

AFR  
Reserved on 21.05.2019  
Delivered on 06.09.2019

**Court No. - 4**

**Case :-** CRIMINAL APPEAL No. - 871 of 1986

**Appellant :-** Bhaggo And Others

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

**Counsel for Appellant :-** G.P. Dikshit, Rakesh Kumar Singh, Tripurari Pal

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

**Hon'ble Bala Krishna Narayana, J.**

**Hon'ble Ali Zamin, J.**

**(Per : Ali Zamin, J.)**

1. Heard Sri R.K. Singh, learned Senior Counsel assisted by Sri Tripurari Pal and Sri J.K. Upadhyay learned A.G.A. for the State, considered the written submission of the appellants and perused the material on record.
2. This appeal has been filed against the judgement and order dated 07.03.1986 passed in Session Trial No.396 of 1984 (State vs. Bhaggo and others), Police Station Usehat, District Budaun by which learned Special Judge (E.C. Act), Budaun has convicted the appellants-accused Bhaggo, Dodhey, Dharam Singh, Atar Singh, Puttoo, Satyapal, Navrang and Ramphal and sentenced to undergo two years rigorous imprisonment under Section 148 of I.P.C., 6 months rigorous imprisonment under Section 323/149 of I.P.C. and life imprisonment under Section 302/149 of I.P.C. Accused Roshan has been sentenced to undergo one year's rigorous imprisonment under Section 147 of I.P.C., 6 months rigorous imprisonment under Section 323/149 of I.P.C. and imprisonment for life under Section 302 I.P.C. It has been also directed that all the sentences shall run

concurrently.

3. Appeal qua appellant no.1 (Bhaggoo), appellant no.2 (Dodhey), appellant no.3 (Dharam), appellant no.4 (Navrang) and appellant no.9 (Roshan) have been dismissed as abated vide order dated 23.04.2019. Hence, this appeal remain for consideration against appellant no.5 (Atar Singh), appellant no.6 (Puttoo), appellant no.7 (Satyapal) and appellant no.8 (Ramphal).

4. In brief facts of the case are that near about one and half year preceding to the incident Hari Ram, brother of the accused Navrang was murdered in which Navrang had made informant Dori Lal, deceased Ram Bharosey, Dori, Prem Pal, Shishupal and Malkhan accused.

Accused Bhaggoo and Dodhey are real brothers, Ram Sahai is son of Dodhey, Dharam Singh and Navrang are sons of Ram Sahai. Accused Roshan is son of Badri and Sohan Pal is son of Ganga Singh, accused Satyapal and Ramphal are sons of Soran, accused Atar Singh and Puttoo are sons of Balwant. Atar and Puttoo are cousins of accused Bhaggoo, accused Ramphal, Satyapal and Sohan Pal are nephews of Navrang, Roshan Lal is cousin of Navrang.

In the family of the informant his great aunt and his maternal uncle Arav Singh, father of the deceased Ram Rais had expired, on account of which they were not celebrating the Holi festival. On 22.03.1984 before sun set in the evening informant Dori Lal, his

brother Ram Bharosey, Prem Pal, nephew Surendra Pal, cousin Ram Rais and Durvijay son of Harbhajan, resident of village Milkia, police station Kalan and Shankar Singh son of Het Ram, village Fatehgarh were sitting over the chaupal. In the meantime, accused Bhaggoo, Dodhey, Navrang, Dharam Singh, Atar Singh and Puttoo armed with guns, Ramphal and Satyapal armed with country-made pistols, accused Sohan Lal and Roshal Lal armed with lathi came there and on exhortation of Dharam Singh and Satyapal that they should not be allowed to escape accused Bhaggoo and Dharam Singh fired at Ram Bharosey, Navrang and Satyapal fired at Ram Rais, Dodhey and Atar Singh fired at Surendra, Puttoo and Ramphal fired at the informant with intention to kill them. Informant Dori Lal escaped from the fire shot but fire shots hit to Ram Bharosey, Ram Rais and Surendra. As soon as Ram Bharosey was shot, he fell down after running for 2-3 steps and Ram Rais also fell down after running 20-25 steps towards South. Surendra Singh hid himself in the wheat crop. Informant Dori Lal, Prem Pal, Durvijay and Shankar took cover behind door of the surrounding houses and raised alarm. The accused fled away towards the gallery from which they had come. After the accused had fled, they found that Ram Bharosey and Ram Rais had both died. On search Surendra was found lying in the field of wheat crop after going 50 steps. Informant got the written report (Ext.Ka-1) scribed at his house by one Pratap Singh in the village and along with Surendra, Ram Naresh, Prempal and Ram Chandra reached the police station by

