CASE NO.:
Appeal (crl.) 1123 of 1999

PETITIONER:
BUDH SINGH AND ORS.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT: 12/05/2006

BENCH:
S.B. SINHA & P.P. NAOLEKAR

JUDGMENT:
JUDGMENT

S.B. SINHA, J. :

The Appellants have preferred this appeal being aggrieved by and dissatisfied with the judgment and order dated 1.9.1999 passed by the High Court of Allahabad in Criminal Appeal No. 2079/93, whereby and whereunder the judgment and order dated 13.8.1993 passed by the IVth Additional Sessions Judge, Moradabad in S.T. No. 604/2002 acquitting the Appellants herein for commission of offences under Sections 148, 302 and 307/149 of the Indian Penal Code ('IPC', for short) and under Section 27 of the Arms Act, 1959 was reversed convicting them under Sections 148, 307/149 and 302/149 of the Indian Penal Code for intentionally causing death of one Ram Gopal (deceased) and his wife Chatarvati, as also for attempt to commit murder of their son Rajveer Singh (the first informant).

Appellant No. 1-Budh Singh, Appellant No. 2-Prem Singh and Appellant No. 3-Jagan Singh are real brothers. The Appellant No. 4-Mahesh Singh is son of Budh Singh whereas Appellant No. 6-Rajendra Singh is son of Prem Singh. Appellant No. 5-Ram Raj is not related to other Appellants, but he is stated to be belonging to the group of the other appellants. The deceased Ram Gopal owned agricultural land towards west side of the village Lalapur Pipalsana. Some lands belonging to the Gram Samaj were situate adjoining the said land. Appellant No. 1-Budh Singh and one Kanhai were said to have illegally occupied about 40-45 bighas land of the said Gram Samaj. They allegedly intended to take possession of the land belonging to the deceased on the pretext that the same also belonged to Gram Sabha. The dispute between the parties in regard to the said land had been pending for the long. At about 9.00 p.m. on 12.4.1992, the deceased and his wife Chatarvati were said to be irrigating their sugarcane field with the help of motor pump. It was said to be a moonlit night. A lantern had also been kept hanging from a nearby tree. The Appellants, at that point of time, allegedly came to the agricultural land of the deceased. Appellant No. 1-Budh Singh was said to be armed with double barrel gun, whereas Prem Singh, Jagan Singh and Ram Raj were armed with country made guns and Mahesh and Rajendra Singh were said to be armed with country made pistols. They stopped running of the motor, as a result whereof there had been exchange of abuses. The appellants allegedly said that the land belonged to Gram Samaj and they would cultivate the same. At that Time, hearing the noise, Chet Ram-P.W. 2, Shiv Singh-P.W. 3, Veer Singh and Sawan Singh allegedly arrived at the place of occurrence. They were allegedly having torches is their hands. The Appellant No. 1-Bugh Singh allegedly fired from his gun upon Ram Gopal, whereas Appellant No.5-Ram Raj fired a shot on the wife of the deceased Chatarvati. Appellant No. 6-Rajendra Singh is said to have fired a shot on Rajveer Singh. Other accused persons also stated to have fired their respective weapons. On receiving

injuries on their person, both Ram Gopal and his wife Chatarvati ran a few paces, but fell down dead at some distance. P.W. 1-Rajveer Singh, who was, at the material time, about 16 years old, thereafter went to the house of one Hori Singh and scribed a First Information Report (FIR). He, thereafter, went to the Thakurdwara Police Station is a tractor belonging to one Jagraj Ram accompanied by two persons, namely, Chet Ram-P.W. 2 and Veer Singh. The police station was situated, at a distance of about 28 kms. from the place of occurrence. He lodged a First Information Report at about 00.25 hours 13.4.1992. The said FIR was dispatched to the Court at about 6.25 a.m. on 13.4.1992, but the same reached the Court on 18.4.1992. At the police station, one R.A. Singh, Sub-Inspector was present. A wireless message was also allegedly sent at about 1.00 a.m. to P.W. 7-S.P.S. Thomar, S.I. of the police station, who was, at the relevant point of time, posted at the police outpost Suraj Nagar. The said P.W. 7-S.P.S. Thomar reached the place of occurrence. He found the dead bodies lying on the field. He also made an attempt to arrest the accused in the night. In the meantime, P.W. 1, who had also received a gun shot injury, was examined by P.W. 4-Dr. S.K. Verma, the Medical Officer (Incharge) of the Primary Health Centre, Thakurdwara at about 4 a.m. on 13.4.1992. He advised P.W. 1 that an X-ray of the injured part of the body required to be taken. X-ray however, was taken on 18.4.1992 by P.W. 6-Dr. Om Mehrotra, Senior Radiologist, District Hospital, Moradabad, who found an opaque substance which, according to him, was a metallic pellet seen in upper part of right arm of P.W. 1.

