

RESERVED

IN THE HIGH COURT OF UTTARANCHAL AT NAIITAL

Criminal Appeal No. 1767 of 2001.

CRIMINAL SIDE:

Parameter Singh alias Pamma,
Son of Sri Har Dayal Singh,
R/o Matkay Wali Gali, Rudrapur,
District Udham Singh Nagar. Appellant

Versus

State of Uttaranchal Opposite Party

Mr. P.M.N. Singh, learned counsel for the appellant.
Mr. A Rab, Addl. Government Advocate for the State.

Hon. M.M. Ghildiyal, J.
Hon. Rajesh Tandon, J.

(Delivered by Hon'ble Tandon, J.)

By the present Criminal Appeal the appellant has challenged the sentence awarded by the Sessions Judge, Udham Singh Nagar, Rudrapur dated 9th August 2001 under section 302 IPC as well as under section 307 IPC. The appellant was sentenced life imprisonment under section 302 IPC. and ten years rigorous imprisonment under section 307 IPC. The Sessions Judge has also imposed a fine of Rs.10,000/- failing which the appellants has to undergo another three years rigorous imprisonment. Brief facts giving rise to the present Appeal are:-

The complainant Sri Ajeet Singh on 27th April 2000 has lodged a First Information Report at about 6:40 P.M. at P.S. Rudrapur stating therein that his grandfather Shri Har Dayal Singh had five sons and his grand father gave the shares to Gopal Singh, Jogender Singh and Mahinder Singh in the property. In the FIR it has further been stated that his father and uncle Paramjeet Singh alias Pamma had not been given their shares. It was stated that complainant's uncle Paramjeet Singh alias Pamma sold the plot of

Kalyani New, Rudrapur by fraud. It was further stated that on 27th April 2000 the complainant's grandfather namely Shri Har Dayal Singh had executed the Power of Attorney regarding Matkay Wali Gali residential home in favour of his father namely, Shri Inderjeet Singh. On the said execution Paramjeet Singh alias Pamma abused words and threatened his father. In the FIR it has further been mentioned that on 27th April 2000 at about 5:45 P.M. the complainants Ajeet Singh his father Inderjeet Singh, his brother Surender Singh, Sharanjeet Singh, Baljeet Singh, Satwant Singh and Gurmeet Singh went to leave his grandfather at his residential house i.e. Matkay Wali Gali. It was stated that when they were coming down from the car, Paramjeet Singh alias Pamma and his 2-3 companions were standing therein. Paramjeet Singh had started firing with an intention to kill them due to which complainant's father and brothers Surender Singh, Sharanjeet Singh, Baljeet Singh and grandfather Har Dayal Singh got injuries. As a result of the aforesaid firing complaint's father namely Shri Inderjeet Singh his brothers Surender Singh and Sharanjeet Singh died. Baljeet Singh got injury on his face and his grandfather Har Dayal Singh also got injuries by gunshot. FIR further revealed that after hearing the noise of gunshot Harpal Singh, Rajender Kumar came there and saw the incident. Some people went to the hospital alongwith complainant's father and brothers.

As per written report Ex. Ka 1, the FIR was lodged at P.S. Rudrapur as Ex. Ka. 6. The entry of the case lodging was mentioned in G.D. the carbon copy of which is Ex. Ka. 30.

Investigating Officer has prepared the report of blood stained mud and simple mud, report of recovery of empty cartridges and turban and goggles which are marked Ex. Ka. 2, Ka. 3 & Ka. 4 respectively. The Panchayatnamas were also prepared with regard to dead bodies of corpses of Inderjeet Singh, Surender Singh and Sharanjeet Singh marked as Ex. Ka. 15, Ka 18 & Ka 23.

On 28th April 2000 postmortem of Sharanjeet Singh, Surender Singh and Inderjeet Singh were made in Base Hospital, Haldwani, Postmortem reports are marked as Ex. Ka. 27, Ka. 28 & Ka. 29 respectively.

The Postmortem report of Sharanjeet Singh (Ex. Ka. 27) reads as under:-

1. Lacerated wound 1 cm x 1 cm circular, Margins inverted over forehead in between eyebrows.
2. Lacerated wound 1cm x 1cm right side chest, 6 cm above right nipple.
3. Lacerated wound 1cm x 1cm right side of lower abdomen 6 cm lateral to umbilicus, circular, margins inverted.
4. Lacerated wound 1cm x 1cm over right shoulder, margins inverted, circular.
5. Multiple firearm injuries measuring 1cm x 1cm in an area of 12 cm x 16 cm over middle of back, margins inverted cavity deep, pellets and plastic cork recovered from cavity (wound of entering).

The Postmortem report of Surender Singh (Ex. Ka. 28) reads as under:-

1. Lacerated wound 12 cm x 14 cm right side abdomen 6 cm above and lateral to umbilicus and 10 cm below right nipple, margins crushed and multiple firearm injuries measuring 1 cm x 1 cm around the lacerated wound, margins inverted, muscle deep
2. Multiple lacerated wounds measuring 1 cm x 1 cm over left chest around nipple some are cavity deep and some skin deep
3. Lacerated wound 10 cm x 6 cm left abdomen lateral side.

The Postmortem report of Inderjeet Singh (Ex. Ka. 29) reads as under:-

1. Lacerated wound 1 cm x 1.5 cm left side chest oval in shape, margins inverted 6 cm above left nipple, cavity deep
2. Two circular lacerated wound right side chest 6 cm below right nipple, skin deep, margins inverted
3. Three lacerated wound in an area of 8 cm x 6 cm over right shoulder joint, skin deep, margins inverted
4. Lacerated wound 1 cm x 1 cm circular in shape over right lower abdomen 6 cm lateral to umbilicus

5. Lacerated wound 3 cm x 3.5 cm oval in shape margins everted and irregular over back of chest, left side, track corresponding to injury No. 1, injury No. 5 is wound of exit. R.M. present both upper and lower limbs.

Similarly, Har Dayal Singh, Ajeet Singh and Baljeet Singh were also got medically examined reports of which are Ex. Ka. 36, Ka. 37 & Ka. 38 respectively.

The medical examination report of Shri Har Dayal Singh (Ex. Ka. 36) is as under:

- i) Punctured wound 4 mm x 4 round in the left side of temporal area 3 cm above the left extended ear. Bleeding. X-ray advised.
- ii) Punctured wound $\frac{1}{2}$ cm x $\frac{1}{2}$ cm round with level of Ist thoracic vertebra. Bleeding. X-ray advised.
- iii) Punctured wound $\frac{1}{2}$ cm x $\frac{1}{2}$ cm on left scapulo. Bleeding. X-ray advised.

The medical examination report of Shri Ajeet Singh (Ex. Ka. 37) is as under:

- i) Lacerated wound of .3 cm x .3 cm on the back side of right hand, skin deep. Oozing of blood present.
- ii) Multiple firearm wound of entry size .3 x .3cm in the area of 18 cm x 9 cm on middle part of the left thigh snout and outer side. Black coloured. Jean pant is also torned on the same places. Margins are charred and indication is present around them. Advised X-ray of left thigh.
- iii) Multiple firearm wound of entry on the medial and anterior aspect of right thigh, some part is also torn on the same places over the injuries. Margins are charred and indication is present around them. Oozing of blood also present size 13 cm x .3 cm. Advised X-ray of the right thigh.
- iv) No other external injuries seen.

The medical examination report of Shri Baljeet Singh (Ex. Ka. 38) is as under:

- i) Lacerated wound over the right side of face and neck involving the lower jaw and right angle of lip and tongue.
- ii) Excessive bleeding through the wound
- iii) Irregular margin defect in the skin ent.
- iv) Boney pieces of mandible
- v) Right lower palpable through the wound.

On 4th May 2000, Investigating Officer has submitted the enquiry report of accused Paramjeet Singh alias Pamma that his fingerprints were found on his gun No. 17466-96. The gun was recovered from an Arms Dealer of Rampur and has been marked as Ex. Ka. 39.

Recovered gun and bullets were sent to Forensic Science Laboratory Agra for investigation and the report has been submitted as Ex. Ka. 46.

The report of Forensic Science Laboratory, Agra submitted as Ex. Ka. 46 is as under:

- 1) विवादित कारतूस ईसी-1, 12 बोर डीबीबीएल गन न0 17466 चिन्हित 1/2001 की बायीं नाल द्वारा चलाया गया है।
- 2) विवादित कारतूस ईसी-2, व ईसी-3, 12 बोर डीबीबीएल गन न0 17466 चिन्हित 1/2001 की दायीं नाल द्वारा चलाया गया है।

Samples of blood and soil which were collected from the spot i.e. at the place of incident and the report received from the Forensic Science Laboratory Agra was marked as Ex. Ka. 47.

Map of the recovery site has also been prepared and has been marked as Ex. Ka. 45.

