

State Of Uttar Pradesh vs Sughar Singh And Ors. on 8 December, 1977

Equivalent citations: AIR1978SC191, 1978CRILJ141, (1978)1SCC178, AIR 1978 SUPREME COURT 191, (1978) 1 SCC 178, 1978 ALL. L. J. 466, 1978 CRI APP R (SC) 62, 1978 SCC(CRI) 83, 1978 SC CRI R 162

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Bench: P.K. Goswami, V.D. Tulzapurkar

JUDGMENT

V.D. Tulzapurkar, J.

1. This appeal by special leave has, been preferred by the State of Uttar Pradesh against the judgment and order of the Allahabad High Court dated October 31, 1973, in Confirmation Reference No. 25 of 1978 and Criminal Appeal No. 634 of 1973, acquitting respondents 1 to 5 in respect of the offences said to have been committed by them under Sections 147, 148, 379, 302 and 302 read with 149 of the I.P.C.

2. The prosecution case as revealed by the evidence led at, the trial may briefly be stated as follows:

The deceased Uma Shanker and his father Mannu Lal (P.W. 1) as also all the five respondent-accused have been the residents of village Karmar, P.S. Oral. The deceased Uma Shanker, his father Mannu Lal (P.W. 1) and respondent-accused Ram Gopal (original accused No. (sic) used to practise the profession of Purohit in villages Karmar, Bambori and surrounding villages. It appears that there was professional rivalry between Uma Shanker and Mannu Lal on the one hand and Ram Gopal (A-3) on the other and for quite some time prior to the incident in question which took place on July 5, 1971, the villagers of Karmar had stopped engaging the services of Ram Gopal (A-3) for purohiti work and entrusted the same to deceased Uma Shanker and his father Mannu Lal (P.W. 1) and therefore, Ram Gopal (A-3) started bearing grudge and ill-will to wards Uma Shanker and Mannu Lal. It further appears that there were two parties in the neighbouring village Bamhori., one of Moti Lal and the other of Om (sic) the (sic) to the party of Moti Lal while the deceased Uma Shanker to the party of Om Prakash. It may be stated that respondents Sughar Singh (original accused No. 1) and Man Singh (original accused No. 4) are real brothers while respondents. Swami Din (original accused No.2) and Dashrath Singh (original accused No. 5) are real brothers and these four in between themselves are cousin

