

**A.F.R.**

**Judgement Reserved On 23.07.2019**

**Judgement Delivered On 22.10.2019**

**Court No. 46**

**Case :- CRIMINAL APPEAL No. - 2963 of 2009**

**Appellant :-** Hasam And Another

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

**Counsel for Appellant :-** Sushil Kumar Pandey, Abhinav Singh, Anil Raghav, Brijesh Sahai, Nazrul Islam Jafri, Veer Singh

**Counsel for Respondent :-** Govt. Advocate, Bakhtyar Yusuf

**Hon'ble Naheed Ara Moonis, J.**

**Hon'ble Anil Kumar-IX, J.**

**(Delivered by Anil Kumar-IX, J.)**

This appeal has been filed against the judgment and order dated 23.04.2009 passed by Additional Sessions Judge Court No. 9, Muzaffarnagar in Sessions Trial No. 405 of 2005 (State of Uttar Pradesh Vs. Hasam and another) arising out of Case Crime No. 06 of 2005 under Section 302 Indian Penal Code (here-in-after referred to as "I.P.C."), Police Station- Chhapar, District- Muzaffarnagar whereby both the appellants Hasam and Nazam have been convicted and sentenced to imprisonment for life with a fine of Rs. 10,000/- under Section 302 I.P.C. with default stipulation.

The prosecution case in brief is that the informant Mohabbat Ali has lodged F.I.R. on 16.01.2005 at 05:15 p.m. at police station- Chhapar, District- Muzaffarnagar

alleging therein that on 16.01.2005 he along with Haneef, Aladeen and his brother Ajaz (deceased) were taking off peels of the sugarcane in the field of Ajaz. At about 4:30 p.m. both the accused Hasam and Nazam came there with Tamancha (country made pistol) in their hands and said that Ajaz was the pairokar of civil case pending in the court, he must not be spared alive. Both the assailants fired with their respective weapons on Ajaz (brother of the informant) who received fire arm injuries on right side back and left eye and died on the spot. The entry was made in G.D. of police station as Report No. 24 at 17:15 hrs. on 16.01.2005 and investigation was taken up by PW-4 Virendra Singh the then posted as Station Officer at police station Chhapar.

After the registration of the F.I.R. at police station, Investigating Officer proceeded to the spot with necessary relevant papers and started investigation of the case. He directed Sub-Inspector Prem Prakash Giri (PW-5) to conduct the inquest of the deceased on spot. The inquest proceeding commenced at 6:30 p.m. and completed at 8:30 p.m. on 16.01.2005. Inquest report is exhibit Ka-6. In the inquest report opinion was expressed unanimously that deadbody be sent for postmortem examination so that cause of death could be ascertained properly. In the process certain relevant papers were prepared by PW-5 and he has prepared inquest report, photo nash exhibit Ka-7. Letter to R.I. exhibit Ka-8, letter to C.M.O. exhibit Ka-9. After conducting inquest and observing necessary formalities,

the deadbody was entrusted to two constables Udai Veer Singh and Harpal Singh for postmortem examination.

Thereafter postmortem examination of the deadbody of Ajaz was conducted by Dr. Rajesh Singh PW-3 at 2:40 p.m. on 17.01.2005 at district hospital Muzaffarnagar. Postmortem report is exhibit Ka-2. According to the postmortem report doctor has found following ante-mortem injuries on the deadbody of the deceased:-

(i) Firearm entry wound size 1.5 cm X ½ cm on left eye-brow margins are inverted an area of blackening 07cm X 5.5 cm on left front forehead.

(ii) Exit wound- Size 2.5 cm X 1.5 cm on just below the left mandible 2.5 cm from left ear. Margins are everted and irregular edges. Injury no. 1 is corresponding to injury no. 2 i.e. wound of exit. The path is communicating from injury no. 1 to no. 2 maxillary bone upper side fracture present.

(iii) Firearm injury size 4.5 cm X 3 cm on Rt. Side of back of chest, 5 cm below from scapula & 16 cm from midline (vertebral column) wound margins are inverted and lacerated the wound is extended inner right & left lung and to ascending aorta 7<sup>th</sup> & 8<sup>th</sup> right ribs are fractured. Pellets recovered from both lungs.

Doctor opined that the duration of death was approximately one day old and cause of death is due to ante-mortem firearm injuries on the vital organs.

At the time of occurrence PW-4 Virendra Singh was posted as Station Officer of police station Chhapar, Muzaffarnagar. In his presence, F.I.R. of the Case Crime No. 06/2005 under Section 302 I.P.C. was registered on the basis of the written report of the complainant Mohabbat Ali, brother of deceased. Investigation of the case was taken up by PW-4 Virendra Singh. He directed to Sub-Inspector Prem Prakash Giri PW-5 to conduct and prepare the inquest report in dragon light and petromax. He has recorded statement under Section 161 Cr.P.C. of the complainant Mohabbat Ali and eye witness Haneef. On 17.01.2005, he has recorded statement of the witnesses of the inquest and eye witness Aladeen. He inspected the spot on the pointing of complainant and prepared site plan which is exhibit as Ka-3. On 22.01.2005 at 8:40 a.m. he arrested both the accused Hasam and Nazam near the Kabristan on Basera Madak Road. He recovered one Tamancha 315 bore and one live cartridge from the possession of accused Hasam and one Tamancha 12 bore, two live cartridges from the possession of Nazam. Against Hasam and Nazam cases were registered under the Arms Act as Case Crime No. 16 of 2005 & Case Crime No. 17 of 2005 under section 25/27 Arms Act respectively. He sent the recovered firearms to Forensic Science Laboratory, Agra for examination. He recorded the statement of Sub-Inspector Prem Prakash Giri, Constable Harpal Singh and Udaiveer Singh. After investigation he has submitted charge-sheet against both the appellants Hasam and Nazam in aforesaid crime no. ;6 of 2005

under aforesaid section 302 I.P.C. Charge-sheet is marked as exhibit Ka- 5.

In the process, case of both the accused was committed to court of sessions where the Case Crime No. 6 of 2005 under section 302 IPC was numbered as Sessions Trial No. 405 of 2005. It will be proper to mention here that separate sessions trial under Section 25 Arms Act were registered as Sessions Trial No. 672 of 2005 and Sessions Trial No. 673 of 2005 against each of the accused person for the recovery of firearms from them. The trial was entrusted to the court of Additional Sessions Judge, Court No. 9 Muzaffarnagar. The trial of cases under Section 25/27 Arms Act were also proceeded and decided with the trial of this case resulting into acquittal of the accused appellants from the charges of section 25 Arms Act.

The trial court after hearing the prosecution as well as defence and perusing the material available on record framed the charges against the accused-appellants under section 302 IPC. The charges framed against them were read over and explained to them. The accused appellants abjured the guilt and claimed to be tried. Thus prosecution was directed to produce all its testimonies by which it proposes to prove guilt of the accused person. The prosecution has examined as many as seven witnesses, the brief sketch of these witnesses is as here-under:-

The prosecution had examined informant Mohabbat Ali (P.W.1), Aladeen (P.W.2) as eye witness, Dr. Rajesh Singh (P.W.3), S.H.O.Virendra Singh (P.W.4), Sub-inspector Prem Prakash Giri (P.W.5) , constable Virendra Kumar P.W 6 , Sub-inspector and Harpal Singh (P.W.7) as formal witnesses.

After conclusion of the prosecution evidence, the accused appellants namely Hasam and Nazam were examined under Section 313 Cr.P.C.In their statement they denied all the charges attributed against them and pleaded for innocence. They stated that they have been falsely implicated in the present case due to animosity. They demanded opportunity to produce evidence in defence. They produced Rishipal Singh Radio Station Officer as D.W.1.

The prosecution in order to corroborate its stand examined Mohabbat Ali (P.W.1) on 1.2.2006. who is the brother of deceased and the complainant eye witnesses of the incident . He deposed that he is well acquainted with the accused appellants Hasam and Nazam. The accused appellants are belonging to his village and are his neighbours. He is also knowing to deceased Ajaz who was his real younger brother. The occurrence had taken place on 16.1.2005 at about 4 to 4.30 p.m. He in association with Haneef, Aladeen (PW-2) and his brother Ajaz ( now deceased) were peeling sugarcane in the field. At that place, the accused persons namely Hasam and Nazam came at around 4 to

4-30 p.m. and on reaching at that place they exposed that Ajaz was doing the pairvi of cases in the civil court hence today they shall not spare him. Both the accused persons namely Hasam and Nazam were equipped with country made pistol. They fired at Ajaz, the brother of the complainant. The first fire hit at the right side chest and the second fire hit on his left eye as a result of which he succumbed to injuries on the spot. Thereafter accused persons fled from the spot unleashing reign of terror by extending threats and hurling abusive and vituperative words. P.W.1 Mohabbat Ali immediately rushed at the police chawki. It was informed by the personnel posted at the police chowki to get the first information report registered at the police station. The first informant got the report written sitting at the house by his nephew Hakim Ali. The report was written verbatim by Hakim Ali at the dictate of the complainant. The report was heard by him on the recital of Hakim Ali. Thereafter the written report was handed over at the police station concerned. P.W.1 Mohabbat Ali had identified the writing and signature of Hakim Ali. He had seen him reading and writing. The paper no.5 was read to P.W.1 Mohabbat Ali. He proved that it was the same report which was got written by Hakim Ali and was handed over at the police station concerned. The said written report was marked as Ext.Ka.1.