During the investigation, Investigating Officer had taken the statements of witnesses under section 161 IPC and also made the map of place of incident (the same was marked as Ex. Ka. 26) after the completion of the investigation the charge-sheet was framed against the accused Paramjeet Singh alias Pamma under section 302 / 307 IPC. To prove the charges against the accused persons eight witnesses were examined the names are as under:

- | | | |
|----|-----------------------------|------------------|
| 1. | Ajeet Singh | P.W. 1 (injured) |
| 2. | Baljeet Singh | P.W. 2 (injured) |
| 3. | Gurmeet Singh | P.W. 3 |
| 4. | Satwant Singh | P.W. 4 |
| 5. | Rajender Kumar | P.W. 5 |
| 6. | Harpal Singh | P.W. 6 |
| 7. | Hira Lal | P.W. 7 |
| 8. | Rajan Tyagi I.O.(Inspector) | P.W. 8 |

The statement of the accused was recorded under section 313 Cr.P.C. who has denied his participation and has stated that

his finger prints was found from the gun which was deposited at Rampur's dealers. It was alleged that the Police has made a fraud case and the report of the Investigation and the witnesses of Police speaks lie and no evidence was produced from the accused.

The learned Sessions Judge has given the following circumstances while sentencing the accused. The first circumstance was about the motive that the accused had motive and reason for committing the offence and murder. The second circumstance was the recovery of 12 bore licensee gun (Ex. 6) of the accused on the information and the statement made by the accused and the three empty cartridges of 12 bore gun which were found at the place of incident clearly indicating that the bullets were fired by the 12 bore licensee gun of the accused at the time of incident and that the gun was in the possession of the accused himself and not in possession of anybody else on the day of incident. The third circumstance was with regard to the compromise that after this incident, a compromise was made between accused and others in which it was decided that the accuse should be apologize for that. The fourth circumstance was with regard to absconding of the accused.

The counsel for the appellant Mr. P.M.N. Singh vehemently argued that the conviction is likely to be vitiated, as there was no direct evidence available on the record.

He has further stated that the FIR was ante dated. He has stated that the learned Sessions Judge has relied upon the motive between the parties but sine the said question was not asked during the proceedings u/s 313 of the Code of Criminal Procedure, therefore, the entire prosecution story was liable to be vitiated.

The counsel for the appellant has also filed the application for additional evidences u/s 391 of the Cr. P.C. The contents of the additional evidences referred to in the application is as under:

- (1) A certified copy of the complaint filed by Hardayal Singh S/o Tara Singh, the father of the appellant, against Inderjeet Singh S/o Hardayal Singh, Surendra Singh S/o Hardayal

Singh, Sharanjeet Singh S/o Hardayal Singh and 4 others in the court of Munsif Magistrate Rudrapur, Distt. Nainital and registered as Criminal Case No. 1060/91 under section 147, 148, 452, 323 504, 506 I.P.C.

- (2) A certified copy of the complaint filed by Inderjeet Singh S/o Hardayal Singh against Hardayal Singh S/o Tara Singh and 6 others in the court of Munsif Magistrate Rudrapur, Nainital under section 147, 323, 504, 506, 392 I.P.C. and registered as Criminal Case No.392/95.
- (3) A Photostat copy of the affidavit of Hardayal Singh S/o Tara Singh dated 15.05.2000.

The counsel for the appellant had argued on the following points with regard to additional evidences:-

- (i) that the certified copies of complaint of the Criminal Case No. 1060/91 and Criminal Case No. 392/95 shows that there was dispute of property between the three deceased persons and Hardayal Singh, the injured witness, and they were litigating and there were frequent criminal incidents disputes among them. The appellant was not at all concerned with the dispute of the property or any other criminal incident due to legacy of Hardayal Singh.
- (ii) that the Photostat copy of the affidavit of Hardayal Singh dated 15.05.2000 shows that Hardayal Singh S/o Tara Singh had deposed before the Sessions Judge Udham Singh Nagar that the appellant was not the assailant.

A reply has been filed by the prosecution against this application which reads as under:-

- 1. That the application moved by the appellant is at a belated stage and is not maintainable as during the trial the appellant has ample opportunity to file the present application before learned Sessions Judge.
- 2. That the contents of certified copy for the criminal complaint No. 1060 of 1991 and certified copy of the criminal case No. 392 of 1995 are not relevant at this

stage, which amounts to taking a new plea for his defence. The photocopy annexed with the affidavit is a got-up evidence, which is not likely to assist this Hon'ble Court in the disposal of the present appeal, and the same is against the provisions of Indian Evidence Act.

3. That the incident / facts shown in the complaint case mentioned in the certified copies filed by the petitioner has no relevance on facts of the incident, which took place on 27.04.2000 and Hardayal Singh had received injuries in the said incident. The veracity of the statement under section 161 Cr.P.C. during the trial has been judged in the proper perspective by the learned Sessions Judge, therefore, the prayed by the appellant is misconceived.
4. It is, therefore, most respectfully prayed that this application may pleased be dismissed being not maintainable under the circumstances of the appeal.

We find none of the contents of the above application which can be admitted as additional evidences as the documents are not concerning any subsequent events but are only narration of the entire story and as such we find no substance in admitting them as additional evidences.

So far as panchayatnama is concerned the counsel for appellant has stated that the same cannot be relied upon in absence of the person in whose favour the decision was taken. The counsel for the appellant has also challenged the report of the Ballistic Expert on account of some discrepancy in the report.

Coming to the FIR the same has been lodged on 27th April 2000. Time has been mentioned as 18:40 (6:40). The FIR was lodged by Sri Ajeet Singh, S/o Inderjeet Singh. The FIR shows as under:-

सेवा में,

श्रीमान् कोतवाल साहिब,

कोतवाली रुद्रपुर।

महोदय,

निवेदन है कि मैं अजीत सिंह, पुत्र इन्द्रजीत सिंह, मोहल्ला कल्याणी ब्यू निकट कंचन तारा होटल कस्बा व थाना रुद्रपुर का करने वाला हूँ मेरे दादा जी हरदयाल सिंह के पांच लड़के हैं (1) स० इन्द्रजीत सिंह (2) स० गोपाल सिंह (3) स० जोगेन्द्र सिंह (4) स० महेन्द्र सिंह (5) सरदार परमजीत सिंह हैं। मेरे दादा जी ने मेरे तीन चाचा स० गोपाल सिंह, स० जोगेन्द्र सिंह, स० महेन्द्र सिंह को अपनी जायदाद में से हिस्सा दे दिया था मेरे पिता व चाचा परमजीत सिंह को जायदाद में हिस्सा नहीं दिया था मेरे चाचा परमजीत ने कल्याणी ब्यू रुद्रपुर वाला प्लॉट फर्जी तरीके से बिना मेरे दादा को बिना बताये, डा० अवतार सिंह गिल को बेच दिया आज मालूमात होने पर मेरे दादा जी ने अपना रिहायशी मकान जो मटके वाली गली रुद्रपुर में है उसका मुख्तयारे आम व वसीयत कराने को मेरे पिता व मुझे लेकर आज किच्छा रजीस्ट्ररी आफिस में गये थे। रजीस्ट्री आफिस में मेरे दादा जी ने मकान का मुख्तयार आम मेरे पिता जी के नाम कर दिया था कि वही पर परमजीत सिंह उर्फ पम्मा आ गया उसने वहां पर मेरे पिता जी व दादा जी को गालियां दी, धक्के मारे व वहां पर धमकी देता हुआ चला गया, इसके बाद हम लोग समय करीब पौने छः बजे उनको हमारे दादा जी को छोड़ने उनके रिहायशी मकान मटके वाली गली में उनके साथ गये थे हमारे साथ मैं व मेरे पिता जी, स० इन्द्रजीत सिंह तथा मेरे भाई स० सुरेन्द्र सिंह, स० शरणजीत सिंह, स० बलजीत सिंह तथा स० सतवंत सिंह पुत्र सरदार भगवान सिंह निवासी मल्सा, गुरुमीत पुत्र श्री भगवान दास निवासी दरियानगर भी थे। जब हम लोग अपनी कार से उतर कर घर के अन्दर जा रहे थे तो मेरा चाचा परमजीत सिंह उर्फ पम्मा तथा उसके साथ दो-तीन आदमी और मेरे चाचा जो कि अपनी कार में गुरुद्वारे के नीचे घर के सामने घात लगाये बैठे थे तथा हमारे घर की तरफ चलते ही मेरे चाचा परमजीत ने अपनी मारुती वैन से उतर कर अपनी बन्दूक से हम लोगों के उपर जान से मारने की नियत से फायरिंग करनी शुरू कर दी जिसकी गोली मेरे पिता व मेरे भाइयों स० सुरेन्द्र सिंह, स० शरणजीत सिंह, बलजीत सिंह तथा मेरे दादा स० हरदयाल सिंह और मेरे लगी गोली लगने से लगातार ही मेरे पिता स० इन्द्रजीत सिंह भाई सुरेन्द्र सिंह व शरणजीत सिंह को मौके पर ही मौत हो गई तथा मेरे भाई बलजीत सिंह के मुंह पर गोली लगी तथा मेरे व दादा जी के छर्रे लगे हैं। फायरिंग के शोर पर वहां से गुजर रहे स० हरपाल सिंह पुत्र गुरबक्श सिंह निवासी मिलक व राजेन्द्र कुमार पुत्र श्री राम रक्खा निवासी मल्सा गिरधरपुर जिला उधमसिंह नगर व अन्य कई लोग मौके पर आ गए जिन्होंने यह वाक्या देखा गोली मारने के बाद परमजीत व उसके दो तीन साथी जिन्हे हम सामने आने पर पहचान सकते हैं हवाई फायर करते हुये तथा लोगों को जान की

