Reserved
A.F.R.

Criminal Appeal No.4641 of 2002

Avaneesh…… ..... Appellant

Versus

State of U.P….....Respondent.

Hon'ble Vinod Prasad, J.
Hon'ble Surendra Kumar, J.

(Delivered by Hon'ble Vinod Prasad J.)

Avaneesh, the sole appellant in this appeal, has been convicted under Section 302 IPC and 25 Arm's Act by Additional Sessions Judge, Court no.9, Muzaffarnagar vide impugned judgment and order dated 18.9.2002 recorded in S.T. No.522 of 2002, State Vs. Avaneesh, under section 302 I.P.C. connected with S.T. No.523 of 2000, State Vs. Avaneesh, under Section 25 Arm's Act and has been sentenced to imprisonment for life with Rs.10,000/- fine and in default in payment thereof to serve one year additional imprisonment for the charge of murder and one year imprisonment with Rs.1000/- fine and in default in payment of fine to serve three months additional imprisonment under section 25 Arms Act. Out of an amount of Rs. 10,000/- fine, Rs.7,500/- has been awarded as compensation to the heirs of the deceased by the learned trial Judge. It is this judgment and order of conviction and sentence, which is under challenged in the instant appeal.

Narrated concisely the background facts, as are stated in the written FIR Ext. Ka-1 and testified during the trial by the two fact witnesses informant Padam Singh P.W.1 and eye-witness Pradeep Kumar P.W.2, are that on 26.1.2000 at 7 A.M. while the informant and the deceased (Rajendra) were proceeding towards their enclosure *(gher)* situated near informant's house and when they were passing through *Teli Wala* locality

(Mohalla) near the house of Mazid in front of house of Noora, the appellant carrying a country made pistol in his hand met them and by uttering that he is going to repay, shot at Rajendra (deceased), who was the nephew of the informant. Informant raised alarm that Rajendra has been shot at, which attracted Vedpal and Pradeep P.W.2 at the spot. Sustaining gunshot injury Rajendra tottered to some distance and fell down in front of the house of Mazid. Appellant thereafter again shot at Rajendra at his head. On hue and cry raised by the informant and witnesses many villagers collected at the spot but the appellant escaped towards *Chowdhrahan Patti* in the east. Rajendra was rushed to the Bohra Nursing Home in a rented car of Kalu Nai and albeit he had expired en-route to the said Nursing Home, yet he was brought to the Nursing Home where he was declared dead and hence his corpse was brought back to the village and was put in the *veranda*.

Informant Padam Singh thereafter got the FIR Ext. Ka.1 penned down through Paramjeet son of Udaiveer, a co-villager, and carried it to the police station Bhorkala, district Muzaffarnagar at a distance of 5 kms, where he lodged it the same day at 1.30 p.m. after six and a half hours of the murder.

Head *Moharrir* Vijendra Singh P.W.4 registered the crime by preparing Chik FIR of Crime No.6 of 2000 under Section 302 IPC, Ext. Ka-7, and corresponding crime registration GD entry No.15, Ext. Ka-18.

Investigation into the murder crime was immediately commenced by S.O. K.K. Vergoti P.W.5, who recorded the statement of *Head Moharrir* Vijendra Singh P.W.4 and then came to the spot where the dead body of the deceased was lying and there recorded statements of the informant Padam Singh P.W.1, Pradeep P.W.2 and scribe of the FIR Paramjeet. A.S.I. Uma Shankar Sharma P.W.3 was deputed by the I.O. P.W.5 to conduct inquest on the cadaver of the deceased and Investigating Officer on his part, accompanied with the informant and the witnesses, came to the incident scene and conducted spot inspection and prepared site plan Ext. Ka-11. From the murder spot, I.O. collected a fired empty cartridge, prepared its recovery memo Ext. Ka-12 sealed it and attached the seal on it. I.O. also

collected blood stained and plain earth and prepared its recovery memo Ext. Ka-13.After copying recovery memos in the case diary, I.O. recorded the statements of some of the inquest witnesses and of other persons of the locality. On 28.1.2000, I.O. P.W.5,copied post-mortem examination report of the deceased in the case diary. On 31.1.2000 I.O. forwarded a report u/s 82 Cr.P.C. and, after obtaining court's order, executed 82 Cr.P.C. proceeding on 1.2.2000. Following day, on 2.2.2000, statements of rest of the inquest witnesses Uma Shankar Sharma, Nahar Singh, Maro Ram etc. were noted. Accused appellant surrendered in the Court on 3.2.2000 and therefore, I.O. recorded his statement in district Jail, Muzaffarnagar the same day. In his statement to the I.O., appellant expressed his desire to get the weapon of murder recovered and therefore, on 7.2.2000, I.O. forwarded a report for appellant's remand. Under the orders of the Court, appellant was taken out from jail on 10.2.2000 and was locked in police station penitentiary the same day. On 11.2.2000, I.O. P.W.5, along with other police personnel and the appellant started from police station at 8A.M. and came to the Alaverpur hamlet where Jaiveer and Ravindra Singh P.W.7 were joined as witnesses. The police party and the witnesses were brought by the appellant near his shared tube well and from the north of the said tube well, from the field of Sirdarey, appellant dug out a country made pistol used in the crime after removing the soil, which was wrapped in a polythene and handed it over to the I.O. On the basis of the said recovery, the weapon of assault, I.O. prepared the recovery memo, Ext. Ka-14. Appellant thereafter was brought to the police station where on the basis of Ext. Ka-14 *Head Moharirr* Vijendra Singh, P.W.4 registered FIR of offence under Section 25 Arm's Act by preparing *Chik* FIR of Crime No.8 of 2007 dated 11.2.2000 at 10 A.M. Investigation into this offence under Section 25 Arm's Act was conducted by ASI Uma Shankar Sharma P.W.3 who concluding the investigation had charge sheeted the appellant on 13.2.2000 vide charge sheet no. 9, on the basis of which Criminal Case No.1627 of 2000 State versus Avaneesh, was registered in the Court of C.J.M., Muzaffarnagar. In the main offence u/s 302 IPC, also Investigating Officer S.O. K.K. Vergoti wrapped up the

investigation on 22.3.2000 and charge-sheeted the appellant for that offence vide Ext. Ka-15. Sanction for appellant's prosecution u/s 25 Arm's Act was applied for vide Ext. Ka-17 by P.W.3, which was accorded by the then District Magistrate Dinesh Chandra Mishra on 14.3.2000, which sanction order is Ext. Ka-18.

