Reserved

A.F.R.

GOVERNMENT APPEAL NO. 1375 OF 1991

State of U.P. ..... Appellant

Vs.

Irfan and others ..... Respondents

Hon'ble Vinod Prasad, J.

Hon'ble Karuna Nand Bajpayee, J.

(Delivered by Hon'ble Vinod Prasad J.)

Appellant prosecutor State has come up in this appeal against impugned judgment and order dated 4.4.1991 passed by VIIIth Additional Sessions Judge, Moradabad in S.T. No. 420 of 1990, State Vs. Irfan and ten others relating to P.S. Didauli, District Moradabad by which learned trial Judge has acquitted all the accused respondents herein namely Irfan (A1), Laddan (A2) Babu(A3) Julfikar (A4), Mohd. Islam (A5), Afsar (A6), KamreyAlam (A7), Aarif (A8), Rabbu (A9), Julfey (A10) and Naushad (A11) of the charged offences under sections 147, 148, 302/149, 307/149 I.P.C.

At the very threshold, we would like to point out that leave to appeal was granted and appeal was admitted on 16.7.1992. Pending final outcome, three of the accused respondents expired. Accused-respondent Irfan(A1), died in an accident on 22.12.2010, which fact is evident from C.J.M., Moradabad's report dated 29.6.2013. Similarly respondent Laddan(A2), according to C.J.M., Moradabad's report dated 7.2.2008 had died and in his respect this appeal already stands abated vide order dated 24.4.2008. Accused respondent Babu(A3) had also died and concerning him also this appeal was abated on 24.10.2002. We therefore have to adjudicate this appeal only against surviving accused respondents(A4) to(A11) as above.

Narrated briefly, prosecution allegations against respondents accused, as are deciphered from the written FIR Ext. Ka-1 and testimonies of fact witnesses, informant Minzar Hussain (P.W. 1), injured eye witness Chhidda (P.W. 2) and eye witness Mohd. Alam (P.W. 3), are that one Safi

resident of village Bhikhanpur Muntha, P.S. Didauli had three sons Yaqub, Mohd. Iqlakh, Shah Mohammad. Mohd. Iqlakh had two sons Sadi and Saifulla. Sadi also had three sons Yaqub, Mohd. Iqlakh and Shah Mohammad. Witness Tasleem is the son of Yaqub. Ishtiyak Hussain (deceased/ D-1), father of informant Minzar Hussain (P.W. 1), and Ishak Hussain (deceased/ D-2) were sibling brothers both being sons of Mohd. Iqlakh. Shah Mohammad had a son Alam and Saifulla had a son Mazeed. Injured Chhidda (P.W. 2) and eye witness Gaffar are the sons of Mazeed.

In village Bhikanpur Muntha, Ishtiyak Hussain (D-1), although was continuously elected village pradhan since last fifteen years but in the last election held two years ago to the present incident, he was defeated by one Chhatar Singh Jat supported by accused respondents. On the polling day in that election a tiradic altercation had occasioned in between(A1) and(A2) and(D-1) and this had impregnated a feeling of revengeful animosity in the minds of the accused respondents.

On the incident date 7.1.1990 at 2 P.M., Minzar Hussain informant (P.W.1) along with his father Ishtiyak Hussain (D-1), uncle Ishak Hussain (D-2), Gaffar, Zahid, Mohd. Alam (P.W.3) and Tasleem were proceeding towards Sunday market of Joya for purchasing cereals, vegetables and other commodities in the tractor trolley of Chhidda (injured/P.W.2) plied by (P.W.2) himself. After covering some distance from the village when the tractor trolley reached near the field of Fatte then, from the adjoining sugarcane field of Ram Pal, all the accused respondents, Irfan (A1)(armed with rifle) and rest of the accused respondents Aarif (A8), Laddan (A2), Babu (A3), Julfikar (A4) all sons of Nawab Jan, Afsar (A6), Kamrey Alam (A7) (sons of Afsar), Mohd. Islam (A5) all residents of village Bhikhanpur Muntha and accused-respondents Julfey (A10) and Rabbu (A9), both sons of Bhoore and Naushad (A11) (all the three residents of village Munda Ikiya, P.S. Didauli, Moradabad) armed with country made pistols with Laddan (A2) having a country made rifle came out firing and approached towards the trolley. They challenged to stop the tractor but Chhidda (P.W. 2) did not adhere to the challenge. On this, accused respondent Julfey

(A10) fired at him, which caused a grazing gun- shot injury on the forearm of Chhidda (PW2). Sustaining injury, Chhidda (P.W. 2) stopped the tractor. All the accused then surrounded the tractor trolley. Irfan (A1) vetuparised Ishtiyak Hussain (D-1) and said that chairman will not to be left alive today as he brazen out very much and thereafter he instigated rest of his associates to annihilate him. All the accused respondents then pulled down (D-1) from the tractor trolley and dragged him to 8-10 paces in nearby field of Fatte where Rabbu(A9) and Kamrey Alam(A7) caught hold(D-1) from both of his hands and(A1) shot him dead inflicting riffle shot injury on his chest.(D-2), uncle of informant(P.W.1) in a lifesaving attempt tried to jump out from the tractor trolley but was caught hold of by accused respondents Aarif(A8) and Julfikar(A4) who both dragged him also to the same field of Fatte, near the spot where(D-1) was shot dead, and accused respondent Laddan(A3), from his CMP riffle shot him dead. All the assailants thereafter chased informant(PW1) but he sprinted and concealed himself in the sugarcane field. Other accompanying witnesses standing in the trolley jumped over from it and raced towards the village. Concealing himself, (PW1) measured a distance of 4½ KMs, came to the police station Didauli and there purchased a plain paper from an outside shop, slated incident FIR Ext. Ka-1, and lodged it at the police station Didauli same day at 3.30 P.M.

Constable Moharir Raj Pal Singh(C.W.1) registered the offence on the strength of Ext. Ka-1 as crime no.2 of 1990,u/s 147, 148, 149, 307, 302 I.P.C. by preparing chik FIR Ext. Ka-23 and crime registration GD Ext. Ka-24.

In-charge inspector Subhash Chand Garg(P.W.6), in whose presence the crime was registered, immediately commenced the investigation and recorded the statement of the informant(P.W.1) and then in a jeep accompanied with (PW1) came to the murder scene where, after conducting the spot inspection, prepared the site plan Exhibit Ka-5. S.I. M.P. Singh recovered two empty cartridges of 315 bore and two cartridges of 12 bore CMP(material Exhibits 1 to 4) blood stained and plain

earth(material exhibits 5 to 8) and tractor trolley and prepared their seizure memos Exts. Ka-6, Ka-7 and Ka-8. He also conducted inquests on both the corpses and had prepared their inquest memos Exhibit Ka-9 and Ka-10. Sealing both the dead bodies, it were handed over to the two constables CP 1164 Jagat Singh and CP 1102 Mahabir Singh to be carried to the mortuary. Simultaneously along with inquest memos, other relevant documents Police Form no.13, photo lash, challan lash, seal impressions, letters to C.M.O., letters to R.I. regarding both the deceased, Exhibits Ka-11 to Ka-21, were prepared. I.O. P.W.6, on his part, recorded the statements of witnesses including that of injured Chhidda(PW2) and thereafter dispatched him for being medically examined. During investigation statements of accused-respondents were also recorded and wrapping it up I.O./ (PW6) charge sheeted all the accused-respondents vide Exhibit Ka-22.

Dr. R.P. Singh(P.W.4), surgeon, posted in the District Hospital, Moradabad had conducted autopsy on the body of Ishtiyak Hussain (D-1) on 8.1.90 at 2 p.m. and had prepared his autopsy report Exhibit Ka-2. (D-1) was adjudged to be 50 years of age and a day had lapsed since his death. He had an average built body and rigor mortis was present on his cadaver. His eyes were closed and mouth was half open. Following ante mortem injury was detected by the doctor on the dead body.

> *"Gunshot wound of entry 3 cm x 1.2 cm into the chest cavity deep on the right front side of chest, marginal to right clavicle of upper at 3 'O' clock position oval in shape margin inverted lacerated and abraded, no blackening and tattooing present direction of wound backward and downward on the left."*

In the stomach digested food was present. In the small and large intestines digested food gases and fecal matter were present. On internal examination doctor had also noted that fifth right rib and eighth left rib of this deceased were fractured, right pleura was cut on both the sides, right and left lungs were lacerated. A big metallic pellet was recovered from the left chest cavity; three ounce of blood was present in the stomach. Shock and hemorrhage occasioned due to sustained ante mortem injury were the cause of death for which inflicted injury caused by firearm (rifle) was

sufficient in the ordinary course of nature.