धमकी देते हुये अपनी मारुती वैन पर बैठ कर चले गये । इस घटना से आस पास के दुकानदारों व लोगों में भगदड़ मच गई भय व्याप्त हो गया व दिन दहाड़ें सार्वजनिक स्थान पर हुई इस घटना से आम लोगों में दहशत हो गई दुकानदारों ने दुकाने बन्द कर दी तथा आने जाने वाले लोगों में भगदड़ मच गई मेरे पिता व भाइयों की लाश लेकर काफी लोग अस्पताल लेकर पहुंच गये। मुझे व मेरे परिवार के अन्य लोगो की जान का खतरा बना हुआ है। अतः श्रीमान् जी से प्रार्थना है कि मेरी रिपोर्ट दर्ज कर कानूनी कार्यवाही करें प्रार्थी अजीत सिंह पुत्र स0 इन्द्रजीत सिंह निवासी कल्याणी व्यू रुद्रपुर।

27.4.2000

- i) As will appear from the FIR that Shri Ajeet Singh has very clearly stated that his father Inderjeet Singh, Surendra Singh and Shranjeet Singh died on the spot.
- ii) His brother Baljeet Singh and grandfather were injured as a result of the aforesaid firing.
- iii) The FIR further shows that the uncle of Ajeet Singh came from Maruti Van and had fired from his gun in order to kill the family members.
- iv) On the top of the FIR there is a mention that the grandfather of Ajeet Singh has given the share to his three uncles, namely Gopal Singh, Jogender Singh and Mahendra Singh from his property. But no share was given to Inderjeet Singh and Paramjeet Singh, father and uncle of Ajeet Singh.
- v) Paramjeet Singh alias Pama, uncle of Ajeet Singh has sold the plot of Rudrapur without conveying to the grandfather of Ajeet Singh.
- vi) The grandfather of Ajeet Singh went to the Registry office for executing the will along with Ajeet Singh and his father Inderjeet Singh and ultimately the grandfather has executed 'Muktarnama' in favour of the father of Ajeet Singh, namely Inderjeet Singh.
- vii) Paramjeet Singh alias Pamma came on the spot and abused the grandfather of Ajeet Singh.
- viii) The quarrel started from the moment as will appear from the motive that Paramjeet Singh abused the father of Ajeet Singh and his grandfather and therefore while entering in the house by the Maruti car his uncle Paramjeet Singh alias Pamma fired on the family of Ajeet Singh. The narration in the FIR aforesaid clearly

indicates that there was a family dispute amongst the heirs of the grandfather of Ajeet Singh and that Paramjeet Singh alias Pamma had seen the Power of Attorney being executed, abused the grandfather of Ajeet Singh and ultimately fired from his licensee gun with an intention to kill all of them.

Coming to the statement of Ajeet Singh, PW 1. PW 1 has stated in his statement that the FIR (Ex. Ka 1) was lodged by him. The cross examination of Ajeet Singh Shows as under:-

यह कहना गलत है कि मैं हाजिर अदालत अभियुक्त परमजीत उर्फ पम्मा जो कि मेरे चाचा लगते हैं, राजीनामा हो जाने के कारण गलत बयानी कर बचा कहा हूँ, यह भी कहना गलत है कि प्रदर्श क-1 रिपोर्ट मैंने स्वयं मौके पर उपस्थित होने एवं घटना को देखने के कारण तहरीर के अनुसार लिखाई थी और अब मैं राजीनामा हो जाने के कारण तहरीर की इबारत को लागू द्वारा बताया जाना बयान कर रहा हूँ, यह सही है कि मेरा डाक्टरी मूआयना हुआ था, यह कहना गलत है कि परमजीत उर्फ पम्मा ने मुझे बलजीत व हरदयाल को जान से मारने की नियत से बन्दूक की चोट पहुँचायी।

Further, so far as the compromise is concerned the same was admitted by Ajeet Singh. The same is quoted below:-

यह सही है कि हाजिर अदालत अभियुक्त से राजीनामा हो गया है मुल्जिम परमजीत सिंह उर्फ पम्मा मेरा चाचा लगता है। प्रदर्श क-1 तहरीर मैंने अपने हाथ से लिखी। यह सही है कि प्रदर्श क-1 में मैंने अपनी चश्मदीद गवाही मौजूदगी अभियुक्त द्वारा इन्द्रजीत सिंह, शरणजीत सिंह व सुरेन्द्र सिंह की हत्या के समय मौके पर लिखाई है अपने आप की चश्मदीद मैंने वहां इकट्ठी भीड़ के बताने पर दिखाई है। लेकिन वास्तव में मैंने खुद मुल्जिम परमजीत सिंह को फायर करते मौके पर नहीं देखा था।

The PW 2, Baljeet Singh who is an injured witness has stated as under:-

हमारी जमीन जायदाद सम्बन्धी विवाद हाजिर अदालत मुल्जिम से चल रहा था। वैन से उतरने वाले और फायर कर हत्यारे को मैं नहीं पहचान सका। हाजिर अदालत अभियुक्त परमजीत सिंह उर्फ पम्मा ने उपरोक्त तीनों हत्यायें एवं हमें चोट नहीं पहुँचायी। मैं हत्या करने वालों को नहीं पहचान सका।

यह सही है कि हाजिर अदालत मुल्जिम परमजीत सिंह उर्फ पम्मा जो कि मेरा चाचा है जिससे मेरा राजीनामा हो गया है। लेकिन यह कहना गलत है कि इस राजीनामों की वजह से मैं गलत बयानी कर अभियुक्त को बचा रहा हूँ।

The PW3, Gurmeet Singh has stated as under:-

यह कहना सही है कि मुल्जिम मेरा मौसेरा भाई है। और हम लोगो का पंचायत में राजीनामा हो गया है। यह कहना गलत है कि इस राजीनामों की वजह से मैं गलत बयान कर उसे बचा रहा हूँ।

The PW4, Satwant Singh has stated as under:-

मृतक सरदार इन्द्रजीत सिंह का मैं रिश्तेदार हूँ, हमारी पंचायत में बैठकर राजीनामा हो गया है, पंचायत ने पम्मा अभियुक्त को माफ कर दिया है। यह कहना गलत है कि इसी राजीनामों की वजह से मैं गलत बयानी कर मुल्जिम पम्मा को बचा रहा हूँ, यह कहना गलत है कि हाजिर अदालत अभियुक्त ने ही हत्या की हो और इसी ने चोटे पहुँचायी हो।

There is a clear admission that the double barrel gun No. 17466-96 was recovered from Rampur and the recovery memo was prepared which is a part of the record as Ex. Ka. 39. The accused has admitted that the gun was deposited by him. In the end the question asked was, what you have to say in your defence and it has been frankly stated by the accused that he has nothing to say. No more evidence was laid with regard to the motive or any other part in spite of the direct question which were asked from the accused

The recovery memo of the gun of Paramjeet Singh alias Pamma bearing No. 17466-96 was recovered from Rampur as will appear from Ex. Ka. 39 on 4th May 2000. The accused persons were also examined u/s 161 Cr. P.C. and thereafter a charge sheet was submitted u/s 302/307 I.P.C.

The statement under section 313 Cr.P.C. of the accused was recorded. The details of the statements made under section 313 IPC is quoted below:-

प्रश्न— अभियोजन पक्ष का कथन है कि दिनांक 27.4.2000 को समय करीब 5.45 बजे शाम, स्थान — मटके वाली गली बाजार रुद्रपुर, बहद थाना रुद्रपुर, जिला उधम सिंह नगर के अन्तर्गत आपने इन्द्रजीत सिंह, सुरेन्द्र सिंह व शरणजीत सिंह पर बन्दूक से फायर करके उनकी हत्या कारित कर दी तथा अजीत सिंह, बलजीत सिंह व हरदयाल सिंह को जान से मारने की नियत से फायर करके चोटें पहुंचाई, इस बाबत आपको क्या कहना है।
उत्तर— जी नहीं यह गलत है ।

प्रश्न— साक्ष्य है कि इस घटना की तहरीरी रिपोर्ट अभियोगी अजीत सिंह ने थाने में दी जो प्रदर्श क-1 है, इस बाबत आपको क्या कहना है ।
उत्तर— रिपोर्ट झूठी लिखाई ।

प्रश्न— साक्ष्य है कि घटनास्थल से विवेचना अधिकारी द्वारा विवेचना के दौरान खून आलूदा एवं सादा मिट्टी कब्जे में लेने की फर्द तैयार की गयी, खोखा कारतूस कब्जे में लाने की फर्द तैयार की गयी, मृतक का चश्मा व पगड़ी कब्जे में लेने की फर्द तैयार की गयी जो क्रमशः प्रदर्श क-2 लगायत क-4 है, इस बाबत आपको क्या कहना है ।
उत्तर— फर्जी कार्यवाही की ।

प्र न— साक्ष्य में यह भी आया है कि दौरान विवेचना अधिकारी राजन त्यागी (पी0डब्लू0-8) द्वारा अभियोगी अजीत सिंह के बयान लिये गये जिसकी प्रमाणित फोटो प्रति प्रदर्श क-40 है, इस बाबत आपको क्या कहना है ।
उत्तर— पता नहीं ।

प्रश्न— साक्ष्य है कि विवेचना अधिकारी द्वारा अन्य गवाहान सतवंत सिंह, गुरमीत सिंह, हरपाल सिंह, राजेन्द्र कुमार व बलजीत सिंह के बयान लिये गये जिनके बयानों की प्रमाणित फोटो प्रतियां प्रदर्श क-41, क-42 व क-43 है, इस बाबत आपको क्या कहना है ।

