

According to these evidences informant's grand- father Nem Singh r/o village Baknare, P.S. Khair, district Aligarh had five sons namely, Manvir, Vijay Pal, Ramvir Singh, Raghuvir Singh and Sultan Singh. Manvir had four sons Padam Singh (deceased), Prempal, Prem Shankar (P.W.2) and Sher Singh (informant/P.W.1). Pawan P.W.3 is the son of Padam Singh(deceased). Pista Devi (a co-accused for conspiracy under Section 120-B IPC, since acquitted) is the wife/widow of Prempal, who had died in the year 1990. Prempal and Pista Devi have four daughters and a son. At the time of the present incident two of the daughters were already married and widow Pista Devi was living with her two damsels and her son in a separate abode from her in-laws house.

Manvir (father of informant P.W.1, Prem Shankar P.W.2 and Padam Singh, deceased) though owned 45 *bighas* of farm land, but he (Manvir), had renounced the world and had embraced seer hood. He had not visited the village since last four years. His 45 *bighas* of land was partitioned amongst his four sons. Whereas informant Sher Singh P.W.1, Prem Shankar P.W.2 and Pawan P.W.3 (son of the deceased) were cultivating their agricultural plots, agricultural land belonging to widow Pista Devi was initially lying vacant, but since last one/two years deceased and Pawan P.W.3 had trespassed and grabbed it and were farming over it. Pista Devi, the widow, thus, was deprived of her rightful inheritance and usufruct of her agricultural land although she and her son had an indubitable right of inheritance.

It further emerges that Pista Devi was originally a resident of village Damora and all the appellants herein, are her parental and marital relatives. Sher Singh P.W.1, during his cross-examination at page 11 has disclosed their relationships as (A-1) and (A-2) being her (Pista Devi's) sons-in-law (*damad*) and (A-3) being son-in-law of her brother. (A-4) is her brother-in-law (*jija*) and (A-5) Pappu is the son of (A-4) and nephew of the widow. Thus it becomes evident that both the warring factions were close relatives and were very well known to each other.

Next it is evident that after demise of Prempal, not only the widow was not allowed to cultivate the agricultural land falling in her share but, with a clandestine motive to grab her agricultural properties, even her chastity was slandered by levelling a faux pas that she was a trollop having an illicit extra marital relationship

with one Baljeet, a co-villager. The deceased, for the aforementioned reasons was not agreeable to allow Pista Devi to reside in the village as that was an impediment in his way to execute his nefarious design. To throw Pista Devi out of the village deceased had even lodged a FIR against her on 23.2.1996 levelling temerity of her being a trollop. She was even assaulted and inflicted with grievous injuries for which she had lodged a FIR on 25.2.1996 at P.S. Khair arraigning deceased, P.W.1, P.W.2, Vijay Pal and Rampal as culprits. She had also moved an application in the year 1991, soon after demise of her husband in 1990, to S.S.P. Aligarh regarding her life threats hurled by the prosecution side. Because of such hostile atmosphere widow Pista Devi was residing separately from her in-laws house in another residential abode.

With above facts being the precursor, that on the incident date 19.6.1996, a Maruti Van came to village Baknare at 9-10 A.M. and went straight to the house of widow Pista Devi. At 12 in the afternoon, (A-1) all alone stepped up to the building material shop of the deceased, which was situated at a distance of 1 k.m. from the village population at a lonely place surrounded only by agricultural fields, where the deceased also resided and informed him (the deceased) that relatives had come and a *Panchayat* (conclave) has been convened to resolve the disputes between him and Pista Devi and thereafter (A-1) had returned back from the shop. Same day at 2.15P.M. a Maruti Van stopped 15/ 16 paces away from the deceased building material shop and all the appellants herein (A-1) to (A-5), each one of them armed with a DBBL gun, alighted from it and came to the deceased shop. At that time, deceased and Vijaypal were sitting on a wooden plank cot (*takht*), and informant and P.W.2 were sitting on a cot (*Charpai*) in front of the shop. No sooner their arrival at the shop, all of a sudden, all the accused appellants opened fire at the deceased and the witnesses at the instigation of (A-1), (A-4) and (A-5). While (A-2) and (A-3) fired at the deceased Padam Singh from a close quarter of 2 or 3 paces and murdered him, rest of the miscreants fired at the informant and other witnesses but in that shooting spree except the deceased nobody else sustained any injury. Committing Padam Singh's murder, all the accused appellants tried to run away in the their Maruti Van and in that endeavour, three of the assailants (A-1), (A-4) and (A-5) threw their DBBL guns inside the Van

and tried to get into it but because of its speed failed in that attempt and, therefore, they sprinted towards village Baknare. Informant, other present witnesses and gathered crowd chased and apprehended all the three of them at a distance of ½ kilometres from the murder spot. Meanwhile, two police constables Bacchu Singh and Rajesh, both armed with rifles, arrived at the spot and the three apprehended assailants were handed over to them. Both the constables brought those three accused to the police station reaching there prior in time than the informant and others, who all returned to the incident spot and from there came to their village and then they came to the police station Khair in a tractor where they orally narrated the entire episode to the I.O., who directed them to give everything in writing and therefore, informant Sher Singh P.W.1 scribed the FIR Ext. Ka-1 inside the police station and handed it over to the Head Mohair Anil Kumar Tiwari P.W.5.

On the strength of the aforesaid written report, Exhibit Ka-1, HC/54 CP Anil Kumar Tiwari P.W.5 registered the crime by preparing Chik FIR, Exhibit Ka-5 of crime no.217 of 1996, under Sections 147, 148, 149, 307, 302, 120B IPC at 3.45P.M. same day (19.6.1996) mentioning the distance between the place of the incident and the police station as 9 kms. west. P.W.5 had also inked corresponding crime registration GD, Exhibit Ka-6.

S.I. C.P. Varma P.W.6 conducted inquest on the cadaver of the deceased between 4.30 to 5.15P.M., and had prepared inquest memo, *photo lash*, *challan lash*, letter to C.M.O., letter to R.I. etc. which all documents have been proved by P.W.6 as Exhibits Ka-7 to Ka-11.

In-charge inspector Mahabir Singh Chaudhary P.W.7 of P.S. Khair received the information about the incident on the R.T. set and, therefore, he directly came to the incident spot along with the police force and arriving there recorded the statement of the informant Sher Singh P.W.1 and at his pointing out conducted spot inspection and prepared site plan Exhibit Ka-11. I.O. also collected plain and blood stained earth and two empty cartridges of 12 bore gun from the incident scene and prepared its recovery memos Exhibits Ka-2 and Ka-3. From the spot, I.O. returned to the police station and interrogated apprehended three accused. On 20.6.96 statements of P.W.2 and Vijay Pal Singh (who had also caught the

three accused) were recorded. On 22.6.96, I.O. arrested co-accused widow Pista Devi (since acquitted) and penned down her statement. On 23.6.1996, I.O. copied autopsy and inquest reports in the case diary and thereafter interrogated accused Yogendra and Pappu inside jail on 18.7.1996. I.O. recorded the statements of both the police constables Bachhu Singh and Rajesh Kumar on 1.8.1996 and same day penned down 161 Cr.P.C. statements of Manvir Singh, Rameshwar Dayal, Sonpal Singh, Himmat Singh and S.I. C.P. Varma. On 13.8.1996, statement of Pawan Kumar P.W.3 was recorded and thereafter wrapping up the investigation, on that date, I.O. charge sheeted the accused appellants for the registered offences vide Exhibit Ka-12.

