

A.F.R.

Case :- CRIMINAL APPEAL No. - 4506 of 2005

Appellants :- Rampal Singh And Others

Respondent :- State of U.P.

Counsel for Appellants :- Rakesh Chandra Upadhyay, Ambrish Kumar Kashyap, Arimardan Singh, Bhaiya Ram, G.P. Singh, J.N.Singh, R.C. Yadav, S.N. Singh, V.K. Sharma

Counsel for Respondent :- Govt. Advocate, R.K. Pathak

Hon'ble Manoj Misra, J.

Hon'ble Saumitra Dayal Singh, J.

(Delivered by Hon'ble Saumitra Dayal Singh, J.)

1. Heard Sri Ambrish Kumar Kashyap, learned counsel for the appellants and Sri Ankit Srivastav, learned AGA for the State-respondent.

2(i). The appellants Rampal Singh, Udaibhan and Chandrabhan filed the present appeal against the common judgment and order dated 05.10.2005 passed by Sri Arvind Kumar Singh, Additional District and Sessions Judge/Fast Track Court No. 2, Mainpuri, in Sessions Trial No. 411 of 2012 (State Vs. Rampal Singh & Udaibhan) and Sessions Trial No. 128 of 2004 (State Vs. Chandrabhan). By that judgment and order, the appellants – Rampal Singh, Udaibhan and Chandrabhan were convicted for offences under Sections 147, 148, 307/149 and 302/149 IPC. Upon conviction, for the offence under Section 147 IPC each of the appellants was sentenced to six months' imprisonment. Upon conviction for the offence under Section 148 IPC, each of the appellants was sentenced to one year's imprisonment. Upon conviction for the offence under Section 307 read with Section 149 IPC, each of the appellants was sentenced to ten years' rigorous imprisonment together with fine Rs. 3,000/-. In the event of non-payment of fine, they were to undergo further imprisonment of one year. Upon conviction for the offence under Section 302 read with Section 149 IPC, each of the appellants was

sentenced to imprisonment for life and fine Rs. 5,000/-. In the event of non-payment of that fine, the appellants were to undergo further imprisonment of one year and six months.

2(ii). Upon the present appeal being filed, appellant no.1-Rampal Singh (hereinafter also referred to as the 'deceased appellant') was enlarged on bail by order dated 24.10.2005 whereas the bail application of the other two appellants was rejected. During the pendency of this appeal, appellant no.1-Rampal Singh died and the appeal filed by him was declared to have abated, vide order dated 13.12.2019. Appeal filed on behalf of appellant no.3-Chandrabhan (hereinafter also referred to as the 'appellant granted remission') also did not survive as he was granted remission by the State Government. It was dismissed as not pressed, vide order dated 07.10.2020. Thus, the present appeal survives and has been heard on behalf of appellant no.2-Udaibhan.

3(i). The prosecution case is that a First Information Report (**Exhibit Ka-4**) (hereinafter referred to as the FIR), in Case Crime No.63 of 2001, under Sections 147, 148, 149, 307 and 302 IPC, was lodged on 11.07.2001 at 11:20 a.m., at Police Station-Kurra, Sub-District-Karhal, District-Mainpuri, by **Sureshpal Singh (PW-1)**, son of Vishwanath Singh, upon a written application submitted in his handwriting. The FIR disclosed : on 10.07.2001 at 10:30 a.m., the first informant was sitting on a cot under a shed/'Chhappar' outside his house while his brother Devendra Singh along with Harvendra @ Tika, Chandra Pratap Singh and Shiv Vir Singh were sitting on a raised platform/'Chabuttra' under a Neem tree, in front of his house, adjoining a public pathway running in the North-South direction. At about 10:30 a.m., the deceased appellant (appellant no.1 herein), Udaibhan and Chandrabhan (both sons of Mewaram), Mewaram (father of Udaibhan Singh and Chandrabhan) and Shailendra Singh @ Kintoo reached there on foot from the South side of the public pathway. Rampal Singh (deceased appellant) was armed with

his licensed rifle, Chandrabhan with his double barrel gun and the others with illicit, single barrel guns. They fired indiscriminately at Devendra Singh, Harvendra Singh @ Tika, Chandra Pratap Singh and Shiv Vir Singh. Devendra Singh and Harvendra Singh @ Tika died on the spot, as a result of the firearm injuries suffered by them. Upon hearing the gun fire, besides the first informant, Makrand Singh, Ram Saran, Harendra Singh, Virendra Singh and Rajarshi Vir Singh reached the spot and witnessed the occurrence. Thereafter, the assailants fled – taking the same path, and in the same direction they had come from i.e. South. He also disclosed that the assailants bore old animus. The bodies of Devendra Singh and Harvendra Singh @ Tika were stated to be lying at the place of occurrence.

3(ii). *Vide Exhibit Ka-26*, drawn on 11.07.2001, the Investigating Officer (I.O.) obtained and sealed, a sample of plain earth and blood soaked earth obtained from the Crime Scene, in the presence of Ram Saran and Ram Ratan. A second sample of plain earth and blood soaked earth was obtained and sealed from the Crime Scene by the I.O. It was marked as **Exhibit Ka-27**. *Vide Exhibit Ka-28*, the I.O. recovered six empty cartridges of 12 bore caliber, bearing a red mark at the base and the marking '*Shaktiman 12 Express*'; 4 empty cartridges of 12 bore with a marking KF 12 00 (on one) and KF 12 01 (on other three) and; one empty cartridge of .315 bore, with a marking 9 MM KF 00.

3(iii). It also appears, during the investigation, the house of Rampal Singh (deceased appellant), Mewaram, Chandrabhan, Udhaibhan and Shailendra Singh @ Kintoo were searched. The search memos are **Exhibit Ka-29, Ka-30 and Ka-31**. However, no recoveries were made as a consequence of that search.

3(iv). The '*Panchayatnama*' with respect to the dead body of Devendra Singh (**Exhibit Ka-09**) was prepared on 11.07.2001. It bears the FIR details including Case Crime No.63 of 2001. However, there is an

overwriting as to the time of the FIR being lodged. The over writing appears to read 11:20 a.m. As to the time of the 'Panchayatnama' being prepared, it is disclosed to have started at 12:10 p.m. on 11.07.2001 and completed at 13:10 p.m. on the same day. Similarly, the 'Panchayatnama' for the dead body of Harvendra Singh @ Tika (**Exhibit Ka-8**) was also prepared on 11.07.2001. It also bears the full details of the FIR, being Case Crime No.63 of 2001. In this 'Panchayatnama' also there is an overwriting as to the time of the FIR being lodged. It reads 11:20 a.m. As to the time of that 'Panchayatnama' being prepared, it is disclosed to have started at 13:20 p.m. on 11.07.2001 and completed at 14:20 p.m. on the same day.

3(v). The postmortem examination report of Devendra Singh (**Exhibit Ka-6**) reveals, it was conducted at the District Hospital Mainpuri at 1:30 p.m. on 12.07.2001. It records the following ante-mortem injuries:

“(1) Wound of entry 5 cm x 3 cm x cranial cavity brain matter coming out of wound on occipital.

(2) Wound of entry 2 cm x 1 cm x muscle deep on back side of chest axillary fold.

(3) Wound of exit 3 cm x 1 cm on left shoulder 6 cm medial to top of left shoulder continuous to Inj No. (2).

(4) Wound of entry 1.5 cm x 1.5 cm on low back side at level L-4 vert.

(5) Gutter shaped firearm wound 2 cm x 1 cm muscle deep on lat. Side of prox. Phalanx of Rt index finger.

(6) Gutter shaped firearm wound 8 cm x 5 cm muscle deep on postero lat/lt firearm 2 cm elbow directed shown.

(7) Wound of entry three, in area 8 cm x 10 cm over left chest near left nipple.”

3(vi). Similarly, the post mortem examination report of Harvendra Singh @ Tika (**Exhibit Ka-7**) reveals, it was conducted at the District Hospital Mainpuri at 2:00 p.m. on 12.07.2001. It records the following ante-mortem injuries:

“(1) Wound of entry 9 cm x 5 cm x oral cavity deep mid chin to floor to Rt side hard pellet fractured mandible floor of mouth. Blackening present.

