext. Ka. 43).

In cross-examination, P.W.15 has stated before the trial Court that he did not send the blood stained items to Chemical Examiner for examination. On asking the reasons thereof, he stated that he was not paying attention.

- (18) Going backward, the injuries of Dinesh Chandra Shukla and Devi Deen were examined on 07.10.1980 and 09.10.1980, at 1:30 p.m. and 03:30 p.m. at District Hospital, Unnao and Primary Health Centre, Bighapur by Dr. Vrij Narayan Saxena (P.W.3) and Dr. Keshav Gupta (P.W.12), respectively, who found injuries on their person as enumerated hereinafter :-

**"Injuries of Dinesh Chandra Shukla**

1. Incised wound 2 cm x 0.25 cm x .15 cm on the 1<sup>st</sup> past aspect of left forearm 5 cm above the medial epicondyle taling present on the above side, margins clear cut.
2. Abrasion 2 cm x 2 cm on the lateral aspect of Rt. knee joint.

**Injuries of Devi Deen**

1. Rounded firearm wound 8 cm below Lt. tibia bone. 1 cm in diameter muscle deep (probed). Feeling of Hard Mass like a pallet 3 cm medial to wound area all around the wound in swollen and tender.
2. Rounded fire arm wound 11 cm down and out from Lt. tibial tubercli measuring 1 cm in diameter. Muscle deep (probed). Blackening is present at the mouth and wound while pressing the wound slight pus and blood has come out."

- (19) It is significant to mention here that Dr. Vrij Narayan Saxena (P.W.3), who examined the injured Dinesh Chandra Shukla, has

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deposed before the trial Court that on 07.10.1980, he was posted as Emergency Medical Officer, District Hospital, Unnao and on the said date, he conducted the medical examination of injured Dinesh Chandra Shukla. On examination of injured Dinesh Chandra Shukla, he found two injuries on his person. As per his opinion, injuries were one day old; injury no.1 could be attributable by sharp edged weapon and injury no.2 by scrubbing; these injuries could be attributable on 06.10.1980 at 05:30 p.m.; and the injury of knee could be caused by falling rough paved road.

In cross-examination, P.W.3- Dr. Vrij Narayan Saxena has deposed that none of the these two injuries could be caused by fire arm; and both the injuries are superficial and could be self-inflicted.

- (20) As stated hereinabove, the injuries of Devi Deen was examined by Dr. Keshav Gupta (P.W.12), who deposed before the trial Court that on 09.10.1980, he was posted as Medical Officer in Primary Health Centre, Bighapur. On the said date, at 03:30 p.m., he examined the injured Devideen, who was brought by Constable Sri Ram of Bighapur Police Station. On the examination of injured Devi Deen, he found two injuries on his person. As per his opinion, injuries could be attributable by any fire arm weapon; duration of the injuries at the time of examination was about three days old; he advised x-ray for both the injuries; he prepared the injury report (Ext. Ka. 42); and all

the injuries on his person could be attributable on 06.10.1980 at 05:30 p.m.

In cross-examination, he had deposed before the trial Court that on 06.10.1980, he went to Bighapur. The hospital of Bighapur is at a distance of 2 kms from the police station.

- (21) The autopsies on the dead bodies of deceased persons, namely, (1) unknown person, (2) Shiv Balak and (3) Ram Balak, were conducted on 09.10.1980, 08.10.1980 and 13.10.1980 at 01:30 p.m., 04.00 p.m. and 1:30 p.m., by Dr. Adarsh Sanghi (P.W. 4), Dr. J.N. Bajpai (P.W.5) and Dr. R.R. Acharya (P.W.16), who found on their person ante-mortem injuries, enumerated hereinafter :-

**“Ante-mortem injuries of unknown person”**

1. Gun shot wound of entry circular in shape  $1\frac{1}{2}$ " x  $1\frac{1}{2}$ " x chest cavity deep. On the upper part of the chest  $1\frac{1}{2}$ " below left sterno clavicular joint margins inverted and contused. Blackening and tattooing not present.
2. Incised wound 2" x  $\frac{1}{2}$ " x bone deep on the right cheek,  $\frac{1}{2}$ " away from right alae of nose. The under lying maxillary bone is cut.
3. Incised wound 3" x  $\frac{1}{2}$ " x bone deep over right cheek  $\frac{1}{2}$ " interior to injury no.2.
4. Circular lacerated wound  $\frac{1}{2}$ " x  $\frac{1}{3}$ " x muscle deep just above right elbow joint.
5. Lacerated wound  $\frac{1}{2}$ " x  $\frac{1}{3}$ " x muscle deep on right fore-arm back 2" below elbow joint.
6. Gun shot wound of entry  $1\frac{1}{2}$ " x  $1\frac{1}{4}$ " x muscle deep on the anterior part of left buttock 3" is below iliac crest. Margins inverted and contused. No blackening or tattooing.
7. Four gun shot wounds  $\frac{1}{2}$ " x  $\frac{1}{3}$ " each into muscle deep on the anterior part of the right buttock in an area of  $3\frac{1}{2}$ " x 2". Margins inverted and contused. No blackening or tattooing. "

**"Ante-mortem injuries of Shiv Balak, son of Gaya Prasad Singh (informant)**

1. Multiple incised wounds in an area of 6" x 6" x bone deep carsury lev on left side of face, left side of nose, left side of cheek and left side of chin. Margins (illigible) clear cut.
2. Gun shot wounds of entry 1" x 1" x chest cavity deep on the right side of chest lower parts. 2" above part of stomach.
3. 4 Gun shot wounds of entry 1/2" x 1/3" x chest cavity deep on the right side of the chest in an area of 3" x 1<sup>1/2</sup>". 4" outer of the injury no.2 and 1<sup>1/2</sup>" from the right nipple.
4. Gun shot wounds of entry 1" x 1" into abdominal cavity deep on the left side abdomen upper part. 9<sup>th</sup> below left arm pit 7<sup>th</sup> outer to unsclicus."

**"Ante-mortem injuries of Ram Balak, son of Gaya Prasad Singh (informant)**

1. Incised wound 12.0 cm x 4.0 cm x bone deep on (L) face from (L) ear to lower jaw. Maxillary bones (L) mandible bone of (L) skull cut.
2. Incised wound on (L) neck 3.0 x 1.0 cm x bone deep middle.
3. Incised injury 8.0 x 0.5 cm x muscle deep on mid, upper abdomen.
4. Firearm wound of entry on (L) shoulder region scapular region, oblique 2.0 x 1.5 cm direction from (L) to (R). Scapular bone (L), back of IV & V rib (L) broken found at (R) lung."

The cause of death spelt out in the autopsy reports of the deceased persons was shock and haemorrhage as a result of ante-mortem injuries which they had suffered.

- (22) It is signification to mention here that in their depositions in the trial Court, Dr. Adarsh Sanghai (P.W.4), Dr. J.N. Bajpai (P.W.5) and Dr. R.R. Aacharya (P.W.16) have reiterated the said cause of

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death of the deceased (1) unknown person, (2) Shiv Balak and (3) Ram Balak, respectively.

