

A.F.R.

Reserved

Case :- CRIMINAL APPEAL No. - 931 of 1999

Appellant :- Ganesh And Others

Respondent :- State of U.P.

Counsel for Appellant :- D.N.Wali, Apul Misra, D.R. Chaudhary, Dharmendra Singh, Dilip Kumar, Ishwar Chandra Tyagi, M D Mishra, Noor

Mohammad, P.N. Misra, R.B. Sharma, Rajiv Gupta, Rajrshi Gupta, S.P.S. Raghav, S.S. Giri, Syed Shahnawaz Shah

Counsel for Respondent :- A.G.A.

with

Case :- CRIMINAL APPEAL No. - 1655 of 2007

Appellant :- Rohtash

Respondent :- State of U.P.

Counsel for Appellant :- R.K.Sharma, Abhishek Mayank, Ajay K. Singh, Akhilesh Kumar Mishra, Devendra Singh, Dharmendra Singh, Dr. Abeda Syeed (A.C), Manish Kumar Pandey, Noor Mohammad, Santosh Kumar Tripathi, V K Upadhyay

Counsel for Respondent :- A.G.A

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Subhash Chandra Sharma, J.

(Delivered by Hon'ble Subhash Chandra Sharma, J.)

1. These criminal appeals emanate from the judgment and order dated 21.04.1999 passed by the learned Vth Additional Sessions Judge, Meerut in Sessions Trial No. 647 of 1997 (State Vs. Ganesh and others), S.T. No. 863 of 1997 (State Vs. Sriram), S.T. No. 1042 of 1997 (State Vs. Charan Singh), S.T. No. 1559 of 1997 (State Vs. Raju

and others), arising out of Crime No. 08 of 1997, under Sections 147, 148, 149, 302, 307 IPC, Police Station Hashtinapur, District Meerut, whereby the appellants-Sriram, Ganesh, Rajveer s/o Harbans, Rajveer s/o Naththu, Shekhar, Pramod, Vijendra @ Banti and Rohtash, each have been convicted and sentenced under Section 148 IPC for three years rigorous imprisonment with fine of Rs. 1000/-, in default of payment of fine they have to undergo additional imprisonment for a period of six months; under Section 307/149 IPC for seven years rigorous imprisonment with fine of Rs. 5000/-, in default of payment of fine they have to undergo additional imprisonment for a period of two years and Section 302/149 IPC for life imprisonment with fine of Rs.10,000/-, in default of payment of fine they have to undergo additional imprisonment for a period of three years. All the punishments are to run concurrently. Accused Charan Singh, Raju and Pintu were acquitted of the charges.

2. During pendency of the appeal, appellant Ganesh had died, therefore, appeal on his behalf stood abated.

3. The prosecution case, in brief, is that on 17.1.1997 at about 3.10 a.m., an F.I.R. was lodged at the Police Station Hashtinapur, District Meerut by the informant Ved Prakash r/s Village Rustampur Bhikund, P.S. Hashtinapur, District Meerut by filing a written report stating therein that on 16/17.1.1997, in the mid night he along with his uncle Rohtash, Mauli, Narendra, Sanjay, Baleshwar residents of Bhikund were sleeping in their house. He and his uncle

Rohtash were sleeping in the *varandan* where lantern was lit up. At about 12 o'clock in the mid night, near about one dozen people in the police attire equipped with weapons came to their house and woke up his uncle, asked him to get the door opened. The informant was told by his uncle Rohtash that that was the gang of dacoit Sriram resident of Kishunpur. He and his uncle Rohtash identified Sriram, Ganesh, Rajveer Jatav, Banti Jatav, Pramod, Shekhar, Rajveer s/o Natthu but remaining six persons could not be identified. As soon as the door was opened, Sriram and Ganesh along with their other companions started firing on the sons of Rohtash, who were sleeping inside. Due to fear the informant hid himself in a nearby hut. When the assailants came out, the informant heard that Sriram was abusing to '*Gurjars*' and saying that he took revenge of '*Ikwara Kand*'. The accused person thereafter went to the *baithaka* of Kartar Singh and made fire while abusing the '*Gurgars*' and then went away towards the forest. The informant then went to his *Dukriya (room)* where he saw in the torch light that Rohtash and his son Baleshwar were lying injured and Narendra, Mauli and Sanjay sons of Rohtash were lying dead. In the meantime, Dhan Singh came there and told him that the gang of dacoit Sriram had murdered his cousin Kartar Singh and Babu as also his son Subhash. The informant went to the police station with his injured uncle Rohtash, brother Baleshwar and Dhan Singh on the same day at about 3.10 a.m. and filed the written report, on the basis of which the case was registered as Crime No. 08 of 1997 under Sections 147, 148, 149, 302/307 IPC. The detail of the case was entered

into the G.D. as report No. 6 dated 17.01.1997.

4. The investigation of the case was handed over to the Station House Officer R.P. Gupta.

5. Investigating Officer along with S.I. Brij Mohan Singh Rana went to the place of occurrence where on the direction of the investigating officer, S.I. Brij Mohan Singh Rana conducted the inquest of the deceased persons and inquest reports were prepared by him along with other relevant papers required for the purpose of post-mortem. Dead bodies were sealed and handed over to constables Ravindra Singh and Jagpal who took them to the Mortuary. Injured Narendra was sent to the Medical College where he was declared dead and his inquest was conducted by S.I. A.K. Sharma and inquest report along with relevant papers was prepared, the dead body was sealed and sent to mortuary.