bullock cart and at 10:00 p.m. handed over the written report to the Head Moharrir, who on the basis of written report Ext.Ka-1, registered Case Crime No.48 of 1984, under Sections 147, 148, 149, 302, 307 I.P.C. against the appellants and prepared chik report Ext.Ka-3 and G.D. entry Ext.Ka-4. Investigation was taken over by Station Officer Mahendra Pal Singh.

The Investigating Officer recorded statement of informant injured Surendra and sent injured Surendra for medical examination. Dr. Ragesh Rai medically examined injured Surendra Singh and prepared his medical report Ext.Ka-2, according to which following injuries were found on the person of the injured:

- 1. A contused swelling on both lips colour red situated on all over the both lips simple caused by some hard object duration fresh.*
  - 2. Bleeding from right ear present, no external injury seen, suspected internal injury, advised x-ray, injury kept under observation referred to radiologist and E.N.T. Surgeon duration fresh.*
  - 3. Contused swelling 6 cm x 4 cm oral red situated 2 cm outer to the right lateral end of mouth simple caused by hard object duration fresh.*
  - 4. tenderness felt 4.5 cm. below the right mastoid, no external injury is seen caused by some hard object duration fresh.*
  - 5. Eighteen gun shot wound entry in an area 23 cm. x 21 cm. in front of right ear to the mid line of skull on right side palpable, no scorching tattooing bleeding seen caused by some fire arm direction straight duration fresh patient feel omitting, sensible referred to radiologist.*
5. The Investigating Officer along with S.I. Sher Singh and other

employees reached the village in the night of the incident and kept deceased Ram Rais's body in the varandah because it was lying in a dirty place. Being night inquest report could not be completed. On the instruction of Investigating Officer S.I. Sher Singh conducted inquest of deceased Ram Bharosey and Ram Rais, prepared inquest reports, relevant documents i.e. photo of the dead body, challan of dead body and sample of dead body seal Ext.Ka-11 to Ext.Ka-14 and Ext.Ka-15 to Ext.Ka-18 respectively. After completing the inquest he dispatched the dead bodies of Ram Bharosey and Ram Rais for post-mortem along with Constable Uma Shankar and Naresh Pal Singh.

6. P.W.8 Dr. R.K. Verma conducted autopsy on the body of deceased Ram Bharosey on 24.03.1984 at 9:00 a.m. and prepared post-mortem report Ext.Ka-9, according to which on the person of deceased Ram Bharosey following injuries were found:

1. *Gun shot wound of entry on left side of upper part of chest mid axillary line 5 cm. below left axilla and 7 cm. away from left nipple measuring 4 cm. x 3 cm., chest cavity deep 1 cm. blackening present around the wound.*
2. *Abrasion measuring 5 cm. x 3 cm. on right side of forehead.*
3. *Gun shot wound of entry on lower side of middle of chin 1 cm. x 0.75 cm. x bone deep, mandible bone fractured and in communication with wound no.4.*
4. *Gun shot wound of exit 3 cm. x 1 cm. x bone deep on upper part of middle of chin.*
5. *Gun shot wound of entry 2 cm. x 2 cm. x bone deep on lateral side of dorsum aspect of left palm at the base of*

*thumb through and through wound. Dispraying the whole of left thumb. The first metacarpal bone badly fractured.*

6. *Gun shot wound abrasion in an area of 6 cm. x 5 cm. on right aide abdomen just below left side and 6 cm. away from umbilicus.*

7. *Gun shot abrasion in an area of 8 cm. x 4 cm. on right side of upper part of chest below right clavicle.*

8. *Gun shot wound in an area 5 cm. x 4 cm. x bone deep on right hand dispraying whole of right thumb fracturing the metacarpal bone of thumb and tearing all the adjacent muscle of first index finger right hand. On opening the chest 2<sup>nd</sup> and 3<sup>rd</sup> ribs of left side, left lung and heart were badly damaged. Small pallets nos.69 recovered from the wound.*

In his opinion cause of death was shock due to excess bleeding and death was possible on 22.03.1984 at the time of sun set. The ante-mortem fire arm injuries found on the body of deceased were sufficient to cause death.