Same day, same doctor had conducted autopsy on another corpse of Ishak Hussain (D-2) at 2.25 p.m. and had penned down his post mortem examination report Ext. Ka-3. (D2) was 46 years of age and a day had lapsed since he had demised. Rigor mortis were present on his both the extremities. His eyes and mouth were closed. His left 3rd , 4th and 9th ribs were fractured, left side pleura, lung were lacerated, digested food was present in the stomach and small and large intestines contained gases and fecal matter. Cause of his death was produced shock and hemorrhage due to following ante mortem injuries:-

ANTE MORTEM INJURIES

(1) Gunshot wound of entry 3 cm x 2 cm x cavity deep on chest 4 cm above the (Lt) nipple. Margins inverted and abraded, no blackening or tattooing present and are 11 'o' clock position.
(2) Gunshot wound of exit 1.2 cm x .7 cm x (Lt) chest cavity deep present 10 cm below the inferior angle of (Lt) scapula and 10cm left to midline. From ..on back of chest margin everted and lacerated
Direction:.... (not visible) downward and toward back."

Dr. Narendra Kumar(P.W.5) had examined injured (PW.2) on the following day of the incident i.e. 8.1.90 at 9.15 a.m. and had prepared his injury report, Ext. Ka-4.Constable Tej Pal Singh had brought him to the doctor. On his person, doctor had found following injury:-

"Examined Shri Chhidda S/o Shri Abdul Majeed. Aged about 35 years R/o village-Bhikanpur Munda, P/s Didauli, District-Moradabad on 8.1.90 at 9.15 AM. At P.H.C.- Joya, Moradabad.
B/B- *C.P. No. 999, Shri Tejpal Singh, P/s Didauli, Moradabad.*
N.I. *: Black mole on left side of neck, 7.5 cm. below the left ear lobule.*
Injuries *(1) Pallet like wound 0.25 cm x 0.25 cm on lower most part of medial aspect of Rt. Forearm. No tattooing, No charring present.*
Opinion*: Injury is kept under observation, Referred for 'X' Ray to District Hospital Moradabad.*
Duration of injury is within one day."

Injured could have been inflicted with above injury on 7.1.90 at 2 p.m. Doctor(P.W.5) was unable to conclusively determine nature of the injury and the weapon by which it was caused and hence he had advised X-

Ray for the same but X-Ray plate and report were never produced before(P.W.5).Nature of the injury was judged to be superficial which could have even been self-inflicted.

Charge sheet, Exhibit Ka-22, resulted in registration of criminal case against the accused respondents in the committal court of C.J.M., Muzaffar Nagar, who finding the disclosed offences exclusive triable by the court of Sessions, committed case of the accused-respondents to the Sessions Court for trial where it was registered as S.T. No.420 of 90, State Vs. Irfan and others.

Learned trial Judge charged all the accused-respondents with offences u/s 147, 148, 302/149 and 307/149. All the charges were read out and explained to the accused, who all, after understanding the same, abjured them and pleaded not guilty and, therefore, to establish their guilt Sessions trial procedure was resorted to by the learned trial Judge for prosecuting them.

During the trial, prosecution examined in all seven witnesses out of whom informant Minzar Hussain(P.W.1), injured Chhidda (P.W.2) and eye witness Mohd. Alam(P.W.3) were the fact witnesses. The doctors, who had performed both the autopsies and had examined the injured were examined as(P.W.4)&(P.W.5). Investigation Officer S.I. Subhash Chandra Garg is(P.W.6). Learned trial Judge examined Head Constable Raj Pal Singh, who had registered the crime and had prepared the chik F.I.R. and the G.D. entry as a court witness (C.W.1).

Since, on the record, after reconstruction, statements of accused under section 313 Cr.P.C. is not available, we are not making any mention of it but since both the counsel from rival sides did not object to hearing of the appeal as they said that the defence of the accused was that of denial and their false implication therefore we had proceeded to hear the appeal. From the contents of the judgment also, accused defence seems to be that of false implication and denial, witnesses being inimical, partisan and related who had falsely deposed against them. It is noted here that in their defence accused had not led any defence evidence.

As stated above, learned trial Judge concluded that the prosecution has not been able to establish guilt of the accused beyond all shadow of reasonable doubt and, therefore, acquitted all the accused respondents vide impugned judgment and order, which decision is now under challenge in the instant appeal by the appellant prosecutor State.

In the aforesaid background, we have heard Sri Rama Shankar Yadav, learned AGA for the appellant State, Sri Satish Trivedi, learned senior counsel for accused-respondents and Sri K.A. Kayum, learned counsel for the informant.

Appellant counsel vehemently criticized the impugned judgment of acquittal and submitted that the incident had occurred in day light with an injured witness and prompt FIR and therefore, the version contained in the FIR seems to be the correct narration of the incident. The time gap between the incident and registration of the FIR was only one and a half hours with police station being four and a half kilometers away and therefore, it is perverse to conclude that the FIR is the outcome of fabrication and concoction. Once the FIR version is correct, there was no occasion for the learned trial Judge to record an acquittal of accused respondents. (PW1) was an educated man and there was no reason for him to falsely implicate accused respondents in a double murder case of his father and uncle. It is further argued that post mortem and medical reports are congruent, consistent and supplementary to the ocular testimonies of creditworthy witnesses and both the deceased had died due to fatal rifle shot injuries. Blood and empty cartridges found at the spot convincingly and conclusively fixes the place of the incident and therefore, the learned trial Judge fell in grave error in discarding the prosecution story and acquitting the accused sans sustainable reasons. The scrutiny of the prosecution version and testimonies of it's witnesses by the learned trial Judge is faulty perverse and it’s analytical approach is also defective and therefore, conclusions arrived at by him suffers from glaring mistakes both on facts and law. Next, it was submitted that there was no reason for (PW2) to tell tale a story regarding an incident in which he himself had

sustained a fire arm injury sparing real assailants. His presence at the spot cannot be doubted and since the defence has not been able to dislodge his testimonies or to bring on record any circumstance to discard his evidences therefore, the prosecution case spelt out by him as well as by the informant which are in corroboration of each other could not have been discarded and disbelieved by the learned trial Judge, who committed an ex facie error on that score. The testimonies of the two doctors unerringly confirms the prosecution allegations lending credence to it. From the Investigating Officer, defence had failed to get elicited any circumstance, which may caste a doubt on the truthfulness of the prosecution version and creditworthiness of it's witnesses. Articulating his contentions learned AGA has taken us through the entire depositions of the witnesses, which we have examined very carefully. Wrapping up the submissions learned AGA contended that the impugned judgment of acquittal is perverse, suffers from grave errors of law and the conclusions drawn by the learned trial Judge are contrary to the evidences on record, which no man of ordinary prudence would have arrived at and therefore, impugned judgment be set aside, the appeal be allowed and the surviving accused-respondents be suitably convicted and sentenced.

Learned senior counsel Sri Satish Trivedi for the accused respondents, arguing to the contrary supported the view taken by the learned trial Judge, which according to him does not suffer from any perversity. In an appeal against acquittal if the view by the learned trial Judge is cogitated to be reasonable then, even if the appellate court may have a different opinion, the findings of acquittal should not be upturned harangued defence counsel. Next, it was urged that learned trial judge has pondered over on all the material and pivotal aspects of the case and his scrutiny is quite reasonable and consequently this Court should not disturb those findings. Two main assailants, who have been specifically assigned the role of shooting down both the deceased, namely, Irfan and Laddan, (A1)&(A2), are already dead. In their respect, this appeal has already been abated and therefore, for rest of the accused, the view recorded by the trial

Judge should be countenanced. Learned senior counsel further submitted that another accused Babu (A3) has also died and in his respect also the appeal stands abated. No specific role has been attributed to three of the accused namely Islam(A5), Afsar(A6) and Naushad(A11)and therefore, their participation in the crime with common object of murder is not established and they have been rightly acquitted. Their ornamental presence armed with country-made pistols throughout the incident do not inspire any confidence and resultantly impugned judgment is neither perverse nor illegal and therefore should be sustained and consequently instant Govt.Appeal be dismissed.

We have bestowed our thoughtful considerations over the rival submissions and have perused both, oral and documentary, evidences. Law respecting appellate court's approach in an appeal against acquittal has been subjected to catena of judicial pronouncements both by the Apex Court and by this Court. What has been enunciated in those judicial decisions is that an appellate court can scan the entire material on record and analyze complete evidences independently on its own but it should not revise an acquittal into conviction if the opinion by the learned trial Judge is reasonably possible based on the evidences on record and cannot be said to be perverse. If two views are possible the opinion favouring to acquittal of the accused should be adhered to and be not discarded. If the view of the trial court does not suffer from grave misdirection and is not based on total misreading and misquoting of facts then the appellate court should not substitute its opinion with that of the trial Judge although, it could have taken a different view had it been the court of original jurisdiction. Merely, because the appellate court is of the opinion that a contrary view should have been adopted by the trial court is no reason to substitute an acquittal with conviction as that is not an enough ground to disturb a recorded acquittal. Appellate court should be slow and loathsome to substitute conviction with an acquittal in such cases. In support of the said peroration, we recite some of the decisions propounding above view:-