P.W.1 Mohabbat Ali divulged that his house and the house of accused persons are situated in the same vicinity. Prior to 5 to 6 months of the incident, there was rift between the complainant and the accused persons on the issue of exit of water. The said issue was pacified on the intervention of some dignified persons of the locality. He had acquiesced proposal put forth by the persons of the locality and was satisfied but the accused persons were nurturing animus and grudge against him. On account of former animosity, the accused persons namely Hasam and Nazam had done to death his brother Ajaz by firing upon him.

In cross examination he unravelled that Hakim Ali is practicing in civil court at Muzaffrar Nagar who is standing behind him. The sun had set on after one hour of the incident. The police personnel had come at the spot after enshrouding of sun. He could not ascertain as to whether the police personnel who came on the spot were hailing to Basere or Chhapar. When the P.W.1 Mohabbat Ali reached at the police station concerned, the Station Officer were present there. He informed to the Station Officer concerned that such an occurrence had taken place in which his brother was done to death with firing. He stayed at the police station concerned about 15-20 minutes. His nephew Hakim Ali was also associated with him. P.W.1 Mohabbat Ali proceeded from the police station firstly and the police personnel departed from the police station concerned later on. He reached at the place of occurrence with police personnel. When the complainant and other

persons reached at the place of occurrence, the sky was darkened but it was not night. The person standing at a distance of 20 yards was visible. No higher officer of the police had reached at the place of occurrence in his presence. At the place of occurrence there were three police officer and the rest were police personnel. He could not ascertain who was the Station Officer, who was the Circle Officer and who was the Senior Superintendent of Police. It is wrong to say that he was not present on the spot and had not seen the incident. He has also stated position of Ajaz (deceased) and the witnesses on spot at the time of incident. He could not divulge the duration of stay of police personnel whether they stayed two hours, or four hours or six hours. He proved his presence at the place of occurrence.

The P.W. 1 Mohabbat Ali was further cross examined on 23.3.2006. He deposed that the corpse of Ajaz had reached at Muzaffar Nagar mortuary on 16.1.2005 at about 11.00 P.M. The complainant in association with Hakim Ali (Advocate), Haneef Aladeen and other persons reached at the mortuary with the corpse of Ajaz. Two to four persons remained present with the dead body of Ajaz. Rest of the persons returned to village. The persons staying at the mortuary with corpse were Shaukeen and Kayyum. The persons associated with the corpse of Ajaz from the place of occurrence to mortuary were Mohd. Azad s/o Fazal, Nawab s/o Idreesh, Firoz uddin s/o Shamiuddin, Tanamjeem s/o Aswar Ali and Shaukat s/o Ghaseeta.

The corpse of deceased Ajaz was brought at the mortuary in Tempo. Ambassador car was also used by other persons in coming at the mortuary. The dead body of Ajaz was escorted by two police personnel. The station officer concerned directed them to reach at the mortuary on the assurance that he will reach very soon. The Station Officer concerned had reached at the mortuary within 30 to 45 minutes. The Station Officer concerned was at Chhapar police station. One constable had come with the station officer concerned. The P.W.1 Mohabbat Ali did not recollect how long the Station Officer concerned stayed at the mortuary because he was coming back to his village leaving the corpse of Ajaz. Hakim Ali (Advocate) stayed at the village. There was no light at the mortuary. He had also not gone inside the room. It was not within his knowledge as to whether there was electric or not. The person standing there had opened the lock. Next day, he had reached at the mortuary at about 7 'o' clock. When the P.W.1 Mohabbat Ali reached at the mortuary, the police personnel from Chhapar had come there. The station officer concerned in association with two or three police personnel came there at about 9 'O' clock. The police personnel stayed there approximately three or four hours. Two police personnel who had gone with him (P.W.1 Mohabbat Ali) remained there three or four hours. He was not aware about any interrogation made by the Station Officer concerned at the mortuary. The Station Officer concerned was making confabulation with the persons standing there. The station officer present

at the mortuary was seen at the place of occurrence. He had seen the station officer concerned making discourse with Mohd. Ajad, Nawab, Firoz Uddin , Tanjeem , Shaukat Ali. These five persons had reached at the mortuary with him in the morning. The station officer concerned had seen the corpse of Ajaz at the mortuary. The signature on the Panchayatnama was obtained at the mortuary. The signature of witnesses namely Mohd. Azad s/o Fazla, Nawab s/o Idrish, Firozuddin s/o Shamimuddin, Tanjeem s/o Akhtar Ali ,Shaukat Ali s/o Ghasita was obtained at the house situate at Basera. The dead body of Ajaz was lying in the house at the moment of Panchayatnama. His house was existing on the road running from Varla to Basera towards north side. His house was adjoining to the road. Ajaz (deceased) was living in that house. The house of accused Hasam and Nazam was situated at a distance of 500 metres from his house. It was also divulged by him that there was demarcative wall in between these houses. It is wrong to say that his house as well as the house of Hasam and Nazam would not have been existing side by side.

The field where the occurrence took place is situated towards north side on the road running from Barla Basera . The field which is the place of occurrence is existing at a distance of ½ kilometre on the road running from Khai Kheri. The chak road was carved out towards west from the path running from Khai Kheri. His chak was existing in front of the chak of Faiyaz running from the Chak road. Running from the path of Khai

Khera at a distance of 90 metres towards west , his chak was existing. To reach at the chak, he had to proceed towards south from the chak road. The field of occurrence would have been about seven bighas. The crops of sugar cane was existing in that field. There were crops of sugar cane around the field of occurrence. The height of the sugar cane was more than the height of the men. The harvesting of the sugar cane was not continuing in the adjacent field. In the adjoining of his field, there was field of Nawab s/o Gafoor towards west, field of Faiyaz s/o Raham Ilahi towards east, field of Lal Fakeer Chand no member of their family were present there at the moment of occurrence. The complainant (P.W.1) was peeling off sugar cane at his field at about 10.00 a.m. and Ajaz as well as both the witnesses were also peeling off sugar cane. The complainant was having the peeling equipment i.e. Palkati and Daranti. Bogi (cart) was standing in the field. They were peeling off sugar cane from 10.00 a.m. to 4.00 p.m. In the intervening period, they used to suck juice from the sugar cane. The complainant and three others had peeled off till the crucial moment of occurrence about 7 to 8 bundles. The peelings of the sugar cane were scattered. The trunks of peeled cane were being loaded on the Bogi (cart). The complainant had not met with the accused Hasam and Nazam in the morning while going to his sugar cane field. The accused appellants had no field adjacent to the spot of occurrence. The witnesses namely Haneef and Aladeen had also no field in the adjacent to the field of occurrence. They used to

go near the place of occurrence for peeling off the sugar cane. The deceased (Ajaz) had worn shirt, pant, sweater. Socks etc. at the moment of occurrence. The cloth put on his head was removed. At the moment of occurrence, the complainant was handing over peeled trunk of sugar cane to Ajaz. The Bogi was leashed with bullock. Ajaz (deceased) was standing on the Bogi (cart) at the moment of occurrence. Ten to twenty bundles of peeled sugar cane were loaded on the cart. Ajaz (deceased) was adjusting to those bundles. The mouth of the bullock was towards west. Ajaz at the moment of occurrence was towards east at the back of cart.. The miscreants did not search to Ajaz rather he was visible from the front side on the Bogi (cart). The miscreants had appeared from the sugar cane field of Nawab towards the western side. No quarrel had taken place prior to this incident. Both the malfactors remained down to the Bogi (cart). The complainant was standing towards east of the Bogi (cart). Ajaz (deceased) was standing at the height of 3 or 4 feet from the ground. Ajaz (deceased) was sitting at the moment of occurrence and his face was towards east. The malfactors fired upon him from the direction of south. Ajaz (deceased) could not get time to flee from the place of occurrence. The accused persons were standing in contiguous of the Bogi (cart). The malfactors had fired without stretching their elbow. There was altitude of about one foot between the accused persons and the deceased (Ajaz) meaning thereby deceased (Ajaz) was standing at the height of

about one foot from the accused persons. The complainant had raised shrieks and shrill at the moment of occurrence but nobody had come. The malfactors did not fire upon any other person except Ajaz. The accused persons had opened only two round of firing at the place of occurrence. The weapon by which the miscreants were equipped, one of them was 315 bore . He had not seen that weapon earlier. On being interrogated by the people, it was divulged by him that one weapon was of thin barrel and the another was of thick barrel. During the course of confabulation, people informed him that it is called Katta (country made pistol. On being wounded, Ajaz had fallen down from the cart. The peeled trunks of sugar cane were also saturated with blood. Blood was also fallen down. The deceased (Ajaz) had fallen towards north from the Bogi (cart). After executing the incident, the accused persons had run away from the place of occurrence. The complainant had observed the condition of Ajaz by touching his body. The condition of deceased (Ajaz) was highly precarious even he was neither inhaling nor exhaling. There was no stain of blood on the cloth of compl;ainant nor Haneef and Aladeen. The place where Ajaz had fallen down, was saturated with profuse blood. After receiving firearm injury, he observed Ajaz where he had sustained injuries. Skull bone was not fractured. The left eye of the deceased (Ajaz) had come out on account of injuries. The next injury was caused in the right side of abdomen. The complainant did not pay heed on the size of wounds. He had seen only two