Dr. R.K. Verma also conducted autopsy on the body of deceased Ram Rais and prepared post-mortem report Ext.Ka-10. According to which following injuries were found on the body of the deceased Ram Rais:

1. *Gun shot wound of entry left side of chest 2 cm. x 2 cm. circular shaped x chest cavity deep, 4 cm. below left nipple, blackening 2 cm. present.*

2. *Gun shot abrasion in an area of 4 cm. x 3 cm. x skin deep on outer side of wrist joint.*

On opening the chest 5<sup>th</sup> and 6<sup>th</sup> ribs were fractured. The left lung was damaged partly, Heart completely lacerated. The right side lung is lacerated badly and both chest cavity are

full of clotted blood.

In his opinion the death could be attributable to shock and hemorrhage. Both the deceased could have died on 22.03.1984 before sun set. These injuries could be caused by fire arm and the injuries were sufficient in the ordinary course of nature to cause death.

7. The Investigating Officer recorded the statement of witnesses, Prempal, Surendrapal, Durvijay, Pratap Singh, Ram Naresh etc. and inspected the spot on the pointing of complainant and witnesses and prepared spot map Ext.Ka.5. He also took the blood stained and plain earth from the places where the dead bodies of Ram Bharosey and Ram Rais were found and got prepared its memo Ext.Ka-6 and Ext.Ka-7. After, completing the investigation submitted the charge sheet Ext.Ka-8 before the C.J.M., Budaun, under Sections 302/149 and 323/149 I.P.C. against the accused, who committed the accused for trial to the court of Session where Case Crime No.480/1984 was registered as Session Trial No.396 of 1984 (State vs. Bhaggoo and others) from where it was transferred to the court of Special Judge (E.C. Act), Budaun for trial. The trial court framed charge against the accused-appellants Bhaggoo, Dodhey, Dharam Singh, Navrang, Atar Singh, Puttoo, Satyapal and Ramphal under Section 148 I.P.C. and charge against Bhaggoo, Dodhey, Dharam Singh, Navrang, Atar Singh, Puttoo, Satyapal, Ramphal, Roshan and Sohanpal was framed

under Sections 302/149 I.P.C. Charge against the accused-appellant Roshan was also framed under Section 323/149 I.P.C. The accused abjured the charge and claimed trial.

8. The prosecution in order to prove its case examined nine witnesses. P.W.1 Dori Lal informant, P.W.2 Surendra Pal injured, P.W.3 Durvijay and P.W.4 Pratap Singh scribe of written report were examined as witnesses of fact while P.W.5 S.R. Sharma Pharmacist, P.W.6 Harpal Singh chik and G.D. scribe, P.W.7 Mahendra Pal Singh Investigating Officer, P.W.8 R.K. Verma who had conducted autopsy of the dead bodies and P.W.9 S.I. Sher Singh, who had prepared the inquest memo of dead bodies as well as memo of blood stained and plain earth from the place of dead bodies were produced as formal witnesses. The accused-appellants in their examination under Section 313 Cr.P.C., denied the prosecution case and alleged false implication due to partibandi and enmity.

9. After hearing learned counsel for the parties and scrutinizing the entire evidence on record, the impugned judgement and order has been passed. Hence, this appeal.