On 6.5.2000, Investigating Officer had dispatched through constable the recovered country made pistol, blood stained and plain earth and deceased cloths to Forensic Science Laboratory for examination. The report of the Forensic Science Laboratory dated 7.6.2001 is Exhibit Ka-20. The recovered articles have been proved by the Investigating Officer, as material Exhibit1 (one country made pistol), material Exhibits 2 to 6 (recovered and tested bullets), material Exhibits 7 and 8 (blood stained and plain earth), material Exhibits 9 and 10 (containers of blood stained and plain earth), material Exhibits 11, 12 and 13 (attires of the deceased) and material Exhibit 14 (wrapping packet).

A.S.I. Uma Shankar Sharma P.W.3,had conducted inquest on the cadaver of the deceased and had prepared inquest memo (Exhibit Ka-2) and other relevant documents photo lash (Exhibit Ka-3), letter to R.I. (Exhibit Ka-4), letter to C.M.O. (Exhibit Ka-5) and Police Form No.13 (Exhibit Ka-6). Two G.D. entries registering the offences u/s 302 IPC and 25 Arm's Act are Exhibits Ka-8 and Ka-10.

Autopsy examination on the cadaver of the deceased was performed by Dr. Vipin Chand Gupta PW6, on 27.1.2000 at 11 a.m. and he had prepared post mortem examination report Ext. ka-19. Constables 867 Som Pal and 156 Bhopal Singh of P.S. Bhorkala, District Muzaffarnagar had brought the cadaver of the deceased before the doctor and had identified it. According to the facts slated in Exhibit Ka-19, deceased was 45 years of age and 30 hours (1¼ days) had lapsed since he had demised. He had a well-built body and rigor mortis had passed off from neck and was present in his upper and lower extremities. No sign of decomposition was found in the body. His both eyes were closed, pleura and lungs were lacerated, stomach was empty, small intestine had chyme and gases and large intestine

contained faecal matter and gases. Deceased death had occasioned due to the sustained firearm injury to vital organ-lung. From the dead body, four attires (*kurta, pajama, sweater and white dhaga*) were removed and were handed over to the constables. Following ante mortem injuries were detected on the corpse of the deceased as noted by the doctor in the autopsy report:-

> *"(1) Firearm lacerated wound 0.5 cm x 0.5 cm x muscle deep inverted margins and area of blackening …. it on back of left side neck 3.5 cm above and outer C7 came out as wound of exit passed through Lt. mandible" fractured as lacerated wound 2.5 cm x 2 cm … on Lt. side face 5.5 cm medial to Lt. ear. Entry -muscle-left mandible-left face exit.*
> *(2) Firearm lacerated wound 2.5 cm x 2 cm. Lung deep on the left side chest between 4-5 ribs 4.5 cm above left nipple medial left nipple at 10 'O' clock position with inverted margins charred and bullet at come out after passing through lung and scapula bone as wound of exit lacerated wound 3 x 2 cm outer margin on left scapular region 16 cm below the top of left shoulder region.*
> *(3) Abrasion 3 cm x 2.5 cm on left lower eyelid.*
> (4) Abrasion 1 cm x 0.25 cm on bridge of nose."

On the basis of submitted charge sheets Exhibit Ka-17., u/s 25 Arm's Act, case no.1627 of 2000, State versus Avaneesh, was registered in the Court of C.J.M., Muzaffarnagar on 4.4.2000. Similarly on the basis of later charge sheet u/s 302 IPC, case no.1234 of 2000, State vs. Avaneesh, was registered on 21.4.2000 in the same court of C.J.M., Muzaffarnagar. Since, the learned C.J.M., found the case u/s 302 IPC being exclusively triable by Sessions Court and case u/s 25 Arm's Act being offshoot of the former and hence he committed both the cases to the Sessions Court for trial on 30.6.2000 and 14.3.2000. Committal order of 25 Arm's Act case is Exhibit Ka-18.

Both the committal orders culminated in registration of S.T. No. 522 of 2000, State vs. Avaneesh u/s 302 IPC, on 30.6.2000 and S.T. No.523 of 2000, State Vs. Avaneesh u/s 25 Arm's Act. Learned trial court clubbed both the Sessions trials and held a joint trial.

Learned trial Judge charged the appellant for the charge sheeted offences u/s 302 IPC and 25 Arm's Act on 4.1.2001. Both the charges were

read out and explained to the accused appellant who, after understanding the same, denied both the charges and claimed to be tried and resultantly to establish his guilt Sessions Trial procedure was resorted to by the learned trial Judge to prosecute the appellant.

In the trial prosecution examined in all seven witnesses including informant Padam Singh, P.W.1 and eye witness Pradeep Kumar P.W.2 as fact witnesses to bring home the charges against the appellant. A.S.I. Uma Shankar Sharma P.W.3, Head Moharirr Vipin Singh, P.W.4, Investigating Officer S.O. K.K. Vergoti P.W.5, Dr. Vipin Chand Gupta, autopsy doctor P.W.6 and Ravindra Singh recovery witness P.W.7 were the formal witnesses testified before the trial court.