(23) P.W.4-Adarsh Sanghai has deposed before the trial Court that on 09.10.1980, he was posted for post-mortem duty and on that date, at about 01:30 p.m., he conducted the post-mortem of the dead body of an unknown person, which was sent by S.O. Bighapur and brought it by C.P.282 Ram Bilash Yadav in a sealed condition and identified it by him. On examination, he initially found that the age of the deceased was about 30 years; it had been almost three days old since he died; the body physique was average; the stiffness of the body after death had ended; the decomposition of the body had begun; the body was covered with mud; the insects were crawling on the body; and blisters were present on the whole body.

He further stated that on internal examination, it was found that the brain was decomposed; in the bone of pleura, one bending, two pellete, about half litre blood and fluid were found; both right and left lungs were torn; heart was torn and empty; the upper part of the sternum bone was broken; about 50 grams of semi-digested food was present in the stomach; small intestine was empty; and faces were present in the large intestine. He has further deposed that he found five big pellet and one piece of bending from the body of the deceased, which was sealed and sent to S.P. Unnao. The report of post-mortem is in his handwriting and signature (Ext. Ka.3). The death of the deceased

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could be attributable on 06.10.1980 at 05:30 p.m. Injuries no. 4 and 5 could not be caused by fire arm. He further stated that it is difficult to distinguish between the injuries caused soon before the death and within half an hour immediately after the death.

In his cross-examination, P.W.4-Dr. Adarsh Sanghai has deposed that the clotting of the blood starts immediately after death. When the blood starts clotting, the dripping of the blood decreases. After the death, skin and subcutaneous tissue etc. starts getting hard. It is difficult to say that within 10-15 minutes, it becomes hard. After hardening, the inflicted injuries could be distinguishable from earlier injuries of death. He had minutely observed the injuries found during the post-mortem. Injuries No. 2, 3, 4, and 5 were ante-mortem. He further stated that at this moment, it is difficult to say where there was blood in these injuries as it is not mentioned in the report. He is not the ballistic expert. As per his opinion, bending could go into the body on firing from three feet with a pistol. The blackening and tattooing will not come in the condition of wearing clothes. One injury i.e. No.1 appears to have been inflicted within three feet. The death is also possible on 06.10.1980 at around 7-8 pm. The name and address of the deceased was unknown at the time of post-mortem. In the winter season, the blood coagulates quickly.

(24) P.W.5-Dr. J.N. Bajpai, in his examination-in-chief, has deposed that on 08.10.1980, he was posted as Radiologist at District Hospital, Unnao and on that date, at 04:00 p.m., he conducted the

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post-mortem examination of the deceased Shiv Balak Singh, which was brought by Constable 354 C.P. Ram Pal Singh, Police Station Bighapur in a sealed condition and identified it by him. On examination, initially he found that the age of the deceased was about 40 years and it had been almost 2 days since he died. The physical appearance of the deceased was normal. There was mud on the body of the deceased. The post-death stiffness was not present and no sign of rot was found. He further deposed that on internal examination, he found that right side bone of the chest and seventh rib bone were broken; eighth and ninth rib on the left side of the chest were broken; the pleura on the right side had ruptured; about half a liter of blood was present in the pleural cavity; the right lung was torn; the membrane above the heart was also torn and was empty; the peritoneum was also torn; one liter of fluid was present in abdominal cavity; stomach and small intestine were empty and stool was present in large intestine; liver was ruptured on the right side; the spleen was also torn. He further stated that he prepared the post-mortem report (Ext. Ka. 4). The death could be possible on 06.10.1980 at 05:30 p.m. He also stated that gun shot injury would come from firing from close range because blackening was present. If injury no. 1 is caused immediately after death, it is difficult to distinguish it as ante-mortem and post-mortem. He stated that in his opinion, injuries no. 3 and 4 of the fire arm cannot be done after the death.



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In his cross-examination, P.W.5 has deposed that he cannot say from how many shots, injuries no. 2, 3 and 4 would have come. He cannot say whether injuries no. 2, 3 and 4 came from one shot or from three shots. These injuries could be possible on 06.10.1980, at 7-8 p.m.

(25) The evidence of P.W.16- Dr. R.R. Acharya shows that on 13.10.1980, he was posted as Orthopedic Surgeon in District Hospital, Unnao. On the said date, at 1:30 p.m., he conducted the post-mortem of the deceased Ram Balak, son of Gaya Prasad, which was brought by C.P. 359 Ram Nath Singh of police station Bighapur in a sealed condition and identified by him. On examination of the body of the deceased Ram Balak, he opined that the deceased was about 40 years old and it had been almost 7 days since he died. On internal examination, he found that the left side skull bone was chopped off; the stomach and small intestine were empty; gas and faces were present somewhere in the large intestine. He further stated that injuries no. 1, 2 and 3 was inflicted with a sharp edged weapon and injury number 4 was inflicted by a fire arm. He had prepared the post-mortem report (Ext. Ka. 45) at the time of inspection, which was in his handwriting and signature. The death of the deceased could be possible on 06.10.1980 at 05:30 pm.

In cross-examination, he has stated that the death of the deceased could be more possible on account of injury no.1. The injury no.1 was more fatal than injury no.4. He further stated that it could not

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be possible for a man to survive after injury no.1. Injury no.1 could also be possible after death. He also stated that advance sign of decomposition in the dead body was present. The maggots flies were present in the dead body of the deceased. The skin was shriveled and the skin was also come out somewhere from the dead body. He could not find the mud on the dead body of the deceased.

- (26) The case was committed to the Court of Session in the usual manner where the convicts/appellants Ringu Pasi and Babu Pasi were charged under Sections 302 read with Section 34 I.P.C. for committing the murder of Sheo Balak and Ram Balak and under Section 404 I.P.C. for having taken arms from the deceased persons; and the acquitted accused, namely, Ramesh, Madan Lal, Ram Swaroop, Ganga Sewak, Neta alias Kunni, Chandra Kishor, Lalaunoo, Ram Roop and Ram Chandra, were charged under Sections 201, 148, 302/34, 302/114 I.P.C. They pleaded not guilty to the charges and claimed to be tried. Their defence was of denial.
- (27) During the trial, in all, the prosecution examined 16 (sixteen) witnesses, namely, P.W.1 Upendra Singh, P.W.2 Lallu, P.W.3 Dr. Vrij Narayan Saxena, P.W.4 Dr. Adarsh Sanghi, P.W.5 Dr. J.N. Bajpai, P.W.6-Krishna Mohan, P.W.7-Hari Shanker Singh, P.W.8 Syed Ibtida Husain Rizvi, P.W.9 Ram Asrey, P.W.10 Janardan Singh, P.W.11 Shiv Charan Mishra, P.W.12 Dr. Keshav Gupta, P.W.13 Anirudh Prasad, P.W.14 Ram Baran Verma, P.W.15 Jora

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Singh and P.W.16 Dr. R. R. Acharya. Out of sixteen witnesses, three of them, namely, Upendra Singh (P.W.1), Lallu (P.W. 2) and Krishna Mohan (P.W.6) were examined as eye-witnesses.

- (28) P.W.1-Upendra Singh, in his examination-in-chief, has deposed before the trial Court that he is the resident of village Hamirpur, police station Bihar. Village Usiya police station Bighapur is about 25 km away from his village. The deceased Shiv Balak and Ram Balak was his father and uncle, respectively. The name of his grand-father is Sri Gaya Prasad Singh. His uncle Ram Balak lived separately from his father. He was studying in Kanpur at the time of incident. Chandrika Pasi of his village was murdered about 7-8 months before this incident, in which his uncle Ram Balak and Raj Narayan etc. were challaned. Raj Narayan happens to be his uncle in a distant relationship. Dinesh Chandra and Harish Chandra, who were accused in the murder of Chandrika Pasi, is a resident of village Bhagwant Nagar.