Autopsy on the cadaver of the deceased was performed by Dr. R.P. Sharma P.W.4 on 20.6.1996 at 4P.M. According to this witness, deceased was aged about 45 years and one day had lapsed since he had expired. He had an average built body. His mouth and both eyes were opened and *rigor mortis* was present on both of his upper and lower limbs. Following ante-mortem gunshot injury was detected by the doctor on the corpse of the deceased:-

(1) Gunshot wound of entry 3.5 cm x 3 cm x chest cavity deep on the front of chest upper part at..... Blackening, tattooing, charring absent. Clotted blood present.

(2) Gunshot wound of Exit 4.5 cm x 3 cm x chest cavity deep. Lt. interior angle of scapula. Lt. lung lower lobe and Lt. atrium is lacerated and ruptured clotted blood present.

(4) Pallets recovered from Lt lung.

In the estimation of the doctor, death was the outcome of shock and haemorrhage as a result of aforementioned ante mortem gun-shot injury.

On the basis of charge-sheet Exhibit Ka-12, submitted in the Court of C.J.M., Aligarh, Criminal Case No.3105 of 1996, State Vs. Mahendra Singh and others, was registered. Findings the disclosed offences triable exclusively by Court of Sessions, learned C.J.M. vide committal order dated 1.11.1996, committed the case to the Sessions Court, where on 8.11.1996 it was registered as S.T. No.1455 of 1996, State Vs. Mahendra and others.

Learned Sessions Judge on 25.11.1997 charged co-accused Pista Devi U/S 120-B IPC, appellants Mahendra, Chandra Pal and Pappu (A-1 to A-3) U/Ss 147, 302/149 IPC and appellants Chandra Pal and Pappu (A-4 and A-5) U/Ss 148,

302/149 IPC. All the charges were read out and explained to the accused, who all after understanding the same, denied them, pleaded not guilty and claimed to be tried and, therefore, for establishing their guilt, their trial commenced by observing Sessions trial procedure.

In the trial prosecution, examined, in all, seven witnesses. Out of them three fact witnesses included informant Sher Singh P.W.1, Prem Shankar P.W.2 (brothers of the deceased and the informant), Pawan Kumar P.W.3 (son of the deceased). Formal witnesses included Dr. R.P. Sharma P.W.4 (autopsy doctor), H.C. Anil Kumar Tiwari P.W.5 (who had registered the F.I.R. and had prepared chik and G.D.), S.I. C.P. Varma P.W.6 (who had performed inquest on the deceased cadaver) and Investigating Officer, In-charge Inspector M.S. Chaudhary P.W.7.

In their examinations U/S 313 Cr.P.C. accused appellants abjured the incriminating circumstances put to them occurring in the prosecution evidences and pleaded that since they were relatives of widow Pista Devi therefore they have been falsely implicated and deceased was done to death at an unknown time by an unknown assailant. Pista Devi, has stated that there was a dispute of agricultural land and since informant and the deceased wanted to grab her share therefore they had assaulted her on the earlier occasion and had caused her grievous injury and because of that ulterior motive they have arraigned her as accused in the present murder incident. Yogendra Singh (A-2) further stated that since he is the son-in-law of Pista Devi, therefore, because of animus with her, that he has been falsely implicated. In their defence, appellants accused have examined Dagger Singh D.W.1 and Sonpal Singh D.W.2. to testified that (A-4) and (A-5) were arrested at 5.30 P.M. by the I.O. and two constables from their tube-well and (A-1) was arrested from the house of Pista Devi by the I.O along with three/four constables and Pista Devi is mother-in-law of (A-1).

Recapitulating final outcome learned trial Judge/Additional Sessions Judge court no.5 concluded that prosecution had successfully established appellants guilt as perpetrators of the crime and, therefore, convicted all appellants herein of the framed charges and sentenced them as above, vide impugned judgment and order dated 11.1.2002, which decision is under challenge in the instant appeals by the convicted accused. Learned trial Judge, however, acquitted widow Pista Devi for

the reason that prosecution had failed to prove its charge against her. In absence of any challenge to her acquittal the same has now attained finality.

In the backdrop of proceeding facts, we have heard Sri G.S. Hajela, Sri Deepak Srivastava and Sri Akhilesh Srivastava, learned counsel for the appellants and Sri Sangam Lal Keshewani, learned AGA for the State and have ourselves scanned the entire trial court record.

Assailing the impugned judgment and castigating the findings recorded by the learned trial Judge, appellants counsel vehemently urged that the entire prosecution story was cooked up and fabricated at the police station in connivance with the Investigating Officer to frame-in widow Pista Devi and her marital maternal relatives with scurrilous motive to grab her share of entire property left by her father-in-law to which her deceased husband Prempal and her son were entitled. She had two unmarried daughters and a son to foster and therefore was fighting to reclaim her agricultural fields already grabbed and trespassed by the deceased and his son PW3. It is submitted that soon after the demise of Prempal in 1990, rankled allegation of un-chastity was levelled against the widow so much so that she was even assaulted and caused grievous injury and was also threatened with life in 1991. Padam Singh (deceased) even went ahead and, according to prosecution allegations, slandered her honour by lodging an FIR levelling allegation of un-chastity and her being a licentious lady. The widow and her children, two small daughters and a son, were turned out of her husband's house and they had to shelter themselves in a separate residential accommodation. Deceased and his son Pawan P.W.3, with ulterior design to grab her agricultural land, which remained uncultivated for many years, had illegally trespassed over it and had started farming on it, which fact has been admitted by P.W. 1 & 3 in their depositions. Appellant who were at the receiving end at all times had no motive to indulge into a day light murder in the witnessing of sibling relatives without any rhyme or reason or immediate causa causans. Articulating the argument, it was submitted that it is a case of total absence of motive for the appellants to involve themselves as they had nothing to gain from the murder of the deceased. Pista Devi had an heir to inherit the property of Manvir and Prempal. For the aforesaid reasons allegation that the appellants arrived in the

informant's/deceased village lodged in a Maruti Van at early hours of the morning on the incident date is all false and a fib allegations. No number of the Maruti Van could be mentioned by any of the fact witnesses nor could the I.O. pin point it during investigation, which unerringly indicates that in fact no Maruti Van was used in the crime. F.I.R. is the outcome of consultations and deliberations with the I.O. and was scribed and fabricated at the Police Station as has been admitted by the informant P.W.1 at internal pages 12/13 of his depositions, which narration has further been corroborated and concurred by P.W.2 vide page 6 of his depositions. FIR could have been penned down when the incident was being narrated orally to the I.O. as it related with a cognizable offence but that course was deliberately eschewed only to cook up a fabricated version. For this submission some relevant depositions of witnesses, to which we shall refer herein after, were referred to and relied upon. Ocular testimony is irreconcilably contradicted by medical evidence and hence is incredible. Albeit deceased was shot at from a distance of less than two or three paces by the two assailants aiming their DBBL guns at him but very significantly, he had sustained only a single gunshot injury and hence the allegations that two assailants shot at him from their DBBLs guns having four barrels, is an embellished and a concocted version to rope in as many persons as was possible harangued appellants' counsel. It was further submitted that distance from which firing is alleged to have been made is belied by absence of blackening, tattooing and charring being present in the solitary wound and hence disclosed distance by the witnesses is also false. All these factors coupled with the fact that none else was injured in the incident indicate that none of three fact witnesses were present at the spot and had actually seen the incident. Number of injuries vis-a-vis number of shots fired at a deceased is not commensurate indicating false implication of persons and since the real culprit and time of murder both were unknown, therefore, for greed of property mentioned above, appellants have been falsely implicated and consequently they all deserve to be acquitted. Sniping the conviction and explaining and elaborating the submissions, it is urged that allegation of indiscriminate firing from their DBBL guns by five shooters is belied by the fact that only the deceased sustained a single firearm injury and nobody else was injured. No pellet makes etc. were found or noted by the I.O. at the spot