injuries on the person of the deceased. When the police personnel came on the spot, they did not allow anybody to touch the body of the deceased. When the police personnel touched the body of the deceased (Ajaz), the complainant was present on the spot. When the police personnel touched the body of the deceased (Ajaz), at that moment there were only two injuries on his person. The complainant did not take notice as to whether the blood was exuding from the body of the deceased (Ajaz) or not. One eye had come out and the other eye was partially opened. The deceased (Ajaz) was not lying flat. The police personnel after examining the condition of the deceased (Ajaz) took the corpse into possession. At that moment, there was gathering of about hundred persons hailing to that village. The village personnel did not resist when the police personnel were taking the corpse of deceased Ajaz. The Geep of police personnel was standing in the nearby place at the chakroad. The police personnels were having torches. There was no arrangement of light. The police personnel told at the police chawki that they shall raid at the house of the assailants namely Hasam and Nazam and will arrest them. Since the complainant was unconscious, he could not give correct information whether the police personnel had taken any assistance of his men in raiding at the house of assailants. He regained consciousness on the next day and the next day, he had gone with the deceased (Ajaz). The complainant was highly flustered and nonplussed. Hakim Ali, Advocate had reached at the place of incident after the occurrence. It was further

averred that Hakim Ali reached at the place of occurrence after lodging of the first information report. The complainant had seen Hakim Ali (Advocate) at the place of occurrence at about 5 to 5.45 p.m. There was no Advocate hailing to Muzaffar Nagar with him. He had gone at the police station concerned with Hakim Ali Advocate. The Station Officer concerned had reached at the place of occurrence just behind him. The police personnel had reached at the place of occurrence prior to that. No person belonging to the family of accused Hasam and Nazam was present at the place of occurrence.

After the incident, the station officer concerned had interrogated him at the place of occurrence. He could not recollect as to whether the statement recorded by the Station Officer concerned was noted down or not. The complainant got the spot inspection done by the station officer concerned next day at about 11.00 a.m. On the same day, he showed the Bogi standing at the place of occurrence and the blood saturated trunks of sugar cane. Those trunks of Sugar Cane were lying at the beneath of Bogi (cart) . He could not ascertain as to whether the Station Officer concerned had taken away the same with him or not. The blood saturated soil and plain soil were collected on the next day. The place of occurrence was pointed to the Station Officer concerned from where the accused persons had fired upon Ajaz. The particular place was pointed to the Station Officer concerned from where the deceased (Ajaz) was sitting at the crucial moment of firing. He had shown the

bundles of sugar cane lying on the spot. It was pointed out by him that he was peeling off sugar cane towards east of Bogi (cart). He has pointed to the Station Officer concerned with regard to holding of trunks of sugar cane. In case this has not been recorded by the Station Officer concerned, he had no reason. It was divulged by him that the accused persons fled from the place of occurrence hurling abusive and vituperative words. In case it has not been recorded by him, he could not put forth any reason. It was also brought in the notice of the Station Officer concerned that he had gone at the police station concerned that he had gone at the police chowki. The police personnel posted at the Chowki directed to him to go at the police station concerned to get the FIR registered. This fact was divulged by him to the Station Officer concerned. In case this fact was not recorded in the report or investigation, he could not put forth any reason for it. This fact was also unfolded by him that his house was situated in the contiguous of the assailants and the querrel ensued between them on the issue of exit of water prior to six months of the incident. This quarrelsome issue was settled by the intervention of some dignified persons of the locality but the assailants had been nurturing animus and grudge against the deceased (Ajaz) and his family members and in consequence of retaliation, the accused appellants had executed the said offence liquidating the deceased (Ajaz). In case this fact has not been incorporated in the first information report, I have no reason to say anything.

Further it was divulged by the P.W.1 (Mohabbat Ali) in his cross examination recorded on 31.3.2006 that he had no idea on how many papers were got signed from him. He had also no idea that ten papers were got signed from him or it was twelve in numbers. At the moment, the station officer concerned got his signature on the papers, Hakim Ali was also present there. The report which was got registered by him was duly signed by him at the police station concerned. The papers on which his signatures were obtained, he does not have any knowledge what were those papers. It was neither asked by him what were those papers. The station officer concerned did not make any confabulation at the police station with Hakim Ali before him. When he was at the police station concerned, he had unfolded entire incident to the Station Officer concerned.

The police station was not existing on the Highway of Delhi-Dehradun. It was existing towards western side from the road at the distance of one and one and half furlong. When he reached at the police station concerned, the sun was rising. When he returned from the police station concerned, the day was nearly over. The police station concerned was situated at the distance of 10 to 12 kilometre from his village. It was not situated at the distance of twenty kilometres.

He had shown the incriminating articles i.e. Palkati and Darati lying at the spot to the Station Officer concerned. His witnesses namely Haneef and Aladeen

were tightening bundles on the spot. Someone were tightening trunks of sugar cane. Ajaz was sitting on the spot lowering his neck below therefore, Ajaz (deceased) could not flee from the spot. Fire was done from the countrymade pistol. The pistol was only one barrel and not have two barrels. The country made pistol was not further loaded. The complainant did not make attempt to apprehend the accused persons after firing. The incriminating articles i.e. Palkati or Daranti were not lifted by him. The complainant was highly terrified and frightened. After harvesting the sugar cane, only roots (Khobey) were left. Khobey means the root of the sugar cane. The deceased Ajaz might have fallen in the mid of the roots. A Kolhoo was installed near the place of incident. for crushing the sugar cane. The Kolhoo was lying unused. There were two brick kilns between the road and the place of occurrence but at the moment of the incident, there was no person preparing the rough bricks. The brick kiln was also closed. From the place of occurrence towards east, the brick kiln was adjoining with the field of Faiyaz but no body was present there. After execution of the incident, the complainant remained there about 2 to 3 minutes thereafter the complainant and the witnesses rushed towards the village. On arriving at the road, he divulged that Ajaz had been hit with shot. He did not make any arrangement of vehicle for reaching at the road. He did not come across to any person in the interregnum period. There were about fifty shops at the stall. On reaching at the stall and divulging about the murder of

Ajaz, a number of persons gathered. The complainant had not gone at the place of occurrence again. He did not have knowledge who were present at the place of occurrence after his departure. This fact was unfolded by the complainant on reaching at his house that his brother Ajaz had been hit with shot. Haneef and Aladeen also unravelled that he was hit with shot. The civil suit which was pending prior to the incident was concerning with Bhondoo s/o Varoo. In that suit, Bhondoo was not doing pairvi but Ajaz (deceased) was doing pairvi. The house of Bhondoo was situated towards east from the house of Hamid and Majid. The complainant was not aware against whom Bhondoo had instituted the suit. The suit was instituted in the civil court prior to 5 to 6 months . The said suit is still pending. The complainant was not doing any pairvi with regard to the suit pending in civil court. Some quarrel and ruckus had taken place between the assailants and the deceased (Ajaz) with respect to the suit pending in the civil court. The uproarious scene developed between the assailants and the deceased (Ajaz) and others were informed to the police station concerned. The matter was pacified on the intervention of the police.

He deposed that earlier dispute had taken place from the side of the complainant and the assailants. The police personnel had intervened to alleviate. At the crucial time of incident, the deceased (Ajaz) was running the shop of fertilizers at the stall. The deceased (Ajaz) was not doing the transaction of money lending.

The deceased (Ajaz) did not have any cart or taxi for plying on rent. It was divulged that he was possessing Ambassador car for his own pleasant.

It was disowned by the complainant that the deceased (Ajaz) used to have cart and taxi both and those were used to ply on rent. It is wrong to say that the driver of the cart was done to death and the pairvi was being done by Ajaz ( deceased) in that case. His brother Ajaz was constantly being threatened by the assailants. It is wrong to say that his brother was done to death by some strangers. It is also wrong to say that on account of pendency of civil suit, the first information report has been lodged against the accused appellants after much deliberation and consultation after undue delay. It is wrong to say that Hakim Ali Advocate was called from Muzaffar Nagar so as to get the first information report registered. At the moment of execution of the incident, Hakim Ali Advocate used to live at the back of District Hospital. He confirmed that his brother Ajaz was done to death before him. He disowned that he was giving his testimony against the accused appellants on account of animosity.

The prosecution has examined Aladeen as P.W.2 on 29.5.2006. He affirmed on oath that he is knowing well to Hasam and Nazam who are belonging to his village. The incident has taken place on 16<sup>th</sup> January 2005 at about 4 to 4.30 p.m. Mohabbat Ali (complainant P.W.1), Haneef and Ajaz peeling sugar cane with him in the field of Ajaz. The accused persons namely Hasam and

Nazam came who were equipped with pistols. Nazam told to another accused that Ajaz is doing pairvi against him in the civil suit. He will not be spared alive today. Nazam fired from his pistol pointing towards Ajaz which hit at the right side under the arm of Ajaz. Second fire was made by Hasam pointing towards Ajaz which hit at his right eye. The victim (Ajaz) succumbed to injuries on the spot as a result of shot sustained by him.

There was a civil suit pending between the perpetrators of the crime and Ajaz on the issue of drain on account of which assailants were rearing and nurturing animus and grudge. Ajaz has been decimated on account of these bitterness.

The P.W.2 Aladeen was cross examined. He divulged that when both the assailants had fired to the victim Ajaz then the malfactors were standing on the ground and the victim Ajaz was standing on the cart. It was divulged by him that shots were made from short distance. He remained present on the spot after the time of incident till the arrival of the police. He had seen to Hakim Ali Advocate at 4.30 p.m-5.00 p.m. Hakim Ali Advocate had done the work of writing at the home. He was not aware as to whether the police personnel who came at the spot was hailing to Chhapar or Basera. The police personnel had arrived on the spot just after the incident at about 4.30 p.m. to 5.00 p.m. He proved his presence on the spot at the time of occurrence.