The hearing in Chandrika's murder case was fixed on 06.10.1980 at Unnao. On 06.10.1980, he was coming from Kanpur to his village by bus. This bus goes from Kanpur to Buxar. Buxar lies ahead of Bhagwant Nagar. The bus starts from Kanpur at 3 or 3.30 pm in the evening. The number of that bus was U.T.T. 7367. For going from Kanpur to Buxar, the bus goes via Unnao. When the bus arrived at Unnao Bus Station, his father (deceased Shiv Balak) and uncle Ram Balak (deceased), grand-father Gaya Prasad (informant), Harish Chandra and injured Dinesh Chandra,

Ram Balak Yadav resident of Pituakheda, Shivadhar Singh resident of Munaukheda, Ram Das Lohar resident of Hamirpur, Ram Balak Pasi resident of Hamirpur met him. At that time, his father (deceased Shiv Balak) was armed with 12 bore licensee gun; his uncle Ram Balak (deceased) was armed with rifle; and Dinesh Chandra (injured) was armed with rifle. They all were sitting on that bus. He was sitting on a two seater with his grandfather. His father (deceased Shiv Balak), uncle (deceased Ram Balak) and Harishchandra were seated behind him on the bus. Shivdhar, Ram Das, Ram Balak Yadav and Ram Balak Pasi were sitting on the rear seat of the bus. Babu Lal Pasi and Ringu Pasi (convicts/appellants) were also sitting from Unnao Bus Station on this bus. He knew both of them from earlier. Both of them used to come at Chandrika's house of his village with Babu Lal Pasi Master. After this incident, Babu Lal Pasi Master was killed in encounter.

After crossing Unnao, the bus reached at Bighapur Bus Station, where some passenger got off and some passengers boarded on the bus. The *tiraha* (an intersection of three roads) of Usiya is about 4-5 kms from Bighapur Bus Stand. For going from Bighapur to Bhagwant Nagar, the bus goes through Usiya *tiraha* (an intersection of three roads). After running from Bighapur, the bus stopped at the *tiraha* (an intersection of three roads) of Usiya. When the bus went 50-60 yards from the *tiraha* of Usiya, a loud sound of "रोको रोको (stop stop)" inside the bus came behind it and 3-4 fires also happened in the bus. When he looked back, he saw

that his father (deceased Shiv Balak) and his uncle (deceased Ram Balak) got shot and they rolled on the seat. The bus stopped after running about 100-125 yards from the place where the bullet was fired. He saw that Babu Lal Pasi, Ringu Pasi and a 22-24 year's old boy wearing red bushirt were standing near the seat of his father and uncle and all of them were armed with Katta (gun). Later on he came to know that the name of the boy wearing a red bushirt was Vinod Kumar. The rifle of his uncle was snatched by accused Babu Lal Pasi and his father's gun was snatched by accused Ringu. All three people abused the passengers and asked them to get off the bus and they had said that "नही उतरोगे तो गोली मार देंगे". One boy wearing khakhi paint and bushirt was standing near Dinesh Chandra and that boy started to snatch the rifle of Dinesh and dragged Dinesh down from the next door of the bus and snatched his rifle. On this, the people sitting inside the bus got out and hid here and there. They (P.W.1 and his grand-father Gaya Prasad) also got down and got under cover.

P.W.1 has further deposed that after getting down from the bus, he saw Babu Lal Master standing on the side of the road with a single bore gun in his hand and along with him, 10-12 men were standing by carrying अर्धी (half) guns and Katta (gun) and they also started firing.

When the passengers went to the north, Babu Lal Master said that "सालो की लाश बाहर निकाल लो" (take out the dead body of the bastard). On this, 3-4 men entered the bus and brought out the

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dead bodies of his father and uncle and carried them towards the fields on the south side of the road. On the saying of Babu Lal Master, one of his companions wiped blood inside the bus with a towel. When an unknown passenger of a bus was running towards east, then, two men chased him and shot him 100-125 yards away from the bus, from which he died. Two miscreants also hanged his dead body and took it towards the south.

P.W.1 has further stated that about 15-16 fires took place there. The people around were coming on listening to the sound of fire and had seen the incident. The people came near them (P.W.1, his grand-father and other passengers) after the accused fled. His grand-father had a conversation with those people and his grand-father asked the names of the accused. A passenger, who had landed on the Usiya Tiraha, had also come there and he told his name as Krishna Mohan. Krishna Mohan and other villagers had told the name of the assailant, who was wearing the *Khakhi* paint and bushirt, as Babu Lal Dom and also told the names of other accused as Madan Pasi, Ramesh Pasi, Ramchandra, Ramswaroop, Ramroop, Ganga Sevak, Kunni alias Neta, Chandrakishore Luhar, Babulal Pasi, Master Babu Pasi, Ringu Pasi, Laloni Pasi, Magraya. Out of these, he already knew Babu Pasi, Ringu Pasi and Kunni. Apart from these, there were also 3-4 assailants, whose names were not given by the villagers nor known to them. This incident is around 5:30 pm in the evening.

The passengers had already gone but he (P.W.1), his grand-father, Harishchandra, Dinesh Chandra, Shivadhar, Ram Balak Yadav, Ram Das Lohar, driver & conductor of the Bus went to Bihar Police Station

by bus and when reached at Takia Bus Stand, his grand-father had talked to someone, then, that person told that the place of incident comes under police station Bighapur. Thereafter, they returned from that bus for Bighapur. After coming to Bighapur, the bus was parked at the bus station. The police station Bighapur is inside the *basti* from Bighapur Bus Station, where bus could not go. He further stated that he scribed the report on the dictation of his grand-father and whatever his grand-father told him, he wrote the same in the report and handed it over to his grand-father. He has proved the report (Ext.Ka.1). Thereafter, he, Shiv Adhar Singh, Ram Balak Yadav, Ram Balak Pasi, Ramdas Lohar went to village Hamirpur for giving information.

P.W.1 had further deposed that his father and uncle had weared the wrist watch. His father had also taken towel (*angaucha*). The miscreants had taken away the towel (*angaucha*) and wrist watch. His father and uncle had a liscence, which the miscreants also brought. At the time of incident, Dinesh Chandra sustained injuries on his hand while taking away his rifle by the miscreants. At that time, 2-3 passengers had also sustained injuries.

P.W.1 has also stated that he had gone to the District Jail, Uanno to identify the miscreants, wherein he identified Chandra Kishore Luhar. He further stated that he had seen Chandra Kishore Luhar for the first time at the time of the incident and thereafter, at the time of identification proceedings and in between, he had not seen to him (Chandra Kishore Luhar). He did not even know him (Chandra Kishore Luhar) before it.

P.W.1 has stated that his father Gaya Prasad is 75 years old and now he did not see and hear properly. Jageshwar is his younger uncle, who lived separately from him. He had told the number of gun, bicycle and license to the Inspector after looking at the documents of the house. On 07.10.1980, the body of his father Shiv Balak was found in the field and he identified it.