In his statement before the Court Padam Singh P.W.1, besides proving his FIR Exhibit Ka-1 and narrating the allegations levelled by him in it has further deposed that the appellant is a co villager and a neighbour of the deceased. Deceased enclosure *(gher) was* adjacent to that of appellants. Some money was advanced by the deceased to the appellant and the same was balanced which the deceased was repeatedly demanding back and the same was *causa causans (*immediate motive) for the murder. Because of demand being raised immediately prior to the shooting, that the deceased was eliminated. Informant further deposed that the house of the appellant is facing east and adjacent towards south of it is the house of one Shukla and the same is also next to the enclosure of the informant. North of the house of the appellant is the enclosure of the deceased Rajendra, but in between the houses of the deceased and the informant are the enclosures/ houses of Baljeet, Nandram and Jagat Singh. In front of the house of appellant there is a lane, which is blocked at the house of the deceased. House of the deceased facing south is opened in the said lane. Informant's further cross-examination regarding topography are wholly irrelevant, not at all affecting the merits of the appeal and therefore are being eschewed from being referred to. While denying defence suggestion that Pradeep P.W.2 and deceased had separate residences facing each other in the lane, it was deposed by the informant PW1 that PW2 was the real nephew of the

deceased and they both resides jointly in their ancestral house and both of them were agriculturists. It was further disclosed by the informant that Balwant was the grand-father of the deceased Rajendra and he had only a son Elam Singh, father of the deceased. Elam Singh had two sons Rajendra(deceased) and Anoop Singh. Pradeep P.W.2 is the son of Anoop Singh. Appellant's house is 15 yards away from the house of Pradeep. Describing about the actual incident informant had stated that he had gone to the deceased's house without any special reason in a routine manner and the deceased at that time had consumed two glasses of milk. It was further evidenced that post assault injured Rajendra was carried to Bohra Nursing Home in the rented car of Kalu Nai, who had a rented car business. Car was brought to a distance of500 meters from the spot of shooting and was parked in front of the house of Dhramveer, a grocer. Injured/deceased Rajendra was lifted in the laps up to the car by the informant, Raju, Om Prakash, Rajpal and Chintu and P.W.2 had accompanied them and in between two places deceased's blood had trickled down. Cloths of the informant were also soaked with blood while lifting the deceased up to the car. Rajpal, Vedpal, Bittu and Pradeep had accompanied the informant and the injured up to Shamli Hospital/ Bohra Nursing Home. They had started for the hospital at quarter past seven and they had taken the route of Saharanpur trisection. It was at that road trisection, which was 15 kms prior to Bohra Nursing Home, that the informant had sensed that injured Rajendra had lost his life, but even then he was brought to the Nursing Home, at 8-8.30 A.M., where he was pronounced dead and consequently his cadaver was brought back to his village and was placed on a cot in the enclosure *(gher)*, where the blood had dripped down. He has further testified that he had returned to his village after the autopsy examination on the following day at 12 in the noon and so long as the deceased was not cremated, he had not changed his cloths. He had further stated that no certificate was issued by Bohra Nursing Home. Informant has expressed his inability to divulge topographical situation of the district hospital Muzaffarnagar, while admitting the fact that in his village there is a

Government Hospital. On further being probed informant PW 1 has further deposed that the police had arrived in the village at about 2 or 2¼ P.M. and it remained there till 3.30 – 4 P.M. and corpse of the deceased was removed only after documentary formalities for further actions were completed near the cadaver of the deceased. Informant and scribe Paramjeet had accompanied hearse of the deceased on a motorcycle to the police lines Muzzafarnagar and then to the mortuary. Some insignificant omissions have been asked from P.W.1 to which he had expressed his ignorance. Informant has further disclosed that he had sprinted towards west raising hue and cry and from that direction only the two witnesses Vedpal and Pradeep Kumar P.W. 2 had arrived at the incident scene. He had further deposed that first fire on the chest of the deceased from a distance of 1 or 1 ½ paces west was made when he was in front of the house of Mir Hasan and second fire was made at him when the informant and the witnesses had arrived at the house of Sukhbir. Deceased had not squatted on the ground receiving first fire arm injury. It was also testified that the shot had entered in the head and had exited from the nose and the shot was fired from a distance of 2-4 inches. Deceased had fallen down at a distance of one yard away from where he was shot at first. Informant P.W. 1 has also deposed that the appellant use to realize the market fees but he has denied the defence suggestion that he has also applied for allotment of market fees tender and because he failed to get it that he has falsely implicated the appellant. Regarding his relationships with the deceased, PW1 has stated that the deceased was not his real nephew but by the genealogy pedigree he was a distant nephew, which ancestral pedigree he could not recollect. He has emphatically declined the defence suggestion that the incident had not taken place as and when alleged by him and the deceased was shot at in the jungle at an unknown time by unknown assailants. He also denied the defence case that he had not witnessed the murder nor he had carried the deceased to the Bohra Nursing Home. He had also refuted the defence suggestion that the FIR was not prepared at the date and time alleged by him and it was made ante dated and ante

timed and because of enmity of market fees that he has falsely implicated the appellant. Informant was recalled for further cross examination after a month when he was asked regarding ration card etc., which are wholly insignificant and trivial aspects having no bearing on the outcome of the appeal and, therefore, do not require any mention.

Pradeep Kumar P.W.2 supported the prosecution case and the informant P.W. 1 in all its material aspects of the matter. He has stated that at the date and time of the incident, he together with Vedpal were going to the forge of Bashir black smith for getting his spade fixed, starting from his house at quarter to seven hours in the morning, and when they reached near the house of Yaseen in *Teli Wala* locality, they had heard the gun fire shot and shrieks of Padam Singh that Rajendra has been shot at.PW2 further disclosed that deceased Rajendra was fired at his head from the country made pistol from point blank range and after the shooting accused appellant had escaped towards *Chawdharan Patti*. Deceased had lost his life en-route to the Nursing Home. P.W.2 has stood the test of searching and lengthy cross examinations and had not budged at all. His initial cross examinations were peripheral regarding another witness Vedpal having no effect at all on the veracity of the prosecution case. He has stated that he and Vedpal had come from their own houses and they had met in the way to the blacksmith forge, which was a tenanted shop of an Inn and was situated 300 meters west to the house of Bashir. He has further testified that Vedpal had to get his chain fixed for which purpose he was going to the blacksmith. On being questioned P.W.2 had stated that he had two enclosures and in the other enclosure, deceased Rajendra and the servant Sanjay used to sleep for looking 5-6 live stocks. He has further deposed that early in morning when he had gone to feed those live stocks then he had found deceased and servant Sanjay present in the enclosure and Sanjay was already feeding the live stocks. He has further stated that the appellant Padam Singh had met him at the incident spot and not prior to it. Regarding the place of the incident, this witness was also tested searchingly but he has corroborated PW1. He has admitted that when he had seen the