10. Learned counsel for the appellants submits that the prosecution witness P.W.-4 Durvijay in para 9 of his testimony has stated that Daroga came on next day and got scribed the report by Pratap Singh which belies the prosecution claim that the F.I.R. was lodged and

registered at the police station on 22.03.1984 at 10:00 p.m. He also submits that injured Surendra Pal has stated that Dodhey and Atar Singh fired at him but he could not tell which part of his body was hit by the shot. The doctor who had medically examined him has not been produced and no supplementary report has been filed before the Court. However, P.W.5 S.R. Sharma has identified his hand writing and signature. He has stated that injury report of Surendra Pal is mentioned at page No.135 of the register but on this page police case is not mentioned while at page no.136 and 134, police case has been mentioned. He further submits that P.W.1 Dori Lal has stated that Investigating Officer had taken the blood stained and plain earth also from the place where Surendra Pal injured had hidden himself in the field while P.W.7 Mahendra Pal Singh-Investigating Officer has stated that he had taken the blood stained and plain earth from both the places where the dead-bodies were found. P.W.2 Surendra has stated that informant Dori Lal had taken him from the field while P.W.1 Dori Lal has stated that injured Surendra himself came out of the field. P.W.1 Dori Lal in his deposition at page 28 has stated that the bed was spread on the chabutra while at page 58, the Investigating Officer has stated that on the spot no carpet was found. Thus, the statement of P.W.1 Dori Lal does not find support but makes his presence doubtful. At page 58 and 59 the Investigating Officer has stated that chabutra was white washed on which the deceased and injured were said to be sitting at the time of the incident. On this chabutra, no mark of pellets

or pellet was found. Such contradictory statements make presence of witnesses as well as place of occurrence doubtful. He also submits that injured P.W.2 Surendra has stated that shot hit Ram Rais while he was fleeing towards South and accused were firing from North but according to post-mortem report Ext.Ka-10, gun shot entry wound on left side of chest 2 cm x 2 cm chest cavity deep was found which could not be possible if deceased was towards South and assailant had fired from North. Thus ocular evidence is contrary to medical evidence, as such prosecution case is doubtful.

11. Next submission of learned counsel for the appellants is that the statement of P.W.1 Dori lal at page 32 does not find support from the spot map that he did not flee in the direction in which accused were standing. In spot map Ext.Ka-5 place-P has been shown surrounding of the complainant where complainant and other witnesses fled to save themselves from place-C while at place-X has been shown presence of the accused. If the witnesses were present on the spot and had fled towards their surrounding to save themselves, then in any case would not have escaped unhurt and the accused would have not have spared the witnesses. Lastly, he submits that prosecution has completely failed to prove the incident. Looking to the injuries of injured and deceased, it appears that due to enmity, the appellants have been falsely implicated exaggerating the incident. Appeal qua accused- Bhaggu and Dharam Singh, who have caused the death of

Ram Bharose and Naurang, who had shot at deceased Ram Rais, has been abated. One gun shot wound was found on the person of Surendrapal. Appeal qua Dhodhey, author of one of the fire arm wound received by Surendra, has also been abated. Dori Lal had not received any injury, so, in the interest of justice, benefit of doubt may be given to the appellants-Satya Pal, Atar Singh, Puttoo and Ramphal.

12. Per contra learned A.G.A. submits that P.W.1 Dori Lal and P.W.4 Pratap Singh scribe of the written report have supported the prosecution version. PW.6 Harpal Singh also has stated that on 22.03.1984 at 21:55 p.m. on the basis of written report Ext.Ka.1, he had registered Case Crime No.480 of 1984 and prepared chik report Ext.Ka-3 and G.D. Ext.Ka-4. The Investigating Officer has also denied the fact. Thus, giving information and its registration is fully proved. He has also submitted that from the testimony of P.W.1 Dori Lal and P.W.2 Surendra and Investigating Officer P.W.7 Mahendra Pal Singh place of occurrence is established. P.W.5 S.R. Sharma in his deposition has stated that Dr. Ragesh Rai was posted for two years as C.M.O. to P.H.C. Usehat. He was well acquainted with his writing and signature, whereabouts of the doctor is not known. He proved the injury report Ext.Ka-2, so, if the Doctor, who had medically examined Surendra Pal had not been produced, it cannot be said that fire injury was not caused to injured Surendra. So far as the mentioning of police case in the register is concerned, the Head Moharrir P.W.6 has stated

that he had written *majroobi chitthi*, entry with regard to which was made in G.D. No.28. So far as the variation in the statements of P.W.1 Dori Lal and P.W.2 Surendra regarding the manner in which injured Surendra Pal came out from the field, not finding pellets or mark of pellet on chabutra or a carpet spread on chabutra or not finding it by the Investigating Officer it as well as not taking of blood stained and plain earth from the place of hiding of injured Surendra by Investigating Officer, are concerned, these are minor discrepancies which cannot affect the prosecution case. In furtherance of common object, all the accused, had committed the offence, which is fully proved from the evidences led by the prosecution, hence, anyone, who is member of unlawful assembly, cannot be given benefit of doubt as contended by learned counsel for the appellants. Appeal has no merit and it is liable to be dismissed.