(29) P.W.2-Lallu, in his examination-in-chief, has deposed that he lives in village Mardan Kheda, Usiya. He knows Babu Lal Master, who has been killed. Babul Lal Master was the resident of village Usiya and was a teacher in Katra Diwan Kheda. He knew Chandrika resident of Hamirpur. The maternal house of Chandrika was at village Katra, Diwankheda. Babu Lal was the master and Chandrika was the passsi (पासी). Before this incident, Chandrika was killed. He had seen the mother of Chandika coming and going to the house of Babu Lal Master after the killing of Chandrika.

It was about 16-17 months ago from today (27.02.1982). He went to Bighapur market. It was 05:00 or 05:15 in the evening. He came to bus stand from Bighapur market, where he met Jagmohan and Krishnamohan. He had to leave for his home by bus. When the bus came from Unnao going towards Buxer, Jagmohan and Krishna Mohan boarded the same bus. He also stated that मैं जिस सीट पर बैठा था उसके आगे एक सीट छोड़कर तीन सीटर वाली सीट पर एक आदमी रायफल लिए व एक बन्दूक लिए व तीसरा आदमी खाली हाथ बैठे थे। (leaving one seat in front of his seat where he was



sitting, on the three seater seat, a man with a rifle, another man with a gun, a man with empty handed were sitting). The man, who was empty handed, was sitting on the side of the window and the man, who was armed with rifle, was sitting in the middle of them. He had seen Babu Lal Pasi and Ringu Pasi (accused) sitting on the two-seater seat next to these three people. He knew both of them before. A man was also sitting behind the driver's seat facing them. When the bus was about to leave, Vinod Pasi resident of Kusia had boarded inside the bus from the back door of the bus. He (Vinod Pasi) was wearing a red shirt. He (Vinod Pasi) came and stood near Ringu (accused). Babu Lal Dom (accused) resident of Usiya had also boarded inside the bus from the front door, who was wearing khakhi shirt and bushirt. He (Babu Lal Dom) was standing next to the man armed with the rifle sitting behind the driver's seat. He knew Vinod and Babu Lal Dom (accused) prior to it.

P.W.2 had further stated that the bus had reached the *tiraha* (intersection road) of Usiya from Bighapur at around 5.30 pm, where Krishna Mohan got down from the bus. He (P.W.2) had to get down at Akwabad, which was ahead of Usiya Tiraha. He further stated that when the bus would have reached about 50 yards from Usiya *tiraha*, then, Babu Lal Pasi and Ringu Pasi (accused) stood up; made the sound of रोको रोको (stop stop); got up from their seats; and came to the gallery of the bus and from there, they (Babu Lal Pasi and Ringu Pasi) fired shot from their two *kattas* upon the men, who were armed with rifle and gun.

Vinod had also fired with a katta. The gunman and rifleman had rolled on their seats as soon as shot. Thereafter, the bus stopped west of the culvert after covering a distance of about 100 yards. Babu Lal Pasi (accused) said that सालो निकल कर भाग जाओ अगर कोई बोलेगा तो उसे भी गोली मार देगे (bastard go out and run away, if anyone speaks, then they will shoot him too).

Thereafter, the gun and rifle were snatched from the deceased by Ringu and Babu Lal Pasi, respectively. Babu Lal Dom (accused) also tried to get rid of the rifle from the second man but when that second man did not relieve the rifle, then, Babu Lal Dom jolted him and dragged him out of the bus and snatched the rifle outside. Thereafter, all the passengers got out of the bus and started running away. He (P.W.2) also got out of the bus and covered himself behind a tree on the side of the road. When he came out of the bus, he saw Babulal Master, Madan Pasi, Ramesh Pasi, Lalaunu Pasi, Chandra Kishore Kumhar, Ram Swaroop, Ram Roop, Ganga Sevak, Ram Chandra, Kunni and four more men to whom he did not recognize, were also standing north of the bus. Babu Lal Master had a gun in his hand and the rest of the people had अर्द्धी (half) guns and Katta (gun). Babu Lal Master and his associates had fired 10-12 shots. Babu Lal Master said that इन सालो की लाशे खीच लो (drag the dead bodies of these bastard). On this, Ramesh, Madan, Chandra Kishore and Lalaunu went inside the bus. Chandra Kishore and Lalaunu were armed with Katta. Ramesh and Madan were empty handed. These four men took two dead bodies from the bus, hung them and went

south. Thereafter, Babu Lal Master said that बस का खून पोंछ डालो (wipe the blood of the bus), on which Ramroop Pasi went inside the bus after soaking a towel.

P.W.2 had also stated that a man, who ran towards north, was chased by Ram Chandra and Kunni and both of them fired at him, thereupon he had fallen and thereafter, his dead body was taken away by Ram Chandra and Kunni towards South direction. Later on all the accused were gone. After the accused left, he went near the bus. Jagmohan and Krishna Mohan also came near the bus and many more people from the village had come. A man had asked them the names of the miscreants, then, they had told the names of the miscreants. After asking the names of the miscreants, that person also asked them the names and addresses of the people. He stated that apart from these three deceased persons, he saw blood coming out from the injuries of 2-3 persons. Thereafter, 6-7 men of the same bus sat down and went towards Takia. He stated that Takia Patan is the same place. He (P.W.2) was staying there. Later on, a lot of people had gathered there. After about half an hour of departure, the same bus came from the side of the Takia and went towards Bighapur. He already knew all the accused.

- (30) P.W.6-Krishna Mohan, in his examination-in-chief, has deposed that his grocery shop is in village Usiya. It is a matter of about a year ago. He had gone to the market of Bighapur to get the items of his shop. Around 5 o'clock in the evening, he came to

Bighapur Bus Stand with his luggage to go to his village. At Bighapur bus stand, he met Lallu Yadav resident of Mardan Kheda and Jagmohan Singh resident of Akbabad. Then, he sat on the bus going towards Buxer at bus stand. All three of them (P.W.6, Lallu Yadav and Jagmohan Singh) sat on the bus. Inside the bus, he saw Ringu, Babu also sat in the bus. These people (Ringu and Babu) were sitting on a two-seater seat in the bus and next to them, he saw three men sitting on the three-seater seat, out of which, one had a rifle and the other had a double barrel gun. The man armed with the rifle was sitting in the middle and the empty-handed man was sitting at the window. A man was sitting behind the seat of the driver with a rifle and his face was towards them (P.W.6 and others). When the bus was about to run, his acquaintances Vinod Pasi and Babu Lal Dom also boarded. Babu Lal Dom was then wearing a khaki paint bushirt and Vinod Kumar was wearing a red shirt. Babu Lal was standing near the rifle man who was sitting behind the driver of the bus and Vinod stood near Ringu Pasi. He was sitting in the back seat of the bus on which 4-5 other people were sitting besides him (P.W.6). The conductor sat in the front seat near the window.