The cross examination of P.W.2 Aladeen was resumed on 7.7.2006. He deposed that he had no field adjacent to the place of occurrence. He had gone for peeling of sugar cane on the day of the occurrence. It had come to his notice that the work of peeling was going on in the field of deceased (Ajaz). The field of occurrence was situated from the main path of Basera Varla towards north side about one kilometre away . It is correct to say that the altitude of the field was about one or one and half feet from the height of men. No work of peeling was going on in any field except in the field of Ajaz (deceased). The field in which the working of peeling was going on was measuring to about seven bighas. The work of peeling was going on in that field prior to one or two days of the incident . On the fateful day of incident, about 5 to 4 biswa sugar cane was peeled off. Prior to it, more than 1'1/2 bigha sugar cane was peeled off. The peeling of the sugar cane in that field was not done in entire north -south side but in some portion of north-south direction. The peeling work was done from the western side. The sugar cane of Haji was situated towards western side. In the north side, the field of Mohabbat Ali (P.W.1) was situated. In the southern side, the field of Fakir Chand was situated. In the eastern side, the field of Haji Faiyaz was existing. They began the work of peeling from 9 to 10 'O' clock from morning. When they reached at the field, the labourer who were engaged in the work of peeling were standing equipped with their Palkati and Daranti. In the intervening period, he did not take any meal as he

proceeds after takine meal rather he had taken juice of sugar cane as well as water between 10 a.m. to 4.30 p.m. The cart was standing towards western side of the field. At the crucial moment of the incident, the deceased Ajaz real brother of Mohabbat Ali (P.W.1) was standing at the distance of 10 paces towards the hill. When the incident took place, P.W.2 Aladeen had gone for trunks of the sugar cane. He was standing towards western side from the cart at a distance of 20 paces.

The station officer concerned did not make any interrogation with respect to the said incident from him. His statement was recorded next day of the incident. He had not gone for the spot inspection done by the station officer concerned. This fact was brought to the notice of the Station Officer concerned that at the crucial moment of execution of incident, he was peeling sugar cane. Haneef was also present beside him This fact was divulged by him that the accused Nazam was saying that Ajaz (deceased) was doing pairvi in the case pending in civil court, . In case this fact has not been reduced in writing by the Station Officer concerned, he could not put forth any reason for it. This fact was not unfolded by him that as soon as Nazam came, he said that since deceased (Ajaz) is pairokar in the matter pending in the civil court hence he will not spare him. The first shot hit in the right side under arm of Ajaz as a consequence of which he toppled on the ground When the malfactors hit shots ,they were standing in the western side of the cart. The second

shot was fired by Hasam pointing towards Ajaz (deceased) on his eye from close range, when he fell down. When the shots were fired by the Nazam, the deceased Ajaz was lying on the corner of north-west from the cart. Hasam reached near Ajaz and had fired. The blood of deceased Ajaz was lying on the cart. The trunks of sugar cane were also soaked with blood. The place where deceased Ajaz was lying was saturated with blood. Hasam had caused gun shot injury to deceased Ajaz at the distance of 2-3 paces. He had not seen any injury on the person of Ajaz (deceased) except two injuries. Only two firing was done at the spot. The assailants had unleashed reign of terror and horror as a result of which they could not muster courage to follow them or to come forward to pursue them. This fact was brought in the notice of the station officer concerned in case it has not been reduced in writing, he could not put forward any reason. Ajaz succumbed to injuries on the spot as a result of sustaining shots of fire. He did not raise any scream on the spot. In the adjoining of the sugar cane field, the labourer working in the brick kiln came on the spot. Amongst the persons present on the spot were Ghasetoo Julaha and Gafoor Julaha belonging to his village. He was not aware about their parentage. Besides them, five to seven persons came on the spot. Mohabbat Ali (P.W.1) had departed from the place of occurrence till those persons arrived on the spot. The persons standing on the spot were curious of knowing reason from him. In the meantime two police constables came on the spot and a number of persons gathered on

the spot. He had not seen to Mohabbat Ali thereafter on the place of occurrence. Whatever was narrated by him previously that he remained present before the police personnel was correct description. Thereafter the police personnel had brought the corpse of Ajaz at the police chawki picking up from the place of occurrence. Till then five to seven police personnel had come at the spot. The police personnel had brought the corpse of Ajaz from the place of occurrence from 7 to 7.30 p.m. Hakim Ali Advocate was present with the police personnel at that moment. The ladies belonging to his family had also gathered at the police chawki. He could not say with regard to distance of house of Mohabbat Ali (P.W.1) from police chawki. The corpse of deceased Ajaz was kept at the police station concerned about 20 to 25 minutes.

He had seen to Mohd. Azad s/o Fajla and Tanjeem Ali s/o Akhtar Ali on the spot. They had also accompanied with the dead body of Ajaz to the police station. He had gone with the corpse at the mortuary Muzaffar Nagar from the police chawki and came along with the dead body in the evening at 8.00 p.m. The dead body of Ajaz was associated with one Sub-inspector and constable. At that moment, at the mortuary, Mohd. Ajad s/o Fazla , Nawab s/o Idrish , Firozuddin s/o Shakiuddin , Tanjeem Ali s/o Akhtar Ali, Shaukat Ali s/o Ghaseeta were present. The Station Officer had seen the corpse of Ajaz at the mortuary. At that moment aforementioned persons were present. He

was not aware what formalities were conducted by the Station Officer concerned at the mortuary. The station officer concerned stayed at that moment about 10 to 20 minutes who departed from the mortuary leaving two police constables. He could not give any detail as to whether next day the Station Officer concerned came at the mortuary or not. When he (P.W.2) departed from the mortuary, Hakim Ali Advocate and Mohabbat Ali (P.W.1) were present there,. He could not give detail about the duration of their stay. The station officer concerned did not take his signature at mortuary. He could not give any detail as to whether the station officer concerned got any material written by Mohabbat Ali or not. He came across with Mohabbat Ali at about 12. 00 to 1 "O' clock next day ,then Mohabbat Ali informed him that he has got report registered against Hasam and Nazam s/o Malkhoo. Mohabbat Ali (P.W.1) departed from him after giving this information. The miscreants were not arrested by the police personnel. The miscreants surrendered themselves at the police station Mopa after several days, then they were sent at Chhapar police station. He (P.W.2 Aladeen) is an illiterate person. He could not disclose properly about the post of police personnel who came on the spot. A number of police personnel came on the spot.

He supported the prosecution case. He proved his presence at the place of occurrence. He disowned that he had not seen the occurrence and given false testimony against the accused on account of village

factionalism. He also proved the place of occurrence.

The prosecution has examined Dr. Rajesh Singh as P.W.3 on 17.10.2006. He stated on oath that he was posted as Child Specialist at District Hoispital Muzaffar Nagar on 17.1.2005. He had examined the corpse of Ajaz s/o Gafoor brought by constable C.P.1255 Harpal Singh and Constable CP 906 Udaiveer Singh , Police Station Chhapar District Muzaffar Nagar. He had found the seal intact affixed on the dead body of Ajaz. The post-mortem of deceased Ajaz was done by him on 17.1.2005 at about 2.40 p.m. The age of the deceased Ajaz was approximately 40 years. He was a man of average built. During the course of autopsy, he found that right eye and mouth were opened. Left eye was pressed and sunk. Rigor mortis was present in all four limbs. In the internal examination, he found that seven and eight ribs were fractured. Pleura was lacerated. Left and right lungs were lacerated. Pericardium was normal. Both chambers were empty weighing to 250 grams ascending aorta ruptured. Thorax cavity containing 2500 ml blood clotted below chest. The injuries found on the person of deceased Ajaz have already been discussed in the preceding paragraph.

The papers were brought by the constable with dead body of Ajaz. The injuries found on the person of the deceased was about one day old. The death of Ajaz had occurred on account of fire arm injuries. The death of Ajaz was opined to have been caused at 4.30 p.m. on 16.1.2005. The post mortem report was prepared

after making meticulous examination. The post mortem report was duly proved by him which was marked as Ext.Ka.2. He had handed over to the constables in sealed cover one sweater, one journey, one shirt, one vest, one under wear, one pant, one pair sock, 18 pellets removed from the dead body, one plastic wad, one wad piece made from card board. He had also got their signatures in respect to this.

He further divulged in his cross examination that the post mortem number is allotted from the District Hospital. The number of post mortem was allotted on 17.1.2005 at about 11.50 a.m.with the seal of District Hospital Muzaffar Nagar which is paper no.6/7. On this paper of District Hospital it was marked as Ext.Kha.1. The distance from District Hospital to post mortem house is about 3 to 5 kilometres. He proved that on 17.1.2005 from the concerned constables these papers were obtained at about 2.30 p.m.