injured deceased for the first time he was in front of Hamid's house and when he had heard the shrieks then he was one or two paces towards north of the house of the Yaseen. Second fire was made when he had stepped up to ten paces. The face of the deceased was towards west and appellant was half a pace away from him. He has further deposed that the appellant had shot the decease just beneath the left ear from point blank range and the deceased had squatted on the ground. At the time of the incident deceased was wearing a sweater and a kurta. He has further deposed that he remained at the incident scene for about five minutes and the car was brought to the spot by Devendra, who had arrived at the incident scene 2 or 3 minutes after the murder from his house. He has further disclosed that the house of Kalu Nai, in whose car the deceased was transported to Bohra Nursing Home, was 600-650 meters away from the incident spot. PW2 has denied that he had gone to Shamli along with the deceased. He further corroborated the informant by testifying that they had left for Bohra Nursing Home at quarter past seven after the incident. This witness had informed the in-laws of the deceased and his maternal uncle. He has further disclosed that police station Bhorkala was at a distance of 2 ¾ or 3 Kms and he had not made any phone calls to P.S. Bhorkala. He has lend credence to the statement of P.W.1 when he has deposed that police had arrived at the spot at 2 P.M. and the corpse of the deceased was removed by the police at 3 ¾ P.M. and he had also accompanied the hearse. It was also evidenced by PW2 that the I.O., before conducting the spot inspection, had waited in the enclosure where the deceased cadaver was lying for half an hour. He has further testified that the I.O. had prepared the site plan and had recovered the blood stained earth and he had also prepared the recovery documents inside the enclosure and had sealed the recovered articles and his statement was penned down by the I.O. before he had left the spot. PW2 has also testified that his signature was not obtained on his recorded statement or on the inquest memo. He has further stated that the inquest was concluded by half past three and after post-mortem examination the corpse of the deceased was received in

the village at 12 in the noon and previous day, the same was taken to the mortuary in a Maruti van *(hearse)*. He has further deposed that they had reached Muzaffarnagar mortuary at half past 5 or 6 p.m. and first of all the dead body was brought to the police lines and after staying there for about 5 or 10 minutes it was taken to the mortuary. He has denied the defence suggestion regarding realization of market fees and the fact that the appellant was realizing the market fees. He has further stated that the lane in which the incident had occurred was 1 ½ meter wide having houses of muslims on both the sides. He has denied the defence suggestion that he was not present in the village on the incident date nor the incident had occurred in *Teli Wali Gali as well as that* the deceased was murdered at some other place by an unknown assailant and the deceased was never transported to Shamli. He has also negated the defence suggestion that the cadaver of the deceased was brought from somewhere else and was put in the enclosure. Rest of the cross-examination of this witness PW2 are wholly irrelevant, unconcerned having no bearing or relation with the present appeal and hence are not being referred to. P.W.2 has also denied the defence case that the deceased was murdered because of realization of market fees and village animosity and the appellant has been falsely implicated. This witness was also recalled for further cross-examination and the statements regarding ration card etc. was put to him to which all he had denied.

A.S.I. Uma Shankar Sharma, who had conducted the inquest on the cadaver of the deceased has testified those very facts which have been recorded herein above and has proved the inquest memo and other documents exhibited as Exhibit Ka-3 to Ka-6. He too has been cross-examined searchingly at a great length. Some insignificant omissions regarding crime number etc. has been admitted by him. He has deposed that he was with the Investigating Officer S.O. and had reached at the spot along with him. He has also deposed that they had reached at the enclosure where the dead body was lying at 2 P.M. and at quarter past 3 the cadaver was removed from the enclosure through the police constables for

mortuary. He has rejected the defence suggestion that he had prepared all the papers ante-timed and ante- dated and that the FIR was not registered at 1.30 p.m. He has also denied the defence case that till the inquest was over no FIR was in existence and that he had not gone to the deceased enclosures. He has further denied that he had testified falsely.

Head Constable Vijendra Singh P.W.4 has given evidences regarding registration of crime, preparation of chik FIRs and GD entries. He has also stated that the I.O. S.O. K.K. Vergoti had deposited recovered country made pistol at the police station on 11.2.2000 and on the basis of the said recovery memo he had registered the case u/s 25 Arm's Act and had prepared the Chik FIR of crime number 8 of 2000, under Section 25 Arm's Act and corresponding GD entry, which are Exhibits Ka-9 and Ka-10. He has further deposed that information regarding the murder was sent to the higher officers orally and not on letter head. He has further stated that constable Ashok Kumar Singh was dispatched to the higher officers along with the special report. He has admitted that in Ext. Ka-7, C.J.M. had noted the date 29.1.2000. He has further admitted that the chik FIRs are prepared in triplicates and thumb impression and the signature of the informant are taken on the third copy and not on the first two copies. He has denied the defence suggestion that no special report was dispatched on the day of the incident and all the papers were prepared ante timed. He has admitted that he had not mentioned regarding the blood stained attires of the informant. He has rejected the defence suggestion that the FIR was not registered on 20th and was registered subsequently ante dated and ante timed and all the entries regarding the movement of the I.O. dated 11.2.2000 were fabricated.

I.O. P.W. 5 evidenced regarding the various investigatory steps already slated herein above. He too was cross examined at a great length by the defence counsel wherein he has deposed that he had recorded the accused statement on the second floor in the room where the Deputy Jailer used to sit and he had not got the signature of the appellant on his recorded statement. I.O. has further deposed that the place from where the

country made pistol was recovered was three and half kilometres North West of the police station and the witnesses had met him at Alaverpur culvert, which was at a distance of half a kilometre west to the place from where the recovery was made. He has further deposed that they had gone to the recovery spot in a jeep. He further disclosed that the statement of the informant could not be recorded at the police station because he had already left the police station. He has further corroborated his predecessor witnesses regarding the time of his arrival at the informant's enclosure (gher) where the cadaver of the deceased was lying and the duration of his stay there. He has further deposed that he had recorded the statement of the inquest witnesses in the enclosure itself. After the dead body was sent for post mortem examination, he had conducted the spot inspection at the pointing out of the informant and the witnesses. He has further evidenced that he had stayed at the spot till 6.30 P.M. and thereafter had started the search for the accused for which purpose he had gone to the house of the accused. He had further deposed that the recovery proceedings consumed one and half hours and all the recovery memos were prepared in his hand writing. He has denied all the defence suggestions regarding the recovery and the fact that he had prepared all the documents sitting at the police station.