After moving from Bighapur, the bus reached Usiya Tiraha around 5:30 pm. He got off the bus at the Tiraha. The bus had moved forward thereafter. When the bus had moved forward about 50 yards, then, he heard the sound of gunfire from inside the bus. Afterwards, the bus stopped in front of the culvert about 40-50 kms towards the *Tiraha*. He saw the passengers of the bus

getting out of the bus. Some of the passengers were standing here and there and some had fled. He saw 10-12 men standing near the bus, among them Babu Lal Master armed with single bore gun and Coolie alias Neta, Madan Lalaunu, Chandra Kishore, Ramesh, Ram Chandra, Ramroop, Ganga Sevak, Ram Swaroop and 3-4 other men whom he did not recognize, armed with अर्धी (half) guns and Katta (gun), were there. When the bus stopped, these people started firing. Babu Lal Master had asked to take out the dead body and at his behest, Ramesh, Chandra Kishore, Madan and Lalaunu had entered the bus and brought out the bodies of two men. These four people had gone towards south with the corpse. Outside the bus, a passenger had run towards the east, then, he was told by Kunni and Ramroop and later on P.W.6 said that Coolie and Madan had run. Both of them had killed him. Thereafter, P.W.6 has said that Coolie and Ram Chandra had shot him and had gone towards south with his dead body. When the bus stopped, Ringu armed with gun and Babu Pasi armed with a rifle came out from the bus. Babu Lal Dom had dragged the person outside the bus, who was armed with rifle and sat behind the seat of driver. Babu Lal Master had asked to wipe the blood of the bus, on which Ramroop went inside after soaking the towel. He had heard about 15-16 fires in total. He saw this incident from where he had landed after moving a little further. Apart from him, Nanku Yadav, Lallu Jagmohan, Laxmi Shankar, Santram Yadav, Harish Chandra, Ram Kumar and many other villagers had seen this incident. After the accused had fled, they went near to the

bus. On being asked, the names and addresses of the accused were given. Accused went towards the boaring of Babu Lal Master in south side. He also stated that to go from Bighapur to Usiya, one has to take a ticket for Akbabad and ticket of Usiya Tiraha is not being given. On that day, he had taken the ticket of Akbabad in the bus from the conductor itself. Babulal Master had been murdered.

- (31) After completion of prosecution evidence, statements of accused persons were recorded under Section 313 Cr.P.C., who denied the alleged incident and stated before the trial Court that they have been falsely implicated due to enmity.
- (32) The trial Court has not placed reliance upon the testimony of P.W.6-Krishna Mohan as his testimony is self-contradictory on material points. However, the trial Court believed the evidence of Upendra Singh (P.W. 1) and Lallu (P.W. 2) and convicted and sentenced the appellants, **Babu Pasi alias Babu Lal Pasi** and **Ringu Pasi** in the manner stated in paragraph-3. It, however, acquitted the remaining accused, namely, Ramesh, Madal Lal, Ram Swaroop, Ganga Sewak, Neta alias Kunni, Chandra Kishore, Lalaunoo, Ram Rup, Ram Chandra. It is pertinent to mention that the State of U.P. has not challenged their acquittal by preferring an appeal under Section 378 (1) Cr. P.C.
- (33) As mentioned earlier, aggrieved by their convictions and sentences, the convicts/appellants **Babu Pasi alias Babu Lal**

**Pasi** and **Ringu Pasi** preferred the instant criminal appeal and during pendency of the instant appeal, appellant no.1-Babu Pasi alias Babu Lal Pasi died and the instant appeal filed on his behalf stood abated vide order dated 07.02.2019. Now, the instant appeal survives only in respect of appellant no.2-**Ringu Pasi**.

(C) **ARGUMENT ON BEHALF OF APPELLANT NO.2-RINGU PASI**

(34) Sri H.B. Singh, learned Counsel for the appellant no.2-Ringu Pasi, has submitted that

- I. The alleged incident took place on 06.10.1980 at 05:30 p.m., whereas the FIR of the said incident was lodged on 06.10.1980 at 07:50 p.m. at police station Bighapur, District Unnao, which is situated at a distance of 3 miles i.e. 04.83 kms, from the place of the incident, hence the F.I.R. has not been lodged promptly. Furthermore, the F.I.R. runs about four pages, which is voluminous and casts doubt that it has been lodged by much consultation and deliberation.
- II. The informant Gaya Prasad, injured Dinesh Chandra Shukla, injured Devi Deen, driver and conductor of the bus, were not examined by the prosecution though they are material witnesses, which casts doubt on the reason for the purported presence of P.W.1 and P.W.2 at the place of the incident and also non-examination of them is fatal to the prosecution case.

III. The trial Court has failed to take cognizance of the fact that no motive has been attributed to the appellant no.2-Ringu Pasi for commission of the offence, therefore, the appellant no.2-Ringu Pasi could not have been found guilty of the charge levelled against him.

IV. P.W.1 is the son of the deceased Shiv Balak and nephew of the deceased Ram Balak, whereas P.W.2 was having previous enmity with co-accused Ramchandra. Furthermore, father of appellant no.2-Ringu Pasi, namely, Baijnath, was the surety of the accused in the cross case filed by P.W.2-Lallu against Ramchandra, Palangi and others. On account of the enmity, P.W.2 had disclosed the names of the accused/appellants to the informant Gaya Prasad and P.W.1-Upendra Singh and on that basis, appellants were falsely implicated in the case. Hence, these two eye-witnesses i.e. P.W.1 and P.W.2 are interested and partitioned witnesses and as such, their testimony have to be scrutinized with caution but the trial Court committed a serious error in not appreciating the evidence of these eye-witnesses with great care and caution.

V. Though there were gunshot injuries inflicted upon the deceased Shiv Balak and Ram Balak but no recovery of the weapon of assault was made.

VI. The evidence of P.W.1 and P.W.2 indicates that there was prior enmity between the deceased and family members of the



accused persons and their companions because of which false implication cannot be ruled out.

VII. Thus, according to the learned counsel, the prosecution has failed to establish the charge of murder against the appellant no.2-Ringu Pasi beyond reasonable doubt.

**(D) ARGUMENT OF STATE/RESPONDENTS**

(35) Ms. Smiti Sahai, learned Additional Government Advocate appearing on behalf of the State, on the other hand, supported the impugned judgment of the trial Court and argued that :-

- I. The incident took place at 5.30 pm, while the FIR was lodged at 07:50 pm on the basis of the written report filed by the informant Gaya Prasad. The police station was admittedly situated at a distance of 4.82 Kms (3 miles) from the place of occurrence. There is no delay in lodging the FIR. Furthermore, the FIR contains a detailed account of the nature of the incident and spells out the role is attributed to the appellants.
- II. The evidence of the eye-witnesses supported by other ocular and documentary evidence has been rightly examined and appreciated by the trial court.
- III. No adverse inference can be drawn against the prosecution for non-examination of the informant Gaya Prasad Singh and other witnesses because the prosecution has fully

established the charge against the appellants beyond reasonable doubt by leading reliable and convincing evidence.

- IV. In the presence of direct evidence, motive recedes to the background. Therefore, the prosecution does not need to prove the motive of the appellant no.2-Ringu Pasi to murder the deceased.
- V. On these grounds, it has been urged on behalf of the State that the finding of guilt which was arrived at by the trial Court, is not liable to warrant any interference in appeal.

**(E) ANALYSIS / DISCUSSION**

- (36) We have heard the learned counsel for the respective parties at length and have carefully gone through the impugned judgment and order of conviction and sentence passed by the learned trial Court. We have also re-appreciated the entire evidence on record, particularly the depositions of P.W.1 Upendra Singh and P.W.2-Lallu. We have also considered the injuries found on the three dead bodies of the deceased persons and injuries found on the body of the two injured persons.
- (37) The crucial question in this appeal is whether the evidence of the three eye witnesses viz. Upendra Singh P.W. 1, Lallu P.W. 2 and Krishna Mohan P.W.6 inspires confidence or not. Our considered answer to the said question is in the negative. We may

straightway mention that these witnesses had also implicated 09 other co-accused persons and all of them have been clearly acquitted by the learned trial Court on all counts. As stated earlier, the State of Uttar Pradesh has not challenged the acquittal of these nine acquitted persons.