The corpse takes two to three hours in starting rigor mortis in the month of January. The rigor mortis disseminates in the entire body within twelve hours. Ascending aorta denotes the blood oozing from the ventricles. In case the blood exudes profusely from ascending aorta, it cannot be determined by looking to the injuries that the victim had succumbed to injuries forthwith or sometime later. It is correct to say that injury no.1 has been shown towards downward. The said injury has been caused from a distance of three feet. No external material has been recovered from the injury

no.1. There was no blackening in injury no.3. Injury no.3 was caused from more than 6 feet below to 5 cm from scapula. Injury no.3 has clearly been shown in the post mortem report. Vertebral column remained intact. Left and right lungs were lacerated. Notice being had to the injury no.3 ,it can be said that the assailant was standing towards right side. The approximate time shown in the post mortem report is probably correct. There will not be variation of two to four or six hours. The assessment of death is made on the basis of rigor mortis present on the body. Rigor mortis can disseminate within 12 hours and can exist next 22 hours. The stomach of the deceased Ajaz was empty. According to the post mortem examination, injury was caused on the vital part of the body with fire arm. It is correct to say that the word "shock haemorrhage ' has not been used but the inference can be drawn that the injuries were caused on the vital part with the shooting of fire arms. There is no mention of tearing of clothes in the post mortem report. Whatever papers were brought during the course of post mortem were thoroughly examined and then a conclusion is drawn. He does not express distinct opinion on account of being any variation in the police report. He notes down the elements found during the course of post mortem. During the course of post mortem, gall bladder was not found, it may be on account of operation of stone and gall bladder was removed. Bladder was found empty.

The prosecution has examined Station Officer Virendra Singh posted at Purkaji District Muzaffar Nagar on 17.10.2006. He stated on oath that he was posted on 16.1.2005 at police Station Chhapar in the capacity of Station Officer. On that very date in his presence, Mohabbat Ali (P.W.1) got a report registered against Hasam and Nazar vide Case Crime No. 6 of 2005 under section 302 IPC. He proceeded from the police station concerned having requisite papers i.e. chick FIR, inquest in association with Prem Prakash Giri (Sub-inspector) and Constable Ishwar Chand (HCP), Anek Singh HCP on police jeep driver Rajpal. On the place of occurrence HCP Asarpal, Constable Udaiveer Singh, Constable Satyapal, Constable Harpal of Chawki Basera were present at the place of incident. On reaching at the spot, S.I. Sri Giri was instructed to make arrangement of dragon light or petromax for carrying out the Panchayatnama of deceased Ajaz. The statement of Mohabbat Ali (P.W.1) was recorded on the spot. The statement of eye witness Haneef was recorded on the place of occurrence. Sri Prem Prakash Giri (S.I.) collected the plain and blood stained soil from the place of occurrence in two distinct containers of which fard was prepared and was noted in the case diary. Thereafter the police team raided at the house of the assailants but they were not arrested. He (P.W.4 Station Officer) and police personnel stayed at the police chawki Basera in the night.

Next day, on 17.1.2005 the Panchayatnama was copied. The statement of the witnesses of Panchayatnam was recorded. The statement of ocular witness Aladeen was also recorded. He made spot inspection in association with complainant Mohabbat Ali (P.W.1) and prepared the site plan which was duly marked as paper no.2 and the same was proved by him. This document was marked as Ext.Ka.3. On 22.1.2005, the police personnel raided at the house of assailants but they could not be arrested. Both the accused persons namely Hasam and Nazam were arrested by him and HCP Asarpal at about 8.40 a.m. on the Madak road near the burial ground on the tip off of spy of police .The police team recovered 315 bore pistol with a cartridge and 12 bore pistol with two cartridges. No public witness has come forward prior to arrest of the accused persons. The police team had searched to others but no incriminating articles were recovered from their possession. Both the pistols were fit for firing. Both the accused could not show licence for keeping the pistol and cartidges. Both the pistols and cartidges were sealed in different bundles giving clear nomenclature. The fard was duly prepared and the signature of the witnesses was obtained. The copy of the Fard was given to the accused persons and their thumb impression and signatures were obtained. The fard was duly proved by the P.W.4 Virendra Singh which was exhibited Ka.4. A bundle duly sealed was uncovered before the court from which 315 bore pistol and a live cartridge was taken out. On seeing that pistol and cartridge, the witness told that

the said pistol and cartridge were recovered from Hasam. The pistol, cartridge and clothes were marked as Ext. 1,2 & 3. The next bundle was opened before the court from which a 12 bore pistol with two cartridges were taken out. On seeing to that, the witness (P.W.4) told that the said pistol and cartridges were recovered from accused Nazam. The pistol was marked as Ext.Ka.4 and the live cartridges were marked as Ext. 5 & 6. The bundle of these articles was marked as Ext.Ka.7. The statement of the accused Hasam and Nazam was recorded on the spot. The accused were brought at the police station and the case was registered. The case crime No.16 of 2005 under section 25 Arms Act Act registered against Hasam and the case no. 17 of 2005 under section 25 Arms Act was registered against Nazam. On 29.1.2005 the post mortem report of deceased Ajaz was received which was duly noted in the case diary. The recovered articles were sent to Forensic Laboratory Agra on 2.2.2005 through constable 790 Sumer Singh. On 3.2.2005 the statement of S.I. Prem Prakash Giri, Constable Harpal Singh and Constable Udaiveer Singh was recorded. On 5.2.2005 after collecting clinching and credible evidence, charge sheet no. 7 of 2005 was submitted against Hasam and Nazam which was duly signed and prepared by him. The said charge sheet was marked as Ext.Ka.5. On 6.2.2005, the statement of scribe of the FIR constable/clerk 1035 Virendra Pawar was recorded. On 24.9.2005, the report received from the Forensic Laboratory was sent to the court concerned.

The prosecution witness no.4 Virendra Singh Station Officer was cross-examined by the accused counsel. During cross examination, he deposed that the investigating officer uses one case diary in a case. It was divulged by him that from 16.1.2005 to 22.1.2005 he had conducted the investigation of this case. He had other investigations also. In the parcha of 22<sup>nd</sup> January, the Chief Judicial Magistrate concerned had examined from 22<sup>nd</sup> January 2005. It is correct that the parcha of 17<sup>th</sup> February 2005, the Chief Judicial Magistrate had examined and dated as 4<sup>th</sup> February 2005. The parcha of 22<sup>nd</sup> January had ended in zig zag manner. There is no mention of starting and ending of investigation in any parcha. He had not unfolded the name of the eye witnesses in the return G.D. to whom he had examined during investigation. He had not made any copy in the case diary with regard to weapon recovered from the accused persons. It is wrong to say that he had prepared the entire case diary anti-dated and anti-time. P.W.4 Virendra Singh was messed up with regard to information given to him with regard to this murder. The case was registered in his presence. No information was conveyed from police station Chhapar through wireless set that Ajaz (deceased) was loading trunks of sugar cane and the assailants had done to his death. It is wrong to say that the information with regard to the murder of Ajaz (deceased) was received in police station Chhapar prior to 5.15 p.m. He had rested at the police chawki in the night after arriving at the spot. He could not recollect as to whether any police officer had

reached at the spot or not. In case during investigation, the circle officer concerned come and gives some directions, it is not necessary to incorporate the same in the case diary as there is no such rule. He (P.W.4 Virendra Singh) had reached at the spot at about 6.30 p.m. and got prepared the Panchayatnama in about two hours. He admitted that on the Panchayatnama and other related documents, he had not put his signature. He proved his presence at the moment of preparation of Panchayatnama but could not show as to why he had not put his signature. The light of dragon light was very intensive and radical. In the said light, the work of preparation of Panchayatnama and other things could be done easily. He could not ascertain as to whether Prem Prakash S.I. had taken blood saturated soil and plain soil prior to preparation of Panchayatnama but he admitted that he had not put his signature. The corpse of Ajaz (deceased) was sent after 8.30 p.m. but he could not divulge exact time. The receiving of papers of the dead body are to be submitted in the police line. The dead body was sent with Tempo. The papers relating to the dead body of Ajaz were entered in the police line on 17.1.2005 at 8.00 a.m.

The spot inspection was made by him before afternoon on 17.1.2005 but he could not unravel exact time. In exhibit Ka.3 at no point it has been displayed that the blood was lying on the particular place. The place of occurrence was encircled with sugar cane crops from three side. The place of occurrence Basera-Barwa

is existing at half furlong from the main road. He could not ascertain the correct direction. It is wrong to say that he did not have knowledge of correct direction because the site plan was prepared at the police station. It is correct that in Ext.Ka.3 he had mentioned about the directions. He could also not recollect as to whether there is other ways to arrive at the place of occurrence. He (P.W.4 Virendra Singh) had seen peeled sugar cane and trunk of sugar cane at the spot but he had not noted in the case diary as to whether these articles were soaked with blood. There is no mention in the case diary with regard to Daranti or Palkati. This fact has also not been incorporated in the site plan. There is no mention of blood lying on it. It is wrong to say that S.I. Giri was sent at Muzaffar Nagar mortuary for filling up the Panchayatnama. At the place of occurrence no eye was found lying. The witness Mohabbat Ali (P.W.1) did not inform him that he was holding trunks at the time of occurrence rather he had divulged the fact of putting fodder near the cart. It was not unfolded by P.W.1 Mohabbat Ali that he had earlier gone at the police chawki and the police personnel present at the Chawki directed him to go at the police station concerned to get the first information report lodged.

Aladeen (P.W.2) had stated that at the time of incident, he was peeling sugar cane. The witness Aladeen had unfolded the name of Hasam who had told that Ajaz was doing pairvi in the civil court. He had not collected any paper with regard to case pending in

the civil court during investigation. Aladeen (P.W.2) had not specifically told when two shots were fired and they did not chase the assailants on account of unleashing the reign of terror rather he told that both the assailants had fired single shot each.