(2) Wound of entry 3.0 cm x 2 cm on left sub-clavicular region.

(3) Wound of exit 3 cm x 2 cm from left side back 4 cm lateral T-1 mid-line continuous to inj. No. (2).

(4) Wound of entry 3 cm x 2 cm just adjacent and lat to inj. No. (2) on left side chest fractured Lt clavicle.

(5) Wound of entry 4 cm x 3 cm on back Rt thigh just below glatier fold Fractured mandible and maxilla Rt side and base of Ant. Cranial fossa and left clavicle.”

3(vii). The postmortem report re Devendra Singh also records recovery of three pellets from left thoracic wall and it also records placing in double sealed envelopes, cardboard-1, distorted metallic bullet-1, pellets-25 that were also recovered during the post mortem examination. Similarly, the post mortem report re Harvendra Singh @ Tika records recoveries of pellets from left shoulder to left chest. It further records placing in a sealed envelope - cardboard-1 and 21 pellets recovered from the dead body of Harvendra Singh @ Tika. Both reports record the cause of death as 'Coma' due to *ante* mortem injuries. The above postmortem examinations were conducted by **Dr. R.D. Pandey (PW-6)** – on the dead body of Devendra Singh at 1:30 p.m. and on the dead body of Harvendra Singh @ Tika at 2:00 p.m., on 12.07.2001.

3(viii). It is the further case of the prosecution that in the incident, **Chandra Pratap Singh (PW-3)** suffered injuries for which he was examined on 11.07.2001 at about 7:45 p.m. by **Dr. R.P.S. Chauhan (PW-4)**. In that examination (**Exhibit Ka-2**), the following injuries were reported:

“1) Fire Arm wound of entry 0.3 cm x 0.3 cm x skin deep – left side of chest clotting blood. Kept HO Adv X Ray.

2) Fire Arm wound of entry over to lt arm upper in area 16 cm x 4 cm Size 0.3 cm x 0.3 cm x skin deep. Kept UO Adv X Ray.

3) Lacerated wound 1.5 cm x 0.5 cm x bone deep on left wrist part clotted blood present. Kept UO Adv X Ray.

4) Fire Arm wound of entry 0.3 cm x 0.3 cm x skin deep on back of left hand. Clotted blood present. Kept UO Adv X Ray.

5) Lacerated wound 2 cm x 0.5 cm x bone deep on middle side of Rt leg 8 cm below knee. Kept UO Adv X ray.

6) Lacerated wound 1.5 cm x 0.4 cm x bone deep on middle aspect of Rt leg 0.5 cm below to Inj No. 5. Clotted blood present. Kept UO Adv. X Ray.

7) Multiple abrasion over Rt Leg size 0.2 cm x 0.2 cm.

8) Multiple abrasion over Rt thigh size 0.2 cm x 0.2 cm.

9) Pin Head abrasion middle aspect of Rt thigh multiple in number size 0.1 cm x 0.1 cm.”

3(ix). Similarly, the injured **Shiv Vir Singh (PW-2)** was also examined by Dr. R.P.S. Chauhan (PW-4) at 7.55 pm on 11.07.2001 (**Exhibit Ka-3**). The following injuries were reported:

“Three lacerated wounds at back of Rt thumb of Size 0.5 cm x 0.2 cm x muscle deep; 0.6 cm x 0.2 cm x muscle deep and; 1.5 cm x 0.2 cm x skin deep xxxx injury of nail of thumb. Clotted blood present. Kept UO Adv X Ray”

The injury reports of Chandra Pal Singh and Shiv Vir Singh are **Exhibits Ka-2** and **Ka-3**, respectively.

3(x). Initial investigation in the case was carried out by the I.O. – Sri M.P. Singh Nagar. Upon his transfer from Police Station-Kurra, the investigation was transferred to the Sub Inspector **Surendra Nath (PW-7)** who completed the investigation. Sri M.P. Singh Nagar died before leading any evidence at the trial. Sub-Inspector **Surendra Nath (PW-7)** proved the investigation.

3(xi). Upon completion of the investigation and upon submission of the Charge Sheet, vide order dated 22.01.2003, charges were framed against Rampal Singh (deceased appellant) and Udaibhan - for offences under Sections 147, 148, 307 read with Sections 149 and 302 read with Section 149 IPC. Similar charges were framed against Chandrabhan by a separate order dated 22.03.2005. Both trials were clubbed. To the

charges thus framed, all the appellants pleaded not guilty. Thus the trial commenced.

4. At the trial, the prosecution examined seven witnesses while the defence examined one witness, as below:

- (i) Sureshpal Singh/informant (PW-1) - witness of fact;
- (ii) Shiv Vir Singh/injured witness (PW-2) – witness of fact;
- (iii) Chandra Pratap Singh/injured witness (PW-3) – witness of fact;
- (iv) Dr. R.P.S. Chauhan/expert witness (PW-4) – to prove the injury reports;
- (v) Shiv Nath Singh (PW-5) – Constable Clerk who prepared the ‘*Chik*’ report;
- (vi) Dr. R.D. Pandey (PW-6) – to prove the postmortem examination reports;
- (vii) Surendra Nath (PW-7) – to prove the investigation and;
- (viii) Yashpal (DW-1) – to disprove implication of Ram Pal Singh.

5(i). Sureshpal Singh (PW-1), first proved the date, time and place of the occurrence as narrated in the FIR. He also described that the deceased and the injured persons received firearm injuries in the assault committed by Rampal Singh (deceased appellant) with his licensed rifle, Mewaram with his single barrel gun, Chandrabhan with his double barrel gun and Udaibhan and Shailendra @ Kintoo with their single barrel guns. According to him, the assailants arrived together at the place of occurrence and fired indiscriminately, at the victim party. It resulted in the instantaneous death of Devendra Singh and Harvendra Singh @ Tika whereas Chandra Pratap Singh and Shiv Vir Singh received firearm injuries. According to him, the occurrence was witnessed by Virendra Singh, Makrand Singh, Ram Saran and Rajarshi Vir Singh. It may be noted here itself that those persons/witnesses to the crime were not

examined at the trial. He further stated to have lodged the FIR against a complaint written in his hand.

5(ii). According to him, the assault was committed on account of old village rivalry arising from successive elections to the post of village 'Pradhan'. Ram Pal Singh had defeated two rival candidates from the family of the informant Sureshpal Singh (and the deceased Devendra Singh), being Munni Devi (wife of Brij Pal Singh – a maternal cousin brother of Navratan Singh) and Makrand Singh (brother of Navratan Singh).

5(iii). He further stated, prior to the present occurrence, a case had been registered against him, Navratan Singh, Brij Pal Singh and Makrand Singh under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, wherein the wife of the deceased appellant - Rampal Singh was a prosecution witness. During his cross-examination carried out on 22.02.2004, the said Sureshpal Singh further admitted that his son Sonu was an accused person in the murder case of Sandeep @ Dabloo, son of the deceased appellant - Rampal Singh. He further admitted that Chandrabhan (appellant granted remission) was the scribe of the FIR in that case, lodged against Sonu. His father Mewaram and brother Udaibhan (present appellant) were witnesses in that case. He also admitted that his son Sonu was absconding and that a reward of Rs.20,000/- had been announced for his arrest yet, he was absconding. He further elaborated as to the existence of two parties/groups in the village, one of which he was a member along with Brijpal Singh, Navratan Singh, Makrand, Vakeel and the other of which Rampal Singh (deceased appellant), Mewaram, Chandrabhan, Udhaibhan and others were members. He however denied the suggestion of false implication of Rampal Singh (deceased appellant), whose house was stated to be about 2 furlong (220 yards) from the 'Chabutra'.

5(iv). As to the manner of the occurrence, on being cross examined, he described that the assailants had approached the victims from the South, walking side by side (to each other). They opened fire at the victim from the '*Kharanja*' near the '*Chabutra*' where the deceased and the injured were sitting under a Neem tree. Also, according to him, the victim party had been surrounded by the assailants from all four sides and had been fired at from the '*Chabutra*'. He confirmed that the bodies of the deceased lay where they fell upon being assaulted - about two feet apart from each other. He further described, upon being injured, Shiv Vir Singh and Chandra Pratap Singh fled to the East and that they were bleeding at that time. He also claimed, after the assailants fled, he found Devendra Singh dead while Harvendra Singh @ Tika was still alive.