Dr. Vipin Chand Gupta P.W.6, who had conducted post mortem examination on the dead body of the deceased has stated those very facts already mentioned herein above. He has further deposed that the milk after entering into the stomach turns into lactose and then in glucose and then is absorbed in the body. He has further deposed that there can be a difference of 3 to 6 hours either way in the time of death of the deceased and the *rigor mortis* starts from head and passes off from head.

Ravindra Singh P.W.7, the recovery witness has mentioned regarding recovery of the country made pistol at the pointing out of the appellant. He has further deposed that prior to joining the police party, he was searched regarding the possession of any illegal weapon etc. and only after that he was joined as a witness. In the wheat field of Sirdarey, appellant had

stepped up to 18 paces and then had taken out the country made pistol of .315 bore, wrapped in a polythene and had informed the I.O. that it was with it that he had shot at the deceased. He has further deposed that the recovery memo was prepared in his presence by the I.O. He has also identified the recovered country made pistol. He has further stated that at the time when he had met the police party, he was going to look for a buffalo along with Jaiveer son of Mahendra and he had met the police party at quarter past eight in the morning. He has further stated that he knew Sirdarey, the owner of the agricultural field, as he was a co-villager and the agricultural plots of Sirdarey and the appellants were adjoining. He (PW7) has expressed his ignorance regarding his relationship with the deceased. He has denied the defence suggestion that because he belonged to the same family therefore, he was testifying falsely and he had not gone to the place from where the country made pistol was recovered. Besides above statement nothing material has come out in the depositions of this witness.

In his statement under section 313 Cr.P.C. appellant has pleaded that he has been falsely implicated due to village party factionalism and enmity.

As is mentioned in the opening paragraph of this judgment, learned trial Judge, after looking into the evidences tendered before it, opined that the prosecution has successfully anointed appellant's guilt and, therefore, convicted him for both the charges and has sentenced him to life imprisonment for the murder and one year imprisonment for offence under section 25 Arm's Act with fines on both the counts and compensation to the victims family vide impugned judgment order, which decision is now under challenge in the instant appeal.

In the above background facts, that we have heard Sri Brijesh Sahai, learned *amicus curiae* for the appellant and learned AGA for the State. We would like to mention at this place that initially appellant had engaged many counsel to defend him but when his appeal was called out for hearing all the above counsel made statements before us that they do not defend the appellant any more. Appellant was noticed by us to engage another counsel but he was found absconding. Resultantly we directed for his arrest and

production before us. Under our direction when appellant was brought before us in custody he requested us to provide him an *amicus curiae* and that is how Sri Brijesh Sahai was appointed as *amicus curiae,* to which appellant had agreed.

Assailing the impugned judgement and order learned *amicus curie* argued that entire prosecution version is false, fabricated and feigned and only after discovery of the cadaver of the deceased that a false story was cooked up to implicate the appellant as the real assailant was not known to the prosecution. It was further harangued that informant and PW2 were not present at the spot nor the incident had occurred in their witnessing and they are all planted witnesses. Next, it was urged that the two fact witnesses examined during the trial are not only interested, related, partisan but their testimonies suffers from inherent improbabilities and un-naturalities and hence cannot be attached with any credence. Next, it is submitted that the deceased had a criminal background and therefore had many enemies ready to eliminate him and since he was murdered at a lonely place, therefore, his death was taken to be a chance to implicate the appellant. Sri Sahai further harangued that though the country-made pistol and the empty cartridge found at the spot were sent for tallying to the ballistic expert but the same were never got tallied and therefore recovered country made pistol could not be connected with the empty cartridge found at the spot and hence there is no link evidence against the appellant. Next, it was urged that P.W.7, the sole recovery witness was neither a witness of locality nor he had agricultural field near the spot of the recovery and since he was a distant relative of the deceased therefore he was planted as a recovery witness to nail-in the appellant in a fabricated case. Since the place of the incident was not known, therefore, columns relating to time in the papers were left blank and there are too many fill in the gaps to lend any credence to the prosecution story. In the soil no human blood was found and therefore place of the murder is also not fixed. No trail of blood was found by the I.O. and therefore, also the place of the incident and the prosecution version of lifting of the injured up to the car is not supported by

any link evidence. It is further submitted that the deceased was never brought to Bohra Nursing Home nor any document was tendered by the prosecution to substantiate such an allegation. Learned counsel further submitted that the entire investigation is not only inept but was dishonest with an intention to frame-in the appellant in a false and fabricated case. On these submissions Sri Sahai urged that the appeal of the appellant deserved to be allowed and he be acquitted of all the charges as the prosecution has miserably failed to anoint his guilt successfully and convincingly.

Submitting conversely learned AGA contended that the occurrence is a day light incident with an eye witness account and consistent medical evidence. As narrated incident must have taken some time as it is a case of two shots. Castigation of prosecution case of it being a case of hit and run at a lonely place is totally out of context bereft of any credible evidence to authenticate such a case. Appellant has miserably failed to bring on record any material indicating that eye witnesses had any motive, howsoever scanty and remote it may be, to depose against the appellant by cooking up a feigned story. It is a case of absence of any animus for the witnesses to nail-in the appellant as the solitary culprit. It is unthinkable that disinterested, related witnesses will spare the real assailant and will falsely implicate innocent person in the murder of their close relative. Medical report is consistent with the ocular testimony which further lend credence to the veracity of the prosecution version. Although defence has searchingly cross-examined the witnesses in depth yet it has failed to surface any damaging evidence which may even slightly cast a doubt on the genuineness of the prosecution story. The pitfalls and latches on the part of the I.O. are trivial and insignificant and do not affect or demolish the core of the prosecution case. The mistakes committed by the I.O. are no reasons to discard the entire prosecution version submitted learned AGA. It was further urged that the FIR was lodged with promptness and whatever time was consumed was explained convincingly and satisfactorily by the fact witnesses and therefore, there is no reason to doubt tendered testimonies

of witnesses. Appellant's appeal is meritless and his conviction is infallible and well merited and hence does not call for any interference by this Court. Concludingly, it was argued that the impugned judgment be concurred and appellant's conviction and sentence be affirmed.