P.W. 1 allegedly came back to his village at about 6 a.m. in the morning. The inquest of the dead bodies started at 8 a.m. and concluded at 9.30 in the morning on 13.4.1992. The dead bodies were sent in a tractor for autopsy at about 12-12.30 during the day time by P.W. 5-Constable Chandra Sen. The post-mortem examination of both the dead bodies were, however, not done on 13.4.1992, because no autopsy surgeon was available. The post-mortem of the deceased was carried out by P.W. 9-Dr. Madan Mohan, G.D.M.O., Central Police Hospital, Moradabad on 14.4.1992. The ante-mortem injuries found on the dead bodies are as under.

"Injuries found on the dead body of Ram Gopal :

1. Multiple gun shot wounds entry 0.3 cm x 0.3 cm in front of chest, abdomen above the interior sup. Illiac spine in an area 40 cm x 2 cm. Margins inverted and lacerated. No charring blackening and tattooing present. On opening the left lung and heart, pleura and pericardium underneath are lacerated. Direction posterior and downward.

2. Gun shot wound 0.3 cm x 0.3 cm entry in front and outer and upper part of right thigh above 12 cm below the ant. Sup. Illiac spine, margin lacerated and inverted. No charring blackening and tattooing present.

3. Gun shot wound entry 0.3 cm x 0.3 cm in front of left thigh..... (sic) 10 cm below interior, superior illiac spine ..... (sic) with margins inverted. No charring blackening present."

"Injuries found on the dead body of Chatarvati :

1. Gun shot wound of entry 6 cm x 3 cm on rt. Side chest upper part over clavical medical part x chest cavity deep. Piece of left lung cavity out of no injuries. Margin lacerated inverted. Skin around this wound is charred, blackened and tattooing present. The right clavical 1st rib, rt. and IInd rib, right fractured. Direction from anterior to posterally medially and size 18 metallic pellets, one Cap and two wadding recovered from the right lung and cavity with Abrasion 2 cm x + cm on left side chest below the left clavical middle part."

Before the learned Trial Court, P.W. 1-Rajveer Singh, P.W. 2-Chet Ram and P.W.-Shiv Singh were examined as eye-witnesses to the occurrence. Three police personnel being P.W. 5-Constable Chandra Sen, P.W. 7-S.P.S. Tomar and P.W. 8-Constable Shailesh Tyagi were examined to prove the post-mortem report of the deceased as also the injury report of P.W. 1. P.W. 4-Dr. S.K. Verma, P.W. 6-Dr. Om Mehrotra and P.W. 9-Dr. Madan Mohan were examined whereas the radiological report was proved by P.W. 6. The learned Trial Judge, by reason of a judgment and order dated 13.8.1993, acquitted the appellants, inter alia, holding :

(i) The First Information Report was ante-timed and ante-dated;

(ii) The exact time of occurrence has not been proved;

(iii) The injuries on the person of P.W. 1 was doubtful;

(iv) The evidences of P.W. 2 and P.W. 3, who were chance witnesses, were not reliable;

(v) The medical evidence does not support the prosecution case.

On an appeal preferred thereagainst by the State, a Division Bench of the High Court, on the other hand, by a judgment and order dated 1.9.1999, reversed the said judgment of the Trial Court.