The miscreants were arrested on 22.1.2005 on the tip of prior information. He had written in the Fard that the pistol recovered from Hasam was in functioning condition. The same fact was incorporated for the second accused that the pistol recovered from him was functional. Both the pistols were not sent by him for ballistic examination because the cartridges were neither recovered at the spot nor subsequently. Both the pistols were sealed on which his signature was made in the capacity of witness. He proved that the incriminating articles including pistols were recovered from the assailants. The charge sheet was submitted against the accused after collecting credible and clinching materials showing their complicity.

The prosecution has examined S.I.Prem Prakash Giri on 27.2.2007 as P.W.5. He was at that time posted at Special Investigation Department District Ghaziabad. He stated on oath that on 16.1.2005, he was posted as S.I.at police station Chhapar. On that day, the Case Crime No. 6 of 2005 under section 302 was registered against Hasam and others. He in association with Station Officer Virendra Singh as well as police personnel and the then Station Officer with requisite papers reached at the place of occurrence Gram Basera.

On the direction of the then Station Officer, he prepared the Panchayatnama vide Ext.Ka.6 and other requisite papers in relation to deceased Ajaz s/o Gafoor on which he had put his signature. He prepared the photo Nash, letter to R.I., letter to C.M.O. He prepared the Fard of blood stained and plain soil , Challan lash these were marked as Ext. Ka.7,Ka.8, Ka.9 Ka.10 and Ka.11. After carrying out the Panchayatnama and other necessary papers, the corpse of Ajaz was sealed and was sent for post mortem under the vigil of constable Harpal Singh and constable Udaiveer Singh.

During cross examination, it was divulged by him that Panchayatnama (Ext.Ka.6) was prepared at the direction of the then Station Officer Virendra Singh but Virendra Singh Station Officer had not put his signature on the Panchayatnama. Panchayatnama was not prepared on the dictate of the the Station Officer.The then Station Officer had directed him to fill up the Panchayatnama. He could not recollect as to whether complainant was present or not.The panchayatnama was being prepared in the dragon light and petromax light. He could not ascertain what papers were being prepared by the then Station Officer. The panchayatnama was prepared from 6.30 p.m. to 8.30 p.m. The witnesses of the Panchayatnama had not participated in any activity from 6.30 p.m. to 8.30 p.m. He had seen the injury sustained on the right side under arm and the left eye. The dead body of the deceased Ajaz was saturated with blood. He had not shown any

injury on the back side of deceased (Ajaz) in the challan lash. The corpse of Ajaz was lying in the north side of the village concerned at a distance of one kilometre. There was no road near the place of occurrence. He could not divulge how long he stayed at the place of occurrence. He could not recollect how long he stayed at the place of occurrence after 8.30 p.m. In his presence, Circle Officer concerned came but he could not recollect how long the circle officer remained there. He did not have knowledge from whom the circle officer concerned enquired. The corpse of deceased (Ajaz) was lying in the mid of the field. The sugar cane was lying scattered on the spot. After the incident, he had gone only once to fill up the Panchayatnama at the place of occurrence. He had departed from the police station concerned in association with Station Officer concerned at about 5.15 p.m. for visiting the spot. The complainant of the case was going with them. He could not recollect as to whether on 17.1.2005 he was present at the police station concerned in the morning or not. He did not visit to Muzaffar Nagar mortuary on 17.1.2005. He denied that the Panchayatnama of the deceased (Ajaz) was completed in the mortuary at Muzaffar Nagar and the time which has been narrated by him for proceeding to the place of occurrence, at that moment the name of any miscreant did not surface. He could not remind at what time in the night he had collected blood stained and plain soil. He denied that the Fard was prepared at the police station concerned.

The prosecution has examined C.C.No. 1035 Virendra Kumar on 27.2.2007 who was posted at Police Station Purkaji District Muzaffar Nagar. He stated on oath that on 16.1.2005, he was posted as Constable Clerk at police station Chapar. He had registered the Case Crime No. 6 of 2005 under section 302 IPC on the written information of Mohabbat Ali (P.W.1). He had prepared the Chick FIR , paper No.4 of this case which has been written and signed by him and was marked as Ext.Ka.12.This case was entered in G.D.No. 24 at 17.15 hours on 16.1.2005. The carbon copy of the G.D.paper no.1/6 which has been prepared by him in the shape of original was duly written and proved.The original G.D.was before him. The carbon copy was marked as Ext. Ka. 13.On 22.1.2005, the then Station Officer Virendra Singh had arrested both the accused namely Hasam and Nazam s/o Malkhoo at about 11.30 a.m. with 12 bore country made pistol and cartridges and 315 bore pistol and cartridges. The accused persons were brought at the police station concerned and the Case Crime No. 16 of 2005 and 17 of 2005 under sections 25/27 Arms Act were registered against Hasam and Nazam. The fard of recovery of fire arms with cartridges was duly prepared and annexed with the Chick FIR as Ext.Ka.14. The particulars of this case was duly entered in G.D.No. 16 at about 11.30 a.m. on 22.1.2005. The carbon copy of the G.D.written and signed by him was duly proved and was marked as Ext.Ka.15.

During cross examination, it was averred by the P.W.6 Virendra Kumar that prior to registration of this case, Station Officer Virendra Singh had departed with police Geep in investigation of Rapat No.19 at 12.45 p.m. His return is mentioned in Rapat No.22 at 17 hours. No case was registered at police station on 16.1.2005 prior to the instant case. He had not given information of this case to Control Room Muzaffar Nagar. The information of this incident was given by the then Station Officer because the case was registered at the police Station in his presence. There is no mention in the G.D. for sending the special report on 16.1.2005 till 12.00 (Night). There is no mention in the G.D. As it is not required for the arrival of the High Officers of the Police. It had taken about 15 to 20 minutes in preparing the chick and GD of this case at the police station concerned. At that moment, the Station Officer Virendra Singh was writing the case diary. He proved that the case was registered on the same day. He denied that the chick or GD with regard to case registered under section 25 Arms Act was prepared at the inkling and connivance of the station officer concerned.

The prosecution has examined S.I. Harpal Singh as P.W.7 on 27.2.2007 who was posted at Police Station Kotwali District Bulandshahar. He stated on oath that he was posted as S.I. at Police Station Chhapar on 22.1.2005. The Case Crime No. 16 of 2005 and 17 of 2005 under section 25 Arms Act were registered on the same day. Thereafter, its investigation was entrusted to

him. He recorded the statement of the accused Hasam and Nazam who were in the lock up. He entered the fard of recovery and the arrest of the accused in the C.D. He has recorded the statement of Constable Virendra kumar, scribe of FIR. On 30.1.2005, he recorded the statement of complainant Virendra Singh, witnesses Pramod Kumar, Parvesh Kumar HCP Asarpal Singh and also made spot inspection. He prepared the site plan on the spot . During cross examination he proved the same to have been written & signed by him. The site plan was duly marked as Ext.Ka.16. He collected credible and clinching evidence against the accused appellants thus they were charge sheeted under section 25/27 Arms Act. The charge sheet was duly marked as Ext.Ka.17 & 18 site plan of Hasam case Ext.as Ka.19 and was submitted before the court concerned for cognizance. He proved the charge sheet which was written and signed by him. The same was sent to the District Magistrate for concurrence. He sanctioned the same on 11.3.2005. The signature of the then District Magistrate was duly identified by him. This was exhibited as Ka.20. The sanction in respect of Hasam was obtained on 11.3.2005 which is paper no.8. He proved the signature of the then District Magistrate Raj Kumar on the same which was also signed by him (P.W.7) vide Ext.Ka.21. In his cross examination he deposed that the charge sheet against Hasam and Nazam was sent to the concerned court on 30.1.2005. It is wrong to say that the entire recovery and other course of action of this case viz. Statement and site plan

etc. was done in clandestine and bogus manner inside the police station concerned.

In support of defence Rishipal Singh, Radio Station Officer City Control Room, Muzaffarnagar was examined as D.W.1 on 13.8.2007. He stated on oath that on 16.1.2005 he was posted as Radio Station Officer City Control Room Muazaffar Nagar. He has proved photo copy of the log book dated 16.01.2005 of city control room, Muzaffarnagar in which the entry was made by the then operator on duty at 17:05 p.m. that deceased Ajaz was shot dead in his field by assailants.

After hearing counsel for the parties and considering the merit of the case, learned court below has recorded conviction of both the accused and passed the sentence

Being aggrieved by the aforesaid judgment and order of the trial court dated 23.4.2009, this appeal has been preferred by the accused-appellants.

We have heard Shri Nazrul Islam Jafri Senior Advocate assisted by Shri S.I. Jafri, learned counsel for appellants and Shri Vikas Sahai, learned Additional Government Advocate appearing on behalf of State and perused the entire material on record.

It is submitted by Sri Shri N.I. Jafri learned senior counsel appearing on behalf of the appellants that the presence of alleged eye witnesses PW-1 Mohabbat Ali and PW-2 Aladeen on spot at the time of incident is highly doubtful. The occurrence was not witnessed by anyone. PW-1 Mohabbat Ali being the brother of the

deceased is highly entrusted witness. There was no field or house of PW-2 Aladeen near the spot therefore he had no occasion to be present on the spot at the time of incident. Name of one witness Haneef was also mentioned in F.I.R. as eye witness but he has not been examined. There are major contradictions and inconsistencies in the statements of both the witnesses of fact on material points. Their testimonies inspire no confidence. There was no strong motive for committing the murder of Ajaz. Motive assigned to the accused appellants has not been proved. F.I.R. is ante-timed. According to the prosecution case, the incident has taken place at about 4.30 p.m. and the first information report has been registered at 17.15 hours covering a distance of 16 kilometres which creates serious doubt about the verity and genuineness of the first information report lodged within 45 minutes. The first information report was not in existence at the time of conducting the inquest of the deceased. The investigating officer had not found any cart or darati from the spot. The prosecution has to stand on its own legs.