which all creates a serious doubt in the veracity and credibility of the prosecution version and ocular testimonies of fact witnesses and conversely diminishes evidentiary value of their depositions. It further leaves an impression that a vain attempt was made to swell the number of accused in a mendacious story to implicate relatives of the widow who could have been of some help to her by perjurer witnesses. Omissions to mention most significant vital facts about the incident at the earliest occasion to the I.O. during the investigation and narrating them for the first time during the trial reconfirms fabrication of prosecution version and false implication of the appellants. Those omissions, which are in the nature of major contradictions, cannot be considered to lend credence to the prosecution story submitted appellant counsel. Presence of Pawan PW3, son of the deceased was disbelieved by the learned trial Judge himself in the impugned judgment and this irreparably damages genuineness of the prosecution case. Trial Judge has discarded his evidences, as is evident from internal page 14 of the trial court's judgment vide point no.3 for good and sustainable reasons, and this indicates that prosecution had attempted even to introduce eye witness account intentionally and deliberately to build up a case against the widow Pista Devi and her relatives with deft chicanery and therefore no reliance should be placed on the eye witness account. Ostensibly no independent witness appeared in the witness box to support the prosecution case, which was testified only by relatives, inimical, partisan and interested witnesses, who at all times were ready and eager to harm the widow and her supportive relatives. Neither the informant nor P.W.2 are reliable witnesses nor any credence can be attached to their depositions, urged learned counsel. Next, it was submitted that there was no *panchayat*, which was to be convened and such feigned allegation was levelled only to probablise presence of witnesses to cook up a case against the appellants. Deceased was shot dead when he was all alone and nobody had witnessed his murder and subsequently after discovery of his dead body that a hay was made at the sunshine to cook up a ludicrous story at the police station in connivance with the I.O. This contention was further expatiated by contending that the place of the incident was a lonely place, a kilometre away from the village *abadi*, which fact has been admitted to all the fact witnesses and, therefore, possibility of murder

being a hit and run incident cannot be ruled out. It has been evidenced by the informant himself that the deceased used to live alone and cook his meal at his aforesaid building material shop, which he had opened since eight or nine months prior to his murder, which indicate that neither the informant nor P.W.2 had anything to do with the deceased. In reality, as a matter of fact, it was a case of blind murder with no eye witness account. It is further submitted that narration of the actual incident by the fact witnesses is contradictory and self-defeating and, therefore, should be discarded. An examination of oral evidences by P.W.1 to 3 unerringly indicates that in fact no shooting was done by the appellants (A-1), (A-4) and (A-5) and they have been nailed-in the incident so that they may not be an ally to the widow. P.W.2 divulged a different story altogether harangued learned counsel who for this argument drew our attention at pages 4/5 of P.W.2's depositions. Referring to pages 8/ 9 of the testimonies of P.W.1, it was further argued that the incident certainly did not occur as alleged by him. Learned counsel further submitted that the allegation that Pista Devi had extra marital affair with Baljeet and P.W.1 had caught them in her house is all a hypothetical imagination with absolutely no basis because Baljeet and his family members were co-villagers and had that fact been correct the entire village with archaic ethos and psychic would have coalesced against the appellants and very strangely no action was taken against Baljeet by the informant and the deceased. In this context relevant depositions of P.W.1 at internal page 5 of his testimony were cited. Next, it was submitted that the theory of spot arrest is wholly incredible not having an *iota* of truth in it and that is why prosecution consciously and deliberately kept away the two police constables from testifying in trial who are alleged to have brought the arrested accused to the police station. Neither constables Bachhu Singh nor Rajesh Kumar were examined to authenticate allegation of spot arrest. Attour, the story that soon after the incident when the three appellants were apprehended at the spot after chase, no beating was given to them is so weird, improbable, unnatural and in-comprehensible version that it ought to be discarded outright. In the heat of the moment and in such a surcharged atmosphere lynching of those apprehended accused or their intense beating would have been the natural conduct and hence, calm and serene conduct of the witnesses are wholly

incongruent and unacceptable and creates doubts regarding genuineness about the spot arrest story which seems to be a figment of imagination and not a statement of fact urged appellant counsel. Further, clarifying the submission, it is contended that according to P.W.1 at pages 12/ 13 of his depositions and P.W.2 at pages 2/6 of his depositions, it is the categorical case of the prosecution that after the arrest, three apprehended accused were handed over to the above two constables Rajesh and Bachhu Singh, who had taken them to the police station but very surreally and unconvincingly, neither of these two constables got an entry of arrested accused made at the police station prior to registration of the F.I.R. although they had reached there much earlier nor any GD entry regarding movement of both the constables was produced in the court. For the first time information about the arrest of those three assailants was intimated through the FIR, Ext. Ka-1. Had the prosecution case been correct, the first thing which both the constables would have done is to get an entry of the three arrested accused made at the police station when they had arrived there much earlier to the informant. Urged submission is that intentional withholding of these independent witnesses indicate that none of the two constables were present at the scene and theory of spot arrest is a feigned allegation. Bringing deceased cadaver at the police station and retaining it there for the whole night was with ulterior motive to buy time to cook up a story and falsely implicate the appellants. It was next urged that the prosecution is trying to prove it's case anyhow by concealing true facts and evidences from the court and in such disgorged factual matrix no conviction should be sustained. It is further submitted that the depositions of P.W.1 at page 10 of his testimony is a total fabrication and embellishment and no reliance can be placed on such an unconvincing description about the actual incident. Defences theory of the appellants being arrested from their tube-well and house of Pista Devi and booked in the present incident are more convincing rather than prosecution allegations submitted learned counsel. Severely castigating learned trial court's findings it was incisively argued that the learned trial Judge has read the incident and the evidences in a pedantic manner without analysing them critically to fathom out the real truth and separate the grain from the chaff and hence it's opinion are partial and lop sided. Participation of all the assailants in the

incident does not seem to be probable as it is difficult to believe that appellant Chandrapal (A-4) aged about 55 years will permit his son (A-5) to be his compatriot in a day light murder incident. Otherwise also presence of (A-1), (A-4) and (A-5) at the spot is doubtful as they have been assigned an ornamental role of firing from their DBBL guns without causing any injury to anybody. The allegations against them seem to be spurious to falsely implicate them. Prosecution story not only has an air of unreality but is so truncated, tenuous and unappealing that it deserves to be discarded rather than embraced, is the urged contention. Closing submissions on behalf of the appellants are that both the appeals be allowed and appellants be acquitted of the charges levelled against them and be set at liberty.