In **Brahm Swaroop and Anr. v. State of U. P.:AIR 2011 SC**

280, apex court after elaborately discussing various precedents held as under:-

"*26. It is well established in law that the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more, the probable one. While dealing with a judgment of acquittal, the appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law. Similarly, the incorrect placing of the burden of proof may also be a subject matter of scrutiny by the appellate court. The court of appeal may not interfere where two views are possible for the reason that in such a case it can be held that prosecution failed to prove the case beyond reasonable doubt and accused is entitled for benefit of doubt. (Vide: Balak Ram and Anr. v. State of U.P., AIR 1974 SC 2165; Allarakha K. Mansuri v. State of Gujarat, (2002) 3 SCC 57 : (AIR 2002 SC 1051); Raghunath v. State of Haryana, (2003) 1 SCC 398 : (AIR 2003 SC 165); State of U.P. v. Ram Veer Singh and Ors., AIR 2007 SC 3075; S. Rama Krishna v. S. Rami Reddy (D) by his LRs. and Ors., AIR 2008 SC 2066; Sambhaji Hindurao Deshmukh and Ors. v. State of Maharashtra, (2008) 11 SCC 186 : (2008 AIR SCW 823 : 2008 (2) AIR Bom R 223 (SC)); Arulvelu and Anr. v. State, (2009) 10 SCC 206 : (2010 Cri LJ 433 (SC)); Perla Somasekhara Reddy and Ors. v. State of A.P., (2009) 16 SCC 98 : (AIR 2009 SC (Supp) 2622)); and Ram Singh alias Chhaju v. State of Himachal Pradesh, (2010) 2 SCC 445) : (2010 Cri LJ 1655 (SC)).*

27. In Sheo Swaroop and Ors. v. King Emperor, AIR 1934 PC 227, the Privy Council held as under:

"...the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses...."

28. In Chandrappa and Ors. v. State of Karnataka, (2007) 4 SCC 415 : (2007 Cri LJ 2136 (SC)), this Court observed as under:

"(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons",

"good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."
29. In State of Uttar Pradesh v. Banne @ Baijnath and Ors., (2009) 4 SCC 271 : (2009 Cri LJ 2234 (SC)), this Court gave illustrations of certain circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include:
i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;
ii) The High Court's conclusions are contrary to evidence and documents on record;
iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;
iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;
v) This Court must always give proper weight and consideration to the findings of the High Court;
vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.
30. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference with the decision of the trial court in a routine manner, where the other view is possible should be avoided, unless there are good reasons for such interference."

In **State of Rajasthan v. Islam: AIR 2011 SC 2317** it has

been laid by the apex court as under:-

"14. The learned counsel for respondent No. 1 has urged that this Court should not interfere in exercise of its jurisdiction under Article 136 of the Constitution when an order of acquittal was granted by the High Court and respondent No. 1 had suffered imprisonment for 6 years. There is no such absolute proposition in law as has been said to be advanced by the learned counsel for respondent No. 1. When this Court exercises its jurisdiction under Article 136, it definitely exercises a discretionary jurisdiction but such discretionary jurisdiction has to be exercised in order to ensure that there is no miscarriage of justice. If the consideration by the High Court is misconceived and perverse as indicated above, there is nothing in law which prevents this Court from exercising its jurisdiction under Article 136 against an order of acquittal when such acquittal cannot be sustained at all, in view of the evidence of record.

15. The golden thread which runs through the administration of justice in criminal cases is that if two views are possible, one pointing to the guilt of the accused and the other to the innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from a conviction of an innocent.

16. The principle to be followed by appellate court considering an appeal against an order of acquittal is to interfere only when there are compelling and substantial reasons to do so.

17. Thus, in such cases, this Court would usually not interfere unless

a. The finding is vitiated by some glaring infirmity in the appraisal of evidence. (State of U.P. v. Sahai, AIR 1981 SC 1442 at paras 19-21)

b. The finding is perverse. (State of MP v. Bachhudas, (2007) 9 SCC 135 at para 10 : (AIR 2007 SC 1236 : 2007 AIR SCW 1302) and State of Punjab v. Parveen Kumar (2005) 9 SCC 769 at para 9 : (AIR 2005 SC 1277 : 2004 AIR SCW 6897))

c. The order suffers from substantial errors of law and fact (Rajesh Kumar v. Dharamvir 1997 (4) SCC 496 at para 5 : (AIR 1997 SC 3769 : 1997 AIR SCW 1847))

d. The order is based on misconception of law or erroneous appreciation of evidence (State of UP v. Abdul 1997(10) SCC 135 : (AIR 1997 SC 2542 : 1997 AIR SCW 2454); State of UP v. Premi 2003 (9) SCC 12 at para 15 : (AIR 2003 SC 1750): 2003 AIR SCW 1179))

e. High Court has adopted an erroneous approach resulting in miscarriage of justice (State of TN v. Suresh 1998 (2) SCC 372 at paras 31 and 32 : (AIR 1998 SC 1044 : 1998 AIR SCW 819); State of MP v. Paltan Mallah 2005 (3) SCC 169 at para 8 : (AIR 2005 SC 733 : 2005 AIR SCW 455))

f. Acquittal is based on irrelevant grounds (Arunachalam v. Sadhanatham 1979(2) SCC 297 at para 4 : (AIR 1979 SC 1284).

g. High Court has completely misdirected itself in reversing the order of conviction by the Trial Court (Gaurishanker Sharma v. State of UP, AIR 1990 SC 709)

h. The judgment is tainted with serious legal infirmities (State of Maharashtra v. Pimple, AIR 1984 SC 63 at para 75)
18. In reversing an acquittal, this Court keeps in mind that presumption of innocence in favour of the accused is fortified by an order of acquittal and if the view of the High Court is reasonable and founded on materials on record, this Court should not interfere."

In consonance with the above expounded trite law when the facts of instant appeal are scrutinized it becomes apparent that albeit all the fact witnesses including the informant (P.W.1) were creditworthy and reliable witnesses and their testimonies were of an unimpeachable character yet for very flimsy and unsustainable reasons trial court has discarded their depositions. All of them had corroborated and affirmed their FIR version in its entirety and defence had miserably failed to dislodge their testimonies and get elicited any damaging evidence from them. Informant/(PW1) depositions are unambiguous clear, unwavering sans any major contradictions or omissions which may caste even a little doubt on the authenticity of the prosecution story. (P.W.1) has categorically stated that he was a resident of village Bikhanpur Muntha and out of eleven accused , eight were his co-villagers. Rest of the three Julfey(A9), Rabbu(A10) and Naushad(A11) belonged to adjoining village Ikiya Muntha, which was six kilometers away and all them belonged to one group. Weapons carried by all the respondents accused have been specified from the very penning down of the FIR and from his evidence it is indubitable that (A1) was armed with a rifle, (A2) was holding a country-made rifle, while rest of the assailants carried country-made pistols with them. It was further evidenced by (PW1) that in the last election, which had polled two years ago, on the polling day hot exchange of words had ensued between(D-1) and accused-respondents (A1) and (A2) in the presence of police personnel who, at that time, had subsided and pacified that exchange of hot verbal duel. It is noted that(A1)&(A2) are the main shooters in the present incident. During counting of votes in Joya no untoward incident occurred and from the poll day till happening of the present incident no physical brawl had ensued between the rival factions except verbal onslaughts and both the deceased

used to roam about in the village freely as they had never sensed that henceforth any incident will happen and hence the murder incident was committed all of a sudden. On being cross examined regarding last election (PW1) categorically deposed that(D-1), Chhatar Singh, Tahir and Majaheer were the candidates in that election fray and accused had supported Chhatar Singh, who had won the election, but(D-1) had not challenged it though any election petition. While admitting his presence during the election, informant testified that by losing in the election(D-1) had not harbored any animus or grouse against accused respondents. Concerning place of the incident (PW1) had disclosed that the same was surrounded by fields and the brick pathway route*(khadanja)* passed amidst it and during days of the incident expellers were extracting sugarcane juices. Agricultural field of Ram Pal was adjoining to the place of the incident having standing sugarcane crops of 8/9 feet high.

(P.W.1) further testified that Joya is a big satellite township having a big market, which starts at 7-8A.M. and closes at sunset and it could be approached through four different routes. The first route is through village Kanakpura, Fatehpur and from this way Joya market would be 6 ½ kms and place of the incident will not fall en-route. Another way is through Sallarpur and from this way Joya will be 5- 5 ½ kms and place of incident will not fall from this way also. Third approach road is through Kharkhoda and incident place will not fall from this way also and Joya will be 8-8 ½ kms from this route. Last route, taken by the informant, the deceased and injured was from Sambhal. Joya will be at the shortest distance from this route. Sambhal-Joya route is one kilometer from the informant's village with regular bus supply. A neem tree near Palala, is the bus stand. From Palala to Asakipur is three kilometers. It is thus obvious that the route taken by the prosecution party was the shortest with traffic on it and it seemed to be the most convenient. On the ill-fated day deceased and the informant were going to Joya market to purchase household articles, grocery, clothes etc. Both the deceased used to do marketing once in week to purchase articles for the entire week. Informant too had to purchase those articles for the

entire week. Informant further deposed that both the deceased had taken lunch at 10-11A.M. on the incident date. When questioned about the money,(PW1) made a categorical statement that both the deceased had no money with them. Informant has informed the attires worn by both the deceased which is corroborated by the inquest memos. Informant had refuted defence suggestion that the story of going to Joya market was false and concocted.