brothers. According to the prosecution on account of the professional rivalry as well as party factions the relations between the deceased Uma Shanker and his father Mannu Lal (P.W. 1) on the one hand and the respondents-accused on the other had become inimical. It appears that prior to the occurrence on July 8, 1971, there were proceedings under Section 107, Criminal P.C. between the two parties of Motilal and Om Prakash and Ram (A-3) had on December 2, 1970 lodged a complaint under Section 352, I.P.C. against Mannu Lal and others. According to the prosecution because of these incidents and the long-standing enmity between deceased Uma Shanker and the respondent-accused, the former, always apprehended danger to his life and hence he used to carry with him a rifle for which he held a licence and a belt of cartridges. The incident giving rise to the prosecution of the respondents-accused occurred on July 5, 1971 at about 2.30 p.m. in village Karmar. On that day deceased Uma Shanker and his father Mannu Lal (P.W. 1) had gone to one Jagdish Lobar for reciting Satya Narain Katha at his place. After the function of reciting the Katha at Jagdish Lobar's place was over both were returning home; Uma Shanker, who was carrying a Jholi (cloth bag) containing Sankh (Conch) Jhalar, Danda, Idol of Thakurjee with Singhasan, Katha book, Coconut, Prasad etc. and also a rifle and belt of cartridges on his shoulder, was walking ahead while Mannu Lal was walking 7 or 8 paces behind him; while they were proceeding from North to South by a lane, at about 2.30 p.m., Uma Shanker, who was walking ahead, reached a spot near Matan-ki-Mathis (a temple). At that time, according to the prosecution, all the respondents-accused were lying in ambush, and Man Singh (A-4) and Dashrath Singh (A-5) suddenly appeared on the road from the temple side and exhorted the other accused to kill Uma Shanker by shouting "brothers, the enemy has come, kill him", where upon Sughar Singh (A-1) Swami Din (A-3) and Ram Gopal (A-3) (sic) the former two having a gun each and the third one having a pistol. Sughar Singh emerged from the east and fired a shot from his gun, which hit Uma Shanker and immediately thereafter Swami Din as well as Ram Gopal, who had emerged from the West, fired a shot each from their respective weapons. All these shots struck Uma Shanker, as a result of which he fell down with bleeding injuries at that very place. According to the prosecution this incident was seen by Ram Narain, Sohan Lal, Ganga Prasad, Munni Lal, Raghubar and Dhani Ram, apart from Mannu Lal (P.W. 1). All these persons challenged and questioned the respondents-accused as to what they had done but Sughar Singh, Swami Din and Ram Gopal (A-1, A-2 and A-3) aimed their weapons at these persons and threatened them that if any one came near he would be shot. After Uma Shanker fell down, Man Singh (A-4) removed the rifle of Uma Shanker from his shoulder Dashrath Singh (A-5) snatched the belt of cartridges and thereafter all the accused ran away. As a result of the bleeding injuries, the clothes of Uma Shanker got stained with blood and the blood had also fallen on the ground. From the Baithak of Raghubar, which was nearby, a quilt was brought and Uma Shanker was kept on that quilt and with the help of witnesses. Mannu Lal (P.W. 1) carried Uma Shanker home on the quilt but on the way he breathed his last. The inmates of the house gathered as also several other persons from the village. Mannu Lal (P.W. 1) then went to Orail after walking a distance of about seven miles from his

village Karmer. He first went to his son Lallu's place and dictated the report of incident to Lallu and after going to the Oral Police Station he lodged that written report {F.I.R. Exhibit. Ka-1) at about 7.15 p. m. whereafter he returned to Karmer. An offence under Section 395/396, I.P.C. was registered and the requisite investigation was undertaken by Inspector, Beni Ram Govil, Incharge of Kotwali Orai who visited village Karmer in the night. He prepared inquest Panchnama of dead-body (Exh. Ka-24) and arranged to send the dead-body to the headquarters for postmortem examination. Several Katha articles as well as the clothes of Uma Shanker were taken charge of and statements of Mannu Lal (P.W. 1) and other witnesses like Munni Lal (P.W. 6), Ganga Prasad (P.W. 9), Rameshwar (P.W. 12), Raghubar (P.W. 13) and Dhani Ram (P.W. 14) were recorded and, a Panchnama of the scene of offence was also made and blood-stained earth was taken charge of. Doctor S.D.S. Chauhan, Medical Officer Incharge of the Sadar Hospital, Orai performed the postmortem on the dead-body of Uma Shanker during the course of which he noticed as many as 13 injuries (some entry wounds and some exit wounds), all ante mortem and having been received by fire arm. He also recovered three pieces of wad from the right arm and three pieces of metal from the right hip bone. In his opinion the death was due to shock and haemorrhage resulting from the above injuries. After receiving the Chemical Analyser's report and the report of the Serologist and after completing the investigation, Inspector Beni Ram submitted a charge-sheet against the accused on 24-7-1971. After holding inquiry, Shri R.P. Singh, A.D.M.(J) committed the respondents-accused to the Court of Session on 15-12-1971 to stand their trial for offences under Sections 147, 148, 302 read with 149 and 379, I.P.C.

3. To the charges that were framed against them in the Sessions Court, all the accused pleaded innocence and contended that they had been falsely implicated in the case on account of enmity. In particular, Sughar Singh (A-1) put forward a plea of alibi. According to him, on the day of occurrence he was not in the village but had gone to Allahabad in connection with the filing of a writ petition of his uncle Jamuna Dass with regard to the suspension of latter's gun licence and had himself sworn an affidavit before the Oath Commissioner at about 7.30 p. m. in the evening on that day in support of the writ petition.