Per contra, Sri Sangam Lal Kesharwani, learned AGA submitted that it is a day light incident in which deceased was shot dead. Prosecution had no motive to implicate the appellants by fabricating a case and hence it has established its version beyond any shadow of reasonable doubt to the hilt. Because of the landed property dispute, assailants, who are the relatives of the widow, had sufficient motive to commit the murder. Three of the accused were chased and arrested in the same sequence of events during the course of the incident and were brought to the police station prior to registration of FIR and therefore, their presence at the spot cannot be doubted, submitted learned AGA. Injury sustained by the deceased could have been caused by DBBL gun and therefore, ocular testimony is consistent with the medical evidence. Merely because the FIR was scribed inside the police station is no ground to disbelieve the informant. Without compelling reasons, which is missing in the present appeal, real sibling brothers and a son will have no reason to falsely implicate innocent persons in a murder case of their own brother and father sparing the real assailants. Learned AGA, therefore, urged that there is absence of reason to take a different view than what has been enunciated in the impugned judgement and consequently both the appeals sans merits and deserves to be dismissed with affirmation of conviction and sentence both.

We have considered the rival arguments and have searchingly vetted through the entire trial court record ourselves in an effort to fathom out the truth and to separate the grain from the chaff.

From our critical analytical analysis it becomes manifest that both the

opposite sides were closely related and hence their acquaintances could not be doubted. It is further apparent that Prempal husband of Pista Devi was the real sibling brother of the informant Sher Singh PW1, Padam Singh (deceased) and Prem Shankar PW2 and real uncle of Pawan PW3. Pista Devi thus is the sister-in-law (*Bhabhi*) of the informant, deceased and PW2 and is the aunt of PW3. It is also proved that the appellants Mahendra Singh (A-1) and Yogendra Singh (A-2) are the sons-in-law of aforesaid Pista Devi, whereas Pappu S/o Kuwarpal (A-3) is the son-in-law of her brother. Chandrapal (A-4) is the brother-in-law (Jija/ sister's husband) of Pista Devi and Pappu (A-5) is his son, being maternal nephew (*Bhanja*) of Pista Devi. Since this divulged pedigree during cross examination has not been disputed by the prosecution witnesses hence it is an accepted relationship.

Next what emerges from the record is that Sher Singh informant, Prem Pal (H/O Pista Devi) and Prem Shankar, PW2 together had purchased 9 *Bighas* of agricultural land jointly out of which 3 *Bighas* were being cultivated by the informant Sher Singh and the portion of agricultural land fallen in the share of Pista Devi was lying uncultivated. Besides aforesaid agricultural land, it is also apparent without any reservations, that Manvir s/o Nem Singh (father of the informant Sher Singh PW1, deceased Padam Singh, witness Prem Shankar and Prempal (expired H/O Pista Devi), had 45 *bighas* of agricultural land. Since Manvir had renounced the world and had embraced seer hood and had not visited the village since last four years, therefore his agricultural land was divided into four equal shares amongst his four sons viz: Padam Singh (deceased), Prem Pal (H/o Pista Devi), Prem Shankar (PW2) and Sher Singh (informant). Although three of the brothers were cultivating their fields, the portion belonging to Prempal (deceased husband of Pista Devi) was lying vacant since last two years, it seems, for the ostensible reason that widow had two small daughters and a small son to foster and they could not cultivate it and nobody else was ready to help her in farming. Further it has also been proved by the fact witnesses themselves that Padam Singh (deceased) and his son Pawan PW3, without any permission and to chagrin and displeasure of the widow Pista Devi had trespassed and grabbed her vacant land and had started cultivation on it perceptibly for the reason to divest

her of that estate.

In the sequence of admitted facts it also discernible that informant PW1 and PW2 resided jointly whereas deceased and Prempal, had different residential abodes. It is also admitted that the murder spot was the building material shop of the deceased, situated at a lonely place at a distance of 1 Km from village population (*Abadi*) surrounded only by agricultural fields where the deceased alone used to reside and cook his meal. His wife had expired in the year 1991 under mysterious circumstances and a year later his daughter too had died an unnatural death.

In the background of aforesaid uncontroverted admitted facts when prosecution allegations and evidences are critically examined it becomes evident that the same is wholly unconvincing and many important and significant aspects remains unexplained creating serious doubts on the veracity of prosecution case and consequently dents the entire prosecution version. Here we would like to recollect that the ethics of criminal jurisprudence does not permit acceptance of prosecution evidences in a pedantic way without critically examining it for its veracity and authenticity from a common parlance approach. Ignoring intrinsic inherent improbabilities occurring in the prosecution story and its evidences to lend credence to its version is the most denounced negation of justice. Courts should never forget legal maxim "*actus curiae neminem gravabit*" (act of court should prejudice none), while always being alive of "*de minimis non curate lex*" (law does not care for trifles). Sometimes prevaricated story is brought forth with parrot like testimonies to settle the scores and seeks vengeance and then it becomes imperative for the courts to separate the grain from the chaff. The need of the hour is to conduct a meticulous examination and roving inquiry into each vital facts and circumstances affecting the merits of the case so that no guilty should escape the punishment and no innocent gets convicted. Evidences of witnesses has to be taken as a whole without picking and choosing truncated portions of depositions and prolix the prosecution story. We do not mean to say that every trivial aspect be aggrandized to confer undeserved benefit on the accused rather we only countenance a balance analytical approach without ignoring significant aspects. Courts should examine the broader probabilities of

evidences rather than swayed away by insignificant contradictions and discrepancies which are not fatal to the prosecution case.

We now register some significant core issues having bearing on the outcome of this appeals, firstly, the incident is alleged to have occurred when the appellants are alleged to have arrived at deceased village, each one of them armed with DBBL gun, to participate in a conclave (*panchayat*) which was alleged to have been convened to make a request to the informant, deceased and others to allow Pista Devi to reside in the village as her chastity was doubted by the informant, deceased and other fact witnesses, but all this is a disproved facts as there was no occasion to call for such a conclave. This conclave had a prelude and a background in the unchaste conduct of Pista Devi but regarding both those facts the evidence is wholly unconvincing and unworthy of credence. In respect of un-chastity allegation there are evidences of informant PW1 Sher Singh and his brother Prem Shankar PW2. Both of them are the real sibling brothers of the deceased, having commonality of motive to grab widow's estate and having no sympathy with her. They had an evil design on her estate and hankered to throw her out of the village. They would have no qualms to scandalise her virtue. Thus both of them are inimical, partisan and related witnesses who could have charged the widow with faux pas for their ulterior motives, which they in fact did. However, not to discard their evidences because of aforesaid reasons alone, perusal of their evidences indicate that allegation in that respect is very facetious, undamnable, naff, shaky and unconvincing. Firstly it started emanating soon after death of Prempal, ostensibly motivated with lust to grab widow's property, and secondly, that but for very dicey evidence of the informant PW1 alone there is no other supporting evidence in that respect. Although informant Sher Singh, PW1 claims himself to be an eye witness of such an extra marital cupid relationship between Pista Devi and Baljeet, a co villager, and had evidenced that he had caught them red handed when both of them had buffeted with him and in that the paramour had escaped from his clutches, but then his narration has an air of unreality. Persons of vicinity and locality or of village had not come forward to support his allegation. Albeit he stated that on his disclosure FIR was also lodged by the deceased against Pista Devi for her vagrant conduct but no such FIR was

brought on the record nor PW1 had seen its transcript. He has no idea about the said FIR or its outcome. *Iipse dixit* of PW1 during his examination-in-chief and cross examinations extracted herein below are wholly undamnable and unconvincing and do not bring home that allegation at all. PW1 had stated at page 1 that-

"meri bhabhi Pista devi va bhai Padam Singh me apas me jhagada chala raha tha chunki meri bhabhi charitrahin thi. February mah 1996 me jhagada chala tha jiski FIR thane me bhabhi ke virudh kit hi. Is prakaran ko lekar...."