Regarding the tractor, informant testified that the tractor belonged to the injured witness Chhidda(PW2) and on the mud-guard there was no seat. The deceased and the informant all were in the trolley and when tractor was forced to be stopped all of them had stood up in the trolley. Accused had come out from the field of Ram Pal resorted to firing to stop the tractor without causing injury to anybody and trolley was cordoned off by them disallowing anybody to escape. Fire was made at (PW2) from 5/6 paces causing him injury on his right forearm to compel him to stop the tractor. Informant further testified that some of the accused remained on the ground and some had climbed on the trolley and 2/ 3 accused had caught hold of (D-1) and had tried to drag him. Terrorized witnesses could not muster courage to stop the assailants as they were carrying firearms in one hand and were pulling(D-1) from the other. At that moment, no dragging injury was sustained by the deceased (D-1), who was trying to get himself freed. This tug of war continued only half a minute. Clothes of the deceased were not torned off.(D-1) had not fallen in the tractor trolley and after being pulled down he was dragged 8 to 10 paces in the field of Fatte where(A7) and (A9) held him by his hands and (A1) shot him dead from a very close quarter of only two and a half feet. After murdering (D-1) assailants returned to the trolley after a quick gap of 25 seconds and then dragged (D-2) to the same field where he was also shot dead by (A2) when (A4) and (A8) had held him by his hands. Thus what is apparent from such depositions are that the entire incident must not have taken more than a few minutes to be over. Informant had further deposed that the assailants had approached to annihilate him also but he jumped out of the trolley and

escaped in the sugar cane field. During the incident accused were threatening the witnesses. This witness was also subjected to cross examination on relationships *inter se* most of which he had denied. Some enmity between the deceased and the other persons were also asked from him. Some of which he has admitted while denying the rest. Omissions in his statement to the I.O. were put to him and in reply thereof he had expressed his ignorance as to why they were not slated down. These omissions, in our opinion, are trivial and insignificant and do not corrode main substratum of the prosecution allegations, like he had not spelt out the names of the assailants who had climbed on the trolley and who had pulled down the two deceased or has not named who had dragged the deceased to the field of Fatte so on and so forth. Informant (P.W.1) further evidenced that after saving himself he did not return to the trolley and had proceeded straight for the police station where he had reached in 1 ½ hours. From a shop outside the police station, he had purchased a plain paper and on it he had scribed Ext. Ka-1 in 22 to 25 minutes.(P.W.1) further testified that he stayed in the police station for about 4/5 minutes. After he was interrogated by the I.O. and his statement was noted down that he had returned to the incident spot along with the I.O. in his jeep. He made a categorical deposition that no blood had tickled down in the trolley during the incident and by the same trolley both the corpses were sent to Moradabad after inquests were over and he had accompanied both the deceased. They had arrived at Moradabad at 8.30 P.M., where he had stayed over- night at the mortuary, which was nearby district jail. He confirmed of his being a *panch* witness in inquest proceedings and had signed inquest memos and had noted his opinion on it. He further stated that he had seen the injuries of the injured witness Chhidda/(PW2), which was on the outer aspect of his right wrist. According to this witness clothes of Chhidda/(PW2) were not stained with blood and he could not inform whether they had pellet marks on it or not? Informant/(PW1) emphatically denied defence suggestion that both the deceased were shot dead at a lonely place at an unknown time by unknown assailants and he was not

present during the incident and (PW2) had also not sustained any injury during such an incident and his injury was got manufactured and he was got medically examined subsequently only to give colour to the incident. He also denied that his FIR was not recorded as alleged by him and subsequently in consultation with the police the same was fabricated and concocted. He also denied that he was not present at the spot and subsequently was summoned by the police and the bodies were detained at the police station to concoct a case.

Chhidda (P.W. 2), the sole injured witness in the incident, corroborated informant/(PW1) on all the material and significant aspects of the incident and narrated the same version as that of the informant. On those aspects he had not erred or faltered to make the prosecution version suspect and doubtful. He rejuvenated date, time and place of the incident, presence of the informant, the deceased and the witnesses in his tractor trolley and in no uncertain terms deposed that he was plying the tractor at the time of the incident. He has repeated the names and weapons of all the accused respondents. Pertaining to the actual incident, he has corroborated (P.W.1) in full and hence , for the sake of brevity, we eschew from penning it down his depositions in *extenso*. (P.W.2) is clear and unambiguous that(D-1) was shot dead by (A1) whereas (A2) shot dead(D-2). Rabbu(A9), Kamrey Alam(A7), Aarif(A8) and Julfikar(A4) had caught hold of the two deceased in pairs. He has made a clear statement that Gaffar is his real brother and he had not fielded any candidate in the election. He further testified that all of them had started for Joya market 2/ 3 hours after taking lunch and both the dead bodies were transported to Moradabad in his tractor trolley. He had sustained grazing fire arm injury while he was plying the tractor and the shot was fired from western side by the shooter from a distance of 22/ 25 paces and he had sustained injury while he was sitting at the driver's seat and was facing towards south. Unlike (PW1), according to (PW2) some blood had oozed out which had stained his cloths. He had further deposed that when both the deceased were dragged to the field of Fatte at a distance of 10 paces and were done

to death then all the accused had accompanied both (D-1) and (D-2) and meanwhile he (PW2) continued to sit on his driver's seat and was being threatened. Thus this witness confirmed the distance between tractor and the field of Fatte. Injured (PW-2) further deposed that 1 ½ seconds had taken place in annihilating both the deceased. He further disclosed that it was only after informant had escaped that he too had jumped down from the tractor and had raced to save his life. Regarding omissions in his earlier statements he could not state the reasons for the same. He further disclosed that when informant jumped down from the trolley and escaped then none of the culprits was near the trolley but he was chased by 3/4 murderers. He denied the defence suggestion that no such incident as alleged by him had occurred and on the date of the incident he was not going to Joya with the tractor trolley and he had not sustained any injury as alleged and he had got his injury report manufactured in connivance with the informant as he belonged to the party of the deceased Ishtiyak (D-1).

Coming to the depositions of (P.W.3) he too has supported his predecessor witnesses in all broad features of the prosecution allegations without wavering and damaging statements. He disclosed that he was going to the market to purchase vegetables and *boora* and at that time he had a bag with him. Tractor had met him in the way. He has further confirmed informant's disclosure that Joya is a big market place with lots of shops and articles of daily consumption were available there. He also disclosed that because I.O. had not confronted him regarding the articles, which he had to purchase, therefore, he had not disclosed it to the I.O. Regarding actual incident, this witness has reiterated the same facts, which have already been testified both by (P.W.1) & (P.W.2). He had further disclosed that initially shots were fired from a distance of 20 paces and after (PW2) became injured then the tractor had stopped ahead 4/ 5 paces. From the western side Chhidda was fired upon from a distance of 5/ 6 paces. Rabbu (A9) and Kamrey Alam (A7) had pulled down Ishtiyak (D-1) when rest of the accused had cordoned off the trolley. During running of tractor torlley nobody had fired upon (D-1). (P.W.3) further disclosed that

the deceased was shot dead 10/ 12 paces away from the trolley. Aarif (A8) and Julfikar (A4) had pulled down (D-2) when he was trying to jump over the trolley and he was murdered by (A2). He too had denied the defence suggestion that he was not present at the spot and had not witnessed the incident and whatever he had testified were all a fib.

The formal witnesses, the two doctors and the I.O. have testified those very facts which have already been recorded herein above and hence the same are not being repeated again.

We again make a note that accused statements u/s 313 Cr.P.C. could not be reconstructed but since no grievance was raised by any of the accused respondent in that respect arguendo this appeal through learned senior advocate therefore, we take it that they had no arguments to offer in that respect and 313 Cr.P.C. questionnaires were correctly put to all the accused persons and they had the only defence that the two deceased were murdered at an unknown place and time by unknown murderers and injury of the inured was manufactured and fabricated and he and informant were not present at the spot and subsequently (PW1) was summoned and FIR was concocted and accused were framed-in this fabricated version.

Comparing the impugned judgment vis-à-vis available oral and documentary evidences on record it is apparent that the learned trial Judge has committed ex facie mistakes in analyzing, and vetting the prosecution story and evidences produced before him and the residue is that it's conclusions are perverse and illegal. He omitted to consider some significant aspects and evidences which had important bearing on the outcome of the case as those aspects anoints guilt of the accused convincingly. Contrary to it learned trial Judge has concentrated and deliberated on most insignificant and trivial issues having no deleterious effects on the prosecution version to discard prosecution allegations. In our opinion, such an exercise by the learned trial Judge is misdirected, perverse and cannot be countenanced. In our view prosecution has successfully established its charges clear of all reasonable doubts against all the accused, but for three, and there was no reason for the learned trial Judge

to return a finding of acquittal of all the malefactors in a day light doubt murder incident having an injured witness. Instead of dispassionately and independently scrutinizing evidences of witnesses, learned trial Judge seems to have adopted a lop sided approach of culling out invalid reasons to assoilzie the case favoring the culprits. The entire exercise by the learned trial Judge seems to be prejudicial and tainted. Since in this appeal against acquittal we are under legal mandate and are required to exhibit the perversity in the impugned judgment, therefore, we propose to deal with the reasons which weighed so much with the trial Judge that he even discarded unimpeachable evidences of creditworthy witnesses who had no earthly reason to depose falsely.