4. At the trial in support of its case the prosecution, examined in all 17 witnesses, out of whom six were material witnesses being eye witnesses to the occurrence, namely, Mannu Lal (P.W. 1), the complainant and the father of the deceased, Munni Lal (P.W. 6), Ganga Prasad (P.W. 9), Rameshwar (P.W. 12), Raghubar (P.W. 13) and Dhani Ram (P.W. 14). All these eye-witnesses, except Rameshwar (P.W. 12) who was declared hostile, fully supported the prosecution case and narrated the entire occurrence in terms of the prosecution case as indicated above. Medical evidence regarding the injuries on the deceased was furnished by Dr. S.D.S. Chauhan (P.W. 10), who produced and proved, his post-mortem report at Exh. Ka-26. Since no weapon of offence (fire-arms) was recovered, there was no occasion to examine any ballistic expert. The various steps taken during the investigation were deposed to by Inspector Beni Ram Govil (P.W. 17). The Chemical Analyser's Report as well as the report of the Serologist were produced and proved as Exhibits Ka-34 and Ka-35 respectively. Others were formal witnesses, including the Panchas and the Constables who

had merely helped the investigating Officer during the investigation. In support at his plea of alibi, accused Sughar Singh examined two witnesses, namely, Shri Dharam Pal Singh, Advocate (D.W. 1) and Shri S.K. Tandem, Advocate (D.W. 2), an Oath Commissioner working in the Allahabad High Court.

5. Out of six eye witnesses, Rameshwar (P.W. 12) was declared hostile by the prosecution itself; the names of Munni Lal (P.W. 6) and Raghubar (P.W. 13) were not mentioned as witnesses in the First Information Report while Ganga Prasad (P.W. 9) was found to have scant respect for truth, and, therefore, the learned trial Judge discarded the testimony of these four witnesses. However, he found the testimony of two eye witnesses, namely, Mannu Lal (P.W. 1) and Dhani Ram (P.W. 14.) as reliable and since the same was corroborated by the First Information Report, in which not merely the names of all the accused had been disclosed but also the part played by each of them had been disclosed, as also by the medical evidence, he accepted the same in proof of the prosecution version. He, therefore, convicted Sughar Singh (A-1), Swarni Din (A-2) and Ram Gopal (A-3) under Section 302 for the murder of Uma Shanker and sentenced each to death; each of them was also convicted for rioting under Section 148 and sentenced to rigorous imprisonment for two years. He convicted Man Singh (A-4) and Dashrath Singh (A-5) under Section 302 read with Section 149 and sentenced them to life imprisonment; each of them was also convicted under Section 147 and sentenced to rigorous imprisonment for one year; each one of them was also convicted under Section 379 for having removed the rifle and belt of cartridges respectively from Uma Shanker and sentenced to further rigorous imprisonment for two years each, the substantive sentences being directed to run concurrently. The accused preferred Criminal Appeal No. 634 of 1973 against their convictions and sentences while (he. death sentences on accused 1, accused 2. and accused 3 were the subject-matter of Confirmation Reference No. 25 of 1973 The appeal preferred by the accused was allowed by the High Court and all of them were acquitted and the Confirmation Reference was rejected. In allowing the appeal and rejecting the Confirmation Reference the High Court came to the conclusion that the prosecution had failed to establish its case against the accused principally on three grounds : (1) that there was some delay in lodging the First Information Report (2) that the two eye witnesses, namely, Mannu Lal (P.W. 1) and Dhani Ram (P.W. 14) on whom the learned trial Judge had relied were partisan witnesses and (3) that the version given by the eye-witnesses did not tally with the medical evidence. Having taken this view of the prosecution evidence, the High Court neither dealt with nor expressed its opinion on the veracity or otherwise of the plea of alibi put forward by accused No. 1 and the evidence led in support thereof. The State of U.P. has come up in appeal to this Court by special leave that was granted by this Court on August 22, 1977.