We have considered the rival submissions and have gone through the entire trial court record and have summated in depth the evidences ourselves.

From our examination of record and entire evidences, it is emerges that some of the facts are admitted and/or are not in dispute and hence, so far as those facts are concerned prosecution allegations in those respects stands fully established. To take stock of those facts and register them we find that informant, deceased and appellants all are/were the resident of same locality *Chawdharan Patti* and their houses were by the side of a lane which was blocked at the house of the deceased. The enclosure of the appellant is adjoining enclosure of the deceased and thus they both were next door neighbours. Thus acquaintances and closeness between them is a natural outcome. Hence is cannot be a case of mistaken identity. In such fact scenario lending advance money by the deceased to the appellant is not something very unusual. What is of significance is that the defence has not challenged the motive for committing the crime which, according to the prosecution case, was the money advanced by the deceased to the appellant which was not being repaid by the appellant and the deceased was repeatedly demanding the same. In that respect, there is evidence of the informant P.W.1 on the record. Defence in its wisdom and for the reasons best known to it has not challenged this part of the prosecution story specifically from the two fact witnesses. Thus, there is little doubt that there was a motive for the appellant to commit the crime as he was repeatedly coerced by the deceased to return his advanced money. Resultantly motive alleged by the prosecution cannot be adjudged as farfetched or feigned and we find it to be well established by the prosecution. It is recapitulated here that demand by the deceased to repay the advanced money was the immediate cause of the incident in which the

deceased had lost his life.

Next it is also not disputed that the death of the deceased was the outcome of sustained fire arm injuries. What has been challenged by the defence is the identity of the shooter and not the cause of death. Post mortem examination report vis-a-vis with ocular testimonies of the two independent fact witnesses, having no reason to falsely implicate the appellant, leaves no room for doubt that the deceased was shot dead. Thus prosecution allegation that deceased was fired upon and was shot dead also stands established.

It is also not disputed that the first informant P.W.1 and P.W.2 were the relatives of the deceased. For them to implicate an innocent person in an incident witnessed by them seems to be a very gibberish submission especially when it could not be fathomed out that they had any reason to falsely implicate the appellant.

Taking note of above admitted facts when castigation by the appellant through amicus curie are analysed it cannot but be said that those castigations are unfounded. Firstly we deal with the submission that neither the informant nor PW2 were present at the scene of the incident and no independent witness has come forward to support their case and hence entire prosecution version is cooked up. In this respect critical examination of evidences on record indicates that none of two fact witnesses could be dislodged for the presence of the other. Both of them have confirmed each - others presence at the spot. Defence could not muster the courage to question them specifically on the said aspect. From neither of them it was suggested as such. Attour, by introducing PW 1 & 2 as eye witnesses prosecution could not have gained any mileage. It would have been easy for the prosecution to introduce other more close relatives and it could have changed incident spot making it more assessable for the witness to arrive at and to be present but it never endeavoured for that. Hence it is incomprehensible that to implicate the appellant prosecution will rely only upon PW1 & 2 and not on any other relatives or persons. Informant PW1 was truthful enough to testify that he had no especial reason to visit the

deceased and it was in usual course. He had not attempted to fabricate a reason for that. If prosecution would have to create a false story it would have been much more graphic and fuller in details. Since there is complete absence of any understandable reasons to plant both the fact witnesses as eye witnesses of the incident we find learned amicus curie's snipping of prosecution version for the presence of PW 1 and PW 2 wholly untenable and hence repel the said criticism by opining that presence of both of them at the time of the incident is well established. Presence of informant PW1 was doubted by the learned *amicus curiae* for the reasons that his blood stained cloths were not seized by the I.O. and the conduct of the informant in wearing those blood stained cloths for two days is wholly unconvincing. He has also castigated the presence of the informant for the reason that he could not mention any reason for his visiting the deceased at the early hours of the morning without any purpose. Another supplementary reason was that the FIR was lodged very belatedly and time taken to go to the police station was too long and that scribed was also not examined by the prosecution. All these factors were pressed into consideration to dislodge the presence of the informant PW1 at the spot. However, we find the converse to be true because of our aforementioned reasons as well as for the fact that defence has not been able to shatter the testimonies of P.W. 1& P.W. 2 at all. From P.W. 1, they have failed to elicit that he was not present at the spot and had not witnessed the incident and from P.W.2 no question was put at all regarding the presence of the informant P.W.1 at the spot during the incident. Graphic description about the incident was made by the informant P.W.1, which has been corroborated not only by P.W.2 but also by the Investigating Officer on the basis of recoveries made by him from the incident scene. No doubt the informant had not disclosed the purpose of his visiting the deceased at his house in the early hours of the morning but that does not create any dent in the prosecution version inasmuch as, both were co-villagers very well known to each other and were distant relatives. In villages, normally people do visit each other before going to their agricultural fields. There is nothing un-natural in the

conduct of the informant. Deceased had also accompanied the informant when the incident had occurred and this shows their companionship and proves the fact that the informant had in fact visited the deceased. Another submission of Sri Sahai that the blood stained clothes of the informant were not seized and his conduct of wearing it for two days is not convincing and his clothes were not blood soaked as he was not present are such hollow submissions that they do not require any lengthy deliberations. It was for the Investigating Officer to have seized those clothes. The informant had worn them for two days is also not something which was very unusual because there had been a demise in the family and in the villages, people take thirteen days to be the days to mourn a death. In those days even shaving of the beard etc. are not being done. Further, the time consumed by the informant for reaching at the police station has been explained satisfactorily. In an incident, which had occurred all of a sudden out of the blue, frailties of human mind cannot be lost sight of. No person can act like a computerised Windows 8 in a given fact situation, where suddenly murder had taken place nor can he be expected to produce the outcome at the pressing of a key. Howsoever, alacritic a person may be, he naturally takes some time to settle down and compose himself and regain his normal senses, more so when such an incident happens unexpectedly all of a sudden. Terrified mind in such a fact situation further takes time to calm down. It will be puerile to expect from any person to act robotically in such fact situation. It is a matter of common heuristic experience that when an incident happens suddenly even the most prudent mind fails to act diligently without wasting time, which also flies by. What is alarming to note is that defence has not been able to cull out any motive for the two fact witnesses to depose falsely and nail-in the appellant after fabricating the feigned story. No suggestion whatsoever worth in name has been given to both the witnesses that they were inimical to the appellant and had a motive, howsoever trivial it may be, too falsely implicate him. We would like to mention that on the premium trivialities the entire prosecution version cannot be thrown over- board. Thus the argument of learned *amicus*