(Transliteration of it means that there was disputed amongst by my *bhabhi* Pista Devi and brother Padam Singh because my *bhabhi* was unchaste. In the month of February 1996 the dispute had arisen regarding which FIR was also lodged at the police station against *bhabhi*. Because of this episode.....)

PW1, when cross examined has further deposed that –

"February 1996 me jo report hui thi wah Padam Singh Ne ki thi. Yeh report charitrahinta ki thi. Us report par prastvit kes chala ya nahin, nahin pata. Vo report maine nahi dekhi."

(Transliteration of it means that whatever report was registered in February 1996 that was lodged by Padam Singh. This report was for un-chastity. I don't know whether any case had started on that report or not. I have not seen that report.)

Further this witness, at the same page 4, has stated that-

"mera meri bhabhi se koi jhagada nahin tha. Maine meri bhabhi ke charitrahinata ki bat swayam meri jankari me. Maine swayam Baljeet putra mahabir ko pakada tha. Bhabhi ke ghar pakada tha. 23 February 1996 ko. Maine iski koi report nahin ki. Padam Singh ne ki thi jiske bavat main upar kah chukka hu. Baljeet ko maine pakada tha yah bat report main nahi likhai thi. Daroga Ji ko pakadane wali bata di thi . Agar yah bat pakadane ki nahi likhi hai to main iski wajah nahi bata sakta. Baljeet ke khilaf Padam singh ne report kit hi uspar kes chalatha ya nahin pata nahin"

(transliteration means I had no enmity with *bhabhi*. Regarding her unchastity the fact was in my personal knowledge. I myself had caught Baljeet son of Mahabir at *bhabhi's* house on 23rd February 1996. I had not lodged any report

regarding that. Padam Singh had lodged as I had deposed above. I had not mentioned in the FIR regarding catching hold of Baljeet. I had informed about it to the I.O. but I can't state the reason why it was not slated. I don't know whether on Padam Singh's report any trial against Baljeet had commenced or not?")

Such statements do not at all inspire any confidence and shows that PW 1 was dangling on his imagination and not on the truth. His disclosures are only moldy and naff. He was rightly suggested that his entire deposition regarding unchastity of Pista Devi is a myth and cooked up. It is noteworthy that neither PW2 nor PW3 have supported PW1 regarding Baljeet's episode. PW3 has stated only this much that there were differences between the deceased and Pista Devi concerning her chastity. They both had stated regarding *panchayat* for the first time in court which does not inspire any confidence. Besides above statements they have not uttered any other attending circumstance in their entire depositions. We caste serious doubt on such an allegation against a widow because at the time of death of her husband Pista Devi was the mother of five children- four daughters and a son. Two of her daughters were already married by that time. Although there is no hard and fast rule of universal application that a mother of five children cannot be licentious but it is difficult to believe such an allegation in village surroundings like ours without convincing material and surrounding circumstances, which is totally missing in this appeal. No person of locality or village appeared to corroborate PW1 and we are of the opinion that had the aforesaid fact been true entire village would have coalescence and risen against her and Baljeet. Acquittal of Pista Devi by the learned trial court further erodes such a blasphemous allegation against a widow and a mother of five children including two married daughters. Thus on a single vacillating and unconvincing testimony of PW1, allegation against Pista Devi being a trollop cannot be judged to be true. Thus the very basis of convening a *panchayat* was absent and hence prosecution allegation regarding that is a disproved fact. It was because no such conclave was convened that the deceased also had no idea about it as during his cross examination informant PW1 had deposed that "*My brother did not know that relatives will arrive and today itself and conversation will ensue*". What transpires to us that the incident had not occurred because of spurious allegation of un-

chastity levelled against the widow, but the temerity was levelled as a pretext to grab the property of the widow which was forcibly being cultivated by the deceased and his son since last a year as has been admitted by PW3 at page 8 of his deposition wherein he has stated "*On the land of Pista Devi I was in possession since last a year*". It was because of this reason that neither informant nor son PW3 had informed the I.O. that incident had occurred because of dispute about chastity of Pista Devi. Otherwise also we find that convening of a conclave because of licentiousness of Pista Devi is a very weird aspect since she was living separately along with her children from the deceased, the informant and PW2 and prosecution side had nothing to do with her. No action was taken against alleged Baljeet nor there is any evidence to that effect and hence also we find allegation of Pista Devi being a lady of easy virtue and calling a *panchayat* for that reason to be a mendacious and cooked up version. We are oblivious of trite law that motive for a crime in case of an eye witness account relegates into the background but at the same time we are also conscious of the fact that when it is found to be fabricated, false, feigned, and it improbabilises an asserted fact, it erodes the credibility of prosecution allegations and testimonies of those witnesses who had adhere to it, as is the case in this appeal. Further it is to be noted that by murdering the deceased appellants would not have gained any mileage as son of Prempal was alive to inherit his entire share in agricultural land. Thus appellants had no motive at all to murder the deceased and prosecution allegation that appellants had arrived in deceased village to settle the score of living of Pista Devi armed with DBBL guns in a Maruti van is all a cooked up story.

Since learned AGA argued that much does not turns out on motive and since present is a case of eye witness account, therefore, we now take up for analysis other facts regarding FIR and description about the actual incident deposed by the fact witnesses to examine it's authenticity and veracity and credibility of the witnesses. On this score also we again find some very disturbing unexplained and surreal features in the prosecution case which we register herein below.

Looking to the evidence concerning FIR we find that categorical case of the prosecution is that after the murder was executed and three arrested accused

were handed over to the two constables who had arrived at the spot that the informant and other witnesses returned to the murder spot and from there they returned to their village. From the village they came to the police station in a tractor where they narrated the entire episode to the I.O. orally. I.O. then asked them to give everything in writing and then informant prepared the FIR and handed it over for registration. This statement of fact does not rule out possibility of concoction and deliberation in connivance with the police. Why the I.O. had not directed the informant to narrate the incident to Head Moharrir with direction to him to register the incident FIR on oral dictation. After all it was an incident of murder. Why time was wasted in getting the FIR slated and then registered remains unexplained. The only reason for such an exercise seems to be that the FIR was to be fabricated and cooked up to implicate innocent persons and for that time was sought by making such a deposition. Though such a happening can't be said to be unusual but then it is not normal as well. Criticism by the appellants that the FIR was cooked up in consultation with the I.O. cannot be said to be an unfounded submission and does not sans evidence. It also emerges from the depositions of P.W.1 and P.W.2 that after the incident, these witnesses had returned to the village. No explanation has been offered by the prosecution as to why the FIR was not dictated in the village by the informant or any other person including the son of the deceased. On the contrary, they preferred to go to the police station have conversation with the Investigating Officer and then prepare the FIR. Therefore, in such fact scenario, it will be very hazardous to opine that the FIR contains a truthful narration about the incident. It seems that in consultation much time was lost and therefore, FIR was got slated in a very hurried manner and such an explanation explains the omissions of significant facts in the first information report. It further transpires that since FIR was prepared at the police station, therefore, endeavours were made to arraign as many relatives of the widow as was possible. Opining thus, we find it very difficult to place any reliance on the first information report, which is the earliest prosecution version. It was for above reasons that the FIR was also registered under Section 147 IPC, although, no allegation was made that any of the assailant was armed with blunt object. Informant P.W.1 in his deposition has stated that he had carried the paper

and the pencil along with him from his village then it remains unexplained why he had not penned it in village itself and why he waited to consult the police. Thus, the very maiden version of the prosecution case is surrounded with suspicion and loses its authenticity and corroborative value.