Learned counsel for the appellants further submitted the prosecution has failed to prove its case beyond reasonable doubt against the accused appellants but the learned Sessions Judge has erroneously convicted and sentenced the accused appellants relying upon untrustworthy and uncorroborated testimonies of the prosecution witnesses. The judgment and order passed by the learned trial judge is not tenable in the eyes of

law hence deserves to be set aside and the appeal may be allowed.

Per contra Shri Vikas Sahai, learned A.G.A. appearing on behalf of State contended that the prosecution version is consistently proved and established by testimonies of prosecution witnesses on fact as well as other formal prosecution witnesses and is fully supported by medical evidence. The presence of witnesses is proved to be natural and statements are nothing but truthful disclosure of actual facts, leading to the occurrence. It will not be permissible for the court to discard the statement of such witnesses on account of minor contradictions on some points because witnesses are rustic villagers. In criminal cases prosecution is not bound to prove motive. It is well settled principle of law that when incident has been proved by the ocular evidence, there is no need to prove motive. F.I.R. is not ante time but it has been promptly registered. It has been further contended that wholesome study of the evidence on record establishes guilt of the accused beyond reasonable doubt. Learned Trial Judge took into consideration every aspect of the case and rightly convicted the appellants for charges under Section 302 I.P.C. The direct evidence of Mohabbat Ali (P.W.1) and Aladeen (P.W.2) supported by medical evidence pointing guilt against the accused appellants are consistent with the prosecution version, hence the plea of the accused appellants with regard to presence of mens rea fully stands proved. Even if there is absence of motive, it

would not benefit the accused when there is reliable and acceptable version of the eye witnesses supported by medical evidence pointing against them. The prosecution is not bound to prove the motive of any offence in a criminal case, in as much as motive is known only to the perpetrator of the crime and may not be known to others if the motive is proved by the prosecution, the court has to consider it and see whether it is adequate. The testimony of the prosecution witnesses are cogent, credible and trustworthy and have a ring of truth hence it cannot be stifled or overshadowed on account of minor variation which only indicates that they are not tutored.

Now we have to scrutinize and evaluate the ocular version of the prosecution witnesses on fact because it has been contended on behalf of appellants that the prosecution witnesses were not present on the spot and they have not witnessed the incident as claimed by them and their testimonies are contradictory and under circumstances does not inspire confidence. Prosecution has examined PW-1 Mohabbat Ali, PW-2 Aladeen as witnesses of fact. We now take into consideration the relevant portion of the testimony of the aforesaid witnesses to decide reliability of their testimony. **PW-1 Mohabbat Ali** brother of deceased is the complainant of the incident. He has stated that on 16.01.2005 he along with Haneef, Aladeen (PW-2) and his brother Ajaz (deceased) were doing the work of removal of peels of sugarcane in his field. At around 4 - 4:30 p.m. in the

day, both the accused Hasam and Nazam who belong to his village came there with tamancha in their hands. They stated that Ajaz (deceased) was doing pairokar work against them in pending civil case, he would not be spared alive. Both of them fired on Ajaz with the firearm in their hand. The first fire hit on right back of the deceased and the second fire hit on left eye and he died on spot. He further stated that house of the accused person is nearby his house and there was dispute regarding drainage due to which they committed the murder of his brother Ajaz (deceased). In his cross examination he has deposed that at the time of incident he was present on the spot and has seen the incident. He has also stated position of Ajaz (deceased) and the witnesses on spot at the time of incident. He has also stated that he had shown each and every place to the Investigating Officer at the time of spot inspection by him. **PW-2 Aladeen** is an independent eye witness, he has explained his presence on the spot at the time of incident. He has deposed that he is resident of the same village. He has no field near the spot but on getting information regarding peeling work of the sugarcane, he had reached there for doing the work of removal of peels from the sugarcane and at the time of incident he was present there and had seen the incident from a distance of 20 paces. He has also stated that both the accused Hasam and Nazam appeared on spot about 4-4:30 p.m. with tamancha in their hands. Both of them fired on Ajaz with firearm in their hand. Before firing, accused Nazam exhorted saying that Ajaz is the

paikar of the pending civil case, he would not be spared. He has supported the statements of PW-1 Mohabbat Ali and stated that fire of accused Nazam hit on right back side of the deceased and other fire opened by Hasam hit on left eye of the deceased. He has identified both the accused present in the court during the trial. He stated that Ajaz died on the spot. In his cross examination, he has deposed the fact that both the accused fired on Ajaz, he has fully supported the testimony of PW-1 Mohabbat Ali.

In detailed cross examination of PW-1 Mohabbat Ali and PW-2 Aladeen, there are some contradictions and ambiguity of time and place of inquest of the deadbody of the deceased. There are some contradictions on the point of time of incident and time of registration of F.I.R. but there is no contradiction or inconsistency on the point of manner, place, motive of incident and identification of the accused persons. There is complete consistency and coherence in examination-in-chief and cross examination of the statement of both the witnesses on above points of manner, place, motive of incident and identification of the accused. It is settled law that it is only the serious contradiction and omission which materially affects prosecution but not every contradiction or omission as held in ***Mritunjoy Biswas Vs. Pranab Alias Kuti Biswas and Another reported in (2013) 12 SCC 796*** that minor contradictions, inconsistencies or insignificant embellishments that do not affect core of prosecution case should not be taken

to be a ground to reject the prosecution evidence.

It is also relevant here that PW-1 Mohabbat Ali and PW-2 Aladeen, both are illiterate and rustic villagers. On the basis of some contradictions their testimonies cannot be discarded. Their evidence should be considered as a whole and from the point of view of trustworthiness.

In the case of ***State of Uttar Pradesh Vs. Krishna Master and Anothers (2012) 12 Supreme Court Cases 324***, it has been held by Hon'ble Apex Court that a rustic witness, who subjected to fatiguing, taxing and tiring cross-examination for days together, is bound to get confused and make some inconsistent statements. Some discrepancies are bound to take place if a witness is cross-examined at length for days together. Therefore, the discrepancies noticed in the evidence of a rustic witness who is subjected to gruelling cross-examination should not be blown out of proportion. To do so is to ignore hard realities of village life and give undeserved benefit to the accused who have perpetrated heinous crime. In the present case cross of Mohabbat Ali (P.W.1) and Aladeen (P.W.2) continued for several months as such any embellishment or exaggeration in their testimonies cannot be discarded if the same is otherwise credible.

It has been contended by learned counsel for appellants that PW-2 Aladeen has deposed on last page of his cross examination that the complainant (PW-1) had met him on the next day of incident and told him

that he had lodged F.I.R. against the accused-appellants Hasam and Nazam. On the basis of this fragment statement of PW-2, he contended that PW-2 Aladeen was not present on the spot at the time of incident but no conclusion can be drawn on the basis of fragment of the statement of witness but whole statement is to be seen. In his examination-in-chief and many places in cross examination PW-2 has clearly stated that he was present on the spot at the time of incident and has witnessed entire incident.

Learned counsel for appellants contended that PW-1 Mohabbat Ali being brother of the deceased Ajaz, is an interested and partisan witness. As regard statement of interested witness, there is no bar in law on examining family members as witness. In case of murder involving family members, it is family member who comes forward to lodge F.I.R. and discloses correct facts. If the statement of a witness is bound to be credible, reliable and trustworthy there would not be any reason for the court to reject such evidence merely on the ground that witness was a family member or interested witness or a person known to the effected party as laid down by Hon'ble Apex Court in the case of ***Amit Vs. State of Uttar Pradesh reported in (2012) 4 SCC 107*** that an interested witness must have some direct interest in having accused somehow convicted for some extraneous reason and a near relative of victim is not necessarily an interested witness.

In ***Hukum Singh Vs. State of Rajasthan, (2000) 7SCC 490***, Hon'ble the Supreme Court has held that only premise for dubbing them as "interested witnesses" is that they were the kith and kin of the deceased. Why should such witnesses be termed as interested witnesses? If they had seen the occurrence they would certainly have the interest to bring the offence of the murder of their breadwinner to book. Normally the kith and kin of the deceased, if they had seen the occurrence would not absolve the real offenders and involve innocent persons in that murder.

Learned counsel for appellants submitted that in F.I.R. presence of eye witness Haneef has also been mentioned but this witness was not examined for reason best known to the prosecution. As regards non examination of the witness Haneef who is named in F.I.R., it is not requirement of law to examine each and every witness to prove the prosecution case. It is quality and not quantity which determines the adequacy of evidence as has been provided under Section 134 of Evidence Act.

Medical evidence (postmortem report) fully corroborates the prosecution version as well as testimony of prosecution witnesses. In postmortem report exhibit Ka-2 of the deceased firearm injuries are found on right side back of the chest and on left eye of the deceased. Thus ocular evidence has been fully supported by medical evidence.

The presence of witnesses is proved to be natural and their statements are nothing but disclosure of actual facts relating to the occurrence. There is nothing on record to show that PW-2 Aladeen had any animous against the accused appellants. The testimony of prosecution witnesses of fact are cogent credible and trustworthy.