5(v). He saw the entire incident from the time the assailants approached the victims from the '*Kharanja*' and fired indiscriminately and thereafter escaped on the path, towards the South. He categorically stated, he had not been fired upon in the incident though he was about 24 steps from the assailants when he saw and had been seen by the assailants who were positioned besides him at the beginning of the assault. According to him, the incident lasted about 10-12 minutes during which time he remained present and cried for help. About 16-18 rounds were fired by the assailants, who were 5-6 in number. They had also reloaded their weapons.

5(vi). As to the report being lodged and arrival of the Police, he deposed to have travelled to the police station Kurra, alone, on his bicycle and to have written the complaint using a pen taken from a shop outside that Police Station. First, he claimed to have stayed at the Police Station for 20-25 minutes and obtained the copy of the FIR. However, on being confronted with the '*Chik*' report (that did not bear his signature), he admitted having received a copy of the '*Chik*' report, the next day, after the postmortem examination. He denied the suggestion that the FIR

was *ante* timed. He claimed that the police had arrived after about one hour and thirty minutes to one hour and forty-five minutes after the incident.

5(vii). Regarding the injured witnesses Shiv Vir Singh and Chandra Pratap Singh, he stated they returned after the police had arrived, at about 12 noon. Shiv Vir Singh was described to have received one firearm injury on his right thumb while Chandra Pratap Singh had suffered four-five firearm injuries. They were stated to have bled while trying to escape the assault. Later, he further stated that the injured had been taken to the hospital at about 4.00 p.m. They returned the next day, in the morning, along with the police.

5(viii). Also, as to the conduct of the '*Panchayatnama*', he did state that the dead bodies were sealed between 12.20 p.m. to 2.20 p.m. and were dispatched, the same day.

5(ix). He specifically denied the suggestion that the FIR had been lodged after consultation or on the suggestions given by the police.

5(x). As to the arrival of the police, besides stating that the Police Inspector had visited the Crime Scene, one and half to two hours after the incident, during his cross-examination on 07.05.2004, he further stated that the Circle Officer also visited the crime scene at about 2.00 p.m. on 11.07.2001. Upon being questioned as to how the injuries were sustained by the victims, he stated that the assailants began firing from the South of the injured and the deceased. While Shiv Vir Singh and Chandra Pratap Singh were stated to have been shot from about 10-15 feet, he further stated that Harvendra Singh @ Tika was shot at while he was sitting. Devendra Singh was stated to have been first shot on his back while he was standing and that he fell to the ground on being hit. He was again fired at by the assailants when they reached the '*Chabutra*'. All the assailants shot at Devendra Singh and Harvendra Singh @ Tika.

6(i). Shiv Vir Singh (PW-2), one of the two injured witness was also examined by the prosecution. He described the occurrence took place at about 10.30 a.m. on 11.07.2001 when he along with Harvendra Singh @ Tika, Shiv Vir Singh, Devendra Singh and Chandra Pratap Singh were sitting at the 'Chabutra' in front of the house of Sureshpal Singh. According to him, the assailants approached from the South side. Rampal Singh (deceased appellant) was armed with his licenced rifle, Chandrabhan was armed with a double barrel gun and the rest of the assailants were armed with single barrel guns. Again, according to this witness, all the assailants opened fire, simultaneously. He claimed to have been hit on his right thumb. Harvendra Singh @ Tika and Devendra Singh succumbed on the spot while himself and Chandra Pratap Singh were also injured.

6(ii). He claimed to have met the Police Inspector about four hours after the incident. He also claimed to have shown him his injuries but that his statement was not recorded that time. It was recorded on the next day.

6(iii). The assailants were disclosed to have fled in the same direction from which they had come i.e. to the South of the Crime Scene.

6(iv). As to his own medical examination, he submitted, he had gone for medical examination at about 2.20 to 3.00 p.m. to Karhal, in a police jeep, with a constable upon an oral direction given by the Circle Officer to the Police Inspector. He reached Karhal at about 5.00-5.30 p.m. but did not get his X-ray examination done. As to the bleeding that may have taken place upon being hit with bullets and pellets, he did state that there was some bleeding but, upon cross examination, he could not establish whether any blood had fallen to the ground and if the same had been examined by the police, at the Crime Scene.

6(v). He denied knowledge of the direction in which Chandra Pratap Singh escaped. However, he also stated that assault began when the

assailants were about 10-12 feet away and that 18-20 rounds were fired. He insisted to have run to save his life when he was chased down by the assailants for some distance and fired at. He claimed to have escaped, having hidden in an open field behind the house of Virendra for 4-5 hours.

6(vi). As to arrival of the police, he disclosed that the police arrived at about 12.30 p.m. Yet, he could not name any of the '*Panch*' witnesses.

6(vii). As to old animosity between the parties. He admitted to have been accused in one case of SC/ST Act wherein Rampal Singh (deceased appellant) was a prosecution witness.

7(i). **Chandra Pratap Singh (PW-3)**, the second injured witness also described the time, date, and place of the occurrence at about 10.30 a.m. on 11.07.2001 at the '*Chabutra*' in front of the house of Sureshpal Singh. According to him as well, the assailants arrived at the spot from the South side of the '*Kharanja*' adjoining the '*Chabutra*'. Rampal Singh (deceased appellant) was armed with his licenced rifle, Chandrabhan with his double barrel gun and rest of the assailants, with single barrel guns. He stated, the assailants opened fire, simultaneously and indiscriminately, at the victim party wherein Devendra Singh and Harvendra Singh @ Tika died on the spot. The assailants fled in the same direction from which they had come, i.e., to the South. Additionally, he stated, Udaibhan had fired at Harvendra Singh @ Tika from a close range as well. That shot hit the deceased Harvendra on his face.

7(ii). During his cross-examination, he stated to have received three bullet injuries that caused bleeding, and that he had not received any injury other than the firearm injuries.

7(iii). As to the manner of the assault committed, this witness also described that the assailants had walked side by side (in a line) and

started firing at the victims. He specified the distance between the 'Chabutra and the Chhappar' to be 24-25 paces and the place from where the assailants shot at the victims at about 10-12 paces from the 'Chhappar' (where the first informant was sitting). He also confirmed that not a shot was fired at the first informant.

7(iv). As to his own injuries, though the said witness insisted to have received three gunshot injuries and other pellet injuries, he further claimed to have suffered little blood loss (2-4 drops) that caused stains on his clothes. He also claimed to have shown his injuries to the Police Inspector when he first visited the Crime Scene but that he did not show his blood stained clothes at that time. He also confirmed that the Police Inspector did not send him for the medical examination but that the Circle Officer sent him for the medical examination though he had not himself shown his injuries to the said Circle Officer. He claimed to have left for medical examination at about 3:00 p.m. on 11.07.2001. He also claimed to have got done an X-ray examination on the third day.

7(v). As to his reaction to the assault, the said victims claimed to have stood up and run for his life upon being assaulted. He further claimed to have been first shot at on his wrist, then on his thigh and third on his chest. He also confirmed that total 18-20 shots were fired in the incident and that he came out of hiding only after the police arrived. Yet, he admitted to have not shown the Police Inspector the place where he hid to save his life.