Now delineating towards oral depositions of the witnesses, at the outset, we repeat that all the fact witnesses PW1 to3 were closely related with each other and the deceased being real brothers, nephew and son of the deceased and they possessed a common intention and an evil design over the estate of the widow and were in the look out to grab it and in fact deceased and his son PW3 had already grabbed the agricultural land fallen in her share since last a year. Thus all the fact witnesses had every reason to depose against the appellants who were close relatives of the widow and could be of help to her.

Now we note that none of the fact witnesses resided with the deceased at his shop and he lived there all alone and even cooked his food also. His wife and daughter had died under mysterious circumstances. Thus the presence of the witnesses during the incident seems to be improbable and because of this reason it seems, that none of them sustained any injury during the incident although no time was allowed to them to take shelter and shooting had commenced immediately after getting down from Maruti Van when witnesses and deceased are alleged to have been sitting very close by on two cots chatting with each other. Learned trial Judge himself has disbelieved presence of son of the deceased who is the most important witness and closest relative of the deceased for sustainable reasons and has dubbed him as a got up witness. Thus learned trial court himself doubted the presence of all the witnesses. We also don't find any impetus to differ from learned trial Judge for PW3 and therefore concur with it's view and hold PW3 to be a got up and planted witness.

Likewise we find informant and PW2 also to be got up and planted witnesses and on this aspect we differ from the reasonings adopted by the learned trial Judge. According to the informant, which has not been contradicted by other two fact witnesses, scene of the incident, which was the building material shop of the deceased, was situated at a lonely place, surrounded only by fields, at a distance of 1 km south of village population. There were no houses or shops

around it, as has been admitted to the informant which is clear from pages 6/ 7 of his depositions and thus murder could have been executed at a lonely time without any body witnessing it. Further it has been evidenced by the informant PW1 at page 8 of his testimony, that at the time when incident had occurred informant Sher Singh PW1 and Prem Shankar PW2 were sitting on a cot whereas deceased and Bijai Pal were sitting on a wooden plank cot (*Takht*). All of them were sitting in the front veranda of the shop and were chatting with each other. At that moment, it is alleged, that all the accused arrived at the shop in a Maruti Van and parked it at 14-15 paces away from the shop. All the accused alighted from the Van and came to the shop and no sooner reaching at the shop they opened fire from outside veranda from their DBBL guns from a distance of 5/6 paces. Padam Singh deceased came out of veranda and proceeded 2/3 steps north when accused started firing. Yogendra (A-2) and Pappu (A-3) aimed and shot at the deceased when he was 2/3 paces away from them. After sustaining bullet injury from fires made by (A-2) & (A-3) Padam Singh fell down on the ground. All the accused had fired simultaneously. However such a description by all the fact witnesses is apparently false and is contradicted by autopsy report of the deceased, doctor's evidence and site plan prepared by the I.O. at the pointing out of the informant. Firstly, no wooden plank cot (*Takht*) or cot has been shown in the site plan on which witnesses and the deceased were sitting by the I.O. so as to confirm the allegation that the witnesses were present at the scene of the incident. Secondly, but for the deceased nobody else sustained any injury. Thirdly, deceased himself had sustained only a single gun fire injury which belies his being shot at from a distance of just 2/3 paces by two persons from their DBBL guns having four muzzles and capable of firing four shots. Fourthly, no blackening or tattooing was present in that single wound and hence it is wrong to allege that he (deceased) was shot down from a distance of 2/3 paces as in that eventuality blackening and tattooing will not elude the injury. Fifthly, allegation that informant, deceased and witnesses were sitting side by side and were chatting when incident occurred is belied by site plan in as much as place 'B' where deceased was shot at is towards north of the shop and places 'A', 'B', and 'C', where witnesses and informant were present and where fired upon is towards east and hence site plan

prepared by the I.O. is not in conformity with the ocular version and in fact contradicts it making presence of eye witnesses doubtful. Sixthly, from the site plan it will be very doubtful for the witnesses to visualise murder of the deceased as projected wall will interrupt their vision. Seventhly, no witness had stated that informant and other witnesses had come towards east side of the shop while deceased remained towards north when the shooting took place and hence site plan does not fit in well with the ocular version. Eighthly, every witness had testified that no sooner accused alighted from Van they resorted to firing and hence in such a fact scenario informant and witnesses could not have arrived at places 'A', 'B', and 'C' if they were sitting beside the deceased. Very significantly on this aspect narration in the FIR is contrary to the witnesses depositions. Although in the FIR it was mentioned-

"Sitting there I, my brother and uncle were talking on said aspect. At 2.15 P.M. a white Maruti Van came. From it Mahendra, Chandra Pal, Son of Chandra Pal Pappu, and Yogendra all carrying DBBL guns and Pappu son of Kuwarpal armed with DBBL gun got down. I and my brother stood up. Bijai Shankar and Prem Shankar were standing near sand dunes. As soon as car stopped Mahendra, Chandra Pal and Chandra Pal's son exhorted to kill and not to allow to escape on which Yogendra and Pappu from their guns shot at my brother Padam Singh who fell down sustaining gunshot injuries. Meanwhile we challenged and hence I was also fired upon to be killed."

But during statement in court it was deposed as follows-

" They came at 2.15 P.M. from Maruti. Firstly they came to their house and then came to the shop. We all stood up spotting them. They exhorted to kill so that we may not escape. All these five accused were armed with DBBL guns. All of them fired and out of them Yogendra and Pappu son of Kuwarpal fired at my brother Padam Singh, who sustaining bullet injuries died at the spot. Shots made by others did not cause any injury to us. It embedded in doors and windows."