First of all, learned trial Judge dealt with the motive part and concluded that there was no motive for the accused to commit the crime and contrary to it prosecution had enough reasons to falsely nail them because they had lost last village Pradhan election and their hegemony to such a prestigious seat had crumbled. Since last two years accused had not indulged into any action against the prosecution side and therefore there was no occasion for them to commit the murder. It has been observed by the learned trial Judge at page17 that-

"*This makes the position crystal clear that the alleged incident has not taken place because of altercation in the election of village pradhan*".

He further went on to hold-

"*therefore, the grievance if any, would have been to Ishtiak and not to the accused. Because the Istihak Hussain have been the village Pradhan continuously from the last 15 and 20 years and in that election the accused got him defeated with their candidate Chhatar Singh since Ishtiak lost the election, therefore, he was the aggrieved party and not the accused. In the circumstances the motive as alleged by the prosecution is not proved. Moreover, the cause of incident is very remote as the election took place about two years back.*"

Learned trial Judge proceeded ahead and after a few lines held-

"*the complainant party was aggrieved because of their defeat in*

election and not the accused party. Therefore, the motive as alleged by the prosecution is not proved and on the other hand, it is quite likely that the accused might have been implicated falsely because of that enmity."

With the aforesaid discussions, learned trial Judge ultimately concluded by observing-

"in the present case it becomes clear that the enmity of the election if any was likely to operate from the side of the complainant and not from the side of the accused."

The aforesaid opinions by the learned trial Judge are primarily based on testimonies of the informant but vetting of the same establishes otherwise situation. Firstly it all runs contrary to the evidences on record in as much as (P.W.1) was questioned on the aforesaid aspect wherein he has categorically stated that interregnum the period of election and the murder there had been heated altercations between the accused and the deceased but no brawl as such had taken place. It is the categorical statement of the informant at page 5 of his deposition that *"till the incident no other brawl had taken place except verbal altercations."* This clearly indicated animus which the accused had imbibed in their minds and they had spewed it immediately preceding the annihilations when (A1) threatened (D-1) by uttering that " *Sale Chairman you will not be left alive today"* .In a quick recapitulation we record that main shooters are (A1) and (A2) with whom triadic altercations had taken place on the election day. All this important circumstances have been ignored by the learned trial Judge. It is discernible from all these evidences that the hostile feelings seeded on the election day had never subsided and intermittent verbal onslaughts continued between rival factions. Learned trial Judge completely misread evidence of (P.W.1) and ignored the context in which the statement was given by the informant and therefore, his conclusion is perverse and suffers from the vice of misreading of testimonies of the informant.

Another significant aspect indicating perversity of approach is that the learned trial Judge did not at all adverted to and considered the fact that if there was no motive for the accused to commit the crime so was the

case with the informant and the injured not to falsely implicate innocent persons and spare the real assailants of an incident in which their most dear ones had lost their lives. Informant would have been the last person to cook up a story of a day light murders of his father and uncle, which had happened in his witnessing. It is too much to expect that a son will concoct a nascent version to seek vengeance sparing real murderers, when during last two years he had not done anything against the accused.

Attour, while examining the prosecution case learned trial Judge completely kept out of consideration too well settled trite law and binding precedents by the apex court that in case of an eye witness account, the motive relegates into the background and loses its significance. Without prolixing the issue, as exemplars, we benefittigly refer some of those decisions as under:-

In **Darbara Singh versus State of Punjab:(2012) 10 SCC 476=2012 Cr.L.J.4757** it has been held by the apex court as under:-

*"**15.** So far as the issue of motive is concerned, it is a settled legal proposition that motive has great significance in a case involving circumstantial evidence, but where direct evidence is available, which is worth relying upon, motive loses its significance. In the instant case, firstly, there is nothing on record to reveal the identity of the person who was convicted for rape, there is also nothing to reveal the status of his relationship with the appellant and further, there is nothing on record to determine the identity of this girl or her relationship with the co-accused Kashmir Singh. More so, the conviction took place 20 years prior to the incident. No independent witness has been examined to prove the factum that the appellant was not on talking terms with Kashmir Singh. In a case where there is direct evidence of witnesses which can be relied upon, the absence of motive cannot be a ground to reject the case. Under no circumstances, can motive take the place of the direct evidence available as proof, and in a case like this, proof of motive is not relevant at all.*

***16.** Motive in criminal cases based solely on the positive, clear, cogent and reliable ocular testimony of witnesses is not at all relevant. In such a fact situation, the mere absence of a strong motive to commit the crime, cannot be of any assistance to the accused. The motive behind a crime is a relevant fact regarding which evidence may be led. The absence of motive is also a circumstance which may be relevant for assessing evidence. (Vide Gurcharan Singh v. State of Punjab[5], Rajinder Kumar v. State of Punjab[6], Datar Singh v. State of Punjab[7] and Rajesh Govind Jagesha v. State of Maharashtra[8].)*

17. *In Sheo Shankar Singh v. State of Jharkhand[9], while dealing with the issue of motive, this Court held as under: (SCC p. 663, para 15)*

> *"15. … Proof of motive, however, recedes into the background in cases where the prosecution relies upon an eyewitness account of the occurrence. That is because if the court upon a proper appraisal of the deposition of the eyewitnesses comes to the conclusion that the version given by them is credible, absence of evidence to prove the motive is rendered inconsequential. Conversely, even if the prosecution succeeds in establishing a strong motive for the commission of the offence, but the evidence of the eyewitnesses is found unreliable or unworthy of credit,* existence of a motive does not by itself provide a safe basis for convicting the accused."

In **Paramjeet Singh @ Pamma v. State of Uttarakhand:AIR 2011 SC 200** it has been held by the apex court as under:-

"45. So far as the issue of motive is concerned, the case is squarely covered by the judgment of this court in Suresh Chandra Bahri (AIR 1994 SC 2420 : 1994 AIR SCW 3420) (supra). Therefore, it does not require any further elaborate discussion. More so, if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case."

In **Gosu Ramachandra Reddy and Ors. v. State of A. P.:AIR 2011 SC 3147** apex court has held as under:-

"13. It is settled by a series of decisions of this Court that in cases based on eye witness account of the incident proof or absence of a motive is not of any significant consequence. If a motive is proved it may supports the prosecution version. But existence or otherwise of a motive plays a significant role in cases based on circumstantial evidence."

In **Shiv Dayal v. State of U. P.:2010 AIR SCW 5685** it has been held by the apex court as under:-

"9. The second contention raised on behalf of the appellants is that the prosecution has failed to prove any motive for the commission of the crime, and in absence of clear and emphatic motive, the order of conviction is liable to be set aside and the accused are entitled to acquittal. This submission, firstly, is based on misreading of the record and secondly, it is devoid of any merit. It has come on record that one Umrao, father of appellant Ram Sanehi was murdered. Bahadur Singh (deceased) was prosecuted for the said murder. Pyare Lal (deceased), father of Bahadur Singh, was doing pairvi on behalf of and along with Bahadur Singh, in which he was finally acquitted. It is also the case of the prosecution that there was enmity between these persons and all other appellants and the family of Ram Sanehi, appellant. The evidence of PW1, PW2 and PW3

indicates that the relations between these two families were quite strained, and the way the crime has been committed clearly indicates that the family of Ram Sanehi would have been unhappy with the acquittal of Bahadur Singh in that murder case. This itself indicates some kind of motive for committing the crime in question. Be that as it may, it is not always necessary for the prosecution to establish a definite motive for the commission of the crime. It will always be relatable to the facts and circumstances of a given case. It will not be correct to say as an absolute proposition of law, that the existence of a strong or definite motive is a sine qua non to holding an accused guilty of a criminal offence. It is not correct to say that absence of motive essentially results in the acquittal of an accused if he is otherwise found to be guilty. In the case of Babu Lodhi v. State of U.P. [(1987) 2 SCC 352] : (AIR 1987 SC 1268), this Court took the view that in so far as the adequacy of motive is concerned, it is not a matter which can be accurately weighed on the scales of a balance. In Prem Kumar v. State of Bihar [(1995) 3 SCC 228] the Court discussed the concept of motive as applicable to Indian criminal jurisprudence and held as under :