6. The post-mortems of the dead bodies of six deceased persons were conducted on 18.1.1997 by Dr. Ashok Kumar Yadav. The antemortem injuries found on the person of deceased Mauli are as under:

I. Gun shot wound entry 2 cm x 1 cm x muscle deep on front of left and upper arm, upper part connecting to wound of Exit 2 cm x 1 cm on the inner side of arm.

II- Gun shot wound of entry 2 cm x 2 cm x chest cavity on the front and outer side of left side chest. 2 cm. Medial to axillary fold connecting to wound of exit 2.1 cm x 1.5 cm on back of right side chest lower

part.

7. The antemortem injuries found on the person of the deceased Sanjay are as under:

I. Gun shot wound of entry 2 cm x 1.5 cm x brain cavity deep on left side head. 2 cm above the left ear blackening and tattooing present.

II. Gun shot wound exit 2.5 cm x 2 cm on the front right side neck 4 cm above the right clavicle bone medial and margin averted connecting to injury no. 1.

III- Gun shot wound of entry 2 cm x 1 cm x chest cavity deep on right side front and upper of chest 2 cm below the mid line joint of right clavicle connecting to wound of exit 3 cm x 3 cm on the outer aspect of right side chest 5 cm. Below axillary joint.

IV- Gun shot wound of entry 2 cm x 1.8 cm x abdomen cavity deep on back of right side abdomen lower part. 4 cm above iliac spine connecting to wound of exit. 4 cm x 4 cm on frontal abdominal upper part small and large intestine coming out.

V- Gun shot wound of entry 1.5 cm x 1 cm x muscle deep on the outer and back aspect left forearm lower part connecting to wound of exit. 2 cm x 2 cm on the inner aspect of left forearm.

8. The antemortem injuries found on the person of the deceased Babu are as under:

I. Gun shot wound entry 5 cm x 2 cm x brain cavity deep on front of nose. Blackening and tattooing present.

II. One metallic bullet recovered from brain cavity.

9. The antemortem injuries found on the person of the deceased Kartar Singh are as under:

I. Gun shot wound entry 8 cm x 8 cm x bone deep on the right side face underneath fracture of maxilla mandible bone.

II. Gun shot wound entry 3 cm x 1 cm x chest cavity deep on left site front of chest 5 cm above left nipple.

III. Gun shot wound 2 cm x 0.5 cm x muscle deep on the frontal right shoulder two metallic of pieces recovered from underneath muscle and chest.

10. The antemortem injuries found on the person of the deceased Narendra are as under:

I. Incised wound 10 cm x 5 cm x brain cavity deep on the right side head underneath bone cut brain matter.

II. Gun shot wound of entry 2 cm x 1 cm x muscle deep outer part of right shoulder.

III. Gun shot wound of exit 3 cm x 2 cm on back of right shoulder connecting to injury no. 1 margin everted.

11. The antemortem injuries found on the person of the deceased Subhash are as under:

I. Gun shot wound entry 2 cm x 1.5 cm x chest cavity deep on frontal right side chest. 4 cm away from right nipple at 3 o'clock position, one metallic bullet recovered from the chest.

12. S.I. B.N. Rana collected pieces of board, plain and blood stained soil, empty cartridges from the place of occurrence. After inspection of the place of occurrence, prepared the site plan and recorded statements of the witnesses conversant to the facts of the case. He arrested all the accused persons and submitted the charge sheets against Ganesh, Rajveer s/o Harbansh, Rajveer s/o Nathu, Shekhar, Pramod, Brijesh, Banti and Rohtash to the court concerned. Later on, the investigation was handed over to S.I. Rajendra Prasad Yadav who conducted the identification parade of accused Charan Singh, Raju and Pintu and collected evidence, filed the charge sheets against Sriram, Charan Singh, Raju and Pintoo in the court concerned.

13. Learned Chief Judicial Magistrate took cognizance of the offence and provided copies of the prosecution papers in compliance of Section 207 Cr.P.C. to the accused persons and committed the case to the Court of sessions for trial.

14. The trial court after taking into consideration the material on record, framed the charges under Sections 148, 302/149 and 307/149 IPC against all the accused/appellants.

15. Charges were read-over and explained to the

accused/appellants who pleaded not guilty, denied the charges and demanded trial. Consequently, the case was fixed for prosecution evidence.

16. In support of its case, the prosecution examined P.W.1 Ved Prakash who is the first informant; P.W.2 Rohtash; P.W. 3 Baleshwar, P.W.4 Dhan Singh, P.W. 5 H.C. Buddh Raj Singh who prepared the check report; P.W. 6 Dr. Ashok Kumar Yadav who conducted the autopsy and prepared the postmortem reports; P.W. 7 S.I. Brijmohan Rana who conducted inquest of the deceased persons and prepared inquest reports and other relevant papers; P.W. 8 constable Ravindar Singh who brought the dead bodies to the mortuary for post-mortem; P.W. 9 Mitthan Lal Jain who conducted identification parade; P.W. 10 Inspector R.P. Gupta who investigated the case and submitted charge sheet; P.W. 11 Adesh Dhankar who operated the injured Baleshwar and P.W. 12 Rajesh Prasad Yadav who conducted the investigation of the case after inspector R.P. Gupta and submitted the charge sheets.

17. On conclusion of the prosecution evidence, statements of the appellants were recorded under Section 313 Cr.P.C. wherein they had denied all the allegations made against them.

18. The defence opportunity was given to the accused persons but no evidence was adduced.

19. The learned trial court passed the order dated 21.4.1999 convicting and sentencing the appellants as aforesaid, hence this appeal.