With above statements presence of witnesses at places 'A' 'B' and 'C' shown in the site plan, becomes impossible. Deposition in Sessions trial by PW1 makes the matter even worse and indicate that actually non was present and had seen the incident. Ninthly it is very absurd to accept ipse dixit of witnesses that those

two accused who were far off from Maruti Van got inside it and escaped and those who were much nearer to it could not board inside it. This aspect becomes clear again from site plan. Places 'C' and 'D' are shown as places from where deceased was shot at by two assailants Yogendra and Pappu s/o Kuwarpal, whereas place 'E' is depicted to show presence of three other assailants. Place 'E' shown in the site plan is much closer to the Van than place 'C' and hence prosecution allegation that three of the assailants could not board Van does not appeal to common sense. We recollect here that according to all the fact witnesses all the assailants had fired simultaneously so much so that when specifically asked from the informant PW1 he categorically denied his FIR assertions that deceased was shot dead first and then, when he and witnesses challenged, they were fired upon. This is conspicuous from page 9 of depositions of the informant PW1. Tenthly, we find the allegation of throwing of guns inside Van very weird and unconvincing. At least two of them Mahendra and Pappu s/o Chandra Pal were only 29/33 years of age and therefore for them to duck themselves in the Van could not have been difficult at all. Otherwise also chassis of the van is so low that it could not have posed any difficulty for the accused to board inside it. Then again we find that PW1 testified that when deceased was shot down they (informant and the witnesses) were only 5/6 paces away from him. How come then that none of them sustained any injury and their presence is shown at a different place altogether in the site plan. What is culled out from evidences is that escaping unhurt by the informant and the witnesses was not providential and it was because of some other reason most likely because they were absent during the incident. In fact what we sense is that since it was a blind murder and nobody had seen the incident and since no witness had sustained any injury and hence to explain their presence without any injury that in the site plan their presence were shown at places 'A' 'B' and 'C' to make prosecution case compatible with the cooked up FIR.

Another significant embellishment, which erodes credibility of the prosecution witnesses of fact is that in the FIR no allegation of firing being made by rest of three apprehended accused on any one, deceased or witnesses, was slated by the informant albeit he claimed himself to be an eye witness. When cross examined on the said aspect at page 10 of his deposition, informant

miserably failed to furnish any reason for it. He also failed to explain how such an important aspect was not stated by him to the I.O. in his earliest statement u/s 161 Cr.P.C. Improving upon his inked version and assigning specific role to three of the accused for the first time during trial, on the one hand makes the informant an unreliable witness and on the other hand improbabilises his presence at the incident scene. It diminishes veracity of his statements and therefore he can be dubbed only as an unreliable witness. PW1 has again affirmed distances between him, deceased and accused during the incident at page 10 of his statement and hence medical contradiction and improbabilities emerging from it further aggrandize falsity of prosecution allegations. Coupled with the aforesaid unconvincing material informant PW1 had also not inked nor told to the I.O. the fact that three of the accused had thrown their DBBL guns inside Maruti Van and when questioned about the same at page 11 of his depositions he failed to offer any explanation for the same. Thus what is evident is that prior to deposition in court informant PW1 had not divulged two most significant aspects to the I.O. creating deep doubt regarding his presence at the incident scene. If a witness had not penned down gun fire shots made at him with an intention to murder him and does not divulge it to the I.O. how presence of such a witness can be held to be established and how such a witness can be treated to be a truthful witness? Our answer to the cropped up question is in negative and consequently we find it extremely difficult to rely upon testimony of the informant PW1, who, according to us, was not present at the incident scene and is a got up witness. He being inimical, partisan, related and motivated had all the earthly reasons to tell tale a story to grab the property of a widow of his deceased brother after spitting a scurrilous charge on her of being a trollop.

Similar is the criticism regarding another fact witness Prem Shankar PW2. He too is related, interested and a partisan witness having the same clandestine motive to usurp the estate of the widow. His evidence is also wholly unconvincing and full of contradictions. In his examination-in-chief he has stated that-

" At that time 2 ½ P.M. Maruti van came at the shop. Mahendra Yogendra, Pappu, Chandrapal, Pappu came and started firing at Padam Singh from DBBL guns. Pappu and Yogendra had fired at Padam Singh. Rest had fired 8-10 at

us from bullets. We have already sheltered ourselves behind slippers, Badarpur sand. Padam Singh died at the spot from sustained gunshot injury."

Firstly such a nascent version was not stated anywhere before and secondly it belies statement of the informant PW1. It also contradicts prosecution case that all the witnesses were chatting in front of the shop when the incident occurred all of a sudden. This witness also deposed at page 4 of his cross examination-

"Maruti stopped at 15/16 paces. As soon as Maruti stopped assailants alighted from it armed with weapons. They it flashed in mind that they had come to commit incident. Maruti had stopped in north where we were sitting. We did not escape because they were also our relatives. Firing had started no sooner they alighted from Maruti. Firing was made at us from 2/3 paces distance. When accused ran towards us we did not run and stayed there. We were sitting in varanda. Uncle Vijaipal Singh Ji was fired at. Pappu son of Kuwarpal and Yogendra had loaded cartridges in my witnessing. Only once cartridges were loaded. Both of them had DBBL guns. Cartridges were loaded in both the barrels. Both these accused had already made two fires before loading the cartridges."

Such a description about the actual incident does not fit in at all with the facts found at the spot. All the above statements are only embellishments and figment of imagination without having any iota of truth in it. Informant PW1 had not stated any such story. Not only the evidence of P.W.2 is self-contradictory but is also bereft of reality. Further this witnesses had informed the I.O. during his interrogation u/s 161 that he and other witnesses had sheltered themselves behind slippers, sand etc. as he had admitted at page 5 of his deposition that *"This taking shelter act was also informed to the I.O. If he has not penned it down I cannot state the reason for the same. All the accused had fired. I had also informed the I.O. that Mahendra, Chandrapal and Pappu had also fired but I cannot state the reason why he has not penned down firing made by these persons. All the five had fired towards me also. Mahendra Chandrapal and Pappu @ Chandrapal had also fired at me. If this fact is not recorded in my statement I cannot state the reason for the same."*

All the above depositions are not only contradicted with medical evidence but are so un-natural that it does not inspire any confidence at all. This witness

also seems to be not present at the spot and his evidence indicates that he too is a planted witness.

Now we advert to the most contentious issue of spot arrest of the three appellants. On this aspect also, the prosecution evidences by the fact witnesses are very unnatural, un-convincing and unappealing. There are significant convincing reasons to discard spot arrest allegation and prosecution evidences. It is alleged that the three apprehended appellants came to the village in a Maruti Van and after the shooting spree they tried to escape in the van and in that attempt threw their DBBL guns inside the van but failed to board inside it and hence they sprinted towards the village. Such allegations do not still any confidence for the reason that there was no occasion for the three appellants to throw their weapons inside the Van which was the only guarantee of their safe exit. Neither the van nor the weapon could be recovered by the I.O. Moreover these appellants were nearer the van than the other two assailants and hence it is difficult to perceive that two other assailants at a longer distance boarded the van but those who were closer to it could not do so. Moreover, the assailants were armed with DBBL guns whereas prosecution side were all unarmed and hence van could have waited for some time to pick them up, which could not have taken much time as all of them were by it's side and nobody could have mustered any courage to come closure to them. Chase of these assailants started only when they are alleged to have failed to get into the van. This narration of incident does not appeal at all and it seems to be a total fabrication. Another aspect creating doubt in the prosecution allegation is that no beating etc. was given to the three arrested accused. It is categorical case of the prosecution that three accused were arrested after hot chase but they were treated in a most dignified manner and were handed over to the police Constables without even been slapped or pummelled. This conduct is so imprudent and puerile that it cannot be digested at all. It is contrary to all canons of human conduct especially of our village settings. Lynching of assailants in such fact situation is the normal conduct our heuristic experiences informs us. The natural conduct of the crowd in such fact scenario is to give a good beating to the arrested/apprehended accused, which is a natural fall out of anger and mob psychology. Another incredible aspect is that