Mr. Sushil Kumar, learned Senior counsel appearing on behalf of the appellant submitted that the High Court committed a manifest error in interfering with the judgment of the Trial Court without assigning sufficient and cogent reasons therefor. The learned Senior Counsel urged that the prosecution has failed to prove that the injuries suffered by P.W. 1 was a gun shot injury. The learned Counsel also contended that the prosecution failed to prove its case from all angles. In this connection, our attention has been drawn to the fact that if, the medical evidence is taken to be correct, the mode and manner in which the occurrence took place cannot be said to have been proved. It is further submitted that the prosecution has failed to explain as to why the FIR, which is said to have been lodge on 13.4.1992 at about 00.25 hours, was received by the Court of Chief Judicial Magistrate on 18.4.1992. The explanation sought to be given that the said FIR was; not directly sent to the Court, but through the Circle Officer, also does not satisfy the mandatory requirement of the provisions contained in section 157 of the Code of Criminal Procedure ("Cr.P.C.", for short). It was furthermore urged that P.W. 5, who had taken the dead bodies for getting the post-mortem examination done, although started at about 12.30 in the noon, failed to prove that as to why the post-mortem examination could not be held till 14.4.1992 and why the doctors were not available. From the post-mortem report, the learned counsel would submit it would appear that the death could have taken place any time between 3. p.m. on 12.4.1992 and 3 pm. on 13.2.1992, as only liquefied substance had been found in the stomach. Even in regard to the time of arrival of P.W. 5 at the District Headquarters, the said explanation has not been entered in the General Diary. He did not even given any statement before the Investigating Officer under Section 161 Cr.P.C. The learned counsel would submit that P.W. 7, who, at the relevant point of time, was not the officer-in-charge of Thakurdwara Police Station, took up the investigation of the case. He, however, investigated the matter only for eight days. The prosecution has not produced any officer who had investigated the case thereafter. It was further submitted that even in the site plan drawn by P.W.7, the place from where the cartridges had been recovered, has not been shown. We have been taken through the deposition of the eye-witnesses. Our attention has particularly, been drawn to the fact that the agricultural lands belonging to P.W. 3 being situated at a distance of half a kilometer from the place of occurrence, there was no reason as to why at the time when the incident took place, they would suddenly come together and witness the entire occurrence. The said

witnesses, according to the defence, were related to the deceased. It was further submitted that the prosecution has also failed to explain as to why Veer Singh, who had accompanied P.W. 1 to the Police Station and who had admittedly on inimical terms with the Appellant No. 6, had not been examined. Similarly no explanation has been offered by the prosecution for non-examination of the eye-witnesses.

Mr. Pramod Swarup, learned counsel appearing on behalf of the State, on the other hand, supported the impugned judgment of the High Court. The learned counsel contended that in view of the consistent evidence adduced on behalf of the prosecution, that not only the FIR was lodged at about mid night at 00.25 hours on 13.4.1992, but the same having been dispatched to the Court at 6.24 hours, it was established that the FIR was not ante-timed. Our attention, in this connection, has also been drawn to the fact that in the inquest report, the crime number has been mentioned, which would clearly prove that the FIR has been lodged prior thereto. Under what circumstances it reached to the Court of Chief Judicial Magistrate only on 18.4.1992, according to Mr. Swarup, might not have been explained but only because of the said, the prosecution case cannot be thrown out. The learned counsel further urged that P.W. 1 was medically examined by Dr. S.K. Verma-P.W. 4. He had only found a lacerated wound which was a simple injury and might not have thought it necessary to provide him with any further medical treatment or advised him to take any X-ray on that date itself and thus, the same had been taken on 18.4.1992.As the report had been proved by the Radiologist, Dr. Om Mehrotra-P.W. 6, non-production of X-ray plate, according to the learned counsel, would not be material.

Our attention has been drawn to the evidence of P.W. 9-Dr. Madan Mohan. It was submitted that from a perusal of the post-mortem examination report, it would appear that no undigested food was found in the stomach of the deceased. They had taken their food at 10 a.m. in the morning on 12.4.1992 and only some liquid was found in their stomach which would clearly go to show that they might have taken water or other liquid substance and in that view of the matter, the learned Trial Judge was not correct in doubting the time of death, as disclosed by PWs. 1, 2 and 3.

The Trial Court, as noticed hereinbefore, recorded a judgment of acquittal upon assigning several reasons. Before adverting to the rival contentions of the parties, it will be beneficial to remind ourselves about the established principles of law that the High Court does not ordinarily set aside a judgment of acquittal in case where two views are possible, although, the view of the Appellate Court is a more probable one. It is, however, true that the High Court, while dealing with a judgment of acquittal, is free to consider the entire evidences on record so as to arrive at a finding as to whether the views of the Trial Judge is perverse or otherwise bad in law. The Appellate Court shall also be entitled to take into consideration as to whether in arriving at a finding of fact, the Trial Judge has failed to take into consideration admissible evidence and has taken into consideration evidences brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of the scrutiny by the Appellate Court.

In Balak Ram v. State of U.P., [1975] 3 SCC 219 this Court has held:

> "The aforesaid discussion of the various items of evidence must at least yield the result that the conclusion to which the learned Sessions Judge came was a reasonable conclusion to come to. It cannot be denied that two views of the evidence are reasonably possible in regard to the participation of Nathoo, Dr. Kohli and Banney Khan. The High Court, therefore, ought not to have interfered with the judgment of the Sessions Court in their favour."

In Shambhoo Missir & Anr. v. State of Bihar, [1990] 4 SCC 17, it was held :

> "The High Court did not deal with any of these circumstances pointed out by the trial court and has given no reasons to negative them or to show as to how they were either improper, unjustified or unreasonable. We are, therefore, of the view that High Court has interfered with the order of acquittal passed by the trial court not only for no substantial reasons but also by ignoring material infirmities in the prosecution case."