उत्तर— पता नहीं ।

प्रश्न— साक्ष्य में यह भी आया है कि पी0डब्लू0-8, विवेचना अधिकारी द्वारा घटनास्थल का मानचित्र तैयार किया गया जो प्रदर्श क-26 है । आपकी बन्दूक नं0 17466-96 आप की निशानदेही पर रामपुर से बरामद हुई जिसकी बरामदगी की फर्द तैयार की गयी जो प्रदर्श क-39 है, बन्दूक बरामदगी के स्थल का मानचित्र तैयार किया गया जो प्रदर्श क-45 है। मुकदमे से सम्बन्धित माल की रासायनिक परीक्षण रिपोर्ट विधि विज्ञान प्रयोगशाला से प्राप्त हुयी जो प्रदर्श क-44 है, इस बाबत आपको क्या कहना है ।

उत्तर— मेरी निशानदेही पर बन्दूक बरामद नहीं हुयी यह नम्बर 17466-96 मेरी लाईसैन्सी बन्दूक का है । मैने रामपुर के डीलर के यहां जमा करायी थी, पुलिस ने फर्जी कार्यवाही की है ।

प्रश्न— साक्ष्य है कि मृतक इन्द्रजीत सिंह, सुरेन्द्र सिंह एवं भारणजीत सिंह के शवों का पंचनामे तैयार किये गये जो क्रमशः प्रदर्श क-15, क-19 एवं क-23 है तथा उपराक्त तीनों मृतक के शवों का पोस्टमार्टम कराया गया जिनकी पास्टमार्टम रिपोर्ट क्रमशः प्रदर्श क-29, क-28 एवं क-27 है, इस बाबत आपको क्या कहना है

उत्तर— पता नहीं ।

प्रश्न— साक्ष्य में यह भी आया है कि विवेचना अधिकारी द्वारा विवेचना समाप्त करने के उपरान्त आपके विरुद्ध आरोप पत्र न्यायालय में प्रेषित किया जो प्रदर्श क-5 है, इस बाबत आपको क्या कहना है ।

उत्तर— फर्जी तफतीश की और गलत आरोप पत्र जारी किया ।

प्रश्न— क्या आपने अभियोजन पक्ष के साक्षी गण पी0डब्लू0-1 अजीत सिंह, पी0डब्लू0-2 बलजीत सिंह, पी0डब्लू0-3 गुरमीत सिंह, पी0डब्लू0-4 सतवंत सिंह, पी0डब्लू0-5 राजेन्द्र कुमार, पी0डब्लू0-6 हरपाल सिंह, पी0डब्लू0-7 हीरा लाल तथा पी0डब्लू0-8 इन्स्पेक्टर राजन त्यागी का साक्ष्य सुना, इस बाबत आपको क्या कहना है ।

उत्तर— गवाहान पब्लिक ने मेरे खिलाफ गवाही नहीं दी है पुलिस के गवाह झूठ बोलते हैं ।

प्रश्न— क्या आपको सफाई में कोई साक्ष्य प्रस्तुत करना है ।

उत्तर— जी नहीं ।

प्रश्न— क्या आपको कुछ और कहना है ।

उत्तर— मुझे झूठा पार्टीवाद की वजह से फंसाया गया है । मै रुद्रपुर का समाजवादी पार्टी का अध्यक्ष हूं ।

The first circumstance was about the motive as will appear from the FIR that there was a dispute with regard to the land and the accused has purpose and reason for committing the offence and murder.

So far as the first circumstance is concerned the learned Sessions Judge has recorded the findings to the following effect:

अभियोजन कथानक के अनुसार उक्त आपराधिक अपकृत्य करने वाला अथवा मृतक की हत्या कारित करने वाली चोटों तथा चुटैलों की हत्या का प्रयास करने व उन्हें शारीरिक क्षति का रचयिता अभियुक्त परमजीत सिंह उर्फ पम्मा है जिसने घटना के समय अपनी बन्दूक का प्रयोग यह आपराधिक अपकृत्य करने में दिनांक 27.4.2000 को समय 5.45 बजे दिन थाना रूद्रपुर में किया । घटना के समय व स्थान के सम्बन्ध में सकारात्मक साक्ष्य अभियोगी— चुटैल अजीत सिंह (पी0 डब्लू0-1), तथा अन्य चुटैल बलजीत सिंह (पी0 डब्लू0-2), ने दी है और इनकी इस आशय की साक्ष्य को प्रति परीक्षा में बचाव पक्ष को ओर से चुनौती नहीं दी गयी है अतएव यह तथ्य पुर्णतया संपुष्ट है कि घटना उक्त दिनांक, समय एवं स्थान पर घटित हुयी । इस बिन्दु पर अन्य उपलब्ध साक्ष्य का उल्लेख करने की आवश्यकता नहीं है क्योंकि दन दोनों साक्षियों की साक्ष्य से ही उक्त वर्णित प्रथम विचारणीय प्रश्न का सकारात्मक उत्तर मिल जाता है ।

जहां तक द्वितीय विचारणीय बिन्दु का प्रश्न है इस सम्बन्ध में अभियोजन पक्ष के साक्ष्य की वस्तुस्थिति यह है कि अभियोजन पक्ष के सभी तथ्य के साक्षी अभियोगी—चुटैल अजीत सिंह (पी डब्लू0 1), चुटैल बलजीत सिंह (पी0 डब्लू0-2), अन्य चक्षुदर्शी साक्षी गण गुरमीत सिंह (पी डब्लू0-3), सतवंत सिंह (पी0 डब्लू0-4), राजेन्द्र कुमार (पी डब्लू0-5), हरपाल सिंह (पी डब्लू0-6), तथा हीरा लाल (पी डब्लू0-7), पक्षद्रोही हो गये और इन्होंने अभियोजन पक्ष के कथन का समर्थन नहीं किया। अभियोगी अजीत सिंह एवं उसके भ्राता बलजीत सिंह ने घटना अपने सामने कारित होने की बात तो कही लेकिन यह अभिवचन भी किया कि अभियुक्त परमजीत सिंह ने न तो मृतकों की हत्या मौके पर बन्दूक से फायर करके की और न ही बन्दूक के फायर से इन्हें तथा इनके दादा अन्य चुटैल हर दयाल सिंह (मृतक) को जान से मारने का प्रयास किया । अभियोगी ने प्रथम सूचना रिपोर्ट प्रदर्श क-1 अपनी हस्तलिखित होना स्वीकार किया जिसमें अभियुक्त परमजीत सिंह नामित किया गया था लेकिन यह अभिवचन किया कि उसने इस अभियुक्त का नाम अन्य लोगों के कहने से रिपोर्ट में लिखा दिया था । अन्य उल्लिखित प्रत्यक्षदर्शी साक्षियों ने तो अपनी मौजूदगी ही घटनास्थल पर स्वीकार नहीं की और घटना के कथानक का समर्थन नहीं किया । इन सभी साक्षियों से अभियोजन पक्ष की ओर से जिलाशासकीय अधिवक्ता (फौजदारी) ने स्वीकृति प्रदान करने पर प्रति परीक्षा की लेकिन कोई ऐसी बात सामने नहीं आयी जो इन साक्षियों के द्वारा उक्त प्रकार से किये गये नुकसान की भरपाई हो सकती । अन्य शब्दों में यह सभी अपने इस अभिवचन पर दृढसंकल्प रहे कि अपकृत्य करने वाला व्यक्ति अभियुक्त परमजीत सिंह नहीं है । यहां यह उल्लेख करना भी समीचीन होगा कि यद्यपि परिवादी अजीत सिंह (पी डब्लू0-1), ने प्रथम सूचना रिपोर्ट प्रदर्श क-1 स्वयं की हस्तलिखित होना स्वीकार की लेकिन शपथ पर अभियोजन पक्ष के कथानक का समर्थन न करने के कारण यह प्रथम सूचना रिपोर्ट सरवान (सब्सटैन्टिव) साक्ष्य की श्रेणी में नहीं आती और यह अपने आप में कोई सकारात्मक निष्कर्ष अभियोजन के पक्ष में निकालने के

लिए पर्याप्त न होगी भले ही किसी अन्य परिस्थितिजनक साक्ष्य के समर्थन में इसका सीमित लाभ अभियोजन पक्ष को मिल सके

The second circumstance was the recovery of 12 bore licensee gun (Ex. 6) of the accused on the information and statement made by the accused and the three empty cartridges of 12 bore gun which were found at the place of incident clearly indicates that the bullets were fired by the 12 bore licensee gun of the accused at the time of incident and that the gun was in possession of the accused himself and not in possession of anybody else on the day of incident as is evident from the statement u/s 313 Cr.P.C. made by the accused in which he had admitted that the gun bearing No. 17466-96 belongs to him which he had deposited with Arms Dealer namely, M/s G.B. Sales Arms & Ammunition at Rampur.