20. Heard Sri Dharmendra Singh and Sri Akhilesh Kumar Mishra, learned Advocates for the appellants, Sri Dharmendra Singh, learned Amicus Curiae appearing on behalf of appellant Sri Ram and learned A.G.A. for the State and perused the record.

21. Learned counsel for the appellants submits that learned trial court had not made proper appreciation of evidence on record but passed the judgment and order against the established principles of law. There was no motive with the accused persons, to commit murder of the deceased persons. The incident took place in the mid of the night when identification of accused persons was not possible. There was no source of light. All the prosecution witnesses could not identify the accused but they have deposed on the basis of hearsay. There are contradictions in the statements of Prosecution Witnesses. No any public witness was present to see the incident except the relatives of the deceased whose testimony cannot be said to be reliable they being interested witnesses. Though Prosecution Witnesses had stated that accused persons had committed murder of deceased persons but no specific role had been assigned to any of the accused. In this way, the conviction as recorded by the learned trial court is not sustainable and it is to be set aside.

22. Learned A.G.A., in rebuttal, urged that though there was no personal enmity or motive with the accused against the deceased persons but there was communal rivalry between two gangs and that was the reason for the murder. At the time of incident, there was light of lantern

and lamp at the place of occurrence wherein accused persons were identified by the Witnesses, who had also sustained injuries in the same occurrence. Accused persons were well identified by the Witnesses and the contradictions in the statements of witnesses are minor which do not affect their credibility. The Prosecution Witnesses are though relatives but they are natural witnesses and injured in the same occurrence which fact prove their presence on the spot. In this way, the learned trial court has convicted the accused persons on the basis of the evidence on record and the decision cannot be said to be illegal but these appeals lack merit and are liable to be dismissed.

23. From the submissions made by the learned counsels for parties, the following questions emerge for consideration by this Court- (i) as to whether there was motive to commit murder of the deceased persons, (ii) source of light in which accused were identified, (iii) contradictions in the testimony of witnesses affecting the very root of the prosecution case and (iv) Prosecution Witnesses being relatives and interested are reliable.

24. Before we deal with the contentions of the learned counsel for the appellants, it would be convenient to take note of the evidence adduced by the prosecution.

25. P.W. 1 Ved Prakash who is informant, deposed that on the date of the incident, i.e. 16/17.1.1997 in the night, he was sleeping with his uncle Rohtash Singh in the *Varandah* where lantern was lit inside Dukdiya (a room) Mauli,

Sanjay, Narendra, Baleshwar, Vijendra were sleeping. At about 12 o'clock, Sriram and his companions came there and woke up his uncle Rohtash and told him to get the door opened. His uncle then told the informant that accused were the members of Sriram gang and he knew them. They were 12-13 in number, out of which Sriram had rifle and others were equipped with countrymade pistols and rifles. Seeing them, the informant hid under the hut on the eastern side of the place. In the meantime, he heard the sound of firing and accused persons were abusing that they had taken the revenge of '*Ikwara Kand*'. Accused persons were carrying torches and went away. Thereafter, the informant came inside where members of his family were lying dead and lamp was lit. He saw in the light of the torch that Mauli, Sanjay and Narendra were lying dead and his uncle Rohtash, brother Baleshwar both were injured. Vijendra his cousin, ran away from the gate on the eastern side and accused persons went away towards the side of the river Ganga while abusing. Thereafter, Dhan Singh came there and told that Sriram Gang had killed his cousins Kartar Singh, Babu and his son Subhash and the incident took place in the room (*baithaka*) of Kartar Singh. Dhan Singh also disclosed the names of accused persons namely, Sriram, Rajveer, Ganesh, Banti, Rajveer s/o Natthu, Shekhar, Pramod. He along with Dhan Singh, injured Rohtash and Baleshwar went to the police station by tractor where he gave the written report. P.W.1 proved the *written report* in his handwriting and signature as Ext. Ka-1. P.W.1 further stated that police went to his village with him and seeing

that Narendra was breathing, took him to the hospital. Police prepared *the memos* relating to torch, lantern & lamp and handed over to him after taking his signature on the memo which he proved as Exhibit- 1, 2 & 3.

This witness was cross-examined by the defence at length wherein he asserted the facts stated before. Nothing adverse to the prosecution could come out in his cross-examination.

26. P.W. 2 Rohtash, an injured witness, deposed that there was dispute between Sriram Harijan and Karodi Gurjar wherein several people were murdered from both sides. On 5.1.1997, Karodi committed murder of six Harijans in the forest of *Ikwara*. On 16/17.1.1997, in the night at about 12 o'clock, He and his nephew Ved Prakash were sleeping in the *Varandah*. In the meantime, Sriram, Ganesh, Rajveer, Banti, Pramod, Shekhar, Rajveer s/o Natthu Alipur Morna Wala and 4-5 other persons to whom he knew came there. Sriram had rifle and other six persons had pistols. Lantern was lit where he was sleeping up in the light of which he had identified aforesaid seven persons. Sriram woke up him and asked to get the door of *dukdiya* opened at which he made a call to his sons. Those who were sleeping inside were named as, Mauli, Vijendra, Baleshwar, Narendra and Sanjay when the door was opened all the accused persons took P.W.2 also inside where they started firing causing injuries to Sanjay, Mauli and Narendra. He thought that all the three persons dead but Narendra did not die and Baleshwar also sustained fire arm injuries. Vijendra ran away and did not sustain any

injury. P.W.2 himself also sustained fire arm injury on his hand which was caused from the distance of 2½ -3 feet. Thereafter, accused persons came out abusing Gurjar community. Sriram said that he took revenge of *Ikwara Kand* and the accused then went to the house of Kartar where they made fires causing injuries to Kartar, Babu and Subhash who had died on the spot from where Dhan Singh escaped and came to him and told about the incident. Later on the assailants went towards the Jungal. The report regarding the incident was lodged by his nephew Ved Prakash (P.W.1) then P.W.2 was brought by the police to Meerut for medical examination. Narendra whom he knew to be dead was also brought to Meerut by Dhan Singh for treatment where he had died as a result of fire arm injury in the Medical College, Meerut.