Yet again in Shailendra Pratap & Anr. v. State of U.P., [2003] 1 SCC 761, the law was laid down in the following terms :

> "Having heard learned counsel appearing on behalf of the parties we are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was a reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."

In Narendra Singh & Anr. v. State of M.P., [2004] 10 SCC 699, wherein one of us (Sinha, J.) was a partly it was categorically held that the Court must bear in mind the presumption of innocence of the accused in setting the law. The said view has been reiterated in Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra & Anr., [2005] 5 SCC 294 in the following terms :

> "Presumption of innocence is a human right. (See Narendrasingh v. State of M.P., SCC para 31.) Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. Sub-section (4) of Section 21 must be interpreted keeping in view the aforementioned salutary principles. Giving an opportunity to the Public Prosecutor to oppose an application for release of an accused appears to be reasonable restriction but clause (b) of sub-section (4) of Section 21 must be given a proper meaning."

The main contention of the appellant is that the FIR is ante-timed. The learned Trial Judge, in his judgment, assigned three reasons in support of his finding that it was so.

It is not in dispute that the written report, although, is said to have been lodged at 00.25 hours on 13.4.192, the same was received in the Court of the Judicial Magistrate as late as on 18.4.1992. The only explanation offered by P.W. 5 was that although the same has been sent at 6.25 in the evening, it could not be sent directly, as in view of the provisions, the same was to be sent through the Circle Officer. The State has not offered any explanation as to why the Circle Officer, a post held by an officer of the rank of Deputy Superintendent of Police, would not act responsibly. Section 157 Cr.P.C. as also Article 21 of the Constitution of India provide for a safeguard in such a manner directing that FIR should be sent to the Court of Chief Judicial Magistrate within a period of 24 hours.

The learned Trial Judge further was of the opinion that the copy of the FIR had not been served upon the complainant P.W 1 forthwith and the signature of the informant had also not been obtained in chik report (sic for check). There was no reason as to why Rajveer Singh was not sent for medical examination immediately after registration of the case, although the Primary Health Centre was situated nearby the police station. The Trial Judge further noticed that ‘chiti mazroobi’ had not been sent from the police station to examine the injured. Such a ‘chiti mazroobi’, according to the learned Trial Judge, would contain not only the details of the

accused, but full particulars of the case, as also the injuries appearing on the person of the victim.

The High Court, however, reversed the said findings opining that issuance of 'chiti mazroobi' was not mandatory, particularly, when P.W. 1 was sent for medical examination along with a Head Constable. It was further opined that the Investigating Officer not being present in the police station, there might have been a delay in medical examination by the doctor. The High Court, without any evidence on record, held that the doctor might not be available and he must have gone to his house for taking rest. It was further opined that P.W. 1 being a young man, must have acted in accordance with the directions of the police.

There is some amount of surmises and conjectures in the opinion of the High Court. The Investigation Officer-P.W. 7, although, might not have been present at the police station, but according to the evidence available on records one R.A. Singh was present. The medical examination report of Rajveer Singh bore the date as 4.4.1997. Why such a wrong date was mentioned, has not been explained. P.W. 1 in his cross-examination categorically admitted that he received the chik report in the morning. A suggestion was given to P.W. 5 that when he reached the place of occurrence, the FIR was not in existence. P.W. 7, the Investigating Officer, in paragraph 19 of his deposition admitted that no date below the signature of the Circle Officer in he first case diary had been mentioned. The date, which appeared in the case dairy, is 16.4. In terms of the U.P. Police Regulation, to which we may short to a little later, the copies of the case diary were required to be sent to the Superintendent of Police and other high officer the next day. In this case the said requirement was not complied with.

P.W. 7 further admitted that some numerical had been written on the said page but he could not say who wrote them and what was the significance thereof. It further appears from his evidence that no name of the accused had been recorded on the inquest and other papers, which were 18 in number. He could not infer even the gist of the incident from the face of the inquest report. He admitted that he was not able to understand the contents of column 2 of the inquest, i.e., the manner of the report. According to him, he had merely read in the said column "murder by gun shot". He admittedly had not mentioned about the nature of the weapon or the person who was responsible for the murder, although in the FIR not only the nature of weapon was mentioned, it was categorically stated as to how the incident took place, including the fact that the DBBL gun held by appellant No. 1 herein was a licensed gun.