So far as the second circumstance is concerned the learned Sessions Judge has recorded the findings to the following effects:

उक्त द्वितीय विचारणीय प्रश्न के परिप्रेक्ष्य में अभियोजन पक्ष के अनुसार स्वीकार्य तथ्यों एवं पत्रावली पर उपलब्ध साक्ष्य सामग्री से ऐसा परिस्थितिजनक साक्ष्य विद्यमान है जो अभियुक्त को इस मार्मिक एवं जघन्य अपराध से जोड़े । जिन परिस्थितियों पर अभियोजन पक्ष ने आश्रय लिया है वह निम्न है—

- 1 अभियुक्त के लिए आपराधिक मानत वध एवं चुटैलों की हत्या के प्रयास का उद्देश्य अथवा कारण उपलब्ध होना ।
- 2 अभियुक्त की 12 बोर की लाईसैन्सी बन्दूक, प्रदर्श-6 जो उसकी सूचना व बताने पर बरामद हुयी, के द्वारा ही घटनास्थल से बरामद तीन 12 बोर के खोखे कारतूस इस बन्दूक से फायर किये गये साबित होना तथा यह कि अभियुक्त के अतिरिक्त अन्य किसी पर घटना के दिन इस बन्दूक का उपलब्ध न होना ।

जहां तक प्रथम परिस्थिति का प्रश्न है, अभियोजन का यह सुस्पष्ट कथन है कि जमीन जायदाद सम्बन्धी विवाद के कारण मनमुटाव मृतकों/चुटैलों को अभियुक्त से चल रहा था । इसी सन्दर्भ में चुटैल साक्षी बलजीत सिंह (पी डब्लू0-2) का यह बयान भी महत्वपूर्ण है कि मैं हाजिर अदालत अभियुक्त परमजीत सिंह उर्फ पम्मा को जानता हूँ, यह मेरा चाचा लगता है हमारी जमीन जायदाद सम्बन्धी विवाद हाजिर अदालत मुलजिम से चल रहा था । इस साक्षी से इस सम्बन्ध में प्रति परीक्षा में कोई प्रश्न नहीं पूछा गया और न ही इस कथन के विपरीत कोई अन्य सुझाव ही बचाव पक्ष की ओर से दिया गया है अतएव यह निर्विवाद रूप से संपुष्ट है कि जमीन जायदाद

के विवाद के कारण अभियुक्त परमजीत सिंह उर्फ पम्मा मृतकों एवं चुटैलों से रूष्ट था और मात्र उसे ही इन व्यक्तियों के विरुद्ध आपराधिक कृत्य करने का उद्देश्य प्राप्त था । अन्य शब्दों में ऐसे आपराधिक कृत्यों का उद्देश्य एक महत्वपूर्ण परिस्थिति ऐसे मामलों में गिनी जा सकती है और जैसी कि अवधारणा माननीय सर्वोच्च न्यायालय ने 30प्र0 राज्य-प्रति-बाबू राम, 2000 सुप्रीम कोर्ट क्रिमिनल रूलिंग्स 860 के मामले में भी स्थापित की है ।

द्वितीय परिस्थिति सम्बन्धित अभियुक्त की लाईसैन्सी गन के सन्दर्भ से सर्वप्रथम यह इंगित करना समीचीन होगा कि स्वयं अभियुक्त के अपने बयान अन्तर्गत धारा 313 दण्ड प्रक्रिया संहिता में यह स्पष्ट रूप से स्वीकार किया कि उसकी लाईसैन्सी बन्दूक का न० 17466-96 है और जिसे उसने रामपुर में एक आर्मस डीलर से यहां जमा कराया था । यहां विवेचना अधिकारी इन्सपेक्टर राजन त्यागी (पी० डब्लू०-9) की बन्दूक बरामदगी करने की साक्ष्य के परिपेक्ष्य में यह उल्लेख करना भी उपयुक्त होगा कि यही नम्बर वाली दो नाली बन्दूक इनके द्वारा अभियुक्त परमजीत सिंह की सूचना और बताने तथा अगवाई करने पर रामपुर में रेलवे स्टेशन के पास स्थित आग्नेयशस्त्र डीलर मैसर्स जे० बी० सैल्स आर्मस एण्ड एम्यूनेशन के यहां से बरामद की गयी थी और इसका सम्पूर्ण उल्लेख फर्द बरामदगी प्रदर्शक-39 में है और जिसे इस साक्षी द्वारा साबित किया गया है । यह लाईसैन्सी बन्दूक वस्तु प्रदर्शक-6 है और इसकी भी पुष्टि साक्षी ने की । आर्मस डीलर की दुकान के रजिस्टर की सम्बन्धित इन्द्राज की प्रति प्रदर्शक-35 पत्रावली पर है और इसे भी इस साक्षी ने अपने शपथ पर बयान में पुष्ट किया है और यह साबित किया कि यह उद्घरण दुकान के रजिस्टर का ही है और सम्बन्धित बन्दूक के इन्द्राज के विरुद्ध बन्दूक बरामद होने पर अभियुक्त ने अपने हस्ताक्षर निर्धारित कालम में किये थे जो पठनीय है और तिथि 4.5.2000 अंकित है । इसी दिन करीब 5 बजे शाम साक्षी ने यह बन्दूक अभियुक्त की निशानदेही पर उक्त डीलर के यहां से बरामद की और यह बयान किया कि अभियुक्त की इस सूचना पर कि घटना में प्रयुक्त अपनी लाईसैन्सी बन्दूक वह बरामद करा सकता है, यह कार्यवाही की गयी ।

यहां यह अभिव्यक्त करना भी उपयुक्त होगा कि अभियुक्त की गिरफ्तारी मुखवीर की सूचना पर इस साक्षी द्वारा दिनांक 4.5.2000 को ही डेढ़ बजे दिन रूद्रपुर-रामपुर रोड़ पर स्थित सोनिया होटल के पास से की गयी थी और अभियुक्त का दाखिल थाने पर जी०डी० रपट न० 38 समय 14-15 बजे, प्रदर्शक-9 द्वारा किया गया था । बाद में अभियुक्त से पुछताछ करने पर उसने घटना में प्रयुक्त की जाने वाली अपनी लाईसैन्सी बन्दूक बरामद करने की सूचना भी उक्त साक्षी को दी थी जिसका उल्लेख रपट नकल नं० 39 समय 14-30, प्रदर्शक-10 में किया गया और बरामदगी के उद्देश्य से रवानगी नकल रपट न० 43 समय 2-30 बजे प्रदर्शक-11 द्वारा की गयी थी । बरामदगी बन्दूक के बाद वापसी साक्षी मय अभियुक्त एवं बरामद माल हुयी जिसका इन्द्राज नकल रपट न० 58 समय 19-45 बजे प्रदर्शक-12 में किया गया । बरामदगी बन्दूक व निशानदेही अभियुक्त के सम्बन्ध में यह तथ्य भी

बड़ा महत्वपूर्ण है कि पत्रावली पर उपलब्ध सामग्री से ऐसा कोई भी संकेत नहीं मिलता है कि अभियुक्त ने अपनी लाईसैन्सी दो नाली बन्दूक उक्त आर्मस डीलर के अतिरिक्त किसी और डीलर के यहां जमा करायी हो । जैसा कि उपर उल्लेख किया गया आर्मस डीलर के रजिस्टर के उद्धरण प्रदर्श क-35 का यह इन्द्राज भी महत्वपूर्ण है कि यह बन्दूक अभियुक्त द्वारा दिनांक 3.5.2000 को डीलर के यहां दाखिल की थी । अन्य शब्दों में घटना के दिन अर्थात् 27.4.200 को यह लाईसैन्सी दो नाली बन्दूक अभियुक्त के ही कब्जे में थी और ऐसी भी कोई आभास अथवा संकेत नहीं कि किसी अन्य व्यक्ति के पास इस बीच में यह बन्दूक रही हो ।

अभियुक्त की निशानदेही पर बरामद की गयी उसकी लाईसैन्सी बन्दूक प्रदर्श-6 तथा घटनास्थल से बरामद किये गये तीन खोखा कारतूस 12 बोर प्रदर्श-1, प्रदर्श-2 व प्रदर्श-3 जांच हेतु विधि विज्ञान प्रयोगशाला उ0प्र0, आगरा भेजे गये थे जहां जांचोपरान्त रिपोर्ट दिनांकित 27.4.2001 तैयार कर प्रेषित की गयी जो अभियोजन पक्ष की ओर से धारा 293 दण्ड प्रक्रियासंहिता टेण्डर की गयी और तदनुसार इस रिपोर्ट को साक्ष्य में लिया गया । यह रिपोर्ट प्रदर्श क-46 पत्रावली पर है । इस ग्राह्य साक्ष्य रिपोर्ट विशेषज्ञ से विदित है कि वैज्ञानिक एवं तकनीकी जांच के आधार पर यह पाया गया कि घटनास्थल से बरामद 12 बोर के तीनों खोखा कारतूस अभियुक्त की लाईसैन्सी दो नाली बन्दूक न0 17466-96 के द्वारा चलाये गये थे । इस वस्तुपरक वैज्ञानिक एवं तकनीकी रिपोर्ट में बचाव पक्ष की ओर से ऐसी कोई बात नहीं दर्शायी जो निकाले गये निष्कर्ष के सम्बन्ध में किसी भी प्रकार का अपवाद अथवा सन्देह उत्पन्न करे । परिणमतः इस ग्राह्य साक्ष्य के आधार पर यह मत अभिव्यक्त करना ही उपयुक्त होगा कि घटना के तुरंत बाद घटनास्थल से जो 12 बोर के तीन खोखा कारतूस बरामद किये गये थे वे अभियुक्त की ही उक्त लाईसैन्सी बन्दूक से चलाये गये थे । अन्य शब्दों में विचारणीय परिस्थिति उपलब्ध सामग्री से पूणतया पुष्ट हुयी जिसके फलस्वरूप अभियुक्त इस मामले की घटना से जोड़ता हैं ।

The third circumstance was with regard to the compromise. After this incident, a compromise was made between accused and others regarding the settlement of property dispute in which it was decided that the accused should be excused.