This witness was also subjected to lengthy cross-examination by the learned counsel for defence wherein he had asserted the facts stated before and no contradicting fact could be brought in his cross examination may affect the credibility of this witness.

27. P.W.3 Baleshwar deposed that prior to the alleged incident, gangs of Sriram and Khaleel of Bastaura were active. There was struggle between both the gangs and they committed murders of people from both sides. In the meantime, gang of Karodi became active and there were strained relations between Sriram and Karodi who had committed murders of six Harijans by cutting their throats on 5.1.1997. Sriram was shocked and on 16/17.1.1997, he along with his companions Ganesh, Rajveer, Pramod,

Shekhar, Bhagwandas, bastaura ka Banti, Rohtas and Rajveer s/o Natthu came to their house. Four other persons who were with them were not known to him. At that time, he, P.W.3. his elder brother Mauli, younger brother Narendra, youngest brother Sanjay were sleeping inside the room and Vijendra was also with them. His father Rohtash and cousin Ved Prakash were sleeping in the *Varandah* outside the room. At about 12 o'clock in the night, his father called him to open the door at which he opened the latch. As soon as he opened the latch, Sriram and his companions came inside the room and started firing. Vijendra ran away from the spot. Mauli, Sanjay and Narendra were shot, out of which Sanjay, Mauli had died on the spot but Narendra was breathing. He (P.W.3.) himself sustained fire-arm injuries and fell down and while lying down he identified all the accused persons, who were wearing police dress. He (P.W.3) saw the accused persons in the light of lamp lit in the room, they were known to him from before as they used to visit in the village, from before. The houses of Harijans. He and his father sustained injuries in the incident, thereafter, gang of Sriram and his companion went to the house of Kartar which was situated at a distance of 15-20 steps from his house. P.W.3 classified that sounds of firing came from the house of Kartar Singh and on the basis of which he stated that Sriram and others went there. Kartar, Babu and Subhash s/o Dhan Singh were murdered but Dhan Singh escaped and came there and narrated the incident to his father. Thereafter he (P.W.3) was brought to Hashtinapur in unconscious state. He was brought to P.L.

Sharma Hospital in a jeep of police from Hashtinapur and then Lokpriya Hospital where he was treated. He sustained fire arm injury on his temple, right shoulder and left thigh. Prior to this incident, Sriram used to meet the people belonging to Gurjar caste but since Karodi committed murder of Harijans, he became opposed to 'Gurjar' caste.

This witness was also subjected to lengthy cross-examination but nothing adverse could be brought out. This witness categorically asserted the involvement of the appellants in the incident.

28. P.W. 4 Dhan Singh deposed that he lived in Hashtinapur. He was ordinary resident of Bhikund where his agricultural land was situated. On 16.1.1997 he, along with his son Subhash went to Bhikund for managing his agriculture field. Being late in the evening, he and his son stayed in the village at the Chaupal of his cousins Kartar Singh and Babu. He and Babu were lying asleep in *Varandah* and his son Subhash was sleeping inside the room behind the window. In the night at about 12.15 p.m., he woke up with the sounds of firing from the side of Rohtash, and heard the noise that we took revenge of *Ikwara Kand* and killed Gurjars. As he heard the noise, he hid himself in the room for buffalo and in the meantime, accused persons came near the cot of Kartar and Babu. There was lantern placed on the window in the light of which he had identified the accused persons as Rajveer, Ganesh, Rohtash, Sriram, Banti, Shekhar, Pramod and Rajveer. There were 4-5 other persons whom he could identify with face but they were not known to him from

before. P.W.4 also identified the aforesaid named eight accused persons in the Court. P.W.4 stated that the accused persons made fires at Kartar, Babu, then at Subhash. All the three persons had died on the spot. He saw the accused persons while making fires at the deceased. The place where he was hiding the cots of Kartar and Babu were visible and also the place where Subhash was lying asleep as window into the door was fitted. Karodi Gurjar had committed *Ikwara Kand* prior to the present occurrence wherein Harijans (chamar) were killed and on account of which, the accused persons had attacked on them being 'Gurjars'. The accused went towards the Jungle on the side of the river Ganga while abusing Gurjars. When the accused were going back, he threw light with his torch on which they cried that someone had been left and thereafter they fled away. He went to the house of Rohtash where he met the injured Rohtash who was weeping and saying that his three sons were killed and also he and his son Baleshwar were injured. P.W.4 stated that he told Ved Prakash that the accused persons had also killed his son Subhash, cousins Kartar and Babu. Thereafter taking the injured Rohtash and Baleshwar in a tractor-*Buggi* they went to the police station Hashtinapur. On the way, he got off the tractor and went to inform his father and wife. His house was located at Ramleela Ground Hashtinapur. Information was given by Rohtash (P.W.2) at the police station and the report was given by Ved Prakash (P.W.2). After giving information in his house, P.W.3 again went back to the village Bhikund at about 4.30 o'clock. He further deposed that he went to the

Jail, Meerut for identifying the accused persons in the identification parade and identified the accused namely Charan Singh and Raju. He saw them at the place of the occurrence and from then till the time of identification, he never saw those two accused persons. P.W.4 also identified accused Charan Singh in the court.