Yet again, to P.W. 8, Shailesh Tyagi, clear suggestion was given that "writing of diary was stopped" and FIR was recorded when Investigating Officer returned in the afternoon on 13.4.1992 from the place of occurrence and thereafter the special report was sent. The FIR, according to the said witness, was sent by post. He merely stated that the Constable who went to the police station, which was at a distance of 50 kms. from the Headquarter, took with him the FIR also but no date or case number had been mentioned in the prescribed column.

He accepted that the FIR was produced before the Court of Chief Judicial Magistrate on 18.4.1992.This Court in Meharaj Singh v. State of U.P., [1994] 5 SCC 188, as regards the requirement of sending of the FIR to the Court, the inquest report as also the requirements to comply with other formalities provided for external checks, categorically held :

> "FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts

played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version of exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have bee recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 Cr.P.C., is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-time to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8."

The said decision of this Court was followed by a Three Judge Bench of this Court in Thanedar Singh v. State of M.P., [2002] 1 SCC 487 and also in, Rajeevan & Anr. v. State of Kerala, [2003] 3 SCC 355 and Bijoy Singh & Anr. v. State of Bihar, [2002] 9 SCC 147.

We are, however, not oblivious of the fact that Meharaj Singh (supra) has been distinguished in Rajesh @ Raju Chandulal Gandhi & Anr. v. State of Gujarat, [2002] 4 SCC 426, stating :

"Relying upon the judgment of Meharaj Singh (L/Nk.) v. State of U.P. the learned counsel appearing for the appellants has submitted that FIR in a criminal case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led in the trial. The object of insisting upon prompt lodging of the FIR is to obtain information regarding the circumstances in which the crime was committed including the names of actual culprits and the part played by them, the weapon of offence used as also the names of the witnesses. One of the external checks which the courts generally look for is the sanding of the copy of the FIR along with the dead body and its reference in the inquest report. The absence of details in the inquest report may be indicative of the fact that the prosecution story was still in embryo and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultation and was then ante-timed to give it a colour of promptly lodged FIR. The reliance of learned counsel for the appellant on Meharaj Singh case is of no help to him in the instant case inasmuch as all requisite details are mentioned in panchnama Exhibit P-32. Mere omission to mention the number of the FIR and the name of the complainant in Ext. P-37 has not persuaded us to hold that the FIR was ante-timed in view of the peculiar facts and circumstances of the case as noticed by the trial court, the High Court and by us hereinabove."

Th State of U.P. had made regulations in terms of the Police Act, which are statutory in nature. Regulation 97 provides as to how and in what from the information relating to commission of a cognizable offence when given to an officer-in-charge of a police station, is to be recorded. Such a First Information Report, know as chik (check) report, should be taken out in triplicate in the prescribed form and the "true facts should be ascertained by a preliminary investigation'. In the event a written report is received, an exact copy thereof should be made and the officer-in-charge of the station is required to sign on each of the pages and put the seal of the police station thereupon. The duplicate copy is to be given to the person who brings the written report and the original thereof must be sent to the Superintendent of Police. Regulation 108 emphasizes the need of maintaining the case diary stating that time and place should be noted in the diary by the Investigating Officer when beginning the investigation; whereafter only , he should inspect the scene of the alleged offence and question the complainant and any other person who may be able to throw light on the circumstances. Regulation 109 provides that the case diary must contain the particulars required by Section 172 of the Code of Criminal Procedure in sufficient detail so as to enable the supervising officer to appreciate the facts.

The learned Trial Judge, in view of the aforementioned conduct of the prosecution and the available materials on records, was of the opinion that defence version is possible. The learned Trial Judge recorded that the statement of Veer Singh had not been recorded by the Investigating Officer. The High court opined that Veer Singh was not an eye-witness of the FIR. The High Court committed an error of record as in the FIR it has clearly been stated that Veer Singh went with the complainant P.W. 1-Rajveer Singh to lodge the FIR and he was present in the police station. In the FIR it was clearly stated :

> "On commotion my uncle Veer Singh and Chetram son of Kalu, Shiv Singh son of Chotte, Sawan son of Bhaggan of our village reached there flashing their torches."

The High Court was of the view that evidence shows that the investigation of the case was entrusted to P.W. 7-S.P.S. Tomar, but he was not present at the police station. The said finding may be correct but it has also been brought on record that one R.A. Singh was present. There was no reason as to why he did not taken up the investigation immediately. It is not the case of the prosecution that S.P.S. Tomar was the officer-in-charge of the police station. Shri R.A. Singh could have recorded the statement of P.W. 1, as also the said Veer Singh. According to P.W. 7, he recorded the statement of eye-witnesses after sunrise on 13.4.1992. If that is so, he should have mentioned the said fact in the general diary after he came back to the police station. He admittedly did not do so, although, the same was required to be done in terms of Section 44 of the Police Act, 1861, which is in the following terms :

> "44. Police-officers to keep diary. - It shall be the duty of every officer-in-charge of a police-station to keep a general diary in such from as shall, from time to time, be prescribed by the State Government and to record, therein, all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.
>
> The Magistrate of the district shall be at liberty to call for and inspect such diary."