So far as the third circumstance is concerned the learned Sessions Judge has recorded the findings to the following effect:

तीसरी परिस्थिति के सम्बन्ध में सर्वप्रथम अभियोगी-चुटैल अजीत सिंह (पी0डब्लू0 -1) का यह बयान महत्वपूर्ण है कि 'यह सही है कि हाजिर अदालत अभियुक्त से राजीनामा हो गया है मुलजिम परमजीत सिंह उर्फ पम्मा मेरा चाचा लगता है' । इस साक्षी के चुटैल भ्राता बलजीत सिंह (पी0डब्लू0 -2) ने भी ऐसा ही बयान दिया कि 'यह सही है कि हाजिर अदालत मुलजिम परमजीत सिंह उर्फ पम्मा जो कि

मेरा चाचा है जिससे हमारा राजीनामा हो गया है” । तीसरे साक्षी गुरमीत सिंह (पी0डब्लू0 -4) ने भी इसी बात को स्वीकारते हुये कहा कि मुलजिम मेरा मौसेरा भाई है और हम लोगो का पंचायत में राजीनामा हो गया है ’ । चौथे साक्षी सतवंत सिंह (पी0डब्लू0 -4) ने भी उसी बात को स्वीकारते हुये यह आग्रह किया कि हमारा पंचायत में बैठ कर आपसी राजीनामा हो गया है , पंचायत ने अभियुक्त को माफ कर दिया है ’ । साक्षी हरपाल सिंह (पी0डब्लू0 -6) ने अपने बयान में कहा कि ‘मुझे मालुम है कि इस काण्ड के सिलसिले में वादी अजीत सिंह के घर अभियुक्त परमजीत सिंह उर्फ पम्मा के मामले में पंचायत हुयी थी लेकिन मैं पंचायत में मौजूद नहीं था’ ’ । यह पर्याप्त पत्रावली पर साक्ष्य निःसन्देह ही घटना के बाद पंचायत में मामला उठाने की बात साबित करती है तथा यह बात भी पर्याप्त रूप से स्पष्ट करती है कि पंचायत के द्वारा समझौते के अनुरूप अभियुक्त को माफ कर दिया गया ।

The fourth circumstance was the behaviour of the accused to abscond on the day of the incident besides the fact that the accused did not plead alibi and he had simply chosen to stay away from the place of incident and not even attended the funeral of his near and dear. It is pertinent to mention here that one of deceased was his real brothers and the other two deceased were his real nephews, two of the injured are also his real nephews and the other injured namely Har Dayal Singh is the father of the accused.

So far as the fourth circumstance is concerned the learned Sessions Judge has recorded the findings to the following effect:

चौथी एवं अन्तिम परिस्थिति के सन्दर्भ में यह पुनः उल्लेख करना समीचीन होगा कि आपराधिक मानव वध के इस मामले में एक मृतक अभियुक्त का सगा भाई, अन्य दो मृतक अभियुक्त के सगे भतीजे, एक चुटैल अभियुक्त का पिता तथा अन्य दो चुटैल अभियुक्त के सगे भतीजे हैं । अभियोजन पक्ष के अनेसार यह मार्मिक जघन्य अपराध रूद्रपुर नगर के बीचों बीच दिन के 5-45 बजे दिनांक 27.4.2000 को घटित हुआ । ऐसी जघन्य घटना की सूचना जंगल की आग की तरह कुछ ही मिनटों में नगर के चारों ओर ही नहीं वरन् आस पास के कस्बों तक फैल जाती है । अभियुक्त की ओर से घटना के दिन नगर से बाहर होने (प्ली आफ एलीबाई) का आग्रह नहीं है । घटना की प्रथम सूचना रिपोर्ट घटना के दिन 55 मिनट बाद थाने पर अंकित करायी गयी । प्रथम सूचना रिपोर्ट अंकित होने से पूर्व रिपोर्ट में नामित लम्बी अवधि में अभियुक्त को पता होने का प्रश्न ही नहीं था और इतनी पर्यप्त लम्बी अवधि में अभियुक्त का शहर से बाहर न होने के बावजूद भी अपने सम्बन्धियों के बीच मौजूद न रहना एक ऐसी परिस्थिति है जो उसके अप्रत्याशित व्यवहार का परिचय देती है और ऐसा ही परिचय अभियुक्त की गिरफ्तारी दिनांक 4.5.2000 तक न होने के आधार पर भी विद्यमान है । अभियुक्त के विरुद्ध रिपोर्ट अंकित होने पर उसकी गिरफ्तारी का

प्रयास किया गया था विवेचना अधिकारी ने दविश दी लेकिन अभियुक्त दस्तयाव नहीं हुआ और इस सम्बन्ध में दिनांक 28.4.2000 की नकल रपट रोजनामचाआम संख्या 9 समय 6-25, प्रदर्श क-7 का उल्लेख किया गया जा सकता है । नकल रपट नं0 51 समय 18-35 दिनांक 3.5.2000, प्रदर्श क-8 यह तथ्य पुष्ट करती है कि अभियुक्त निरन्तर फरार रहा और इसकी सम्पत्ति की कुर्की की गयी । अभियुक्त की गिरफ्तारी दिनांक 4.5.2000 को समय 1-30 बजे जैसा कि उपर भी उल्लेख किया जा चुका है, विवेचना अधिकारी द्वारा मुखबीर की सूचना पर की गयी थी । अभियुक्त घटना के बाद से स्वयं को फरार रखे हुये था और पुलिस की नजर से बच कहा था तथा जैसा कि उपर भी उल्लेख किया गया अपनी लाईसैन्सी बन्दूक को दिनांक 3.5.2000 को आर्मस डीलर के यहां दाखिल किया और यह सारा अभियुक्त का व्यवहार एक ऐसी सारगर्भित परिस्थिति का जनक है जो अभियुक्त को घटित अपराध से निश्चय ही जोड़ने की एक कड़ी के रूप में सामने आयी ।

The counsel for the appellant has argued that the proceedings under section 82 and 83 Cr.P.C. are wholly irrelevant so far as the chain of the evidence against the appellant is concerned. Similar controversy came up before the Divisional Bench in 2003 (47) ACC 534 where their lordships has held as under:-

It is also a factor to be taken note of that after the incident the accused-appellants absconded and proceedings under section 82 and 83 Cr.P.C. has to be drawn against them. The Investigating Officer Ram Chandra Dubey PW5 deposed that articles of the accused appellants were attached. Though the accused appeallants admitted the factum of attachment of their property but denied that they had absconded. There could hardly be any necessity of attaching their property, if they had not absconded.

All the facts, circumstances and the injuries caused to the victim indicate as if the accused-appellants were not satisfied by simply putting her to eternal sleep. Rather they committed this murder in most cruel and diabolical manner demonstrating sadistic proclivity.

The Counsel for the appellant has referred the following judgments in order to show that the statement u/s 313 Cr.P.C. is

material and the conviction cannot be based on any material which was not put under section 313 Cr.P.C.

The counsel for the appellant has also referred section 8 of the Evidence Act. The same reads as under:

*“Motive, Preparation and Previous or subsequent conduct:
Any fact is relevant, which shows or constitutes a motive or preparation for any fact in issue or relevant fact.
The conduct of any part, or of any agent to any party, to any suit or proceedings, in reference to such suit or proceedings, or in reference to a fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceedings, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.”*

As will appear from the FIR that motive as well as preparation both are available in the FIR itself as well as other chain of circumstance as referred in the judgment of AIR 1978 (S.C.) page 1025 – *Smt. Nandani Satpathy Vs. P.L. Dani* in which it has been stated that:

“On the other hand, we must never forget that crimes, in India and internationally, are growing and criminals are outwitting the detectives. What holds good in the cities of the United States is infecting other countries, including our own. An American author in a recent book has stated: “What do u think the city of tomorrow will be? In 1969 the National Commission on the Causes and Prevention of Violence made alarming predictions. You will live in a city where everyone has guns. Houses will be protected by grills and spy equipment. Armed citizen patrols will be necessary. The political extremes will be small armies. Buses will have to carry armed guards. There will be hatred and war between the races, and between the rich and the poor. In other words, your city will be a place of terror.

“From 1969 to 1974 the number of crimes from each hundred thousand people is up 38%. Violent crimes rose

47%. Robbery increased 48%. Burglary went up a whopping 53%. Theft rose 35%. The chances are becoming better and better that you or someone dear to you will be a victim. The chances are also better that the close relative will be involved in crime as criminal.

“.....In only 12% of the serious crimes is there a suspect arrested. Half of those are convicted. (Serious crime includes homicide, burglary, aggravated assault, larceny over \$ 50, forcible rape, robbery, and auto theft.)

“The situation is so discouraging that only half the people bother to report serious crime. Even then, in 1974, 82% of the known burglaries went unsolved. That means only 18% of the half known to the police were solved.