This witness was also subjected to lengthy cross-examination wherein he categorically reiterated the facts stated before.

29. P.W.5 H.C. Bachchhraj Singh deposed that he was posted as the head constable at the police station on 16.1.1997 and lodged the F.I.R. as Crime No. 08 of 1997 under Sections 147, 148, 149, 302, 307 IPC on the basis of the written report. He proved the check F.I.R. in his hand-writing and signature as Ext. Ka-3 and G.D. entry as Ext. Ka-4.

30. P.W. 6 Dr. Ashok Kumar Yadav who conducted the postmortem of dead bodies of the deceased persons deposed that on 18.1.1997, he was posted at Pyare Lal Sharma hospital, Meerut where he conducted the postmortem of deceased Mauli, Sanjay, Babu, Subhash, Kartar Singh, Narendra and prepared postmortem reports describing the injuries on their persons in his hand-writing and signature and proved them as Ext. Ka-5 to 10.

31. P.W. 7 Brij Mohan Rana deposed that, on 17.1.1997, he was posted at the police station Hashtinapur as S.I. and on that day, Crime No. 08 of 1997 under Sections 147, 148, 149, 302, 307 IPC was registered. The

investigation of which was handed over to Station Officer R.P. Gupta with whom he also went to the place of occurrence and conducted inquest of the deceased persons on the direction of the Investigating Officer and also prepared the inquest reports and other relevant papers for postmortem in his hand-writing and signature which he proved as Ext. Ka-11 to 35. P.W.7 further deposed that the inquest of the deceased Narendra was conducted by S.I. A.K. Sharma who prepared the inquest report with relevant papers for postmortem, which he also proved as Ext. Ka-35 to 40 recognising the hand-writing of S.I. A.K. Singh. P.W.7 proved the recovery memos relating to the samples of cushion, blood stained and plain soil, empty cartridges, blood stained quilt, bedsheet taken from the place of occurrence as Ext. Ka-41-51 and also proved the sealed bundles of articles taken into possession from the place of occurrence as Material Ext. 1 to 28.

32. P.W. 8 Constable Ravindra Singh deposed that he was posted as constable at P.S. Hashtinapur on 17.1.1997 and he along with constable Jagpal was handed over the sealed dead bodies of the deceased persons to carry them for postmortem. He took the sealed dead bodies with papers for postmortem. After postmortem, he handed over the bodies to the members of their family.

33. P.W. 9 Mitthan Lal Jain, Special Executive Magistrate deposed that on 2.6.1997 he conducted the identification parade of accused Charan Singh in the District Jail, Meerut and prepared identification memo in his hand-writing and signature as Ext. Ka-52. He further deposed that on

12.3.1997 he conducted the identification parade relating to the accused Pintu and Raju and prepared the identification memo in his hand-writing and signature which he proved as Ext. ka-53.

34. P.W.10 Inspector R.P. Gupta who investigated the case deposed that, on 17.1.1997, he was posted as the Station Officer at Police Station Hashtinapur. On that day, Crime No. 08 of 1997 under Sections 147, 148, 149, 302, 307 IPC was registered on the basis of the written report given rendered by the informant Ved Prakash and the investigation was handed over to him. During investigation, he visited the place of occurrence, after copying the report and F.I.R. in the case diary he recorded the statements of the informant and eye witness Dhan Singh, instructed S.I. V.M. Rana to conduct the inquest of the deceased persons. He also inspected the spot and prepared the site plan in his hand-writing and signature which he proved as Ext. Ka-54. P.W.10 further deposed that he also prepared the memo relating to lantern and torch in his hand-writing and signature which he proved as Ext. Ka-55. He made arrests of the accused persons and recorded statements of other witnesses relating to the incident and after concluding the investigation, submitted the charge sheet in his hand-writing and signature against accused Sriram, Ganesh, Rajveer s/o Harbans, Rajveer s/o Natthu, Shekhar, Pramod, Vijendra @ Banti and Rohtash which he proved as Ext. Ka-56. He also proved the test reports obtained from F.S.L. Agra as Ext. Ka-57 to 63.

35. P.W. 11 Dr. Adesh Dhankar deposed that he was

posted as the Plastic Surgeon in Lokpriya Hospital on 17.1.1997. He conducted operation of injured Baleshwar and recovered a bullet from below his eye regarding which he had prepared the report in his hand-writing and signature and proved as Ext. Ka-64.

36. P.W. 12 S.I. Rajendra Prasad Yadav deposed that, on 17.1.1997, he was posted at P.S. Hashtinapur and Crime No. 8 of 1997 under Sections 147, 148, 149, 302, 307 IPC was investigated by Station Officer R.P. Gupta after whose transfer the investigation was handed over to him. He made arrests of the accused Sriram, Charan Singh and Raju and submitted charge sheets against them in his hand-writing and signature which he proved as Ext. Ka-65 to 67.