13. P.W.1 Dori Lal has stated that after getting the written report scribed by Pratap Singh, it was handed over to Head Moharrir at about 10:00 p.m. in the police station. He proved it as Ext.Ka-1. From the cross-examination of this witness by defence, nothing has been elicited. The aforesaid fact finds corroboration from the evidence of P.W.2 injured Surendra Pal and from his cross-examination too, nothing has been elicited. P.W.4 Pratap Singh specifically has stated that on dictation of Dori Lal he had written the report Ext.Ka-1 and he had denied the suggestion that the report was written on dictation of

Daroga. P.W.6 Head Moharrir C.P. Harpal Singh has stated that on 22.03.1984 at 21:55 p.m. he had prepared chik on the basis of the written report Ext.Ka-1 given by complainant Dori Lal and also entered it in the G.D. No.28. He had proved the chik report Ext.Ka-3 and G.D. entry as Ext.Ka-4. From his cross-examination also nothing has been elicited. A suggestion has been given by the defence to the Investigating Officer P.W.7 Mahendra Pal Singh that on his dictation the information was scribed and totally bogus proceedings were conducted which has been denied by him. P.W.3 Durvijay had given his statement first time in court after a lapse of one and half year from the incident and nothing turns on his evidence that F.I.R. was got scribed by Darogaji on the next morning. Considering the convincing, consistent and reliable evidences of informant Dorilal, injured Surendra, scribe P.W.4 Pratap Singh, Head Moharrir P.W. 6 Harpal Singh and Investigating Officer P.W.7 Mahendra Pal Singh the statement of P.W.3 Durvijay given time in court after one and half year of the incident does not appear trustworthy and reliable. Accordingly, we do not find any force in the contention of learned counsel for the appellants that giving first information report is ante time.

14. P.W.2 Surendra Pal, injured, in cross-examination at page 38 of the paper book has stated that shot hit him on his head which is also supported with injury report Ext.Ka-2 proved by P.W.5 S.R. Sharma

and other witnesses of fact. So contention of learned counsel for appellants is without substance that injured did not state on which part of his body the shot had hit.

15. P.W.5 S.R. Sharma has stated that Dr. Ragesh Rai was posted for two years as C.M.O. in P.H.C., Usehat and he was also posted there. He is acquainted with handwriting and signature of the doctor, the whereabouts of the doctor is not known. In view of his statement, if Dr. Ragesh Rai has not been produced, the prosecution case will not be adversely affected.

16. P.W.6 C.P. Harpal Singh has stated that he had prepared *majroobi chitthi* and made entry in the G.D. No.28. Injured Surendra Pal himself has stated that fire shot hit him on his head and he was medically examined on being send by police, which has been supported by informant Dori Lal, P.W.6 Head Moharrir Harpal Singh and P.W.7 Mahendra Pal Singh Investigating Officer. In view of the above testimony of the prosecution witnesses, prosecution case is not affected on account of non filing of supplementary report and not mentioning police case in the register of mentioning injury as stated by P.W.5 S.R. Sharma.