8. Dr. R.P. Singh Chauhan (PW-4), the doctor who examined the injured witnesses Chandra Pratap Singh (PW-3) and Shiv Vir Singh (PW-2), proved the two injury reports (**Exhibits Ka-2 and Ka-3**) stated to have examined the injured at about 7.45 p.m. on 11.07.2001 at the District Hospital, Mainpuri (where he was posted as EMO), upon reference made by the Community Health Centre, Karhal. He proved the injury reports and, in his opinion, injury nos. 1, 2, 4 and 9 caused to

Chandra Pratap Singh (PW-3) were firearm injuries, about half day old. He further proved, he had advised an X-ray for the injury suffered by Chandra Pratap Singh (PW-3). He further proved to have examined the other injured Shiv Vir Singh (PW-2) at about 7.55 p.m. on 11.07.2001 at the same hospital, upon reference made by the Community Health Centre, Karhal. He proved that injury report as well. He opined that it was possible, the injuries may have been received at 10.30 a.m. on 11.07.2001 and that, according to him, Shiv Vir Singh may have suffered firearm injury. During his cross-examination, he stated that it was possible that the time of injuries caused, as disclosed by him, may carry a margin of 3 to 4 hours. None of the injuries suffered by the injured had blackening, tattooing, or scorching. He further denied of having noticed any traces of gun powder on any of the wounds. As to injury nos. 7 and 8, suffered by Chandra Pratap Singh, he opined that it was possible that such injuries may be abrasion injuries. Though, he admitted having not recovered any pellet or bullet or traces of gun powder from the wounds suffered by those injured persons, yet, in his opinion, those injuries were firearm injuries, considering their measurements and penetration. He denied the suggestion that the injuries were possible to be incurred by placing hot needle or a stick or rod.

9(i). **Shiv Nath Singh**, the Constable Clerk was examined as **PW-5**. He proved the fact of the preparation of 'Chik' report no. 61 of 2001 in Case Crime No. 63 of 2001, under Sections 147, 148, 149, 307, 302 IPC, in his own handwriting (**Exhibit Ka-4**). He further proved that this case was disclosed in GD No. 15 at 11:20 a.m. on 11.07.2001. He denied the 'Chik' report having been *ante* timed.

9(ii). During his cross-examination, he could not disclose as to who prepared the 'Chitthi Majrubi' of Shiv Vir Singh and Chandra Pratap Singh. He claimed that the 'Chik' FIR had been promptly dispatched. However, he also admitted, it was received by the learned Magistrate on

16.07.2001. He was not questioned further as to the delay of about four days (including three working days), in that regard.

10. Dr. R.D. Pandey (PW-6), who conducted the post-mortem on the dead bodies of Devendra Singh and Harvendra Singh @ Tika, proved the ante-mortem injuries reported in the two post-mortem examination reports (**Exhibits Ka-6 and Ka-7**) and the cause of death. He further established that pieces of cardboard (wad) and pellets were recovered from the dead bodies. According to him, (firearm) injury no.1 on Devendra Singh had been caused from the back side and that all (firearm) injuries suffered could have been caused either while the deceased was standing or sitting. Further, injury no.1 was opined to have been caused upon the deceased Devendra being shot at from close range, while the other firearm injuries may have been caused from more than 3 ft. Similarly, injury no.1 suffered by the deceased Harvendra @ Tika was opined to have been caused from close distance while the others may have been caused from a distance of more than 3 ft. Upon being questioned as to the intestinal contents, the doctor opined that the deceased must have had food about six hours before his death.

11(i). Sub-Inspector **Surendra Nath (PW-7)** (the second Investigating Officer) was examined as the Investigating Officer. By that time, the first I.O. M.P. Singh Nagar (who was transferred mid way into the investigation), had died. He proved the steps of investigation, the recoveries made, and the statements recorded. During his cross-examination he deposed that the start time of investigation and the time when the I.O. first reached the Crime Scene were not recorded in the Case Diary. He was also questioned as to the genuineness of the '*Chitthi Majrubi*'. Here, he stated that the Case Diary records that the same were issued at the instruction of the Circle Officer. Those documents did not bear the Case Crime number. He described the place of occurrence as the '*Chabutra*'. On being questioned, he denied having been informed

during the investigation that the licenced rifle of Rampal Singh (deceased appellant) had been deposited with any arms dealer. In fact, he stated to have been informed that the said rifle was in the custody of the brother-in-law of Rampal Singh (deceased appellant), namely Shailendra Singh @ Kintoo. Since that Shailendra Singh @ Kintoo could not be found, hence that rifle could not be recovered. He was not questioned either as to the overwriting on the '*Panchayatnama*' (as to time of the FIR being lodged or as to any delay in submitting the report u/s Section 157 (1) Cr.P.C.)

11(ii). Thereafter, all the incriminating circumstances appearing in the prosecution evidence were put to them and their respective statements were recorded under Section 313 CrPC. They attributed the earlier FIR - lodged against Sonu (for the murder of Sandeep @ Dabloo), as the real reason for their false implication. Rampal being the father of Sonu, Chandrabhan being the scribe of that FIR and Udaibhan being brother of Chandrabhan and prosecution witness. The Injury Reports of Shiv Vir Singh and Chandra Pratap Singh were stated to be fabricated. The deceased appellant - Rampal Singh also claimed to be not present and ill at the relevant time.

12. Thereafter, **Yashpal** was examined as **DW-1** wherein he sought to explain that the licenced rifle of Rampal Singh (deceased appellant) had been deposited with an arms repairer on 03.06.2001 and it was received back after repair on 20.07.2001. He further tried to establish that the appellant Rampal Singh (deceased appellant) was ill at the time of the incident and that he was 71 years old at the commencement of the trial. However, no proof arose to the licenced rifle of Rampal Singh (deceased appellant) having been given for repair, as claimed.

13. Upon hearing the parties, the learned trial court found the appellants guilty on all counts and, accordingly, passed it's judgment and

order of conviction and punished Rampal Singh (deceased appellant), Chandrabhan Singh and Udaibhan Singh, as above.

14. Learned counsel for the appellants has first submitted that the entire prosecution story is an afterthought. In this regard, reference has also been made to the cross-examination of constable clerk Shiv Nath (PW-5) who admitted that the FIR was first received by the learned Magistrate on 16.07.2001, clearly indicating that the FIR was *ante*-timed. The real occurrence had not been truly reported. The FIR is clearly *ante* timed is also borne out from the plain reading of the inquest 'Panchayatnama' with respect to the dead bodies of Harvendra Singh @ Tika and Devendra Singh, wherein the time of the FIR being lodged has been clearly overwritten only to give sanctity to the otherwise *ante* timed FIR. Upto that time, no FIR existed. Further, the 'Chitthi Majrubi' also does not bear the FIR number. Second, it has been submitted that the injuries claimed by the injured witnesses were wholly false and unsubstantiated. No X-ray examination was conducted with respect to any of the injuries reported and, in any case, there is a huge unexplained delay in the medical examination of the injured witnesses and in recording their statement u/s 161 Cr.P.C. The occurrence had taken place at about 10.30 a.m. in the morning of 11.07.2001 whereas the injured were examined at about 7.45 p.m. i.e., with a delay of about 9 hours and their statements were recorded, the next day. In the context of the injuries claimed, it is submitted, the same are wholly manufactured. In that regard, reference has also been made to the cross-examination statement of Constable Clerk Shiv Nath Singh (PW-5) who could not establish the authenticity of the 'Chitthi Majrubi'. Third, referring to the post-mortem report whereby Dr R.D. Pandey, during his cross-examination, proved that Devendra Singh had also suffered gunshot injury from close range, it has been submitted that the same is wholly unexplained by the ocular evidence. Further, all injuries suffered by the deceased are on one side and, therefore, further doubt has been raised to

the credibility of the ocular evidence that the accused had surrounded the victims from four sides and shot at them simultaneously. If that narration be correct, then, according to the learned counsel for the appellants, the deceased and victims would have suffered injuries from all directions and not one. Fourth, it has been submitted that the injuries suffered by Chandra Pratap Singh, being Injury Nos. 7 & 8 were not caused by firearm. The ocular evidence does not support any of those injuries. In fact, the presence of such injuries clearly discredits the ocular evidence. Last, it has been submitted that neither the site plan discloses the place where the deceased or the injured were sitting or were standing at the time of occurrence nor has any weapon been recovered nor had any blood soaked clothes of the injured been recovered and examined nor there is any independent witness in support of the testimony that is wholly partisan being of persons whose close family members had been accused in the murder case of Sandeep @ Dabloo. In short, the entire prosecution story is stated to be a bundle of lies put together only to falsely implicate the appellants arising from the prior animosity between the parties. In that regard, it has been further pointed out, though Sureshpal Singh (PW-1), who is the father of Sandeep @ Dabloo (accused in the case of murder of the son of Rampal Singh) was also present and, according to all the witnesses, remained present throughout the occurrence, he was not shot at. It clearly belies the suggestion made by the prosecution - of indiscriminate firing.