“.....President Johnson’s message to Congress March 8, 1965 is a true today as it was then:

“Crime has become a malignant enemy in America’s midst..... We must arrest and reverse the trend towards lawlessnessWe cannot tolerate an endless, self-defeating cycle of imprisonment, release, and reimprisonment which fails to alter undesirable attitudes and behaviour. We must find ways to help the first offender avoid a continuing career to crime.

The first obligation of the criminal justice system is to secure justice by seeking and substantiating truth through proof. Of course, the means must be as good as the ends and the dignity of the individual and the freedom of the human person cannot be sacrificed by resort to improper means, however worthy the ends. Therefore, ‘Third degree’ has to be outlawed and indeed has been. We have to draw up clear lines between the whirl-pool and the rock where the safety of society and the worth of the human person may co-exist in peace.

In *Khujji Vs State of Madhya Pradesh* following principles has been laid down.

Mr. Lalit, learned counsel for the appellant, however, argued that since the report of the serologist does not determine the blood group of the stains on the weapon and the pant of the appellant, the mere find of human blood on these two articles is of no consequence, whatsoever. In support of this contention he placed strong reliance on the decisions of this Court in Kansa Behera Vs. State of Orrisa (1987) 3 SCC 480 and Surinder Singh Vs State of Punjab 1989 Supp 2 SCC 21. In the first mentioned case the conviction was sought to be sustained on three circumstances, namely, (i) the appellant and the deceased were last seen together; (ii) a dhoti and a shirt recovered from the possession of the appellant were found to be stained with human blood; and (iii) the appellant had made an extra-judicial confession to two witnesses when arrested. There was no dispute in regard to the first circumstances and the third circumstance was held not satisfactorily proved. In this backdrop the question for consideration was whether the first and the second circumstances were sufficient to convict the appellant. This Court, therefore, observed that a few small blood stains could be of the appellant himself and in the absence of evidence regarding blood group it cannot conclusively connect the blood stains with the blood of the deceased. In these circumstances this Court refused to draw any inference of guilt on the basis of the said circumstance since it was not 'conclusive' evidence. This Court, however, did not go so far as to say that such a circumstance does not even provide a link in the chain of circumstances on which the prosecution can place reliance. In the second case also this Court did not consider the evidence regarding the find of human blood on the knife sufficient to convict the appellant in the absence of determination of blood group since the evidence of PW2 was found to be uninspiring and there was no other circumstance to connect him with the crime. In this case we have the direct testimony of PW 1 Komal Chand, besides the testimony of PWs 3 and 4 which we have considered

earlier. The find of human blood on the weapon and the pant of the appellant lends corroboration to the testimony of PW1 Komal Chand when he states that he had seen the appellant inflicting a knife blow on the deceased. The appellant has not explained the presence of human blood on these two articles. We are, therefore, of the opinion that the aforesaid two decisions turned on the peculiar facts of each case and they do not lay down a general proposition that in the absence of determination of blood group the find of human blood on the weapon or garment of the accused is of no consequence. We, therefore, see no substance in this contention urged by Mr. Lalit.

The evidence on the record has fully proved the recovery of bloodstains, recovery of gun and in such circumstances the judgment of the *Khujji Vs State of Madhya Pradesh* (1991) 3 SCC 627 is fully applicable to the facts of the case.

The counsel for the prosecution has referred the judgment of *Mani Kumar Thapa Vs State of Sikkim* (2002) 7 SCC 157 regarding circumstantial evidence as well as the failure of the accused to explain any inculcating circumstance under section 313 of the Cr.P.C. as under:

If the prosecution case were to be confined only to the facts referred to by the learned counsel for the appellant in his presentation of the hypothesis then there may be some force in the said argument. But then while considering a hypothesis of this nature, we will have to take into consideration the entire prosecution case and the circumstances proved by the prosecution as also any legitimate inference that could be drawn from such proved circumstances. If that is done then we notice the main plank of the appellant's hypothesis that the appellant did not know the intention of A-1 in taking away the deceased with him in his jeep, falls to the ground. In this regard we notice that it is an admitted fact as could be seen hereafter that the appellant was found in the company of A-1 on 12.2.1988 sometime in the

afternoon while traveling in the jeep driven by A-1 and searching for the deceased. To the extent that he was with A-1 on that afternoon is admitted by the appellant himself in his statement under section 313 Cr.P.C. From the evidence of PWs 3,5 to 9, 11 and 12, the prosecution has established that A-1 and the appellant ultimately met the deceased and took him away in the jeep driven by A-1. During that time PW 5 also accompanied these accused persons and the deceased to some distance in the jeep. It is a fact that then the appellant did not in any manner indicate that he shared the common intention of A-1 in taking the deceased away. But then if we examine the conduct of the appellant we find that if really the appellant did not know the object for which the deceased was being taken in the jeep, one would have expected as a natural conduct at least after PW 5 alighted from the vehicle, the appellant would have asked A-1 the purpose of taking the deceased with them. The appellant had done no such thing nor has the appellant given any explanation in his statement under section 313 Cr.P.C. in this regard. The explanation in this regard is only found in the argument of the learned counsel in this Court which is that the appellant being an obedient subordinate of A-1, might not have questioned the authority of his superior. We do not think such an explanation is acceptable to anybody. If really the appellant was innocent, having known that a crime is committed, any prudent person if he was innocent, would certainly have tried to dissuade A-1 from committing a crime and if he failed in his attempt, he would have certainly taken steps to see that his non-involvement is safeguarded by seeking help from others. Failure to do so makes us infer that the appellant already knew the intention of A-1 and acquiesced with the same. Here we would also note that in the normal course if the deceased was being taken for interrogation or for the purpose of keeping him away from any mischief that A-1 suspected him of planning to commit in the meeting of the chief Minister then the normal destination would have been the police station but that was not the

direction in which the vehicle was moving, therefore it is legitimate for us to conclude that the appellant knew that the deceased was being taken towards the checkpoint with certain other oblique motive. This conduct of the appellant in not trying to find out the reason for taking the deceased and the destination further strengthens our inference that the appellant knew well in advance what was the reason and the destination to which the deceased was being taken. Assuming for argument's sake that he was obedient or innocent or ignorant enough to keep quite right through the journey then one would have expected him on his return at least to have informed of the incident to some person in authority or at least to a friend with a view to exculpate himself from the incident in which the deceased lost his life except what he told PW 5 on 13th and 16th of February, which, of course, is only one of the versions of his story which the appellant had adopted to mislead the investigation. This statement of PW 5 apart we see there is nothing which the appellant did which is in consonance with his innocence. Per contra, it is seen that the appellant accompanied A-1 in the evening of 12-2-1988 to a farewell function organized to bid farewell to one of their colleagues, this also indicates the appellant's conduct in sharing A-1's intention. It is further seen that on 13.2.1988 the appellant accompanied A-1 and went to Ramam Checkpost without there being any official reason for the same except to deliver two torchlights. We find it difficult to believe that the appellant who witnessed a crime to which he is not a party, would venture to go again with A-1 on 13.2.1988 to the scene of the occurrence if he was actually innocent. It is also to be noticed that even though on 13.2.1988 he told PW 5 about the incident of 12.2.1988 without inculpating himself, he again goes to Ramam Checkpost on 14.2.1988. This constant visit to the place of the incident along with A-1 makes the hypothesis presented on behalf of the appellant highly improbable and gives sufficient room to infer that the appellant did know and share the intention harboured by A-1 in the crime. If we analyse

the prosecution evidence further it is seen that in regard to traveling in the jeep from where they picked up the deceased then on to Ramam Checkpost and back, we see the appellant has given 3 different version on 3 different occasions. To PW5 he stated that while taking the deceased towards Singla from the checkpost, he allowed him to run away from the jeep after they crossed Ramam Checkpost when A-1 had got down from the jeep to ease himself. To PW 36 he told that when they were bringing a smuggler from Darjeeling side to Ramam Checkpost i.e. from the opposite direction the smuggler escaped from the jeep and in the process of running he fell down and suffered fatal injuries. In his statement under Section 313 Cr.P.C. before the court, he stated that on 12.2.1988 he had gone to Soreng on the orders of his SP as the Chief Minister was visiting Soreng and on the evening of that day as he did not have any vehicle, he took a "lift" in the vehicle of A-1 up to Jorethang from where he went to his quarters and Accused 1 went to Naya Bazar Dak Bunglow as he was camping there on duty. These 3 different versions which are self-contradictory further show that the appellant has not been consistent in his stand as to what happened on 12.2.1988. This Court in the case of State of Maharashtra Vs Suresh has held that a false answer offered by the accused when his attention was drawn to any inculpatory circumstance would render such circumstance as capable of inculpatory him. The Court also held that in such a situation a false answer can also be counted as providing "a missing link" in completing the chain. If the said principle in law is to be accepted, the statement of the appellant made under section 313 Cr.P.C. being palpably false and there being cogent evidence adduced by the prosecution to show that the appellant had given two other versions as to the incident of 12.2.1988, we will have to proceed on the basis that the appellant has not explained the inculpatory circumstances established by the prosecution against him which would form an additional link in the chain of circumstances. Then again there is another factor to

be taken note of in regard to the sharing of the common object of A-1 by the appellant. It has come in the evidence of PW 5 that the appellant had told him that after the body of the deceased was taken from the place where it had fallen in the first instance, the appellant had taken away certain possible identification materials like panchayat seal and some personal papers with a view to create false evidence as to the whereabouts of the deceased. This also indicates the involvement of the appellant in the crime. These circumstances and inferences drawn from such proved circumstances establish beyond all reasonable doubt that the appellant did share the common intention of A-1 in taking the deceased away in the jeep driven by A-1 and causing the murder, therefore, the hypothesis of innocence pleaded on behalf of the appellant in our opinion is not in consonance with the innocence of the appellant. On the contrary, from the chain of circumstantial evidence the prosecution has been able to establish beyond all reasonable doubt that the appellant did share the common intention of A-1 in abducting the deceased, causing his death as also causing disappearance of evidence of offence under section 201 IPC.