(38) The trial Court, after analyzing the evidence of P.W.6-Krishna Mohan, formed the opinion that he gave self-contradictory version on most material points viz. as to who chased the unknown person and shot dead and took his body, therefore, his presence on the spot is doubtful. In this backdrop, the trial Court has rightly not placed reliance upon the testimony of P.W.6-Krishna Mohan.

(39) Now, out of two eye witnesses i.e. P.W.1 and P.W.2, the evidence of Upendra Singh P.W. 1 can be straight way rejected by us on the ground that although the deceased had been done to death at about 05:30 p.m., on 06.10.1980, Upendra Singh (P.W.1) could not identify the acquitted accused/convicts-appellants. He could only identify Chandra Kishore (acquitted accused) at the test identification parade held on 03.01.1981, by Sri Janardan Singh, the Special Executive Magistrate, Unnao (P.W. 10). In our view, if P.W.1 (Upendra Singh) could not identify the appellants after about three months after the incident what is the sanctity to be attached to his nominating the appellants in his statement in the trial Court. More so, P.W.10-Sri Janardan Singh, the Special Executive Magistrate, Unnao, in his cross-examination, had

deposed before the trial Court that informant Gaya Prasad made one mistake in identifying the other accused persons; Upendra Singh (P.W.1) also made nine mistakes in identifying the other accused persons and none of them were identified by him; witness Dinesh Chandra (injured) made ten mistakes in identifying the ten accused persons. P.W.10, in his cross-examination, had also deposed before the trial Court that “गवाहान ने जो बयान मेरे सामने दिए थे “डकैती व कल्ल करते वक्त मौके पर देखा था।” (The statement, which was given by the witnesses, before him that “while committing robbery and murder, saw on the spot”). It means that the witnesses i.e. P.W.1-Upendra Singh, informant Gaya Prasad, injured Dinesh Chandra, stated before P.W.10-Sri Janardan Singh that they saw the identified accused persons while committing robbery and murder on the spot. But the prosecution case is not that the accused/appellants had committed robbery and also murdered the deceased. This is all the more so because in his cross-examination, P.W.1-Upendra Singh has deposed that the names of the accused/appellants were stated to him after the incident by Krishna Mohan, Lallu Mohan (P.W.2), Jagmohan Singh and other nearby villages and on that basis, he knew the names of the accused persons after the incident.

- (40) Apart from the aforesaid, P.W.1-Upendra Singh, in his cross-examination, had deposed before the trial Court that at the time of the incident, there were about 60-70 passengers in the bus, out of which, six man were armed with fire arms, however, out of

these six man, he didn't see anyone firing. He also deposed in the cross-examination that he could not see how many people fired inside the bus. P.W.1-Upendra Singh had further deposed that at the time of the incident, he (P.W.1) and his grand-father Gaya Prasad (informant) were sitting in two seater seat and behind 2-3 seat of them, his father Shiv Balak (deceased), his uncle Ram Balak (deceased) and Harishchandra were sitting in three seater seat. Shivadhar, Ram Das, Ram Balak Yadav and Ram Balak Pasi were sitting in the rear seat of the bus. Injured Dinesh Chandra was sitting behind the seat of driver with his rifle. He also stated that he knew Babulal Pasi and Ringu Pasi (appellants) prior to the incident as they used to come to Chandrika Pasi's house and Babu Lal Pasi Master before the incident. However, this statement of P.W.1-Upendra Singh was denied by the accused Ringu Pasi and Babu Lal Pasi in their statement under Section 313 Cr.P.C. He said that he did not know Chandrika Pasi.

- (41) It also comes out from the depositions of P.W.1-Upendra Singh that both appellants Babulal Pasi and Ringu Pasi boarded the bus from Unnao Bus Stand. P.W.1, in his cross-examination, has stated that “जहाँ मैं बैठा था वही से बैठे-बैठे मेरी बातचीत मेरे पिता व चाचा से हुई थी” (from where he sat, he had a conversation with his father and uncle while sitting). Meaning thereby, from Unnao Bus Station to the place of occurrence, he (P.W.1) had a conversation with his father and his uncle, who sat behind 2-3 seats in three seater seat. At that relevant time, both accused/ appellants Babu

Lal Pasi and Ringu Pasi were sitting just near to the seat of his father, his uncle and Harishchandra. In such circumstances, Babu Lal Pasi and Ringu Pasi (appellants) were very well aware that P.W.1-Upendra Singh and his grand-father Gaya Prasad (informant) are the family members of Ram Balak and Shiv Balak (deceased) and Harish Chandra who sat with Ram Balak and Shiv Balak (deceased) in the window seat of three seater seat of the bus, was also known to the deceased. P.W.1-Upendra Singh, in his cross-examination, has deposed that “किसी बदमाश ने मेरे उपर फायर नहीं किया न मुझे मारा पीटा न मेरे पास आया।” (none of the miscreants had fired upon him nor assaulted him nor came near to him). He has also stated that “किसी बदमाश ने मुझसे रुपये पैसो के होने के बावत नहीं पूछा था।” (none of the miscreants had asked him about the money). P.W.1-Upendra Singh had stated before the trial Court that when the bus went 50-60 yards from the *tiraha* (an intersection of three roads) of Usiya, a loud sound “रोको रोको” (stop stop) inside the bus came behind him and 3-4 fires also happened in the bus and then at this moment, he turned back and saw that his father Shiv Balak and his uncle Ram Balak got shot; they rolled on the seat; Babu Lal Pasi, Ringu Pasi and a 22-24 year’s old boy wearing red bushirt were standing near the seat of his father and uncle with Katta (pistol); and snatched the gun of his father and rifle of his uncle. P.W.1, in his cross-examination, has categorically admitted the fact that “फायर होने पर मैं अपने पिता व चाचा की ओर दौड़ा नहीं था। किसी फायर करने वाले को पकड़ने की कोशिश मैंने

नहीं की थी।” (after firing, he did not run towards his father and uncle. He did not try to catch any person who fired).