15. Learned Counsel for the appellant has relied on the following decisions:

1. *Criminal Appeal No. 4857 of 2011 (Parshu Ram Vs. State of U.P.), and connected appeals, decided on 14.02.2019;*
2. *Criminal Appeal No. 1875 of 2007 (Shesh Narain Vs. State of U.P.), and connected appeals, decided on 27.05.2016;*
3. *Criminal Appeal No. 5211 of 2011 (Madan singh Vs. State of U.P.), and another connected appeal, decided on 21.02.2019; and*
4. *Criminal Appeal No. 2560 of 2005 (Raj Kumar Khangar & Ors. Vs. State of U.P.), decided on 11.05.2017.*

16. Opposing the appeal, learned AGA would submit that there is no delay in lodging the FIR and that there is no reasonable doubt of the same being *ante*-timed. It was promptly lodged. A simple cutting/overwriting on the inquest report as to the time of the FIR being lodged cannot and it does not create a reasonable doubt as to the date or time when the FIR was lodged. All other details of the FIR were duly and correctly recorded on the '*Panchayatnama*'. The injuries of the two injured witnesses are stated to be wholly genuine and duly proved. In an incident of this kind, where many rounds of ammunition were fired and two murders had been caused, merely because one close shot injury suffered by the deceased Devendra was not explained during ocular evidence, it could not lead to falsification of the entire prosecution evidence. Since the victim had no time or opportunity to escape when assaulted, the description of them being shot at after being surrounded, was duly explained. No injuries (other than firearm injuries) had been suffered by the injured Chandra Pratap Singh. The unexplained injuries claimed by the defence are really pellet injuries caused from a distance. Last, it has been submitted that the site plan was merely a rough depiction of the Crime Scene and it was, in no way, substantive evidence led by the prosecution to prove the charges. Non-disclosure/depiction of the exact place where each of the victim was sitting before being assaulted, is of no consequence in the face of clinching evidence available to establish the occurrence and the involvement of the present appellant. He has relied on the following decisions:

1. *Gangabhavani Vs. Rayapati Venkat Reddy & Ors.*, (2013) 15 SCC 298;
2. *Kamaljit Singh Vs. State of Punjab*, (2003) 12 SCC 155;
3. *Krishna Gope Vs. State of Bihar*, (2003) 10 SCC 45;
4. *Yogesh Singh Vs. Mahabeer Singh & Ors.*, (2017) 11 SCC 195;
5. *Prithu @ Prithi Chand & Anr. Vs. State of H.P.*, (2009) 11 SCC 588 and;
6. *Mallikarjun & Ors. Vs. State of Karnataka*, (2019) 3 SCC (Cri) 563;

17(i). Having heard learned counsel for the parties and having perused the record, first it is to be examined whether the FIR was lodged on the date and at the time disclosed by the prosecution. Specific to the plea of *ante* timed FIR set up by the appellants, in **Mehraj Singh Vs. State of U.P.; (1994) 5 SCC 188**, two external tests had been relied, to decide that plea. First external test is the report made to the magistrate under Section 157 Cr.P.C. and the second external test is the copy of the FIR sent with the dead body, for postmortem examination and its reference on the inquest report. In the present case, the FIR is disclosed to have been lodged on 11.07.2001, at 11.20 a.m. at Police Station Kurra, Sub-District Karhal, District Mainpuri. As per the requirements of Section 157 (1) Cr.P.C., the Officer-in-charge of the Police Station Kurra ought to have sent his report to the concerned Magistrate, forthwith. The original FIR (Exhibit Ka-4) bears the endorsement made by the Magistrate “Seen”. It is dated 16.07.2001. 11.07.2001 being a Wednesday, there was sufficient time of three working days (before 16.07.2001), for the report under Section 157(1) Cr.P.C. to have been prepared and sent to the learned Magistrate. According to the prosecution case, the Investigating Officer at the relevant time was Shri M.P. Singh Nagar. He could not be examined at the trial as he was dead. However, the defence did cross-examine the other Investigating Officer namely, Sub Inspector Surendra Nath (PW-7). No doubt was expressed during his cross examination as to the late preparation and submission of the report under section 157(1) Cr.P.C. In fact, he was not cross-examined to any extent as to the delay in submission of the report under Section 157 (1) Cr.P.C. At the same time, the Constable Clerk Shiv Nath Singh (PW-5), during his cross-examination, asserted that the said report had been promptly dispatched from the Police Station but that it was received by the learned Magistrate on 16.07.2001. He neither disclosed the exact date and time when the report was dispatched from the police station nor he was questioned any further as to that.

17(ii). In absence of any cross-examination either of the Investigating Officer Surendra Nath (PW-7) as to the cause of delay in submission of the report under Section 157 (1) Cr.P.C. and also on account of inadequate cross-examination of the Constable Clerk – Shiv Nath Singh (PW-5) - as to the date and time when the report under Section 157 (1) Cr.P.C. was actually dispatched, there is no reasonable doubt to the prosecution case that the first information report was lodged at 11:20 AM on 11.07.2001. That date and time is not only borne on the face of the FIR but the same was also corroborated from the General Diary entry, that was duly proved.

17(iii). Then, looking at the two inquest '*Panchayatnamas*' of the deceased Devendra Singh and Harvendra Singh @ Tika, they bear the Case Crime No. 63 of 2001, under Sections 147, 148, 149, 307, 302 IPC, Police Station Kurra, District Mainpuri in clear handwriting with no over writing or cutting. No cross-examination was conducted to doubt the existence of that endorsement on the aforesaid inquest '*Panchayatnamas*'. The cutting and over writing as to the time of the FIR mentioned on the two '*Panchayatnamas*' is identical. Though it stands out on the face of the '*Panchayatnamas*' yet, it cannot be ignored that during the elaborate cross-examination of Sri Shiv Nath Singh (PW-5) and Surendra Nath (PW-7), not a single question was thrown at those witnesses to doubt the correctness of the time "11:20 AM" mentioned on those '*Panchayatnamas*', as the time of the FIR being lodged. In absence of any cross-examination on that count, there is no reason to entertain any doubt as suggested by learned counsel for the appellant. It appears that a *bona fide* mistake may have occurred while recording the time of the FIR on the '*Panchayatnamas*'. That may have been corrected at the relevant time itself. The fact that the full FIR details (with respect to Case Crime Number etc.) are clearly and correctly mentioned on both the '*Panchayatnama*', there remains no reason to doubt that the FIR had been lodged on the date and time as disclosed therein. Therefore, the

external tests as relied by the Supreme Court in **Mehraj (supra)** are not found to have failed.

17(iv). Then, it is undisputed that the place of occurrence was not more than 4 to 6 kms from Police Station Kurra, District Mainpuri. The first informant Sureshpal (PW-1) Singh clearly described - after the incident, he travelled to that Police Station on his bicycle and lodged the FIR using a pen taken from a shop outside the police station. Again, in the entire cross-examination of that witness, which is rather lengthy and elaborate, no doubt emerged either that that witness was not present at the time and place of the occurrence or that he did not leave the Crime Scene immediately so as to travel to the Police Station on his bicycle or that he could not have reached the Police Station soon after the incident as may have allowed the FIR to be lodged at 11.20 a.m., i.e. within an hour from the incident having taken place, at 10.30 a.m. The cross-examination is also wholly inadequate. It does not allow any reasonable doubt to be entertained on that count either.

17(v). In view of the above, there is no reasonable doubt created by the appellant to the claim of the prosecution that the FIR was lodged at 11.20 a.m. on 11.07.2001. The Constable Clerk, Shiv Nath Singh (**P.W.-5**) proved the fact of the '*Chik*' FIR being prepared as disclosed. Thus, it has to be accepted that the FIR was lodged at 11.20 a.m. on 11.07.2001 at the Police Station – Kurra, District – Mainpuri, in Case Crime No. 63 of 2001.