17. According to first information report, complainant Dori Lal, deceased Ram Bharosey, Ram Rais, Prempal, Surendra and Durvijay were sitting on the chaupal at the time of the incident. Appellants

came armed with gun, country-made pistols and lathi. On exhortation of Dharam Singh and Satyapal the accused fired at them causing fire arm injuries to Ram Bharosey, Ram Rais and Surendra. Ram Bharosey died on the spot. Ram Rais and Surendra fled towards South. Ram Rais after running for some distance also died and Surendra fled and hid himself in wheat crop. P.W.1 in his deposition supporting the F.I.R. version has stated that Ram Bharosey fell down after 2-3 steps on receiving the gun shot injury and Ram Rais fell down after running for about 20-25 steps and Surendra hid himself in wheat crop. In cross-examination, he has stated that Surendra fled 50 steps. This version has been also supported by P.W.2 Surendra who had also received injuries in the incident and P.W.3 Durvijay. The Investigating Officer P.W.7 Mahendra Pal Singh has stated that on the pointing of complainant and witnesses, he inspected the place of incident and prepared the spot map and proved it as Ext.Ka-5. He took into his possession the blood stained and plain earth from the places where both the dead bodies were found lying. In Ext.Ka-5 spot map at place-A, the dead body of the deceased Ram Bharosey has been shown, Place-C is the place where the deceased and witnesses were sitting. Place-B has been shown where the dead body of deceased Ram Rais was found and place K is shown, where Surendra had hidden himself in wheat crop. Distance of place A to B has been mentioned as 25 steps and distance of place A to C has been mentioned 3 steps and distance from place-C to place-K is 50 steps

which corroborates the statement of P.W.1 Dori Lal, P.W.2 Surendra, the injured and P.W.3 Durvijay. Thus, the testimonies of P.W.1 Dori Lal, P.W.2 Surendra and P.W.3 Durvijay regarding the place of incident causing fire arm injury and the places where the dead bodies were lying and presence of injured in wheat crop after the incident are consistent and corroborated by P.W.7 Mahendra Pal Singh Investigating Officer. On the basis of evidences available on record and as discussed above, we are of the view that the prosecution evidence with regard to the place where informant Dori Lal, injured Surendra, deceased Ram Bharosey, Ram Rais and witnesses were sitting at place-C the place of incident shown in Ext.Ka-5, the chaupal and coming of accused armed with weapons as mentioned above and firing at them, causing death of Ram Bharosey, Ram Rais and injury to Surendra are consistent, corroborated and convincing. Considering the above evidences, on the basis of statement of P.W.7 Mahendra Pal Singh Investigating Officer, that chabutra was white washed and he had not found any marks of pellet or pellets on chabutra, it can't be said that place of incidence is doubtful.

18. P.W.7 Mahendra Pal Singh has stated that on the spot, he did not find any mattress spread but in spot map Ext.Ka-5, it has been mentioned that below place-C mattress was spread over on which the deceased and witnesses were sitting which indicates that at the time of investigation, Investigating Officer had found the mattress but at the

time of deposition he has made a contrary statement. As such we find no weight in the contention of learned counsel for the appellant that statement of P.W.1 Dori Lal does not find support from the evidence of P.W.7 Mahendra Pal and it makes his presence on the spot doubtful.

19. According to P.W.1 Dori Lal (informant) and P.W.2 Surendra, the incident occurred on 22.03.1984 before the sun set and according to P.W.3 and P.W.4, it occurred near about 6:00-6:30 p.m. As per first information report Ext.Ka-3, distance of the police station has been shown to be 14 kilometers and according to P.W.1 (informant Dori Lal), P.W.2 Surendra and P.W.3 Durvijay, they had gone to police station by bullock cart. As per statement of P.W.6 Harpal Singh the written report was given by informant Dori Lal, on the basis of which chik F.I.R. was registered and as per Ext.Ka-3 on 22.03.1984 at 21:55 p.m. within three to three and half hours after the incident it was registered. In the facts and circumstances, it appears that a prompt report has been lodged. Thus on the point of giving information by P.W.1 Dori Lal, the evidence of P.W.1, P.W.2 Surendra injured, P.W.3 Durvijay and P.W.6 Harpal Singh Head Moharrir scribe of chik and G.D. is consistent. If the informant was not present on the spot then lodging first information report of the incident promptly giving vivid details of the incident would not have been possible. This fact also fortifies the presence of the informant Dori Lal on the spot.

20. In *Chand Khan vs. State of U.P., (1995) 5 SCC 448*, it has been held that minor discrepancies in evidence of eye-witnesses who have given convincing and reliable evidence with regard to details and manner of assault will not affect their evidentiary value.