"5.....The Courts below have concurrently held that the motive suggested by the prosecution against the accused persons is established. When there is sufficient direct evidence regarding the commission of the offence, the question of motive will not loom large in the mind of the court. It is true that this Court has held in State of U.P. v. Moti Ram [(1990) 4 SCC 389] : (AIR 1990 SC 1709) that in a case where the prosecution party and the accused party were in animosity on account of series of incidents over a considerable length of time, the motive is a double-edged weapon and the key question for consideration is whether the prosecution had convincingly and satisfactorily established the guilt of all or any of the accused beyond reasonable doubt by letting in reliable and cogent evidence. Very often, a motive is alleged to indicate the high degree of probability that the offence was committed by the person who was prompted by the motive. In our opinion, in a case when motive alleged against the accused is fully established, it provides a foundational material to connect the chain of circumstances. We hold that if motive is proved or established, it affords a key or pointer, to scan the evidence in the case, in that perspective and as a satisfactory circumstance of corroboration. It is a very relevant, and important aspect- (a) to highlight the intention of the accused and (b) the approach to be made in appreciating the totality of the circumstances including the evidence disclosed in the case. The relevance of motive and the importance or value to be given to it are tersely stated by Shamsul Huda in delivering the Tagore Law Lectures (1902) - The Principles of the Law of Crimes in British India, at page 176, as follows :

'But proof of the existence of a motive is not necessary for a conviction for any offence. But where the motive is proved it is evidence of the evil intent and is also relevant to show that the person who had the motive to commit a crime actually committed, it, although such evidence alone would not ordinarily be sufficient. Under Section 8 of the Evidence Act any fact is

relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact'."
10. However, in cases which are entirely or mainly based upon and rest on circumstantial evidence, motive can have greater relevancy or significance (Babu Lodhi (AIR 1987 SC 1268) and Prem Kumar's case (supra). But it is equally true that when positive evidence against the accused is clear in relation to the offence, motive is not of much importance. Mere absence of motive, even if assumed, will not per se entitle the accused to acquittal, if otherwise, the commission of the crime is proved by cogent and reliable evidence (State of Punjab v. Kuljit Singh [2003 (2) RCR (Criminal) 629]). Significance of relevancy of motive would primarily depend upon the facts and circumstances of a given case. In the case in hand, there are eye witnesses whose version is supported by expert and other evidence. Their statements find corroboration and in fact, they completely fit in with the case put forward by the prosecution and there is hardly any occasion for the Court to doubt the version of the prosecution. Firstly, we find that there exists some motive for Ram Sanehi and other appellants, who are his family members, to commit the crime, but in case of direct and clear evidence, there is no need for the Court to attach undue emphasis or importance to the motive behind the crime. The principles afore stated would clearly apply to the facts of the present case and we cannot find fault in the concurrent judgments, which is the subject matter of the present appeals."

Keeping above decisions into consideration when we revert back to the appeal in hand we find that most of the findings recorded by the learned trial Judge are perverse and unsustainable and have been recorded without proper and dispassionate appreciations of facts and circumstances involved and evidences on record. We take up those findings in a seriatum. A priori, finding regarding motive that accused had no motive to commit the crime is against the merits of evidence on record and has been slated same evidences. Accused had always felt affronted till they satiated their revengeful feelings by annihilating the deceased and they had enough motive to commit the murders and hence conclusions by the trial Judge respecting motive is perverse and cannot be countenance at all. On this aspect wrong reliance has been placed by the learned trial Judge on the apex court decision in Raghunandan versus State of U.P.:AIR 1974 SC 463 as the said decision was rendered in altogether different context vide para 5 of the said decision. More over what weighed with the apex court was the medical contradiction with the ocular version and unworthiness of the oral

account by the fact witnesses. That is not the situation here in this appeal as neither the election was uncontested nor the medical evidence is inconsistent nor the witnesses are un-creditworthy. More over murders were committed because of personal temerity and not because of election rivalry. What had rankled the accused was the wordy duel and spited insult and not the wining of the election.

In this connection learned trial Judge kept out of consideration the most significant aspect that the incident had occurred at 2 p.m. and F.I.R. about the incident was lodged at 3.30P.M., just after 1 ½ hours during which period the informant had travelled to a distance of 4 ½ kms north. He took 20/25 minutes in recording the FIR and consequently from a pragmatic and ordinary prudent approach, there was no time left for the informant to cook up a false story. This left out circumstance apparently indicate ex facie error in scrutiny of evidences by the learned trial Judge which anoints his conclusions on the motive aspect with the vice of non-consideration of material evidences in examining the prosecution case and testimonies of the witnesses which approach renders his entire analysis full of flaws and we therefore disapprove of his conclusions on the motive aspect.

Second reason which heavily weighed with the trial Judge to record acquittal is that F.I.R. is not a genuine piece of corroborative evidence and was the outcome of concoction and was lodged ante timed and the same was not in existence till inquest was over. Three reasons, vide paragraph 18, of the impugned judgment, have been mentioned by the trial Judge for his such conclusions. Firstly that the distance recorded in chik FIR and inquest memo between place of the incident to the police station is different, secondly that memo does not mention 307 IPC and thirdly that injured (P.W.2) was medically examined belatedly. For the first reason, learned trial Judge held that although FIR recorded the distance 4 ½ kms but in the inquest it is mentioned as 6 kms and had the FIR been in existence this discrepancy would not have occurred and the prosecution had failed to offer any "plausible explanation" for the same. In our humble

view such an approach had been disapproved and depricated by the apex court time and again. If eye witness's account is creditworthy and appealing no discrepancy or inconsistency committed while conducting inquest will diminish authenticity of the prosecution allegations is the time and again reverberated trite law by the apex court. In the F.I.R., the distance between village and the police station is to be recorded, whereas in the inquest, it is place of the incident and the police station which is to be mentioned. I.O./PW6 and head Moharrir, CW1 both have categorically refuted defence case that the FIR was registered ante timed. More over inquest was conducted by SI M.P.Singh who was not examined in the trial and it was only he who could have explained such a discrepancy. There is no evidence on the record whether during inquest he possessed copy of chik FIR with him or not as simultaneous investigation was being conducted by the I.O. Since all the fact witnesses are completely reliable and trustworthy and their depositions are of an unimpeachable character there was no reason for the learned trial Judge to discard their evidences on such an insignificant aspect, which was too meagre to throw the entire prosecution version over board. Instead of examining the intrinsic worth of testimonies of fact witnesses learned trial Judge was illegally swayed away by the distance factor and we find his conclusions perverse and untenable.

Coming to the second reason that offence u/s 307 IPC is not mentioned in the inquest memo, the mistake was not such as to discard the entire prosecution case especially in view of clinching evidences of all the three fact witnesses, who had corroborated each other on all material aspects of the crime in which their most dear ones had lost their lives. Except above two discrepancies, no other circumstance has been penned down by the learned trial Judge to discard the FIR as an authentic document. In our opinion the conclusions by the learned trial Judge are wholly unmerited and uncalled for. We recollect here that it is a day light double murder incident with an injured eye witness account. Acquitting accused on such inchoate and incipient reasons is unwarranted and perverse. Too much adherence on mathematical technicalities, when tested

on the anvil to unravel the truth, dissipates into insignificance. The third reason which learned trial Judge has recorded is that the injured was medically examined belatedly. No doubt the injured was examined on the following day of the incident but looking to the nature of the injury sustained by him, it was unreasonable for the trial Judge to discard the entire prosecution story. That injury, already mentioned above, was so insignificant that probably the injured thought not to have an immediate medical examination. He had an injury on the right forearm 0.25 cm 0.52 cm on the lower part of medial aspect without any tattooing or charring. According to the prosecution case it was a grazing injury (*udta hua laga*). Such an insignificant injury probably did not require any immediate medical attention but subsequently, when it was found that the medical examination is necessary that the injured was got medically treated. Thus the conclusions arrived at by the learned trial Judge respecting FIR, Ext.Ka-1, are also unendurable and are perverse.

At this juncture we would like to point out that the learned trial Judge had disbelieved presence of the injured Chidda(P.W.2) at the place of the incident but mention of his such an insignificant injury in the F.I.R. establishes his presence at the spot during the incident and, therefore, the opinion by the learned trial Judge to the contrary is also illegal and against the evidences on record and based on misreading of evidences. If Chidda would not have been at the spot there would not have been any mention of his injury in the F.I.R. which was dictated without any deliberation and consultation in as much as it is unchallenged categorical deposition of the informant that from the place of his hiding he had gone straight to the police station all alone and had not returned to the murder scene. This part of the prosecution case remains un-impeached.

Attour defence has failed to dislodge or rebut prosecution allegation of deceased, injured and informant proceeding to Joya market on the tractor trolley plied by the injured. Tractor trolley was seized by the police and recovery memo in that respect was prepared and duly proved and exhibited in the trial which lend credence to the prosecution story. No alternative

place or manner of incident has been suggested by the defence to discredit prosecution allegations. More over by induction of a tractor trolley into the episode prosecution does not gain any mileage. Informant would have been the last person to feign a story of introducing a tractor trolley in the incident. He could have fabricated another version with even more clinching and appealing narrations. Since no time was left with the informant to single handedly cook up a story, we find trial Judge's approach wholly perverse and unsustainable and it is quite evident that neither the F.I.R. was ante-timed nor it was fabricated and it is worthy of acceptance as a genuine piece of corroborative evidence. The whole approach by the learned trial Judge seems to be lop sided and he has conferred unwarranted benefits on the accused on the premium of trivialities while passing the impugned judgment and order. We therefore reject such an approach and infer to the contrary.