18(i). As to the occurrence, it is seen that the prosecution produced three eye-witness account, being those of Sureshpal Singh (**P.W.-1**) - the first informant who was sitting under a '*Chhappar*', almost due South to the '*Chabutra*' (where the deceased and the injured were sitting). According to him, the assailants, who were 4 to 5 in numbers, approached from the South side of the '*Kharnaja*' and started firing simultaneously and indiscriminately at the victim party who were sitting

under the Neem tree about 24 paces away. They had walked up to the 'Chabutra', that was to the North of the 'Chhappar' and fired a few shots from close distance also. The incident itself has been described to have taken place over a period of 10 to 12 minutes wherein the assailants had also reloaded their weapons and fired 16 – 18 rounds of ammunition (in all). It necessarily implies, the assailants would have walked past the 'Chhappar' to reach the 'Chabutra'. Besides the oral evidence, there are also the two 'Panchayatnama' and recoveries of blood-soaked earth and empty cartridges (duly proven) to establish the place of occurrence at the 'Chabutra' in front of the 'Chhappar' outside the house of Sureshpal Singh (PW-1). Those facts were proved. In absence of any doubt emerging thereat, during the cross-examination of any of the prosecution witnesses, the time and place of occurrence as claimed by the prosecution are also found proved.

18(ii). The assailants having walked in South-North direction upto the 'Chabutra' that was to the East of the pavement, they would have had to walk past the 'Chhappar' and in front of it (before reaching the 'Chabutra'), giving Sureshpal Singh (PW-1) (sitting to their right/East) a clear view of the occurrence. This is further corroborated from the stand taken by the said witness that he had clearly seen the assailants and they had seen him while being at a distance of about 24 paces from them. He also described that the assailants fled taking the same path, implying that they would have necessarily walked past the 'Chhappar' again, where the informant was sitting.

18(iii). However, a doubt emerges as to allegation of indiscriminate firing resorted to by the assailants. According to the testimony of Sureshpal Singh (PW-1), the victims had been completely over powered by the appellants and remained at the Crime Scene for about 10-12 minutes during which period they fired about 16-18 rounds of ammunition after reloading their weapons. If the firing was so

indiscriminate and purposeful to eliminate as many members of the rival party/family, it stands out that not a bullet was fired at the first informant Sureshpal Singh (PW-1) who was positioned under the “*Chhappar*” at a similar distance as the two deceased victims-Devendra Singh and Harvendra Singh @ Tika. There is no evidence of the assailants having been fired back and there is also no evidence of they being challenged by any person. In fact, according to Sureshpal Singh (PW-1), he had only raised an alarm and cried out for help upon spotting the assailants.

18(iv). It may be noted, according to the first informant Sureshpal Singh (PW-1), the murders of Devendra Singh and Harvendra Singh @ Tika had been caused as a result of political rivalry/village '*party bandi*'. On the other hand, the defence has claimed that Rampal Singh (deceased appellant), Chandrabhan (appellant granted remission) along with the present appellant and Mewaram (father of Chandrabhan and Udaibhan) had been falsely implicated for the reason of an earlier FIR having been lodged against Sonu, son of Sureshpal Singh (PW-1), for the murder of Sandeep @ Dabloo (son of the deceased appellant/Ram Pal Singh). In that case, Chandrabhan (appellant granted remission) was the scribe of the FIR whereas his brother - Udaibhan (appellant herein) and his father Mewaram, were prosecution witnesses. The existence of that earlier case against Sonu, son of Sureshpal Singh (PW-1), stands proved by PW-1 himself.

18(v). Also, the defence has successfully established existence of another case lodged against Sureshpal Singh (PW-1), Navratan Singh, Brijpal Singh and Makrand Singh under the Scheduled Castes/Scheduled Tribes (Prevention of the Atrocities Act, 1989) wherein the wife of the Rampal Singh (deceased appellant) was a prosecution witness. Sureshpal Singh (PW-1) also admitted that Rampal Singh (deceased appellant) had defeated Munni Devi and Makrand Singh in successive elections to the post of Village Pradhan. Thus, it emerges that the parties were in a bitter

relationship from before. The informant side had a grouse against the appellant side on three counts, all duly proven.

18(vi). Examined in this background of proven old animosity and doubts noted above, the testimony of Sureshpal Singh (PW-1) - an interested witness must be tested more carefully before any firm conclusion may be reached thereon. Motive for commission of offence is not a primary factor to be established in a case where direct ocular evidence has been adduced by the prosecution yet, that evidence must be intrinsically reliable and inherently probable and not tainted with animosity.

18(vii). In **Rameshwar Vs. The State of Rajasthan, AIR (1952) SC 54**, close relationship of the witness with the victim (in that case a mother) was held to be not relevant to the independent character of her deposition. Then in **Dalip Singh & Others Vs. State of Punjab, AIR (1953) SC 364**, close relationship of the witness to the victim was considered to be normally "a sure guarantee of truth" unless tainted with enmity with the accused etc.

18(viii). In Criminal Appeal No.1247 of 2000 (Sri Kant Pandey and Others Vs. State of U.P.) decided on 11.11.2020 by my learned brother, in his astute opinion, has taken note of the ratio laid down by the Supreme Court in ***Hari Obula Reddy & Others Vs The State of Andhra Pradesh 1981 (3) SCC 675*** and ***Jalpat Rai Vs The State of Haryana 2011 (14) SCC 208***. It had been thus observed:-

"20. In Hari Obula Reddy v. State of A.P., (1981) 3 SCC 675, a three-judge Bench of the apex court, with regard to the care and caution with which the testimony of an interested witness is to be appreciated and assessed, in paragraph 13 of the judgment, as reported, had observed as follows:

"..... it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a

conviction thereon. Although in the matter of appreciation of evidence, no hard and fast rule can be laid down, yet, in most cases, in evaluating the evidence of an interested or even a partisan witness, it is useful as a first step to focus attention on the question, whether the presence of the witness at the scene of the crime at the material time was probable. If so, whether the substratum of the story narrated by the witness, being consistent with the other evidence on record, the natural course of human events, the surrounding circumstances and inherent probabilities of the case, is such which will carry conviction with a prudent person. If the answer to these questions be in the affirmative, and the evidence of the witness appears to the court to be almost flawless, and free from suspicion, it may accept it, without seeking corroboration from any other source. Since perfection in this imperfect world is seldom to be found, and the evidence of a witness, more so of an interested witness, is generally fringed with embellishment and exaggerations, however true in the main, the court may look for some assurance, the nature and extent of which will vary according to the circumstances of the particular case, from independent evidence, circumstantial or direct, before finding the accused guilty on the basis of his interested testimony. We may again emphasise that these are only broad guidelines which may often be useful in assessing interested testimony, and are not iron-cased rules uniformly applicable in all situations."

(Emphasis Supplied)

21. In *Jalpat Rai v. State of Haryana*, (2011) 14 SCC 208, after reiterating the general principles as noticed above, in paragraph 42 of the judgment, as reported, the apex court cautioned the courts of the stark reality that where there is rivalry, hostility and enmity there is a tendency to over implicate and distort the true version against the person(s) with whom there is rivalry, hostility and enmity. In that context, it was observed as follows:

"42..... But it is a reality of life, albeit unfortunate and sad, that human failing tends to exaggerate, over implicate and distort the true version against the person(s) with whom there is rivalry, hostility and enmity. Cases are not unknown where an entire family is roped in due to enmity and simmering feelings although one or only few members of that family may be involved in the crime."

22. Prior to that, in paragraph 41 of the judgment, with regard to the mode to be adopted by the court to assess the worth of the testimony of interested witnesses, it was observed:

"41.....To find out the intrinsic worth of these witnesses, it is appropriate to test their trustworthiness and credibility in light of the collateral and surrounding circumstances as well as the probabilities and in conjunction with all other facts brought out on record."

23. Thus, the law is clear that though testimony of an interested witness can alone form the basis of conviction but before acting on it the court must carefully test whether it is free from suspicion, embellishment and exaggeration and whether the substratum of the story narrated by the witness is such which is consistent with the other evidence on record, the natural course of human events, the surrounding circumstances and inherent probabilities of the case so that it carries conviction with a prudent person."