37. Now, we are required to consider the testimony of witnesses of fact as to whether they are reliable and trustworthy. P.Ws. 1 to 4 are witnesses of fact. P.W.1 Ved Prakash, P.W. 2 Rohtash and P.W.3 Baleshwar were lying asleep in one place, which was the house of Rohtash. All these witnesses were present on the spot at the time of the incident and saw the accused-appellants in the light of lantern and lamp which was lit up. There in the *varandah* and also the room where deceased Mauli, Sanjay and Narendra were sleeping with P.W. 3 Baleshwar, who also sustained gunshot injuries on his person. P.W.2 Rohtash also sustained injuries in the same occurrence. P.W. 1 stated that the names of the accused appellants were disclosed to him by P.W.2 Rohtash who had identified them. P.W.3 Baleshwar also identified the accused-

appellants on his own. P.W.4 Dhan Singh was lying asleep in the house of his cousins Kartar Singh and Babu where his deceased son Subhash were also asleep. The accused-appellants who by making fires had killed three persons in the house of the deceased were identified by P.W.4 Dhan Singh in the light of lantern. The cause of murders was revenge of *Ikwara Kand* wherein six Harijans were done to death by cutting their throats by the gang of Karodi Gurjars who was opponent to Sri Ram gang, by causing six murders of Gurjars were killed in the present incident. P.W.1 and P.W.3 heard the appellants uttering the words at the time of occurrence that they took the revenge of *Ikwara Kand*.

38. Learned counsel for appellants argued that there are contradictions in the statements of the prosecution witnesses which make them unreliable. In this regard, it is to note that P.Ws. 1 to 4 have been subjected to lengthy cross-examination which was done in several parts and after a year from the incident wherein six persons were murdered. In such a situation, it cannot be expected from the witnesses that they would remember each and every event without any slip particularly where the witnesses are villagers and unaware to the tricks of wise counsels and their style of putting questions before them. In spite of this, all the witnesses had answered the questions as they remembered. Though there are some minor variations relating to some facts but those variations are not of such nature that can be said to make their testimony unbelievable. There appears to be no exaggeration in the

statements of four witnesses they had narrated the incident in a natural way as it had happened. There is no contradiction or variation regarding identification of the accused persons involved in the incident. The contradictions and variations in the testimony of witnesses are natural and of cosmetic nature which cannot affect the very root of the case and, therefore, negligible. It is well settled in law that minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission, to be given undue importance.

39. The learned counsel for the appellants also drew the attention of the Court towards the absence of personal motive to commit the murder. He urged that the prosecution had failed to prove motive on the part of the appellants to commit the crime.

40. In this regard, it is fairly well settled that while motive does not have major role to play in cases based on eye witness account of the incident, it assumes significance in cases that rest on circumstantial evidence. There is no such principle or rule of law that where the prosecution fails to prove motive for commission of the crime, it must necessarily result in acquittal of the accused. Where ocular evidence is found to be trustworthy and reliable and finds corroboration from the medical evidence, a finding of guilt can safely be recorded even if the motive for the commission of crime has not been

proved.

41. In ***State of Himachal Pradesh Vs. Jeet Singh 1999 (38) ACC 550 SC***, it was held that no doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no offence was committed if the prosecution failed to prove the precise motive of the accused to commit it as it is almost an impossibility for the prosecution to unravel full dimension of the mental disposition of an offender towards the person whom he offended.

42. This Court has also made such observations in the case of ***Rameshwar and others vs. State 2003 (46) ACC 581*** that when there is direct evidence, the motive was not important. Likewise in the case of ***State of Haryana vs. Sher Singh and others 1981 Cr. Ruling 317 SC*** it has been held that the prosecution is not bound to prove the motive, more so, when crime is proved by direct evidence.

43. In the case at hand, it has been stated by the prosecution witnesses that there was rivalry between Sri Ram Gang and Karori Gurjar Gang. Karori Gurjar committed murder of six harijans by cutting their throats in Ikwara jungle which shocked Sri Ram and he also promised to take revenge. In pursuance thereto he committed six murders of six Gurjars in the present incident. The witnesses (P.W.1 and P.W.3) categorically stated that they heard the cries that the appellants took revenge of *Ikwara Kand*. In this way, there was communal

rivalry which became the main cause of the commission of this massacre though there was no individual grudge with the deceased persons. Where there is communal rivalry, no one thinks about individual interest of others but to show their power or feeling of revenge, they commit such incident based on the particular community or caste. The present incidents was also committed by the accused persons with the view to take revenge for their community.

44. It has also been argued that the incident took place in the mid night and all the accused persons were equipped with firearms, therefore, it was not possible for the witnesses to identify them. In this regard, PW.1 and PW.2 have categorically stated that they were sleeping in the veranda where lantern was lit and PW.3 was sleeping in the room (Dukaria) where lamp was lit. In the light of lantern and lamp, the witnesses had identified the accused persons. PW.2 Rohtash was woken up by the accused persons and told to get the door opened. He called his sons who opened the door of the room from inside, where PW.3 Baleshwar was also sleeping with his other brothers. Since there was light of lantern and lamp and there was conversation between PW.2 with the assailants, therefore, PW.2 had sufficient opportunity for identifying the accused persons. It cannot be said that on account of darkness, he could not identify them. Likewise, PW.3 Baleshwar who was also inside the room where his other three brothers were shot dead and he himself was injured, had all the opportunity to identify the accused persons. It has also

been stated by the witnesses that the accused persons used to come to their village, so they were known to them. Sri Ram used to come in the house of Gurjars in the village but got annoyed with the incident wherein Karori Gurjar Gang committed murder of six Harijans in the jungle of Ekwara by cutting their throats. PW.4 Dhan Singh was also sleeping in the *verandah* of house of Kartar Singh. When he saw the accused persons coming towards his house and heard their utterance that they had taken revenge of *Ekwara Kand*, he hid himself in the room where buffalos were kept and saw the accused persons in the light of lantern placed at the open window. Even during the cross-examination of these witnesses nothing could be brought on record so as to make the identification of accused persons doubtful. In this way, there is no any doubt in the identification of accused persons by the Prosecution Witnesses.