curiae, though not out of context, but is too fragile to be accepted and lend any credence to the defence plea. We therefore repel castigation regarding presence of the informant P.W.1 at the spot.

Coming to the testimony of P.W.2, we find him also to be a truthful witness who seems to have narrated the true incident witnessed by him. His evidence is clear and cogent that he was proceeding to the forge of Bashir black smith to get his spade fixed when the incident had occurred. Spade is an agricultural implement and normally in villages, in the morning the shops of black smiths are opened so that prior to the going to the fields agricultural implants are fixed and repaired. This is normal behaviour and in villages it is a common phenomenon. Further, P.W.2 has been well corroborated by the informant P.W.1 in all respects. They have not vacillated or budged from the main substratum of the prosecution story and, therefore, there is no difficulty in concluding that P.W.2 was also present at the spot and had witnessed the incident. Learned *amicus curiae* had castigated the evidence of P.W.2 for the reason that he had not seen the first shot fired at the deceased and the narration of the incident made by him does not fit in well with the fact situation found at the spot especially in respect of directions of causing wounds. He has further castigated the testimony of P.W.2 by arguing that he and the deceased both were agriculturalist and were partners and hence he is an interested and a partisan witness besides being related. After going through the testimony of P.W.2, we have not been able to assume any reason for such castigations. Since the incident occurred on the way passers- by like P.W.2 is a natural witness whose presence at the spot is very probable and, therefore, his evidence cannot be discarded on insignificant trivialities. No doubt, he is the nephew of the deceased but that is no reason to discard his evidences as till date too well settled trite law is that merely because of relationships between the victims and the witnesses otherwise convincing testimonies of the witnesses cannot be discarded. We would not like to burden this judgment by referring to the plethora of Apex Court decisions on this aspect, but at the same time could not resist the temptation of referring to

some of those decisions countenancing our view which are as follows:-

In **Ram Anup Singh versus State Of Bihar: (2002)6 SCC 686** it has been held by the apex court as under:-

*"**18.** We find that as many as six eyewitnesses have been examined by the prosecution. Nothing has been elicited in their cross-examination which may lead us to doubt their reliability or truthfulness. The only criticism levelled against them is that three of them are relatives of the informant and all the six belong to Village Jamunia Jasauli. It was faintly suggested that their evidence is too consistent to be true. It is no doubt true that PWs 8, 9 and 10 are related. PWs 9 and 10 are brothers and PW 8 is the son of PW 10, the informant. However, having regard to the facts of this case their evidence cannot be discarded merely on the ground that they are related to each other. There is abundant evidence on record to establish that on 27-3-1997 a panchayati was to be held concerning the disputes between Madan Singh (deceased) and Ram Anup Singh, accused. The dispute related to the lands gifted by Madan Singh to his daughter and son-in-law. PW 10, the informant being the father of Shambhu Sharan Dubey, son-in-law of Madan Singh, was naturally interested in attending the panchayati. In fact Madan Singh had requested him to attend the panchayati. His brother and son had accompanied him to Village Dilman Chapra. Having regard to these facts, their evidence cannot be thrown out merely on the ground that they are related and interested witnesses. The eyewitness account given by these witnesses is natural as well as consistent. Their presence at the scene of occurrence cannot be doubted in view of the overwhelming evidence on record. They are not only named in the FIR but their presence is confirmed by the other eyewitnesses."*

In **Ranjit Singh and Ors. v. State of M. P.:AIR 2011 SC 255** it has been held by the apex court as under:-

"32. Undoubtedly, all the eye-witnesses including the injured witnesses are closely related to the deceased. Thus, in such a fact-situation, the law requires the court to examine their evidence with care and caution. Such close relatives and injured witnesses would definitely not shield the real culprits of the crime, and name somebody else because of enmity. The defence did not ask the injured witnesses as to how they received the injuries mentioned in the medical reports."

In **Dinesh Kumar v. State of Rajasthan:AIR 2008 SC 3259** it has been held by the apex court as under:-

"6. It is to be noted that PWs-7 and 13 were the injured witnesses and PW-10 was another eye-witness and was the informant. Law is fairly well settled that even if acquittal is recorded in respect of co-accused on the ground that there were exaggerations and embellishments, yet conviction

can be recorded if the evidence is found cogent, credible and truthful in respect of another accused. The mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence. In law testimony of an injured witness is given importance. When the eye-witnesses are stated to be interested and inimically deposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The Court would be required to analyse the evidence of related witnesses and those witnesses who are inimically de posed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witness appears to be clear, cogent and credible, there is no reason to discard the same. Conviction can be made on the basis of such evidence. In the instant case, the Trial Court and the High Court have analysed the testimony of PWs-7, 10 and 13 in great detail. It is revealed that the appellant had inflicted the first sword blow to the deceased in his abdomen and he fell on the ground. The High Court, however, found that the role ascribed to the others was not fully satisfied. The sword used in the offence was recovered at the instance of the appellant and the same was found to be stained with same group of human blood, as that of the deceased, as per the FSL report, Exh.P-28. PW-7 stated that when he tried to save his father, the accused also inflicted blows on him and he sustained injury by sharp edged weapon i.e. the sword. According to him, the accused inflicted the blow by the sword on his neck and he fell down. Though, the appellant stated that he had suffered injuries at the hands of the deceased and his sons, as rightly noted by the Trial Court and the High Court, they were superficial injuries and as the doctor opined, could be self-inflicted."