21. In spot map (Ex.Ka-5), the place K wheat crop field has been shown where the injured-Suredrapal was found. It is not disputed that on the pointing of the complainant-Dori Lal, the spot map was prepared by the Investigating Officer. The incident has occurred on 22.03.1984 and the statement of P.W.1 Dori Lal has been recorded in court on 03.09.1985, near about after 1-1/2 years, so due to fading of memory, due to lapse of time, P.W.1-Dori Lal might have given the statement that blood and plain earth was taken from the place where Surendra had hidden himself in the wheat crop field. It is not disputed that Investigating Officer has taken in his possession the blood stained and plain earth from two places where the dead-bodies of deceased-Ram Bharosey and Ram Rais were found. Considering the facts and circumstances of the case, in the statement of the informant there does appear to be a minor discrepancy. So far as the statement of P.W.1 and P.W.2 regarding coming out of injured Surendra from the field himself or being taken by informant Dori Lal is concerned, it is also a minor discrepancy. In view of the observation of *Hon'ble Supreme Court in Chand Khan vs. State of U.P. (supra)* and above discussion on the basis of statements of P.W.1 Dori Lal that injured Surendra himself

came and Investigating Officer also took in his possession blood stained and plain earth from the place in the field where Surendra had hidden himself and statement of P.W.2 Surendra Pal that informant Dori Lal had taken him from the field will not affect their convincing and reliable evidence with regard to details given about incident and manner of assault.

22. In view of the above discussion, we find no substance in the contention of learned counsel for the appellants that presence of witness as well as place of occurrence is doubtful.

23. According to post-mortem report Ext.Ka-10, gun shot wound of entry on left side of chest 2 cm x 2 cm circular shaped, chest cavity deep was found on the body of deceased Ram Rais. In cross-examination P.W.2 Surendra has stated that fire shot hit Ram Rais while he was fleeing towards South and accused were firing from North. Considering the statement of P.W.2 Surendra and injury found in Ext.Ka-10, post-mortem there appears prima-facie contradiction in statement of witness Surendra and injury found in post-mortem report Ext.Ka-10 because if fire is shot from North and deceased was fleeing towards South normally fire wound on chest will not be possible. P.W.2 Surendra in his examination in chief has stated that on exhortation of Dharam Pal and Satyapal, Bhaggoo and Dharam Singh fired at his father, Navrang and Satyapal fired at Ram Rais, Dodhey and Atar Singh fired at him and Puttoo and Ramphal fired at Dori Lal.

In cross-examination by defence he has stated that all the accused had fired from a distance of 6-7 steps towards North. They had all fired at the same time and after firing they fled in the direction from which they had come. He has also stated that no one had fired twice. Evidence of P.W.1 Dori Lal, P.W.2 Surendra and P.W.3 Durvijay is consistent on the point that informant Dori Lal, deceased Ram Bharosey, Ram Rais, injured Surendra, Prempal, Durvijay and Shanker were sitting on the chaupal at that time when appellants/accused came and fired at them, shots fired hit Ram Bharosey, Ram Rais and Surendra, informant Dori Lal escaped unhurt. Ram Bharosey fell down after 2-3 steps, Ram Rais fell down after 20-25 steps and Surendra hid himself in wheat crop field. It is not the case of prosecution that when appellants/accused came and fired at the deceased and injured Surendra, they again fired when injured and deceased Ram Bharosey and Ram Rais as well as informant Dori Lal and other witnesses were fleeing away from the place of incident. Considering the prosecution case and evidences led in this respect including the injured Surendra also as discussed above, on the basis of the statement of injured Surendra that shot fired hit Ram Rais while he was fleeing towards South and accused were firing from North then the shot hit Ram Rais, the prosecution case cannot be doubted. Accordingly, we find no force in the contention of learned counsel for the appellants.