- (42) Considering the aforesaid circumstances, it is quite strange/improbable that Ram Balak, Shiv Balak (deceased) and Harish Chandra were sitting together in three seater seat in the bus; after shot to Shiv Balak and Ram Balak with Katta, accused/appellants had neither made any injury to Harishchandra who sat in the window seat with Shiv Balak and Ram Balak nor the accused/appellants had made any effort to cause injuries to P.W.1 and his grand-father Gaya Prasad even knowing very well that deceased Shiv Balak was the father of P.W.1 and deceased Ram Balak was the uncle of P.W.1. It is also quite surprising that P.W.1-Upendra Singh and informant Gaya Prasad did not try to save the deceased persons, who were their family members, from grip the accused/appellants nor raised any alarm or made hue and cry at that moment. But surprisingly, they (P.W.1, informant Gaya Prasad, Harischandra and other passengers) all peacefully took their items from the bus; got down from the bus; hid behind the tree; and from there all three persons and other passengers saw the accused/appellants bring out the dead bodies of the deceased (Ram Balak, Shiv Balak). P.W.1 had also admitted the fact that he did not see any one to fire upon his father Shiv Balak and his uncle Ram Balak, however, he knew the name of these accused persons on the saying of Krishna Mohan, Lallu Yadav (P.W.2), Jagmohan and other villagers, who were said to be

travelling with the said bus. But surprisingly, Krishna Mohan, Jagmohan and other villagers were not examined by the prosecution. All the circumstances as discussed hereinabove shows that the testimony of P.W.1-Upendra Singh is not credible and creates doubt upon the prosecution story and it appears that P.W.1-Upendra Singh and his grand-father Gaya Prasad were not present at the place of the incident

- (43) We are also not inclined to place any reliance on the testimony of Lallu P.W. 2. We have our grave doubts about his claim of having seen the incident. In his examination-in-chief, he stated that on the date of the incident, he went to the Bighapur Market and at about 05:00-05:15 p.m., he went from Bighapur Market to Bighapur Bus Stand, where he met Jagmohan and Krishnamohan. All of them boarded on a bus coming from Unnao and going towards Buxer. After boarding on the bus, he saw that leaving one seat in front of his seat where he was sitting in the bus, on the three seater seat, a man with a rifle, another man with a gun, a man with empty handed were sitting, whereas Babu Lal Pasi and Ringu Pasi (accused) were sitting on the two-seater seat next to these three peoples. He also saw that a man was also sitting behind the driver's seat by facing face towards them. When the bus was about to leave, Vinod Pasi resident of Kusia wearing a red shirt had boarded inside the bus from the back door of the bus and stood near Ringu (accused). Babu Lal Dom (accused) resident of Usiya had also boarded inside the bus



from the front door, who was wearing khakhi paint and bushirt and stood next to the man armed with the rifle sitting behind the driver's seat. He knew Babu Lal, Ringu Pasi, Vinod and Babu Lal Dom (accused) before. P.W.2 has further deposed that Krishna Mohan got down from the bus at *tiraha* (intersection road) of Usiya at around 5.30 pm but he (P.W.2) had to get down at Akwabad, which was ahead of Usiya Tiraha. He further stated that when the bus would have reached about 50 yards from Usiya *tiraha*, then, Babu Lal Pasi and Ringu Pasi (accused) stood up; made the sound of रोको रोको (stop stop); got up from their seats; and came to the gallery of the bus and from there, they (Babu Lal Pasi and Ringu Pasi) fired shot from their two *kattas* upon the men, who were armed with rifle and gun. Vinod had also fired with a katta. Thereafter, the gunman and rifleman had rolled on their seats as soon as shot.

- (44) As per the aforesaid depositions of P.W.2, it transpires that accused Babu Lal Pasi, Ringu Pasi and Vinod armed with Katta fired upon the men armed with rifle and gun sat in the three seater seat. It is admitted by P.W.2 also that the man, who was empty handed and sitting with rifleman and gunman in a window seat of three seater seat, did not receive any injury. P.W.1, in his cross-examination, had stated that the names of the accused persons were stated to him and his grand-father Gaya Prasad (informant) by Krishna Mohan, Lallu (P.W.2). From the depositions of P.W.1, it transpires that accused/appellants were

very well aware of the relationship of the deceased with P.W.1, informant and Harishchandra, still the accused/appellants did nothing to them and all of them were allowed by the accused/appellants to keep their articles from the bus, got down the bus and hid behind the tree. P.W.2 had also supported the statement of the P.W.1. Thus, it appears that the testimony of P.W.2 is not trustworthy.

- (45) P.W.16-Dr. R.R. Acharya, who conducted the post-mortem report of deceased Ram Balak, has stated before the trial Court that injuries no. 1, 2 and 3 (incised wounds) could be attributable by the sharp edged weapon, whereas injury no.4 could be attributable by fire arm. In his cross-examination, P.W.16-Dr. R.R. Acharya has deposed that “मृतक की मृत्यु चोट नं० 1 से ही होना अधिक संभव है” (the death of the deceased is mostly possible by injury no.1). He further stated that “चोट नं० 1 नं० 4 की अपेक्षा अधिक प्राणघातक थी।” (injury no.1 was more fatal than injury no.4). He also deposed that “चोट नं० 1 भी मरने के बाद की संभव नहीं है।” (injury no.1 is also not possible after death). From this statement of P.W.16-Dr. R.R. Acharya, it transpires that injury no.1 i.e. *“incised wound 12.0 cm x 4.0 cm x bone-deep on the face from (L) ear to lower jaw. Maxillary bones (L) mandible bone of (L) skull cut.”* is more fatal than injury no.4 i.e. firearm wound and further injury no.1 is also not possible after death meaning thereby it was caused before death.

(46) It is pertinent to mention that both P.W.1-Upendra Singh and P.W.2-Lallu had deposed before the trial Court that appellants Babu Lal Pasi and Ringu Pasi had fired upon Ram Balak and Shiv Balak with Kattas (pistol), due to which, they died on the spot. Except the allegation of firing with Kattas upon the deceased, both the eye-witnesses had not stated other mode of assault upon the deceased persons. That being the position, as to how the injury no.1 i.e. incised wound, on the dead body of the deceased Ram Balak came, has not been explained by the prosecution by giving any evidence in this regard. Furthermore, the prosecution has also not explained how one multiple incised wound came on the body of the deceased Sheo Balak and two other incised wound in addition to incised wound (injury no.1) came on the body of the deceased Ram Balak. In these backgrounds, it appears that both eye-witnesses i.e. P.W.1-Upendra Singh and P.W.2-Lallu were not seen the incident.

(47) It is also relevant to add that both P.W.1 and P.W.2 have made depositions to the effect that prior enmity existed between the members of the P.W.1 and P.W.2 one side and the members of the accused/appellants on the other side. P.W.1, in his cross-examination, has deposed that in the year 1973, Chandrika (since deceased) had lodged a case under Section 307 I.P.C. against his father and uncle. He further deposed that in the murder of Chandrika, his uncle Ram Balak, another uncle Ram Narayan, witness Dinesh Chandra (injured herein) and Harishchandra

(who was sitting along with the deceased Ram Balak and Shiv Balak at the time of the incident in a window seat of three seater seat of the bus) were accused. P.W.2, in his cross-examination, has stated that he had enmity with Ramroop, Ram Swaroop, Ganga Sewak and Ramchandra (acquitted accused) and he had a criminal case against them and the second case are going on. He further stated that the second case, which was filed, is a cross case under Sections 323 and 325 I.P.C.. He stated that along with him 12 peoples were accused and from the side of Ram Roop etc., 16 peoples were accused. In the cross case, bail was granted to them. P.W.2 has further stated that at the time of the incident, the said cross criminal case under Sections 323, 325 I.P.C. was going on. He further stated that रामस्वरूप से 1977 में झगडा हुआ था उसके बाद रामरूप बगैरह से झगडा हुआ। हम लोगो का झगडा रामस्वरूप आदि से 1977 से शुरू हुआ है। कास केस की पेशियो पर रामस्वरूप वगैरह आते है तथा हम सब लोग भी आते हैं। P.W.2 has further deposed in cross-examination that in his cross case, accused Ramchandra, Smt. Batasa and his father Palangi are also the accused. He also stated that he knew the father of appellant Ringu, namely, Baijnath. According to the appellants, in the cross-case, Baijnath, who is the father of appellant Ringu, was the surety of Palangi. Thus, it appears that there was long enmity between the parties, hence involving the accused/appellants falsely in a criminal case such as the instant case by P.W.1 and P.W.2 cannot be ruled out.