The Counsel for the prosecution has also referred the judgment of *Bodhraj alias Bodha and others Vs. State of Jammu & Kashmir* (2000) 8 SCC 45 on circumstantial evidence. An extract of the same is quoted below:

“It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (see Hukun Singh Vs State of Rajasthan, Eradu Vs. State of Hyderabad, Earabhadrapa Vs. State of Karnataka, State of U.P. Vs. Sukhbasi, Balwinder Singh Vs. State of Punjab and Ashik Kumar Chatterjee Vs. State of M.P. The circumstances from

which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In bhagat Ram Vs. State of Punjab it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

We may also make a reference to a decision of this Court in C. Chenga Reddy Vs. State of A.P. wherein it has been observed thus: (SCC pp. 206-07, para 21)

“21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.”

In Padala Veera Reddy Vs. State of A.P. it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests: (SCC pp. 710-11, para 10)

“10. (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

In state of U.P. Vs. Ashok Kumar Srivastava it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

Sir Alfred Wills in his admirable book **“Wills’ Circumstantial Evidence”** (Chapter IV) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the *factum probandum*; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

After relying upon the aforesaid facts the Apex Court has come to the conclusion that conviction can be based solely on the circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence and it should be a complete chain in the following manner:-

A reference may be made to a later decision in **Sharad Birdhichand Sarda Vs State of Maharashtra**. Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false

defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

- (1) The circumstances, from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;*
- (2) The fact so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
- (3) The circumstances should be of a conclusive nature and tendency;*
- (4) They should exclude every possible hypothesis except the one to be proved; and*
- (5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

Further, in *Hanumant Govind Nargundkar Vs State of M.P.* it was observed thus: (SCC pp. 345-46, para 10)

“it is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

The Counsel for the prosecution has also referred the judgment of *Alla China Apparao and others Vs. State of A.P.* (2000) 8 SCC 440 on circumstantial evidence. An extract of the same is quoted below:

*“A question that now arises is that where first information report is shown to have actually been recorded without delay and investigation started on its basis, if any delay is caused in sending the same to the Magistrate which the prosecution fails to explain by furnishing reasonable explanation, what would be its effect upon the prosecution case. In our view, ipso facto the same cannot be taken to be a ground for throwing out the prosecution case if the same is otherwise trustworthy upon appreciation of evidence which is found to be credible. However, if it is otherwise, an adverse inference may be drawn against the prosecution and the same may affect the veracity of the prosecution case, more so when there are circumstances from which and inference can be drawn that there were chance of manipulation in the first information report by falsely roping in the accused persons after due deliberations. Reference in this connection may be made to decisions of this Court in the cases of *Pala Singh Vs. State of Punjab*, *Sarwan Singh Vs. State of Punjab*, *State of Karanataka Vs. Moin Patel*, *Harpal Singh Vs. Devinder Singh*, *Shiv Ram Vs. State of U.P.*, *Anil Rai Vs. State of Bihar* and *Munshi Prasad Vs. State of Bihar*.*

Lastly it was submitted that no blood was found on the weapons of assault recovered by the investigation Officer. It may be stated that the trial court in its judgment has taken note of this fact and did not draw any inference therefrom against the prosecution in view of the fact that the weapons were recovered from a pipt in which water was flowing, as such non-existence of blood thereon was quite natural. We do not find any infirmity in the reasoning of the trial court on this score.

In view of the foregoing discussion, we are of the opinion that the High Court has not committed any error in upholding convictions and sentences awarded against the appellants.”

The object of section 313 Cr.P.C. has been explained in *Basavaraj R. Patil Vs. State of Karanataka* in paragraph 18. The same is quoted below:

“What is the object of examination of an accused under section 313 of the Code? The section itself declares the object in explicit language that it is “for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him”. In Jai Dev Vs. State of Punjab, AIR 1963 SC 612: (1963) (1) Cri LJ 495, Gajendragadkar. J. (as he then was) speaking for a three-Judge Bench has focused on the ultimate test in determining wheather the provision has been fairly complied with. He observed thus (Pars 21 of AIR and Cri LJ):

“The ultimate test in determining wheather or not the accused has been fairly examined under section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity.”

The learned counsel for the prosecution has referred the judgment in criminal appeal No. 257 of 2002 in the case of *Chandra Mohan Singh Vs. State of Uttaranchal* delivered by Hon’ble P.C. Verma, A.C.J. and Irshad Hussain, J which is quoted below:

“Before proceeding to scrutinize the incriminating circumstances relied upon by the prosecution, it is desirable to state that the legal proposition as to when conviction can be recorded on circumstantial evidence has been settled by a catena of decision of the apex court and the different High Courts. The legal position has also recently been reiterated by the apex court in

the case of Mohibur Rehman and another Vs. State of Assam, 2002 AIR SCW 3523. The Hon'ble Judges observed that:-

“It is well settled by a catena of decision of this Court that in order to find conviction of circumstantial evidence each of the incriminating pieces of circumstantial evidence should be proved by cogent and reliable evidence and the Court should be satisfied that the proved pieces of circumstantial evidence taken together forge such a chain wherefrom no inference other than of guilt can be drawn against the accused persons or, in other words, the proved pieces of circumstantial evidence should not be capable of being explained on any hypothesis other than the guilt of the accused.”

The Counsel for the appellant has referred the following judgments viz. Jagir Singh Vs.State (Delhi) 1975 Vol. 3 SCC page 562- Para 7; Satpaul Singh Vs. Delhi Administration 1976 Vol. I SCC page 729 (Para 39, 42, 44, 52, 54, 55); Bhagwan Singh Vs. State of Haryana 1976 SCC (Cri page 7) para 8; Ravinder Kumar Day Vs. State of Orrisa 1977 SC page 170 (Para 10, 11, 12); Sayid Akbar Vs State of Karnataka AIR 1979 SC page 1848 (Para 12, 13); Gura Singh Vs. State of Rajasthan 2001 Vol. II SCC page 205 (Para 8, 9, 10, 11, 12); K. Angara Vs. State of Kerala 2001 (42) ACC page 786 (Para 3, 4, 5, 7).

None of the judgments tallies with the facts of the present case in as much as the circumstantial chain fully establishes the guilt of the accused appellant.

The State has also referred the judgments of Subimal Sarkar Vs. Sachindra Nath Mundal and others J.T. 2003(1) S.C. 72 (Para 8) and State of U.P. Vs. Arun Kumar Gupta J.T. 2003 (1) S.C. 49 (Para 17) in order to show that the motive alone is sufficient for conviction. In state of U.P. Vs. Arun Kumar Gupta J.T. 2003 (1) S.C. 49 (Para 17) the following observations were made by the Hon'ble Judge:

“From the above decision of this Court it is clear that in such circumstances when the prosecution fails to send the blood stained material to the chemical examiner a reasonable doubt arises as to the genuineness of the prosecution case in regard to the recovery of such material. It is also relevant to notice at this stage the factum of recovery of the blood stained earth was not put to the respondent when his statement was recorded under section 313 Cr.P.C.

From the above discrepancies noticed by us in the evidence of PWs 7 and 9 and also from the omission on the part of the prosecution in sending blood stained material to the serologist we are sonstrained to doubt the prosecution case in regard to the recovery.

Coming to the evidence of PW 2, who says that he had seen the respondent take the deceased from his shop on 27th May, 1988, it should be noticed that this person is of the same biradari as of the deceased and was a close friend of the father of the deceased for over 20 years. The defence has suggested that he is actually the brother-in-law of PW 1, but the same is denied. The facts remains that this witness is an interested witness.

From the material produced by the prosecution, it shows that this witness was taking extraordinary interest in the investigation and was present at practically every important place and time in the course of the investigation. The High Court has very elaborately discussed the evidence of this witness and has rejected the same for good reasons with which we agree. In our opinion, the evidence of this witness does not inspire much confidence.

From the above discussion, in our opinion that the prosecution has been able to establish only a motive as against the respondent for committing the murder, while

most of the circumstances which are otherwise important to be proved in this case have not been established. We are of the opinion, the High Court was justified in interfering with the judgment of the sessions judge and allowing the appeal.

Therefore, the chain of circumstances highlighted by the prosecution presents a complete picture which absolutely rules out the role of any other person then the person described in the F.I.R. by the complainant immediately after the occurrence had taken place.

For the foregoing reasons we find no substance and merit in the appeal and the same is hereby dismissed. The conviction and sentence to life imprisonment awarded against him is confirmed. The appellant is in jail and he shall serve out the sentence imposed by the Sessions Judge.

Let the record of the trial be sent back to the Court concerned for compliance of the order.

(Rajesh Tandon, J.)

(M.M. Ghildiyal, J.)

Dated: 30th April, 2004

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