Another reason slated by the learned trial Judge for acquitting the accused respondents is that Chidda (PW2) was medically examined on the subsequent day and his belated medical examination makes the FIR and the prosecution case suspect. It is also opined that injured was introduced as a witness later on after getting his injury manufactured. As discussed above such a ludicrous approach by the learned trial Judge does not merit any consideration. Such conclusions had no basis to be arrived at. As has already been noted by us that the injury sustained by the injured was a grazing shot of such a nature that immediately medical aid was not required and hence belated medical examination of the injured on the following day of the incident when his injury had a reference in the FIR itself was of no consequence. Letter for examining Chhidda was prepared by the I.O. (P.W. 6) on 7.1.1990 itself and the I.O. has made a clear statement that he had seen the injury from his own eyes. He had denied the defence suggestion that Chhidda had not sustained any injury in the incident and that his medical examination is fabricated.

On the above aspects we benefittigly cite some of the apex court decisions as under- In **Fahim Khan v. State of Bihar now**

Jharkhand:2011 AIR SCW 2747 it has been held as under:-

"6. The first argument raised by Mr. Sushil Kumar is with regard to the delay in the lodging of the FIR, as the inquest report did not bear the FIR number. This argument however flows from a presumption that the FIR had been lodged at the site. This can never be the position as a FIR is always recorded in the police station. It has come in the evidence that the PW-4's statement had been recorded at the site at about 0 :10 hours on the 11th May, 1989 by Sub-Inspector S. N. Das-PW-7. This statement had been carried to the police station and the formal FIR recorded at 3:00 a.m. It is significant that as per the post-mortem report the dead body had been received in the hospital at 6:30 a.m. on the 11th May, 1989 i.e. within 3 hours of the F.I.R. with all relevant papers which would include the inquest papers. It is true that the special report under Section 157(3) of the Cr.P.C. had been received by the Magistrate after two days but we are told that in the State of Bihar this is a normal process. We, therefore, find no merit in Sushil Kumar's first argument."

In Brahm Swaroop and Anr. v. State of U. P.: AIR 2011SC 280 it has been held as under:-

"Inquest : Section 174 Cr.P.C.
6. Undoubtedly, there are five blanks in the inquest report. The crime number and names of the accused have not been filled up. The column for filling up the penal provisions under which offences have been committed is blank. The time of incident and time of dispatch of the special report have not been mentioned. Therefore, Shri Tulsi has submitted that the FIR is ante-timed and there is manipulation in the case of the prosecution.
7. The whole purpose of preparing an inquest report under Section 174 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') is to investigate into and draw up a report of the apparent cause of death, describing such wounds as may be found on the body of the deceased and stating as in what manner, or by what weapon or instrument such wounds appear to have been inflicted. For the purpose of holding the inquest it is neither necessary nor obligatory on the part of the Investigating Officer to investigate into or ascertain who were the persons responsible for the death. The object of the proceedings under Section 174 Cr.P.C. is merely to ascertain whether a person died under suspicious circumstances or met with an unnatural death and, if so, what was its apparent cause. The question regarding the details of how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of such proceedings i.e. the inquest report is not the statement of any person wherein all the names of the persons accused must be mentioned. Omissions in the inquest report are not sufficient to put the prosecution out of court. The basic purpose of holding an inquest is to report regarding the apparent cause of death, namely, whether it is suicidal, homicidal, accidental or by some machinery etc. It is, therefore,

not necessary to enter all the details of the overt acts in the inquest report. Evidence of eyewitnesses cannot be discarded if their names do not figure in the inquest report, prepared at the earliest point of time. The inquest report cannot be treated as substantive evidence but may be utilised for contradicting the witnesses of inquest. (See Podda Narayana and Ors. v. State of Andhra Pradesh, AIR 1975 SC 1252; Khujji v. State of Madhya Pradesh, AIR 1991 SC 1853; George and othrs. v. State of Kerala and Anr., (1998) 4 SCC 605 : (AIR 1998 SC 1376); Shaikh Ayub v. State of Maharashtra, (1998) 9 SCC 521 : (AIR 1998 SC 1285); Suresh Rai v. State of Bihar, (2000) 4 SCC 84 : (AIR 2000 SC 2207); Amar Singh v. Balwinder Singh and Ors., (2003) 2 SCC 518 : (AIR 2003 SC 1164); Radha Mohan Singh alias Lal Sahab and Ors. v. State of Uttar Pradesh, (2006) 2 SCC 450 : (AIR 2006 SC 951); and Aqeel Ahmad v. State of Uttar Pradesh, AIR 2009 SC 1271).

8. In Radha Mohan Singh (supra), a three Judge bench of this Court held:

"No argument on the basis of an alleged discrepancy, overwriting, omission or contradiction in the inquest report can be entertained unless the attention of the author thereof is drawn to the said fact and he is given an opportunity to explain when he is examined as a witness in court."

(Emphasis added)

9. Even where, the attention of the author of the inquest is drawn to the alleged discrepancy, overwriting, omission or contradiction in the inquest report and the author in his deposition has also admitted that through a mistake he omitted to mention the crime number in the inquest report, this Court has held that just because the author of the report had not been diligent did not mean that reliable and clinching evidence adduced by the eye-witnesses should be discarded by the Court. (Vide: Dr. Krishna Pal and Anr. v. State of Uttar Pradesh, (1996) 7 SCC 194) : (AIR 1996 SC 733).

10. In view of the law referred to hereinabove it cannot be held that any omission or discrepancy in the inquest is fatal to the prosecution's case and such omissions would necessarily lead to the inference that FIR is ante-timed. Shri N.K. Sharma Sub Inspector (PW.7) had denied the suggestion made by defence that till the time of preparing the report the names of the accused persons were not available. He further stated that the column for filling up the nature of weapons used in the crime was left open as it could be ascertained only by the Doctor what weapons had been used in the crime. Thus, the submissions made in this regard are preposterous."

In **Podda Narayana and others vs. State of A.P.:AIR 1975 SC 1252** it has been laid down by the apex court as under:-

"10. Another point taken by the learned Additional Sessions Judge was that in the inquest report details of the overt acts committed by the various accused have not been mentioned in the relevant column. The learned Judge in fact has assumed without any legal justification that because the details were not mentioned in the requisite column of the in- quest report, therefore, the presumption will be that the eye witnesses did not mention

the overt acts in their statements before the police. To begin with it seems to us that the learned Additional Sessions Judge's approach is legally erroneous. A statement recorded by the police during the investigation is not at all admissible and the proper procedure is to confront the witnesses with the contradictions when they are examined and then the Investigating Officer regarding those contradictions. This does not appear to have been done in this case. Furthermore, proceedings for inquest under Section 174 of the Code of Criminal Procedure have a very limited scope. Section 174 of the Code as it then stood read as follows :

"174. Police to enquire and report on suicide, etc-

(1) The officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf, on receiving information that a person-

(a) has committed suicide ; or

(b) has been killed by another, or by an animal, or by machinery, or by an accident; or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence;

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is and there, in the presence of two or more respectable' inhabitants of the neighborhood, shall make an investigation and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any) such marks appear to have been inflicted.

(2) x x x

(3) When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless."

11. A perusal of this would clearly show that the object the proceedings under Section 174 is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted appears to us to be foreign to the ambit and scope of the proceedings under S. 174. In these circumstances, therefore, neither in practice nor in law was it necessary for the police to have mentioned these details in the inquest report, The High Court has adverted to this point and has rightly pointed out as follows:

" The learned Sessions Judge had also dated that the details regarding the weapons armed by each of the accused and which accused had attacked on which part of the body of the deceased are not found in the inquest report and from this he sought to draw the inference that the statements of the witnesses now found recorded under Section 161 Cr.P.C. could not have been the statements then read over to the panchayatdars. Column 9 of the inquest report shows that the injuries on the deceased were caused by knives and daggers. Column II (a) shows that A1 to A3, A4 and A5 with 3 strangers came in the jeep driven by A4, got down the jeep, stabbed the deceased with daggers and knives, pushed P.W. 1, lifted the deceased, put him in the jeep, and drove away the jeep and death was the result of the injuries inflicted. The object of holding any inquest as can be seen from Section 174 Cr.P.C. is to find whether a person died a natural death, or a homicidal death or due to suicide. It was therefore not necessary to enter all the details of the overt-acts in the inquest report. From the mere fact that these details were not noted in the inquest report it cannot be concluded that the statements given by the witnesses and read over at the inquest did not contain those overt-acts and the statements now produced are those of the witnesses which were taken later."
The High Court has thus rightly explained that the omissions in the inquest report are not sufficient to put the prosecution out of Court, and the learned Additional Sessions Judge was not at all justified in rejecting the prosecution case in view of this alleged infirmity."

As we are of the view that eye witness's account of the incident is infallible and fact witnesses are trustworthy and reliable, therefore we are also of the view that laconic discrepancies in the investigation will not affect the main edifice of the prosecution version which we find credible and clear of all doubts so far as accused with specific roles are concerned. Albeit investigation is not up to the mark but laches in it are not of such a magnitude so as to exonerate all the accused of all the charges and reject the entire prosecution case.