- (48) Learned Additional Government Advocate strenuously urged that the circumstance that the FIR of the incident was lodged promptly i.e. about 1 hour 50 minutes of the incident taking place and in the same, the act of causing injuries to the deceased with a fire arms has been attributed to the appellants speaks volumes in favour about the participation of the appellants in the murder of the deceased. We have reflected over the said submission of learned AGA. On the first blush, it was certainly very attractive. However, on a deeper scrutiny, we realised that all that glitters is not gold. It is well-settled that the FIR can only be used to contradict or corroborate the maker and is not substantive evidence. The substantive evidence are the statements of the witnesses in Court. The substantive evidence in the instant case was in the form of the evidence of the three eye witnesses viz. Upendra Singh P.W. 1, Lallu P.W. 2 and Krishna Mohan P.W.6 and that we have rejected for the reasons stated by us above. Hence this submission of learned AGA fails.
- (49) As it is manifest, neither the informant Gaya Prasad nor injured Dinesh Shukla and Devideen nor driver and conductor of the bus has been examined by the prosecution. Submission of appellants is that they are natural witnesses and no explanation has been given for their non- examination and hence, adverse inference against the prosecution deserves to be drawn.
- (50) In the case of **Surinder Kumar v. State of Haryana** : (2011) 10 SCC 173, the Apex Court has held that though in a different

context, that a failure on the part of the prosecution in non-examining the two children, aged about six and four years, respectively, when both of them were present at the site of the crime, amounted to failure on the part of the prosecution.

- (51) In **State of H.P. v. Gian Chand** : (2001) 6 SCC 71, the Apex Court, while dealing with non-examination of material witnesses has expressed that:-

"14 ... Non-examination of a material witness is not a mathematical formula for discarding the weight of the testimony available on record, howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court leveled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses are available for being examined in the court and were yet withheld by the prosecution. The Court has first to assess the trustworthiness of the evidence adduced and available on record. If the Court finds the evidence adduced worthy of being relied on then the testimony has to be accepted and acted on though there may be other witnesses available who could also have been examined but were not examined. However, if the available evidence suffers from some infirmity or cannot be accepted in the absence of other evidence which though available has been withheld from the Court then the question of drawing an adverse inference against the prosecution for non-examination of such witnesses may arise. "

- (52) In **Takhaji Hiraji v. Thakore Kubersing Chamansing and others** : (2001) 6 SCC 145, the Apex Court has held that it is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied

or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The Court should pose the question whether in the facts and circumstances of the case, it was necessary to examine such other witness. If so, whether such witness was available to be examined and yet was being withheld from the court. If the answer is positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable, the Court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses.

- (53) In **Dahari v. State of U.P.** : (2012) 10 SCC 256 while discussing the non-examination of a material witness, the Apex Court expressed the view that when he was not the only competent witness who would have been fully capable of explaining the factual situation correctly. The prosecution case stood fully

corroborated by the medical evidence and the testimony of other reliable witnesses, no adverse inference could be drawn against the prosecution.

(54) From the aforesaid authorities, it is quite vivid that non-examination of material witnesses would not always create a dent in the prosecution's case. However, as has been held in the case of **State of H.P. v. Gian Chand (supra)**, the charge of withholding a material witness from the Court levelled against the prosecution should be examined in the background of facts and circumstances of each case to find out whether the witnesses were available for being examined in the Court and were yet withheld by the prosecution. That apart, the Court has first to assess the trustworthiness of the evidence adduced and available on record. If the court finds the evidence adduced worthy of being relied on then the testimony has to be accepted and acted on. There may be other witnesses available who could also have been examined but were not examined. Another aspect which is required to be seen whether such witness or witnesses are the only competent witnesses who could have been fully capable of explaining correctly the factual situation.

(55) In the instant case, we have already noticed that informant-Gaya Prasad, who was sitting along with P.W.1 in the bus; Harishchandra, who was sitting along with the deceased in the window seat of three seater seat of the bus; injured Dinesh Chandra Shukla and Devideen; and conduct and driver of the



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bus, were the eye-witness. They are the most natural and competent witnesses. They really could have thrown immense light on the factual score, but for the reasons best known to the prosecution, they have not been examined. It is also not the case of the prosecution that they had not been cited as their evidence would have been duplication or repetition of evidence or there was an apprehension that they would have not supported the case of the prosecution. In the absence of any explanation whatsoever, we are of the considered opinion that it has affected the case of the prosecution.

(56) P.W.1-Upendra Singh, in his cross-examination, had stated that on account of extra old age and loss of vision, informant-Gaya Prasad was not produced before the trial Court. This explanation seems to be true. However, as stated hereinabove, there were other material eye-witnesses i.e. Harishchandra, injured Dinesh Chandra Shukla and Devi Deen, and conductor and driver of the bus still, no explanation has been produced by the prosecution for their non-examination in the trial Court. Therefore, we are of the considered view that the conviction recorded by the trial Court on the testimony of P.W.1 and P.W.2 without any corroboration is unsustainable.

(57) At this juncture, we feel distressed by the thought that the triple murderer is going unpunished but we cannot and should not be swayed by our emotions. What we have to see is whether the prosecution has led cogent, truthful and credible evidence to

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establish the guilt of the appellants beyond reasonable doubt. Such evidence in our judgement is wanting in the instant case. It might be that the prosecution case may be true. But before a conviction can be recorded/sustained a Court has to be satisfied that the prosecution case must be true. Emphasising this, the Apex Court in the case of **Sarwan Singh v. State of Punjab** : 1957 AIR 637, in paragraph 11 observed thus :-

"(11) ....

It may be as Mr. Gopal Singh strenuously urged before us that there is an element of truth in the prosecution story against both the appellants Mr. Gopal Singh contended that, considered as a whole the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence."

- (58) In the instant case, the distance between 'may be true' and 'must be true' has not been covered by the prosecution by adducing legal, reliable and unimpeachable evidence.
- (59) Pursuant to the above discussion, we are squarely satisfied that the instant is a fit case in which the appellant no.2-Ringu Pasi deserves the benefit of doubt. We propose giving him the benefit of that doubt.

**(F) CONCLUSION**

- (60) In the result, the instant criminal appeal is **allowed**. The judgment and order dated 17.07.1982 passed in Sessions Trial No. 210 of 1981 so far as it relates to the **appellant no.2-Ringu Pasi** is hereby set aside. The appellant no.2-Ringu Pasi is

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acquitted from the charges levelled against him. He is in jail. He shall be set at liberty forthwith if no longer required in any other criminal case.

- (61) **Appellant no.2-Ringu Pasi** is directed to file personal bond and two sureties each in the like amount to the satisfaction of the Court concerned in compliance with Section 437-A of the Code of Criminal Procedure, 1973.
- (62) Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

**(Vivek Varma , J.)**

**(Ramesh Sinha, J.)**

**Order Date : 22<sup>nd</sup> February, 2022**  
Ajit/-