45. Regarding the accused/appellant Rohtash, it has been argued by the learned counsel the appellant that PWs.1 & 2 had not named him as an accused, except P.W.3, therefore, his involvement cannot be said to be proved. It is true that the name of Rohtash was not mentioned in F.I.R. which was lodged by P.W.1 Ved Prakash. P.W.2 also did not name him. P.W.3 Baleshwar, however, had named him to be a member of the gang. PW.3 is an injured witness and he was within the room where his three brothers were murdered. His account about the incident cannot be brushed away. Likewise PW.4 Dhan Singh also stated about his involvement of appellant Rohtash in the

incident. In this way, according to eye-witness account of injured witness PW.3 and PW.4, the involvement of accused/appellant Rohtash is also proved. There is nothing on record to show that his involvement is doubtful.

46. From PW-1 to 4, all are related to each other and also to the deceased persons regarding which the argument had been made that all these witnesses being relatives and highly interested, are not reliable in the lack of account of an independent witnesses in support of their case. No doubt the prosecution witnesses from PW-1 to 3 relating to the fact as examined in the case are members of the same family. P.W. 1 Ved Prakash is nephew of P.W. 2 Rohtash and P.W. 3 is son of P.W. 2 who is also father of deceased Mauli, Sanjay and Narendra. Likewise, P.W.4 Dhan Singh is father of deceased Subhash. Thus, all of them are related to the deceased persons but their relationship itself is not a ground to reject the testimony of the witnesses, rather a family member would be last person to leave the real culprits and falsely implicate any other innocent person.

47. In this case, the incident took place in the mid of night in the houses of Rohtash and of deceased Kartar Singh where Dhan Singh (P.W.4) and his son Subhash were sleeping. At that time, presence of other persons of the village was not be possible. Except the family members, no one else could be the natural witnesses of the incident.

48. In the case of **Brahm Swaroop and another vs.**

State of U.P. (2011) 6 SCC 288 the Apex Court in Para No.21 has observed as under

"merely because the witnesses were related to the deceased persons, their testimonies cannot be discarded. Their relationship to one of the parties is not a factor that affects the credibility of a witness, more so, a relation would not conceal the real culprit and make allegations against an innocent person. A party has to lay down a factual foundation and prove by leading impeccable evidence in respect of its false implication. However, in such cases the Court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible evidence."

49. The Court also referred cases of ***Dalip and others vs. State of Punjab A.I.R. (1953) SC 364; Masalti vs. State of U.P. (A.I.R.) 1965 SC 202.***

50. In ***Masalti vs. State of U.P. A.I.R. 1965 SC 202,*** the Apex Court observed in Para No.14

"but it would, we think, be unreasonably 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 sole ground that it's 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's partisan cannot be accepted as correct.

51. It is common knowledge that village (*mohalla*) life is faction ridden and involvement of one or the other in the incidents is not unusual. One has also to be cautious about the fact that wholly independent witnesses are seldom available or are otherwise not inclined to come forth. Lest they may invite trouble for themselves for future. Therefore, relationship of eye-witnesses inter se, cannot

be a ground to discard their testimony. There is no reason to suppose the false implication of the appellants at the instance of the eye-witnesses. It would also be illogical to think that witnesses would screen the real culprits and substitute the appellants for them.

52. This Court has also made such observations in Para No.14 of ***Rameshwar and others vs. State 2003 (46) ACC 581.***

53. It is pertinent to note that PW-2 Rohtash and PW-3 Baleshwar are injured witnesses and their presence on the place of occurrence cannot be disputed. It can also not be said that they would conceal the names of real assailants and implicate the false ones.

54. It is a settled law that testimony of injured witness is considered to be very reliable and is accorded a special status in law. The statement of an injured witness is generally considered to be very reliable and it is unlikely that he has spared the actual assailants in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. There must be convincing evidence on record to discredit the testimony of an injured witness.

55. In the case of ***State of U.P. v. Naresh & Ors. (2011) 4 SCC 324,*** it was held that the evidence of an injured witness cannot be doubted merely because there is a background of previous dispute or enmity between the

parties because this could well be the motive of causing assault by the accused on injured witnesses. The evidence of an injured witness has to be appreciated keeping in view that ordinarily a person, who has been assaulted by someone would not allow him to go scot free and falsely implicate persons other than those who actually assaulted him. The evidence of an injured witness stand on different pedestal as compared to any other witness cited by the prosecution as eye witness, who claims to have seen the incident. Where an injured witness clearly named the persons and the assault made on him by those persons which is broadly corroborated with what has been found in the medical report, even though there may not be any mathematical precision with regard to the manner of assault, the evidence of an injured eye witness cannot be lightly thrown because of certain minor contradictions and omissions. It cannot be a case of some exaggeration or it could even be some discrepancy in recollecting the whole incident with exactitude and certainty but on certain minor discrepancy disbelieving altogether the testimony of an injured eye witness, would be against the settled principle of appreciation of evidence.

56. In the case of ***Bhajan Singh Vs. State of Haryana (2011) 7 SCC 421*** it was observed that in Para No.21 :-

21. The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time

and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide: Abdul Sayeed v. State of Madhya Pradesh (2010) 10 SCC 259; Kailas & Ors. v. State of Maharashtra (2011) 1 SCC 793; Durbal v. State of Uttar Pradesh, (2011) 2 SCC 676; and State of U.P. v. Naresh & Ors., (2011) 4 SCC.