Another reason for acquittal of accused respondents mentioned by the learned trial Judge is that the presence of the informant Minzar Hussain (P.W.1) at the spot appears to be doubtful. Like all other conclusions this one too is faulty and unsustainable as it runs contrary to the material on record. Defence miserably failed to elicit from him any favourable statement and hence there is dearth of reasons to castigate his evidence. A mere suggestion to this witness without any supportive material to reject his convincing and confidence inspiring evidences is not

enough to discard his testimonies. Omissions in his statements made to the I.O. e.g. that he had not mentioned that he was going to the market to purchase vegetable and other articles of daily use, being too insignificant can be disregarded as they do not have any deleterious effect on the main substratum of the prosecution story. Needless to say that informant was examined by the I.O. immediately after recording of the FIR just after 1 ½ hours of the incident in which his father and uncle were shot dead, and hence it is puerile to expect from him that he will describe each fact with complete detail. In such a fact situation like the present one (PW1) would not have been in a fit state of mind to narrate the entire story to the I.O. with precise recollections. Consequently negation of informant's presence at the spot is puerile and conjectural. In our opinion, the defence has miserably failed to fathom out circumstances improbabilising his presence at the spot. (P.W. 2) and (P.W. 3), have also fully established his presence at the spot and the defence has not been able to extract any evidence creating any suspicion in that respect. Instead of dispassionately scanning the evidences, learned trial Judge has discarded the prosecution case on most inconsequential and facetious aspects and thereby has committed grave error and miscarriage of justice. In our opinion, (P.W.1) was present at the spot and he had seen the entire incident, which he has narrated lucidly without faltering. Here we would like to record one more reason that the incident had occurred in less than a few minutes in 1990. It is a matter of common knowledge that frailty of terrorized human mind can never reproduce entire episode with exactitude and can never rewind it completely. Learned trial Judge has also disbelieved informant because of inconsistency in distances from which fire was made and nature of injury sustained by the injured but he forgot to consider fact that wad was also found in the injury and hence the injury of the injured was a close range shot and hence absence of blackening and charring was of no consequence. If the muzzle is so close to the body so that wad also penetrate inside the wound then there will be no blackening and charring Modi has opined. Further on premium of trivialities the confidence inspiring

evidences of eye witnesses cannot be ignored and brushed aside. In our view, the approach by the learned trial Judge was incongruent to the well-established trite law spelt out by the Hon'ble Apex Court and, therefore, we find it to be wholly perverse.

Reasons for disbelieving (PW2) and (PW3) as are mentioned at pages 27/28/29 of the impugned judgement are also perverse and in view of our forgoing discussions we need not repeat the same deliberations. Instead of judging main substratum of the prosecution case , learned trial Judge has relied upon most petty and ignorable statements to fathom out unsustainable reasons to record acquittal. His entire approach is defective bereft of appealing reasons. Giving evasive answers regarding relationships or contradictions in the number of shots fired all were trifling aspects which should not have been prolixed to discard the entire prosecution version.

Medical evidences and depositions of formal witnesses do not infuse any material in the case senario so as to lean in favour of the accused and sustain their acquittal. On the basis of presence of rigor mortis, which do not completely ruled out time of the incident alleged by the prosecution, learned trial judge has held that the incident had not occurred at the time alleged by the witnesses. To say the least his such an opinion is conjectural and hypothetical. Doctor has no- where stated that the incident could not have occurred at 2 P.M. In **Darbara Singh (Supra)** it has been laid down as under:-

*"**10.** So far as the question of inconsistency between the medical evidence and the ocular evidence is concerned, the law is well settled that, unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy. In the event of contradictions between medical and ocular evidence, the ocular testimony of a witness will have greater evidentiary value vis-à-vis medical evidence and when medical evidence makes the oral testimony improbable, the same becomes a relevant factor in the process of evaluation of such evidence. It is only when the contradiction between the two is so extreme that the medical evidence completely rules out all possibilities of the ocular evidence being true at all, that the ocular evidence is liable to be disbelieved. (Vide Stae of U.P. Hari Chand and Bhajan Singh v. State of Haryana)*

Regarding route taken by the informant's party, only this much

opinion is enough that since both the sides resided in the same village, therefore there was no difficulty in knowing the route which the informant and deceased will take to go to the Joya market. They were going there every week and probably their route was fixed and in any view this was not such an important aspect so as to discard the entire prosecution case.

In the net result, we find the impugned judgement of acquittal perverse and unsustainable and therefore we differ from it.

Now we take up the question as to whether all the surviving accused are guilty or only some of them. When this aspect is examined what if discernible from evidences is that there are two sets of accused. One set consisted of those accused whose names are only mentioned without assigning them any overt act what so ever. They are alleged to be present as silent and mute spectators to the entire episode. There is nothing on record to **deduce** that they also formed an unlawful assembly with a common object to commit double murder. Their mere presence is not sufficient to hold them guilty of a double murder charge. In a factional ridden village it is not safe to convict those accused who might be innocent. Taking an abundant caution and adopting a careful approach these accused should be conferred benefit of doubt. These three accused are Islam (A5), Afsar (A6) and Naushad (A11).

Epilogue to our forgone discussions are that the prosecution has not been able to successfully prove participation of accused respondents Islam (A5), Afsar (A6) and Naushad (A11) in the incident. Their mere passive presence without any overt act is too glaring and significant to articulate them as members of an unlawful assembly with a common object to commit the double murder. Their case stands altogether on a different footing than rest of the assailants on the facts and circumstances emerged from the evidences. We therefore confer benefit of doubt on them and concur with their acquittal. This Government Appeal for these three accused respondents Islam (A5), Afsar (A6) and Naushad (A11), resultantly stands dismissed and their acquittal through impugned judgment and order are affirmed. Personal and surety bonds of these

accused respondents are cancelled/ discharged. They are on bail. They need not surrender.

For rest of the surviving accused respondents namely Julfey (A10), Rabbu (A9), Kamrey Alam (A7), Arif (A8) and Julfikar (A4) prosecution has convincingly and successfully anointed their guilt and has established framed charges against them. In their respects the view by the learned trial judge in the impugned judgment and order are wholly perverse and unsustainable which no man of ordinary prudence would have arrived at on the facts and circumstances of the case and hence the same cannot be affirmed. Prosecution has successfully discharged it's burden of proof and has established beyond any shadow of doubt that it were these accused Julfey (A10), Rabbu (A9), Kamrey Alam (A7), Arif (A8) and Julfikar (A4), who had perpetrated the double murder in day light on the date and time alleged by the prosecution alongwith (A1) and (A2) since dead, and there is nothing on record to assoilzie them of the said crime. Their guilt has been convincingly too well anointed by confidence inspiring and reliable testimonies of three fact witnesses supplemented well by all the formal witnesses and consequently their (Julfey, Rabbu, Kamrey Alam, Arif and Julfikar) acquittal has to be upturned and set aside as being illegal and wholly perverse and we hereby doth order so and these accused are held guilty of double murder and causing simple injury to the injured by forming an unlawful assembly with a common object for the said purpose.

Coming to the proven offences of theses accused Julfey (A10), Rabbu (A9), Kamrey Alam (A7), Arif (A8)and Julfikar (A4), they had formed and were members of an unlawful assembly armed with fire arms with a common object to commit double murder and in furtherance of their said common object they had committed daylight double murder and had made fire at the injured causing him simple injury, and hence they all, except Julfey (A10), are held guilty for offences u/s 148, 302/149, and 324/149 I.P.C. Julfey (A10) is held guilty for offence u/s 148,302/149 and 324 IPC.

Turning towards the sentences, since it is not a case which falls in the category of rarest of rare cases to impose capital punishment, these

accused respondents Julfey (A10), Rabbu (A9), Kamrey Alam (A7), Arif (A8) and Julfikar (A4) for offence u/s 148 IPC are sentenced to 2 years RI with fine of Rs. 5000/= and in default of payment of fine to serve 1 year additional imprisonment, for offence u/s 302/149 IPC each one them Julfey (A10), Rabbu (A9), Kamrey Alam (A7), Arif (A8) and Julfikar (A4) are sentenced to life imprisonment with fine of Rs. 10000/= and in default in payment thereof to serve 2 years further RI and for offence u/s 324/149 I.P.C. all of them except Julfey (A10) are sentenced to 2 years RI with fine of Rs. 2000/= and in default in payment of fine to serve 1 year additional RI. Julfey (A10), for offence u/s 324 IPC is also sentenced to 2 years RI with fine of Rs. 2000/= and in default in payment of fine to serve 1 year additional RI. All the sentences of these respondents accused shall run concurrently.

These respondents accused Julfey (A10), Rabbu (A9), Kamrey Alam (A7), Arif (A8) and Julfikar (A4) are on bail. Their personal and surety bonds are cancelled and discharged and they are directed to be taken into custody forthwith to serve out the sentences imposed herein above.

Let a copy of this judgment be certified to the learned trial court for follow up action at it's end.

Appeal allowed in part as above.

Dt.2.9.2013
Rk/Arvind/Tamang/-