18(ix). Then, in ***Pulicherla Nagaraju @ Nagaraja Vs. The State of Andhra Pradesh*** (2006) 11 SCC 444, it has been observed as under:

"16. In this case, we find that the trial court had rejected the evidence of PW 1

and PW 2 merely because they were interested witnesses being the brother and father of the deceased. But it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or closely related to the deceased, if it is otherwise found to be trustworthy and credible. It only requires scrutiny with more care and caution, so that neither the guilty escape nor the innocent wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, it can be acted upon. If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted. (Vide Hari Obula Reddy v. State of A.P. [(1981) 3 SCC 675 : 1981 SCC (Cri) 795] , Ashok Kumar Pandey v. State of Delhi [(2002) 4 SCC 76 : 2002 SCC (Cri) 728] and Bijoy Singh v. State of Bihar [(2002) 9 SCC 147 : 2003 SCC (Cri) 1093]”

18(x). The conspectus of the law as applied to the facts of the present case leads us to a *prima facie* conclusion that Sureshpal Singh (PW-1) is a witness who may be expected, under normal circumstances, to be interested in seeking successful prosecution of the present appellant along with the co-accused Rampal Singh (deceased appellant) and Chandrabhan (appellant granted remission), for reason of two earlier criminal cases involving him and his close family members. Also, it is a fact that the said witness (PW-1) categorically admitted to existence of “*party bandi*” in the village wherein the appellants and the informant party were on opposite sides. Also, Rampal Singh (deceased appellant) was the victor in two electoral battles fought between the parties on the post of '*Pradhan*'. Therefore, the testimony of Sureshpal Singh (PW-2) though not self contradicted or patently false yet it may require corroboration in regard to material particulars from other prosecution evidence to eliminate any doubt that the same may be tainted with animosity.

19(i). As to the further evidence led by the prosecution, it is seen, Shiv Vir Singh (PW-2) had suffered only one injury - being a lacerated wound on his right thumb. However, the other injured witness Chandra Pratap Singh (PW-3) had suffered seven firearm injuries, allegedly caused by three shots fired - on the wrist of his left hand, another on his right leg and a third on the left side of his chest. Thus, numerous pellet injuries are claimed to have been suffered by him. According to the prosecution story, Devendra Singh, Harvendra Singh @ Tika, Shiv Vir

Singh and Chandrapal Singh were sitting under the Neem tree on the 'Chabutra' in front of the house of the first informant Sureshpal Singh for some time before the assault took place. According to Shiv Vir Singh (PW-2), upon being fired at, he ran for his life to the East of the 'Chabutra', in an open field behind the house of one Virendra Singh. The third prosecution witness Chandra Pratap Singh (PW-3) also claims to have reacted similarly to the occurrence and to hide in a 'kachcha' room of Sureshpal Singh (PW-1).

19(ii). During his cross-examination, Shiv Vir Singh (PW-2) claimed to have met the Investigating Officer when he first arrived at the Crime Scene, yet his statement was not recorded by the I.O. at that time though according to the FIR (that had been recorded at 11.20 am), he along with Chandra Pratap Singh had been injured in the double murder of Devendra Singh and Harvendra Singh. At the same time, he claimed, he had shown his injuries to the Police Inspector, at that time itself. He was sent for medical examination at about 2.30 – 3.00 p.m. on 11.07.2001. He admitted that his statement was first recorded on the next date which would be on 12.07.2001. He however could not name any of the 'Panch' witnesses. He further admitted to having not disclosed to the Investigating Officer on 11.07.2001, the names of the assailants, though it is otherwise clear from the deposition made by the said Shiv Vir Singh (PW-2) that the assailants were known to him from before and, in any case, they had already been named in the F.I.R. He denied, there was any blood on his clothes. He tried to explain the same by stating, he had held his right thumb with his other hand and ran to save his life. It is also a fact that neither any blood-soaked earth was recovered from the place of hiding of Shiv Vir Singh (PW-2) nor his blood-soaked clothes nor any blood-soaked bandage was recovered by the police nor any such item was examined to any extent. Further, he claimed to have hidden in a nearby open field and to have remained hidden almost till the arrival of the police. Thus, the testimony of Shiv Vir Singh (PW-2) and his

description of the occurrence is found wholly consistent with the prosecution story. However, doubts remain as to peripheral facts as to why he could not name the '*Panch*' witnesses and the delay in recording his statement under Section 161 Cr.P.C. and the delay in his medical examination. These may be considered later, while dealing with similar doubts in the testimony of Chandra Pratap Singh (PW-2).

19(iii). Then, as to the other injured witness Chandra Pratap Singh (PW-3), it is seen, he claimed to have saved his life by fleeing from the assault and hiding himself in a '*kachcha*' room of Sureshpal Singh (PW-1) about 10 to 12 steps away. At the same time, this witness is disclosed to have been fired at thrice – first at his wrist, second at his thigh and a third on the left side of his chest. In that assault, he is alleged to have received various pellet injuries. Like Shiv Vir Singh (PW-2), this witness also claimed to have been present at the Crime Scene when the Police Inspector first visited, on 11.07.2001. He also claimed to have shown his injuries to the Police Inspector at that time itself yet, neither his statement was recorded at that time nor he was sent for medical examination. He denied having been sent for medical examination by the Police Inspector.

19(iv). The police Circle Officer is stated to have arrived at the Crime Scene half an hour after the Police Inspector as was also confirmed by the Sub-Inspector Surendra Nath (PW-7) from the Case Diary. Though it is undisputed that neither of the two '*Chitthi Majrubi*' bore the instant Case Crime number, according to the statement of the Sub-Inspector Surendra Nath (PW-7), the issuance of the '*Chitthi Majrubi*' was occasioned by an oral direction given by the Circle Officer, as recorded in the Case Diary. It is also undisputed that no X-ray plate or X-ray report was proved at the trial. Both witnesses denied having shown to the Police Inspector the place where they had hidden upon the assault being made. No blood (soaked) earth or clothes or bandages were recovered.

19(v). The fact that the Investigating Officer did not consider it necessary to get the injured medically examined and he further did not record the statements of those injured witnesses at the first met opportunity may not carry much weight, in face of the fact that in the FIR lodged promptly, at 11.20 am, the said witnesses were named as injured persons. Then, in face of no doubt emerging during the cross-examination of Dr. R.P.S. Chauhan (PW-4) as to the conduct of the medical examinations, it has to be accepted that the injured witnesses were sent for medical examination at about 2:30-3:00 pm by the Circle Officer, against '*Chitthi Majrubi*' that do not bear the Case Crime No. That fact and the fact of medical examination actually carried out being proven the rest are matters that may point to deficiencies in the police investigation but may not discredit the testimony of the injured witness Chandra Pratap Singh (PW-3) itself. As held by the **Supreme Court in State of Rajasthan Vs. Kishore, (1996) 8 SCC 217**, an irregularity or even an illegality during investigation would not cast doubt on the otherwise trustworthy and reliable evidence.

19(vi). Then, Dr. R.P. Singh Chauhan (P.W.-4), during his cross examination, admitted to absence of any X-Ray report with respect to any of the injuries suffered by either of the injured witness and he also negated the query as to presence of traces of gunpowder or pellets etc. from any of the wounds of either of the two injured witness. Yet, his opinion as to the other injuries suffered by Chandra Pratap Singh (PW-3) being injury numbers 1 to 6 and 9 remained undoubted, being firearm injuries. It clearly supports/corroborates the prosecution story. There is no patent inconsistency in the ocular and medical evidence as may discredit the former. Thus, in absence of any cross-examination of Chandra Pratap Singh (PW-3) to establish or suggest that injury numbers 1 to 6 and 9 were either not caused by firearm or that they had been caused in any manner other than claimed by that witness, it has to be accepted that those injuries were caused as alleged by the prosecution.