24. In Ext.Ka-5 place-C is shown where injured, deceased and witnesses were sitting and towards East of it the place-X has been shown the place from where accused opened fire. Place-P has been shown in East and North of the place-C as well as from place-X. Distance from C to X has been mentioned 5 steps. Place A is shown where dead body of Ram Bharosey was found. Distance from A to P has been mentioned 12 steps. Distance of C to A has been mentioned 3 steps. According to the map place-X is towards West adjacent to the way. Place-P is situated towards eastern side of the way and there is a space between the way and surroundings at place-P. P.W.1 has stated that from chaupal, his surrounding is 10 to 12 steps and its door is towards west. Accused were standing towards North of the surroundings and fired from there. He has also stated that when he fled from the chabutra at that time the accused had not fired at him but they had fired at deceased Ram Bharosey and Ram Rais. He has also stated that when accused fired at him at that time accused were standing in the North of his surrounding and he was on East South corner to the accused. They were standing towards South of the house of Puttoo and towards North of his surroundings below the chaupal. In the map also towards North of his surrounding the house of Puttoo has been shown. It is also considerable that when a shot is fired thereafter in re-loading of the arm it will take time and in such a situation sprinting is possible. In view of the statement of P.W.1 Dori Lal as well as the location and situation depicted in the spot map, as

discussed above, we find no substance in the contention of learned counsel for the appellants that statement of P.W.1 Dori Lal does not find support from the spot map that he did not flee in the direction in which accused were standing and if witnesses were present on the spot and had fled away to their surrounding then in that case they should have received gun shot injuries.

25. We have gone through the evidence produced by the prosecution. We find that the statements of P.W.1 Dori Lal and P.W.2 injured Surendra Pal Singh are consistent, corroborative and convincing with regard to murder of Hari Ram brother of accused Navrang. The evidence of P.W.1 Dori Lal, P.W.2 injured Surendra Pal and P.W.3 Durvijay with regard to their sitting over the chaupal on 22.03.1984 before sun set and coming the accused at that time and firing at them in which death of Ram Bharosey and Ram Rais was caused and Surendra Singh received injuries are also consistent, corroborative and convincing. Ocular version is also supported by medical evidence and formal witnesses with regard to manner of assault and time of injury as well as spot of the incident. The case of the prosecution is fully proved.

26. In *Lalji and others vs. State of U.P., (1989) 1 SCC 437*, the Hon'ble Supreme Court has held that once the Court holds that certain accused persons formed an unlawful assembly and an offence is committed by any member of that assembly in prosecution of the

common object of that assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object, every person who at the time of committing that offence was a member of the same assembly is to be held guilty of that offence. After such a finding it is not open to the Court to see as to who actually did the offensive act. The prosecution is not obliged to prove which specific overt act was done by which of the accused. In *Lalji and others (supra)*, it has been also held that “*common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before scene of occurrence. It is an inference to be deducted from the facts and circumstances of each case.*” In *Chand vs. State of U.P. (2004) 5 SCC 141*, it has been also held that “*the plea that definite roles have not been ascribed to the accused and therefore Section 149 is not applicable, is untenable. It is not really necessary to determine as to which of the accused persons forming part of the unlawful assembly inflicted what particular or specific injury in the course of the occurrence.*”

27. In the instant case, from the prosecution evidence it is established that all the accused armed with guns, country-made pistols and lathi came and committed the alleged offence in which Ram Bharosey and Ram Rais succumbed to the injuries and Surendra Pal also received fire arm injury in his head. From the above, it is clear

that all the accused formed an unlawful assembly and committed the alleged offence. As such, in view of the law laid down by Hon'ble Supreme Court in the above referred cases, in our opinion no benefit of doubt or benevolence can be given to the appellants as contended by the learned counsel for the appellants.

28. Thus, upon a wholesome consideration of the facts of the case, attending circumstances and the evidence on record, we do not find that the learned trial Judge committed any illegality or legal infirmity in convicting and sentencing appellants Atar Singh, Puttoo, Satyapal and Ramphal in Criminal Appeal No. 871 of 1986, to undergo two years under Section 148 of I.P.C., 6 months rigorous imprisonment under Section 323/149 of I.P.C. and life imprisonment under Section 302/149 of I.P.C.

29. This appeal lacks merit and is accordingly, **dismissed**.

30. Appellants Atar Singh, Puttoo, Satyapal and Ramphal are on bail. Chief Judicial Magistrate, Budaun is directed to take them into custody and send them to jail for serving out the remaining out of their sentences.

**Order Date :- 06.9.2019**  
Jitendra