Learned counsel for appellants contended that there was no strong motive on the part of the accused persons to commit murder of the deceased and motive assigned has not been proved. Perusal of record shows that in this case motive has been mentioned in the F.I.R. PW-1 Mohabbat Ali and PW-2 Aladeen, both have stated that there was dispute of drainage between complainant and accused persons and this was the cause of committing murder. PW-1 has stated in his cross examination that there was a civil case pending in the court in which (deceased) was pairokar. Learned counsel for the appellants contended that no documentary evidence of alleged pending case has been filed and alleged motive has not been proved. So far as motive is concerned, it is settled law that motive is not a sine qua non for commission of a crime. Failure to prove motive or absence of evidence on point of motive would not be fatal to the prosecution case where guilt is proved from the reliable evidence. In fact motive is primarily known to the accused himself and it may not be possible for the prosecution to explain what actually prompted or excited him to commit a particular crime.

In case of ***Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793***, Hon'ble Supreme Court has held that proof of motive satisfies the judicial mind about the likelihood of the authorship but its absence only demands deeper forensic search and cannot undo the effect of evidence otherwise sufficient. Motives of men are often subjective, submerged and unamenable to easy proof that Courts have to go without clear evidence thereon if other clinching evidence exists.

In ***Vijay Shankar v. State of Haryana, (2015) 12 SCC 644***, Hon'ble Apex Court has held that in each and every case, it was not incumbent on the prosecution to prove the motive for the crime. Often, motive is indicated to heighten the probability of the offence that the accused was impelled by that motive to commit the offence. Proof of motive only adds to the weight and value of evidence adduced by the prosecution. If the prosecution is able to prove its case on motive, it will be a corroborative piece of evidence. But even if the prosecution has not been able to prove its case on motive that will not be a ground to throw the prosecution case nor does it corrode the credibility of the prosecution case. Absence of proof of motive only demands careful scrutiny of evidence adduced by the prosecution.

In ***Abdul Waheed v. State of U.P., (2016) 1 SCC 583***, the Hon'ble Apex Court has held that proof of motive of the accused towards the deceased heightens

the possibility of the crime. Proof of motive adds weight and value to the evidence of the eyewitnesses.

In case in hand both the witnesses of fact have proved the prosecution version and their testimonies is fully supported by medical evidence therefore motive loses its significance.

So far as the contention of learned counsel for appellants is concerned that Buggi (Bullock Cart) and instruments of peeling the sugarcane (Daranti and Palkati) which were said to be with the witnesses at the time of incident were not recovered by the I.O., in fact it was the duty of the I.O. to take in possession and prepare memo of the case properties but if there is any laxity on the part of the I.O. in this regard, it could not be a ground to doubt the testimony of PW-1 and PW-2 which were clear and cogent. The consistent and reliable testimony of PW-1 Mohabbat Ali and PW-2 Aladeen cannot be disbelieved on ground of any act or omission on the part of the investigating officer. As held by Full Bench of this Court in case of ***Gopal Vs. State of U.P. reported in 1999 (39) ACC 98*** that investigation of the case if found faulty, even mischievous and collusive could not be a ground to reject ocular testimony of the informant who lodged the F.I.R. promptly. If eye witness is believable the mere weakness of investigation should not be a ground to reject the testimony.

So far as this argument is concerned that the F.I.R. is ante timed, it is correct that according to chick F.I.R., it was lodged within 45 minutes after covering a

distance of 16 Kms. In F.I.R. time of incident has been mentioned as 4:30 p.m. distance of police station from the spot 16 Kms. and it was registered at 05:15 p.m. but only on this basis it cannot be said that F.I.R. is ante timed. Nowadays there are several fast modes of covering distance and it has not been asked by the informant (PW-1) in his statement that by what means he covered a distance of 16 Kms. in 45 minutes to reach to the police station for lodging F.I.R. Therefore lodging the F.I.R. after covering a distance of 16 Km. can be said as prompt F.I.R. The informant PW-1 is an illiterate man of village atmosphere, it may also be possible that the time of incident mentioned in F.I.R. may be approximate and not exact 4:30 p.m. In his written report informant has stated time of incident as about 4:30 p.m. In his statement PW-1 Mohabbat Ali and PW-2 Aladeen both eye witnesses have stated that incident occurred around 4:00 to 4:30 p.m.

Defence has examined DW-1 Rishipal Singh who was posted on 16.01.2005 as Radio Station Officer City control room Muzaffarnagar who has proved photo copy of original log book dated 16.01.2005. In his statement he has stated that then operator Ranjit Singh has made entry at 17:05 hrs. in it that it was informed by police station that Ajaz (deceased) was shot dead by assailants in the field. On the basis of aforesaid statement, learned counsel for appellants contended that time of incident was different from time mentioned in F.I.R. and F.I.R. is ante timed. As regards information of murder of

deceased by the assailants sent by the police station to city control room prior to the registration of the F.I.R. as contended by learned counsel for appellants is concerned, on this basis it cannot be said that F.I.R. was ante timed because there may be possibility of getting the information before registration of F.I.R. by some other means.

As discussed above, both the witnesses of fact are rustic witnesses there may be some difference in mentioning accurate time of incident. In chick F.I.R. and concerned G.D. time of registration of F.I.R. is clearly mentioned and proved by PW-6 Constable Virendra Kumar PW-5. Sub-Inspector Prem Prakash Giri has conducted inquest on the same day and prepared the inquest report. In the inquest report crime number and the time of incident are mentioned which has been proved by PW-5 in his statement. There was no delay in lodging the F.I.R. In view of the entire facts and circumstances it cannot be said that F.I.R. is ante timed and lodged after consultation with police.

It is true that there are some minor contradictions in the depositions of the prosecution witnesses of facts that too in regard to the subsequent events and not to the actual incident. Considering the entire facts. and circumstances of the case, we are of the considered opinion that contradictions are not so material which goes to the root of the case and materially affect the core of the prosecution case. Therefore, minor contradictions cannot be taken to be a ground to reject

the testimony of the prosecutions witnesses of facts. In the deposition of witnesses there are always normal discrepancies due to normal errors of observation, loss of memory, mental disposition of the witnesses and the like. Unless, therefore, the discrepancies are "material discrepancies" so as to create a reasonable doubt about the credibility of the witnesses, the Court will not discard the evidence of the witnesses. If the evidence is untrustworthy and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect prosecution case but not every contradiction or omission.

The learned trial judge has drawn wrong inference against the accused appellants with regard to recovery of fire arms with cartidges from their possession. The medical evidence is consistent with the use of the fire arms. The fire arms have been recovered at the pointing of the accused appellants from their possession. Even

though the offence under the Arms Act is quite distinct from the different sections of the Indian Penal Code but the acquittal under one provision of law will not exculpate the accused appellants from the offence under the penal provisions . Section 27 of the Indian Evidence Act is in the nature of an exception to the general rules contained in the two preceding sections i.e. under section 25 and 26. Section 25 makes inadmissible any confession by an accused person to a police officer. Under section 26 no confession by any person while he is in the custody of a police officer shall be proved against such person unless it be made in the presence of a Magistrate. Section 27 says that such part of the information given by an accused person while in the custody of a police officer may be proved against him as distinctly relates to the fact which is thereby discovered. It therefore makes admissible a confession made while in police custody if the other conditions laid in it are fulfilled. Being an exception to the general rule it has to be strictly construed. The section does not permit the admission in evidence of the whole of the confession, but of such portion only of it as can be said to relate distinctly to the fact discovered. There does not seem to be any controversy on this aspect of the section. The accused appellants were arrested on 22.1.2005 at 8.40 a.m. by the police personnel and two pistols and cartridges were recovered from their possession In view of this the portion of the alleged joint statement by the accused appellants wherein they admitted that they had committed the

murder of Ajaz with the pistols recovered from their possession, this fact would be admissible in evidence. Mere acquittal of the accused appellants for the charges under sections 25/27 Arms Act for the reasons given by the learned trial court would not give any benefit to the accused appellants whose presence on the spot and by whose firing the deceased succumbed to the injuries has been fully proved by the evidence of Mohabbat Ali (P.W.1) and Aladeen (P.W.2). The learned trial court swayed by the so called irrelevant technicalities which resulted into the acquittal of the appellants under the Arms Act

On the basis of discussion made here-in-above and also considering the material evidence on record, we are of the considered opinion that findings of conviction for the offence punishable under Section 302 I.P.C. recorded by the trial court are well substantiated by the evidence on record. The trial court has appreciated the evidence in the right perspective. We do not find any justification to interfere with the finding of conviction recorded for the offence punishable under Section 302 I.P.C., therefore the conviction recorded against the accused appellants under Section 302 I.P.C. is hereby maintained and affirmed. The instant appeal is **dismissed** accordingly.

The order dated 23.04.2009 passed by Additional Sessions Judge Court No. 9 Muzafar Nagar in Sessions Trial No. 405 of 2005 (State of Uttar Pradesh Vs. Hasam and another) arising out of Case Crime No. 6 of 2005

under Section 302 Indian Penal Code Police Station- Chhapar, District- Muzaffarnagar, is hereby affirmed. Accused-appellants are in jail. They shall serve out the sentence as awarded by the learned trial court and affirmed by this Court.

Let a copy of the judgment be certified and sent along with the lower court record to the court below immediately for compliance and necessary entry be made in the relevant register.

**(Anil Kumar-IX, J.)**

**(Naheed Ara Moonis,J.)**

**Order Date :- 22.10.2019**

Sharad/-