none of two police constables who were handed over the three assailants were examined during the trial to corroborate prosecution allegations and lend credence to it. No reason worth in name has been offered by the prosecution for it's such a lapse. Thus most significant aspect of spot arrest of three assailants and their bringing to the police station by the two police constables remains totally disproved. Added to it is the fact that no documentary evidence or any case diary or general diary etc. regarding movement of those constables was produced or proved to show their presence at the incident spot at the time and date of the occurrence. How can we be very sure then that the constables arrived immediately after the incident and were handed over the apprehended accused and they have brought them to the police station? Intentional suppression of this vital evidence goes a long way to discard prosecution allegations. Next, unconvincing feature of the entire episode is that although the two Constables had brought the three apprehended accused to the concerned police station much earlier than the informant and other witnesses but no entry of those accused was got made prior to the registration of the FIR of the present incident. Why the two police constables did not get the entry made at the police station also remains in a realm of pure conjecture and only belies the spot arrest theory. No explanation has been offered either by the I.O. or any other witness regarding the said weird conduct by the constables. Had the prosecution allegation been true, constables would have necessarily handed over the arrested accused at the police station and would have informed the station in-charge regarding the murder incident. Total silent inaction on the part of both the constables coupled with the fact of their non-examination impels us to discard the spot arrest allegation, which to us seems to be a mendacious version introduced with motives to rope in as many parental relatives of the widow as was possible. It seems that because of spot arrest theory being a fib that at pages 12 and 13 of his deposition informant P.W.1 has stated that they had effected the arrest at a distance of half kilometre and nobody had assaulted the arrested accused with kicks and fists not even he. The police Constables had arrived there and accused were handed over to them. He has further deposed that prior to his reaching at the police station the Constables had already arrived there. P.W.2 in his statement has stated at page 2 that the apprehended accused were

handed over to the police constables, who had brought them to the police station. At page 6 of his cross-examination, he has contradicted his earlier statement as well as the statement of the informant when he deposed that the apprehended accused were handed over to those constables near the corpse of the deceased. In such a view, so far as spot arrest is concerned, there is no congruent evidence to establish it. The two police constables were not examined in the trial and there is no corroboration of the said fact by any independent source. Nobody from the village or from the informant house had accompanied the apprehended accused to the police station, which also is a very disturbing feature of the case. It is very difficult to perceive that the relatives of the deceased will leave the arrested three appellants only at the mercy of the two police constables. It also remains unexplained why informant had not accompanied the two constables to the police station in the tractor to lodge a report and why he followed them very belatedly. Another very strange feature of the case, which compels us to discard the prosecution story is that why the assailants will run towards the village only to get apprehended against all canons of human natural psychology of escaping the arrest. It is incomprehensible that the murderers will run towards the trap to get arrested. The prosecution allegation that the three assailants ran towards the village to escape arrest, therefore, does not appeal to reason. In fact, the assailants should have taken a route where nobody could have chased them. The incident place being a lonely place, running towards open field hither and thither to escape apprehension would have been the normal course, which has not been followed in the present incident and, therefore, we are of the opinion that the presence of three apprehended accused at the spot is extremely doubtful as their conduct is most weird. For the aforesaid reason also we discard spot arrest theory. The appellants have pleaded that they were arrested from their houses and were falsely implicated in the crime because of their relationships with the widow and their defence cannot be brushed aside for lack of substance. Nobody noticed whether those constables brought the arrested accused in handcuffs or in tied ropes to the police station and therefore, the spot arrest allegation seems to be a far-fetched one.

Next, we doubt the spot arrest theory also because the presence of three

appellants during the incident seems to be extremely doubtful. Firstly, only appellant Mahendra, empty handed, is alleged to have come to the building material shop of the deceased and not the other two. Further only an ornamental role of firing at the witnesses from a distance of 5/6 paces or even less than that without causing even a scratch to the witnesses, has been assigned to all of them. They are not alleged to have even attempted to cause injury to the deceased. It is too much to believe that 6 barrels fired by three appellants all of a sudden without allowing any chance to escape will not cause even one injury to any of three witnesses sitting very close by the deceased. What transpires is that the prosecution allegation with such an assertion was levelled only to rope in entire relatives of the widow who could be of some help to her. Next the presence of these accused were surfaced for the first time through the incident FIR, which was lodged after due consultation with the police. After reaching at the police station why the informant had also not handed over these arrested accused to the officer-in-charge of the police station is also an important circumstance casting doubt on the prosecution version. The delay was made in conveying to the police regarding the spot arrest of the three assailants and the same has not been explained at all by the prosecution and therefore, we seriously doubt the aforesaid allegation. The defence version seems to be quite probable because the un-naturalities and improbabilities cropped up in the prosecution case. We have already pointed out that all the fact witnesses had good reason to implicate the appellants being the helper of the widow and therefore, it can be said that false implication of the three appellants with spot arrest theory for ulterior motives is a mendacious version having not an iota of truth in it.

For the aforementioned reasons, we are unable to subscribe to the view recorded by the learned trial Judge and are constrained to observe that the prosecution allegations regarding spot arrest is false and fabricated story.

Besides the aforesaid facts there has been no recovery from three appellants nor the Maruti van could be traced out. No record of the two police Constables regarding their picket duty has been filed. No independent witness has lend any credence to the theory of spot arrest or attending circumstances establishing truthfulness of that allegation was brought forth.

There are other aspects also which makes prosecution case suspect and that is that the number of accused is less than number of injuries sustained by the prosecution side and hence false implication and escalation of member of accused cannot be ruled out. Investigation of the crime is also shoddy and perfunctory and does not inspire any confidence. I.O. had not made any effort to investigate the crime justly and fairly and he had only recorded the parrot like statements of witnesses and had laid the charge sheet. No attempt was made to investigate the case at all from the angle of the accused defence so as to judge the reliability of prosecution case and rule out possibility of false implication.

Turning to the impugned judgement we find that the learned trial court has fell in error in analysing the evidences pedantically and not dispassionately and seems to have been overawed by the allegation of spot arrest and day light incident. He has disbelieved presence of PW3 but for the same criticism has not disbelieved informant and PW2, whose presence at the spot are also extremely doubtful and suspect. Contradictions and improbabilities cropped up in the prosecution version have escaped it's attention and therefore we find ourselves in disagreement with his opinion.

On an overall analysis, we find it very difficult to uphold the conviction of the appellants and in our view prosecution has miserably failed to bring home the charges against the appellants who all deserve to be acquitted.

In the net result, both the appeals succeeds and are allowed. Impugned judgement of conviction and sentences of all the appellants, Mahendra Singh (A-1), Yogendra Singh (A-2), Pappu son of Kunwarpal (A-3), Chandra Pal (A-4) and Pappu son of Chandra Pal (A-5), dated 11.1.2002, recorded by Additional Sessions Judge, court no.5, Aligarh in S.T. No.1455 of 1996, state vs. Mahendra Singh and others, P.S. Khair, district Aligarh are set aside and all the appellants are acquitted of all the charges. Appellants Mahendra Singh (A-1), Chandra Pal (A-4) and Pappu son of Chandra Pal (A-5) are on bail. They need not surrender, their personal and surety bonds are discharged. Appellants Yogendra Singh (A-2), Pappu son of Kunwarpal (A-3) are in jail. They are directed to be released from jail forthwith unless they are required in any other case.

Let a this judgement be certified to the trial court for its' intimation and

follow up action at its end.

Dt.18.12.2013

Rk/Arvind/Tamang-130 of 2002 and 135 of 2002