Furthermore, even the statement of Sawan Singh had not been recorded under Section 161. P.W. 1, who is an eye-witness, stated that his evidence has been taken at about 7.30 a.m. and only thereafter, inquest had been carried

out. Although, inquest had been carried out in his presence, his signatures were not taken on the 'Panchayatnama'. P.W. 2-Chet Ram stated that the inspector did not examine him about the murder at all and he did not meet the inspector after sealing of the dead bodies. The Investigating Officer, who was examined as P.W. 7 did not contradict him.

We do not know as to whether copy of the statement of P.W. 2, recorded in terms of Section 161 Cr.P.C., had been handed over to the accused. Even the same is not available on record.

The High Court opined that the Investigating Officer might have taken the statement of the witnesses on the next day when he had conducted a raid on the house of the accused. Admittedly, the copy of the FIR reached the place of occurrence only in the morning of 13.4.1992. He did not have with him a copy of the FIR. Without a copy of the FIR, it is surprising that he could make raids.

P.W. 1 was stated to have been examined on 4 O'clock in the morning on 13.4.1992. He, however, stated that he was examined at about 1/1.30 a.m.

If, according to the doctor, some X-ray was to be taken, the same should have been taken immediately. Assuming the High Court is right in its observations that he must have been busy in relation to the investigation in regard to death of his parents, he was admittedly available in the town on 13th April. Post-mortem examination had only been carried out on 14.4.1992. There was not reason as to why he was not taken for an X-ray on 13.4.1992. Even assuming that there was good reason for taking the X-ray on 18.4.1992, it is significant to note, the X-ray plate had not been filed in the Court. A supplementary injury report had been prepared by P.W. 6, but the said report is not admissible in evidence, as the primary document, on the basis whereof he prepared his report, was not made available. He could have been effectively examined as regards the correctness or otherwise of the report only if the X-ray plate was placed on record. According to the Trial Court, although, the number of FIR was mentioned, as we have noticed hereinbefore, other details were lacking. There Investigating Officer also did not explain as to why he waited to make the investigation till 8 a.m. or 9 a.m. of 13th April, 1992.

According to the High Court's opinion :

> "It is quite likely that he may have thought of commencing inquest after finishing the daily chores of life like going to toilet, taking a bath and having some break fast. After touching a dead body many people do not eat anything without taking a bath. It is quite likely that P.W. 7 may have thought of commencing holding of inquest after taking break fast etc."

No such explanation has been offered by P.W. 7. The opinion of the High Court is based on the surmises and conjectures. We may, at this juncture, also notice the medical evidences brought on record. P.W. 9-Dr. Madan Mohan, performed the post-mortem examination. He conducted the post-mortem examination on 14.4.1992 both of Ram Gopal and Chatarvati. The death, according to him, took place on 1+ day before the examination, which would take us about 10 p.m. on 12.4.1992. The ante-mortem injuries found on the body of Ram Gopal are already mentioned. He, in his evidence, stated :

> "The direction of injury No. 1 of Ram Gopal was from upwards to downwards. The injury No. 1 is possible is somebody is lying and one fires from the side of head towards the legs from the top keeping his barrel parallel to the direction of body, from a distance. But then in that condition injuries No. 2 and 3 are not possible from one fire. There is a bleak possibility that Ram Gopal had received all the three injuries, from three different shots."

The direction and dispersal of injury sustained by Ram Gopal did not tally

with the prosecution case, which, according to the learned Trial Judge, raises a doubt about the presence of the prosecution witnesses. The High Court, however, opined that the pellets were of small size and could be deflected easily and there is a possibility of it that pellets could change their direction after hitting them with a force. The said opinion was arrived at by the High Court on the premise that the dispersal of pellets, as mentioned in authoritative texts, were regular factory made cartridges. The High Court failed to notice that appellant No. 1 was said to have been carrying licensed double barrel gun and thus authoritative text as regard direction and dispersal of the injuries could be relied upon. The High Court, in this regard, opined as under :

> "The dispersal of the pellets as mentioned in authoritative texts is with regard to regular factory made cartridges. Besides Budh Singh, the remaining five accused were carrying country made pistols and country made guns. It is quite likely that locally made or hand-filled cartridge had been used where the position of dispersal of pellets may be entirely diffent."