57. Therefore, in the light of law reproduced as above and applying the same to the facts of the present case, it can be categorically stated that the testimony of the injured witnesses in the present case is absolutely clear and cogent and free from any kind of discrepancies, embellishments and concoctions. Thus, no ground is made out for brushing aside the testimony of the injured witnesses. There are no grounds for rejection of the evidence of PW-2 and PW-3 as discussed above unless and until there are no major contradictions and discrepancies in the testimony of injured witnesses, there arises no reason for either doubting their presence at the spot of incident or for that matter questioning the injuries suffered by them. Moreover, in the case at hand, the testimony of PW-2 and PW-3 is not only firm, cogent and convincing but is also in consonance with the medical evidence on record.

58. Injuries on the person of deceased Mauli, Sanjay, Naredra, Kartar, Babu and Subhash were caused by fire

arms as stated by P.Ws. 1 to 4. Ext. Ka-5 to 10 are the postmortem reports wherein gun shot injuries were found on the persons of the deceased and P.W. 6 Dr. Ashok Kumar Yadav had proved the injuries and stated that except deceased Narendra, all the deceased persons had died due to fire arm injuries and the death of Narendra was caused as a result of injuries caused with sharp edged weapon like farsa. He also stated that the death of all the deceased persons was possible in the mid night at about 12 o'clock on 16/17.1.1997. It is noteworthy that in postmortem of the deceased Narendra, an incised wound was found on his head and one entry and exit wound was also found on the upper part of the right shoulder which was caused by fire arm. During his cross-examination, nothing has been stated by the witness (P.W.6) as to infer that the injuries as aforesaid were not caused by fire arms and at about the aforesaid time. In this way, the injuries on the body of the deceased persons are proved to have been caused by fire arms in the night at about 12 o'clock on 16/17.1.1997 and it also corroborate the manner of causing injuries resulting into death as stated by P.Ws. 1 to 4. In this way, the eye witness account finds support with the medical evidence available on record.

59. The incident is said to have taken place in the house of Rohtash and Kartar. In the site plan Ext. Ka-54, the place of occurrence has been shown to be the house of Rohtash and Kartar. Blood was also found there. The investigating Officer S.I. R.P. Gupta had proved the site plans and no question relating to the place of occurrence

was put to him during his cross-examination. Blood stained and plain soil were collected from those places by the Investigating Officer regarding which the reports were obtained from F.S.L. which are on record as Ext. Ka-57 to 63, and thus indicate that the samples as positive.

60. P.Ws. 1 to 4 also stated about the place of occurrence being the house of Rohtash and Kartar, thus the place of occurrence stood proved and no dispute in this regard could be raised by the learned counsel for the appellants.

61. There is no delay in lodging the F.I.R., occurrence took place at about 12 o'clock in the night of 16/17.1.1997 and the F.I.R. was lodged at 3.10 am on 17.1.1997 after three hours and ten minutes of the incident. The distance between the place of occurrence and the police station was 7 km. The time gap of three hours in lodging the F.I.R. cannot be treated to be a delay. In such a situation, where six persons were gunned down and others were injured and the incident took place in the mid night the time taken by the witnesses to reach at the police station and lodge F.I.R is justifiable. The F.I.R. was thus, prompt which does not leave room for any doubt or deliberations.

62. There is not even an iota of evidence on record which could suggest that PW-1 to PW-4 had any other grudge against the appellants in any case to implicate them falsely.

63. To sum up, we do not find any major contradiction either in the evidence of the P.Ws. 1 to 4 or conflict in the

medical and ocular evidence of P.Ws. 1 to 4 which would tilt the balance in favour of the appellants. The minor improvements, embellishments etc, apart from being for yield of human faculties are insignificant and ought to be ignored since the evidence of the witnesses otherwise overwhelmingly corroborate each other in the material particulars. The testimony of P.Ws. 1 to 4 gets support with the medical as well as other evidence on record. The method, time and manner of causing death, the weapon used, the place of occurrence and promptness in lodging the F.I.R., all these factors corroborate the ocular testimony of the prosecution witnesses. The presence of witnesses on the spot cannot be said to be doubtful, as a result of the evidence of P.Ws. 1 to 4 Ved Prakash, Rohtash, Baleshwar and Dhan Singh being wholly reliable and trustworthy.

64. Having regard to the evidence on record, we are of the opinion that the trial court has correctly analyzed the material on record in the factual as well as legal perspectives to arrive at its conclusion. The judgment and order of conviction and sentence passed by the learned Sessions Judge, Meerut stands intact and is hereby affirmed. The appeals filed by the appellants being devoid of merit are liable to be dismissed.

65. These appeals are hereby ***dismissed***.

66. The appellants are in jail, they will serve out the remaining period of sentence.

67. Copy of this judgment alongwith the original record

be transmitted to the Court concerned for necessary compliance. A compliance report be sent to this Court within one month. The office is directed to keep the compliance report on record.

68. Sri Dharmendra Singh, learned Amicus Curiae rendered valuable assistance to the Court. The Court quantifies Rs.15,000/- to be paid to Sri Dharmendra Singh, Advocate towards fee for the able assistance provided by him in hearing of this Criminal Appeal. The said payment shall be made to Sri Dharmendra Singh Advocate by the Registry of the Court within the shortest possible time.

Order Date :- 30th September, 2022

A. Singh

(Subhash Chandra Sharma,J.) (Sunita Agarwal,J.)