19(vii). In view of the above, we find no reason to disbelieve the testimony of the injured witness Chandra Pratap Singh (PW-3) as to the occurrence and/or the manner in which he sustained seven firearm injuries. In absence of effective cross examination, his presence at the time and place of occurrence being the '*Chabutra*' cannot be doubted. The narration of the event and the manner in which he sustained injuries also cannot be doubted as nothing came out during that cross examination as may point towards any patent or other fatal inconsistency. His injuries were duly proven to be firearm injuries being injury nos.1 to 6 and 9. That having been wholly proven by the medical opinion of Dr R.P. Singh Chauhan (PW-4), the weight of such evidence cannot be over looked, merely because the Police Inspector acted with ineptitude and did not get the injured witnesses medically examined, promptly. Yet, the conduct of those medical examinations is wholly proved, having been conducted on the same day at the District Hospital Mainpuri at 7:45 pm and 7:55 pm on 07.11.2001. Thus, it cannot be said with any conviction either that no medical examination was done or there is no evidence to believe the genuineness of the two injury reports.

19(vii). All other doubts would remain matters of unexplained chance. The substratum of the prosecution story is found wholly consistent and corroborated in all material parts. The fact that the two injured witness escaped with minor injuries and Sureshpal Singh (PW-1) escaped without being fired at are not facts or occurrences as may throw out the prosecution story in entirety as unbelievable. Similarly, the ineptitude of the police and/or the mistakes committed during the investigation - not recording the statement of the injured witness when they first became available at about 12:00 noon on 11.07.2001 or of having sent the injured witnesses for their medical examination with a delay of few hours or of not recovering the blood soaked earth or clothes etc, do not create any reasonable doubt in the basic allegation in the prosecution story that the appellant Udaibhan along with other assailants had caused the

occurrence at 10:30 a.m. wherein Devendra Singh, Harvendra Singh @ Tika were killed and Shiv Vir Singh (PW-2) and Chandrabhan Singh (PW-3) received pellet injuries in a daring assault made at them with various firearms fired repeatedly in an indiscriminate manner. The number of rounds fired together with variety of cartridges recovered corroborates the prosecution allegation.

20. As to the third submission, the postmortem examination of the deceased clearly brings out multiple firearm injuries suffered by them on vital body parts as would have caused their instantaneous death, in the first place that fact supports the prosecution allegation of indiscriminate firing by all the assailants carried out using different weapons of which there is ample evidence in the shape of recoveries made of empty cartridges of different bore types and also by the different nature of injuries proven. The fact that one of the injuries suffered by the deceased Devendra Singh, caused from a close range may not have been explained by ocular evidence, may not be relevant. In such an occurrence where a large number of rounds of ammunition were fired indiscriminately by four or five assailants some of which were stated to have been fired from close range i.e. when the assailants had reached the '*Chabutra*' and fired at the victims from that position, it is quite possible that one of the injuries suffered by a deceased may have remained from being specified in the ocular evidence. Therefore, the submission advanced by learned counsel for the appellants to that extent, may not be accepted.

21(i). As to the last submission, the fact that exact depictions were not made on the site plan where each member of the victim party was seated, may also not be of great relevance. A site plan is not a piece of substantive evidence. In **Jagdish Narain & Anr. Vs. State of U.P.; (1996) 8 SCC 199**, it was observed:

“9. In responding to the next criticism of the trial court regarding the failure of the Investigating Officer to indicate in the site plan prepared by him the spot wherefrom the shots were allegedly fired by the appellants and its resultant effect upon the investigation itself, the High Court observed that such failure did not

*detract from the truthfulness of the eyewitnesses and only amounted to an omission on the part of the Investigating Officer. In our opinion neither the criticism of the trial court nor the reason ascribed by the High Court in its rebuttal can be legally sustained. While preparing a site plan an Investigating Police Officer can certainly record what he sees and observes, for that will be direct and substantive evidence being based on his personal knowledge; but as, he was not obviously present when the incident took place, he has to derive knowledge as to when, where and how it happened from persons who had seen the incident. When a witness testifies about what he heard from somebody else it is ordinarily not admissible in evidence being hearsay, but if the person from whom he heard is examined to give direct evidence within the meaning of Section 60 of the Evidence Act, 1872 the former's evidence would be admissible to corroborate the latter in accordance with Section 157 CrPC (sic Evidence Act). However such a statement made to a police officer, when he is investigating into an offence in accordance with Chapter XII of the Code of Criminal Procedure cannot be used to even corroborate the maker thereof in view of the embargo in Section 162(1) CrPC appearing in that chapter and can be used only to contradict him (the maker) in accordance with the proviso thereof, except in those cases where sub-section (2) of the section applies. That necessarily means that if in the site plan PW 6 had even shown the place from which the shots were allegedly fired after ascertaining the same from the eyewitnesses it could not have been admitted in evidence being hit by Section 162 CrPC. The law on this subject has been succinctly laid down by a three-Judge Bench of this Court in *Tori Singh v. State of U.P.* [AIR 1962 SC 399 : (1962) 1 Cri LJ 469 : (1962) 3 SCR 580] In that case it was contended on behalf of the appellant therein that if one looked at the sketch map, on which the place where the deceased was said to have been hit was marked, and compared it with the statements of the prosecution witnesses and the medical evidence, it would be extremely improbable for the injury which was received by the deceased to have been caused on that part of the body where it had been actually caused if the deceased was at the place marked on the map. In repelling the above contention this Court observed, inter alia:*

"... the mark on the sketch-map was put by the Sub-Inspector who was obviously not an eyewitness to the incident. He could only have put it there after taking the statements of the eyewitnesses. The marking of the spot on the sketch-map is really bringing on record the conclusion of the Sub-Inspector on the basis of the statements made by the witnesses to him. This in our opinion would not be admissible in view of the provisions of Section 162 of the Code of Criminal Procedure, for it is in effect nothing more than the statement of the Sub-Inspector that the eyewitnesses told him that the deceased was at such and such place at the time when he was hit. The sketch-map would be admissible so far as it indicates all that the Sub-Inspector saw himself at the spot; but any mark put on the sketch-map based on the statements made by the witnesses to the Sub-Inspector would be inadmissible in view of the clear provisions of Section 162 of the Code of Criminal Procedure as it will be no more than a statement made to the police during investigation."

(emphasis supplied)

21(ii). Similarly, the non-recovery of assault weapon is also not found decisive to the charge, as the ocular evidence led by the prosecution was reliable as to the manner of occurrence. Similarly, the absence of recovery of blood stained clothes etc. of the victim/injured witnesses, though not desirable in a trial such as this, at the same time, by very nature it would remain an inadequacy or defect in the police investigation that may not discredit the prosecution evidence, as the ocular evidence is otherwise credit worthy.

22. To conclude, we find that the prosecution had successfully proven that the appellant-Udaibhan alongwith others had assaulted Devendra Singh, Harvendra Singh @ Tika, Shiv Vir Singh (PW-2) and Chandra Pratap Singh (PW-3) while they were sitting/standing at the '*Chabutra*' (adjoining the village pathway), outside the house of Sureshpal Singh (PW-1), at about 10:30 pm on 11.07.2001. It is also found proven that the assailants had fired indiscriminately at the victim party, over a period of about 10-12 minutes, close to twenty rounds resulting in six firearm injuries to the deceased Devendra Singh and four firearm injuries to the deceased Harvendra Singh @ Tika. Also, it is found proven that in the same occurrence, the other injured witness Chandra Pratap Singh (PW-3) received about seven firearm injuries whereas a single firearm injury was caused to the other injured witness Shiv Vir Singh (PW-2). That much of the prosecution story having been proven, no merit is found in the appeal as may lead to acquittal of the present appellant. We have also gone through the precedent relied upon by learned counsel for the appellant in paragraph 15 above. No new or other principle has been laid down in those decisions as may require separate consideration. Since upon appraisal of evidence, we have found the facts to be proven against the appellant, those precedents are found distinguished on facts.

23. Consequently, the appeal fails and is accordingly **dismissed**. The impugned judgment and order dated 05.10.2005 by which the appellant-Udaibhan was convicted and sentenced under Sections 147, 148, 307/149 and 302/149 IPC, is hereby affirmed.

24. Office is directed to communicate the order to the Court concerned for compliance.

March 5 2021

Abhilash/Shubham/Prakhar