We have not been shown that there was any injury to the bone. Only Budh singh, according to P.W. 1, was responsible for firing from his double barrel licensed gun. It had been noticed by the learned Trial Judge, as also by us, the ante-mortem injuries suffered by Ram Gopal. The opinion of the High Court does not find support from the medical evidence.

The prosecution witnesses, namely, P.Ws. 1, 2 and 3 further stated that the appellants and the deceased had been standing. According to them, only appellant No. 1 fired one shot. From the medical evidence, however, it appears that the direction of injury was from upwards to downwards, which belies the statement of the prosecution witnesses that both of them were in standing position and in fact, were quarrelling with each other. The opinion of the doctor is that at the time of firing Ram Gopal must have been laying down and the firing must have been done from a distance, which would mean from a higher level. In view of the nature of injuries suffered by Ram Gopal, such firing was possible from a distance of 40 to 45 feet and not from a close range. He did not find any charring, bleeding and tattooing marks. Furthermore, the margin of injury was found to be inverted. No corresponding exit would of the bullet was found. Even so far the injuries found on left thigh and right thigh are concerned, the same were inverted in nature. The reasons assigned by the learned Trial Judge in this behalf, thus, cannot be said to be perverse.

P.W. 4-Dr. S.K. Verma also noticed only a lacerated wound on the person of P.W. 1. He did not see any pellet. He did not find any inverted wound. Had he noticed any, he would have mentioned the same. The injury, according to the doctor was with a sharp round object, which, according to the defence, could have been self inflicted. It is also of some significance to note that both the learned Trial Judge as also the High Court did not place any reliance on the ballistic report of cogent reasons : Firstly, the site of recovery of pellet had not been shown in the site plan; Secondly, the envelope, in which the gun and the empty shell had been packed, did not bear the signatures of the witness and; Thirdly, the exhibits were sent to the ballistic expert after more than a month, i.e., on 15.5.1992.

P.W. 1, in his evidence stated that apart from both his parents, he himself received gun shot injuries in a standing position and the accused were also standing. According to him, his father Ram Gopal ran towards the southern direction after being shot, whereas his mother ran towards north-west. He also ran towards the south. If the medical evidence is to be relied upon, having regard to the nature of ante-mortem injuries suffered by Ram Gopal, it might not have been possible for him to stand up and then run to some distance at all. The High Court referred to the Principles and Practice of Medical Jurisprudence (1984 Edition) by Taylor and Modi’s Medical Jurisprudence and Toxicology (1967 Edition) for the purpose of showing that there are many instances where persons had been found to be walking to some

distance after receiving gun shot injury in the heart or even run to some distance. The learned counsel appearing on behalf of the State had not been able to show before us that having regard to the nature of the injuries suffered by Ram Gopal, it was possible for him to stand up as was in a laying down position and then, run a few yards.

The learned Trial Judge had drawn an adverse inference as no agricultural implement, as spade etc., were found at the place of occurrence. The High Court, however, reversed the said findings stating that the deceased and their son had been irrigating their field. P.W. 1, however, in his evidence categorically stated :

> "I was away from the Engine. I flashed the torch as others who were having torches were also far from the engine. I was working at about 10 steps from the engine when the accused came. My mother and father were working near me. I was towards south from the engine. I was making bed (kyari) in the feld. Father was making the bed (kyari). Mother was sitting. We both were making the bed (kyari) with held of spade. We left the there was the field. When Inspector came at the spot, there was no spade. I had shown to the Inspector the place where we were working. I cannot state the reason if he has not shown the same in the map. I cannot say who had taken away the spades."

Apart from the place where they had been working had not been shown in the site plan, the High Court was also not correct to hold that the agricultural implements were not necessary for preparing kyaries.

Indisputably it was P.W. 5, who had taken the dead bodies for post-mortem examination. The High Court noticed that P.W. 5, Constable Chandra Sen gave contradicting statements. He categorically stated that he had come to the place of occurrence at about 9 O'clock with the Inspector. How the FIR reached the hands of the Investigating Officer at 6-6.30 in the morning is a mystery.