In **Akhtar and Others versus State of Uttaranchal: (2009) 13 SCC 722)** it has been observed by the apex court as under:-

"***19.*** *It was contended by the appellant that the testimony of Jamil Ahmad (PW 2) and Mobin (PW 3) cannot be relied on as these two eyewitnesses were allegedly highly interested witnesses and were related to the deceased. In our considered view, merely because the witnesses in question were related to the deceased cannot be a ground for non-acceptance of their evidence, which otherwise was found to be trustworthy. It is true that these two witnesses are related to the deceased but at the same time one cannot lose sight of the fact that these two witnesses were also injured witnesses. It is extremely difficult to believe that the injured witnesses who themselves got injured and whose close relatives lost their lives would shield the real culprits and name somebody else only due to some enmity. The defence had ample opportunity to cross-examine these two injured eyewitnesses but records show that no suggestions were put to them as to how they received the injuries, mentioned in the medical reports. In fact, various documents filed by the defence with respect to*

litigation among themselves itself give the unmistakable impression that there was indeed motive to attack the deceased and the injured witnesses."

In **Arjun Mahto versus State of Bihar: AIR 2008 SC 3270** it has been held by the apex court as under:-

"*5. Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise co gent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.*

6. In Dalip Singh and Ors. v. The State of Punjab (AIR 1953 SC 364) it has been laid down as under :-

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

7. The above decision has since been followed in Guli Chand and Ors. v. State of Rajasthan (1974 (3) SCC 698) in which Vadivelu Thevar v. State of Madras (AIR 1957 SC 614) was also relied upon.

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

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women

and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in, 'Rameshwar v. State of Rajasthan' (AIR 1952 SC 54 at p.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."
9. Again in Masalti and Ors. v. State of U.P. (AIR 1965 SC 202) this Court observed : (p. 209-210 para 14) :
"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

Next contention by learned *amicus curie* that the incident had occurred at a lonely place in the wee hours of the morning without witnessing of it by anybody, we do not find any force in this submission also. The reasons harangued for the aforesaid submission by Sri Sahai, learned *amicus curiae*, is that it was stated by the informant P.W.1 that when he had gone to the house of the deceased, he was having his meal but no meal was found in his stomach and on the contrary, in the autopsy examination, the doctor had found deceased stomach empty, chime and gasses in the small intestine and faecal matter and gasses in the large intestine. On the strength of the aforesaid findings noted by the doctor, it was argued that deceased was murdered sometimes in the wee hours of the morning and not as alleged by the prosecution. In that respect, learned *amicus curiae* also relied upon the statement of the doctor according to whom, if the deceased had taken meal soon after his death, the same should have been found in his stomach. However, the defence is to be blamed for such a fallacious criticism. In it's endeavour to bring contradictions in the ocular version vis-à-vis with the medical evidence defence went on to ask questions from the informant P.W.1 who utilised the offered opportunity to explain that by meal he meant only two glasses of

milk which was only consumed by the deceased. Thus, the favourable evidence gained by the defence in the previous sentence was lost in the second question. Doctor has categorically stated that if the deceased had taken milk then it would have been absorbed in the stomach. No other factor was brought to our notice to doubt the time of the incident and hence it has to be concluded that the criticism levelled by learned *amicus curiae* regarding different time of the incident cannot be accepted and is hereby repelled.

So far as place of the incident is concerned, the prosecution version right from the very beginning is centred at the place alleged by it i.e. Teli Wala locality. None of the two fact witnesses vacillated in their narrations about the incident having occurred at the said place. They have corroborated each other convincingly. I.O., during investigation, had also collected the blood from the same spot where the deceased had fallen down sustaining both the firearm injuries. PW1 un-ambiguously stated that when he and the deceased had reached near the house of Mazid on the turning in front of the house of Noora in Teli Wala locality they had met the appellant who was armed with a country made pistol. It was further deposed that first fire at the deceased was made when he was in front of the house of Mir Hasan. In the site plan also place B + is the place where the deceased was shot at first and this place is right in front of the house of Mir Hasan. Place A+ is the place where deceased sustained the second gunshot fire and he had fallen down at the same place. It was from place A+ that I.O. had collected the blood. Defence has not suggested any specific place where the deceased was murdered and hence the contention that the incident had not occurred at the place alleged by the prosecution lies in a realm pure hypothesis without any concrete material. Otherwise also, the prosecution would not have gained any point by changing place of the incident.

So far as the testimony of the doctor is concerned, we find it to corroborates the prosecution case in it's entirety and lend credence to it. Defence has not been able to fathom out even an iota of evidence on the

strength of which it can be said that medical version is inconsistent with the ocular testimony. Deceased was shot at from point blank range and the injury sustained by him as is recorded in his autopsy report affirms it. He died an unnatural death because of sustained gunshot injuries. F.I.R. was lodged without any delay and whatever delay had occasioned was explained well by the informant and both these factors goes a long way is establishing veracity of the prosecution story.

All the formal witnesses supported prosecution case convincingly and it is not decipherable from their evidences that prosecution story is not true. No doubt some insignificant omissions have cropped up in the depositions of two fact witnesses and the investigating officer also left some aspects to be probed into but on an overall analysis they do not, cumulatively or singularly, have enough potential to dislodge the core issue, genuineness prosecution story and credibility of both the fact witnesses. In essence we find it and them reliable and truthful having a ring of affirmative opinion.

On an overall analysis we find that prosecution has successfully brought home both the charges against the appellant and the impugned judgement of conviction and sentence is infallible and has to be affirmed and this appeal by the appellant lacks merit.

Appellant's present appeal is dismissed. His conviction and sentence recorded in the impugned judgment is hereby affirmed. Presently appellant is confined in Central Jail, Naini, Allahabad. He is directed to be transferred to the district jail Muzzafarnagar forthwith from where he was brought before us. He shall remain in jail to serve out remaining part of his sentence.

Let this order be intimated to the learned trial court.

Dt.17.5.2013
Rk/Arvind/Tamang/-