The High Court opined as under :

> "It may be mentioned that in his examination-in-chief this witness has merely stated about carrying the dead bodies to the Head Quarter for their post mortem examination. At three different places in his cross-examination (paras 4 and 8) he has said that the matter had become very old and he does not remember the facts. He is not an eye witness of the occurrence nor he gave his statements after refreshing his memory from records. As a constable posted to a police station he may have accompanied the Sub Inspector or Inspector of Police to scenes of commission of crime on many occasions and may have carried the dead bodies to the Head Quarter for post mortem examination. It is quite likely that on account of confusion of mixing of facts with some other case, he may have stated that he reached the spot at 9 a.m. If this is accepted, it would mean that all the three eye witnesses and P.W. 7 S.P.S. Tomar gave false statements that the latter had reached the spot around 1.30 in the night. If his entire cross examination is read, it will clearly show that he did not remember the fact regarding reaching of the I.O. or distance of the bodies and place where they were lying and not much importance can be attached to the same."

The evidence on record does not lead to such an inference. If P.W. 5 is to be believed, the same would clearly suggest that three eye-witnesses, as also P.W. 7 gave false evidence. If P.W. 5 made some mixing statement, it was for the prosecution to examine. According to him, he had been present at the place of occurrence throughout the day, till the dead bodies were sent to the Head Quarter.

The Trial Court disbelieved the evidence of P.W. 2 and P.W. 3. But P.W. 3 had changed his statement regarding place of occurrence where Chatarvati had sustained injuries. The ante-mortem injuries found on the dead body of the Ram Gopal clearly belied the statements of P.Ws. 1, 2 and 3. The High Court, however, held that P.Ws. 2 and 3 were not related to the complainant. The following statement of P.W. 2 in his cross-examination goes to show that they were related to the complainant :

> "The name of may father was Kallu. I have no knowledge how many brothers my grandfather, Guljari were. I do not know my grandfather were five brothers. I do not know if Bihari, Gangu, Bhola, Sandhu were brothers of my grandfather. Ram Gopal and Veer Singh are son of Heera. The name of Heers's father was Nannu. The name of Nannu's father was Bihari. Shiv singh was son of Chotte. I do not know if Chotte was son of Bihari. I do not know if Nannu and Chotte are brothers. It is wrong to suggest that I am concealing deliberately that I am cognate to the Ram Gopal, Veer Singh and Shiv Singh.
>
> Prem and Jagan are separated. They have different fields and kitchens."

P.W. 3 also stated as under :

> "My father were two brothers. The name of father's brother was Thakura, I do not know the name of my grandfather. It is wrong to suggest that Nanua was also brother of my father. I do not know the name of my grandfather was Bihari. Heera is son of Nanua. The name of Nanua's father is not Bihari. I have no relatoin with Chetram. Chetram is witness in this case. He has no relationship with me. I am not uncle of Veer Singh."

It will bear repetition to state that according to P.W. 2, his statements had not been taken by P.W. 7 under Section 161 Cr.P.C. It is interesting to note what P.W. 7 in his evidence stated :

> "...I cannot tell about the distance between the place where the dead body of Chatarvati was found and the road which goes towards village from fields which had been shown in site plan, as I had not measured the aforesaid distance. I had not seen the fields of witnesses Veer Singh, Chetram, Shiv Singh & Savan Singh from where after completion of their work they had reached at the place of occurrence. I cannot tell the length of the field having trees belonging to Meer Hasan which is South to the field of witness Chetram, it is very long. No marks of blood was found between the place HD and 'G'. There was heavy crowd in the night."

We may notice that admittedly the accused No. 6 was not carrying any weapon. He admittedly had a dispute with Veer Singh. Veer Singh accompanied the complainant to the police station. No role had been attributed to the said accused. It is not clear as to why he was implicated. He did not have any dispute with the deceased, namely, Ram Gopal and Chatarvati. The prosecution did not lead any evidence as to why he would join the appellant Nos. 1 and 2 in commission of the crime. Similarly, appellant Nos. 3 and 4 were cousins. Except making a statement that they had been carrying some country made pistols and fired from their respective weapons, no evidence has been brought on record to that effect. We also fail to understand as to why the Investigating Officer, who took over the investigation from P.W. 7 and who had investigated only for 8 days, had not been examined. No explanation whatsoever has been offered by the prosecution in this regard .

The version of the prosecution is that the lands belonging to P.Ws. 2 and 3 were half a kilometer away and they do not have any field near the field of the deceased. There was no standing crops in the field. The view of the Trial Court, having regard to the aforementioned facts and circumstances of the case, was, therefore, a possible view and as such we need not go into

the other contentions as regards the motive or time of death, vis-\005-vis, the medical opinion etc.

For the reasons mentioned hereinbefore, we are of the opinion that the High Court was not correct in arriving at the conclusion that the view of the Trial Court was wholly perverse and could not be sustained on the materials brought on record by the prosecution. This appeal is, therefore, allowed.

The impugned judgment of the High Court is set aside. The appellants are on bails. They are discharged from their bail bonds.