6. Mr. Uniyal, Counsel for the State of U.P., has vehemently attacked the judgment of the High Court on two or three grounds. In the first place, he has contended that though it was a serious case involving the offence of murder of Uma Shanker at the hands of the respondents accused, who had used fire-arms like guns and pistol during the incident and though capital punishment of death had been imposed by the learned Sessions Judge on the first three respondents-accused, who had actually used fire-arms against the deceased, the High Court has (sic) with and disposed of the entire case very perfunctorily without really discussing and properly assessing the testimony of the two eye-witnesses on which the prosecution relied and which had been accepted by the learned Sessions Judge. Secondly, he contended that none of the three reasons given by the High Court for

discarding; the evidence of the two eye-witnesses Mannu Lal (P.W. 1) and Dhani Bam (P.W. 14), is warranted or substantiated by the material on the record. On the other hand their testimony was consistent with and corroborated by the First Information Report and the medical evidence on record. He also urged that the High Court erred in doubting the presence of Mannu Lal (P.W. 1) at the time of the occurrence on flimsy grounds and erroneously regarded Dhani Ram (P.W. 14) as a partisan witness and assuming that he was a partisan witness his evidence should have been scrutinised with great caution bearing in mind his partisan character but that by itself could not be regarded as sufficient reason to discard his evidence. He, therefore, urged that there was no justification for the High Court to interfere with the appreciation of the prosecution evidence done by the learned Sessions Judge as well as his conclusions and, therefore, the convictions as recorded by the learned Sessions Judge against all the respondent-accused should be restored and the acquittal directed by the High Court be set aside. It is true that this Court will normally be slow in interfering with an acquittal recorded by a High Court but as we will point out presently we find considerable force and substance in the above contentions urged by Mr. Uniyal before us in support of this appeal.

7. At the outset we may state that we are not at all satisfied with the manner in which the High Court has dealt with and disposed of such a serious; case involving death sentences imposed upon first three accused. The appeal as well as the confirmation case as has been disposed of by the High Court in a judgment of only five printed pages out of which the first three pages are taken up for narrating the prosecution case, the defence version and describing the nature of injuries suffered by the deceased Uma Shanker, as detailed in the post-mortem note produced by Dr. Chauhan, while the entire discussion of the material evidence and the reasoning is to be found in the remaining two pages. Moreover, the High Court has regarded the presence of Mannu Lal (P.W. 1), father of the deceased, at the time of the assault on Uma Shanker as doubtful on the supposition that ordinarily he would not have accompanied his son for the recitation of the Katha at the house of Jagdish Lohar because he (Mannu Lal) was not versed in the recitation of the Katha and as regards Dhani Ram (P.W. 14), the High Court has taken the view that his evidence cannot be accepted because he will have to be classified as a partisan witness. In the first place, simply because Mannu Lal (P.W. 1), father of the deceased, did not know Sanskrit and was not versed in the recitation of Katha, it would not follow that he would not have accompanied his son to the house of Jagdish Lohar for the recitation of the Katha. After all he was the father of Uma Shanker who was to recite the Katha. Besides the High Court has really ignored the important aspect, which emerged in the evidence. The deceased Uma Shanker was always apprehending danger to his life due to enmity between the two parties in the village and as such was always carrying a rifle and belt of cartridges with him. Working under a pall of fear it would be natural for him to have his father Mannu Lal with him whenever he had occasions to go out for recitation of Katha or rendering any other Purohiti service. Further, the defence itself had elicited from Mannu Lal, in his cross-examination, the fact that every year Uma Shanker used to go for reciting Katha and he used to go along with him; in other words, it was his practice to accompany his son when even the latter went out for recitation of (sic) and as such Mannu Lal would be the most natural witness to the occurrence. Ignoring these important aspects arising from the evidence on record the High Court has doubted the witness's presence at the time of the occurrence, on very flimsy ground. Similarly the High Court's conclusion that Dhani Ram (P.W. 14) is in the category of partisan witnesses is based upon insufficient material. It is based on the fact

that Ram Gopal (A-3) had lodged a complaint at the Police Station Orai in December 1970 against Mannu Lal, Dhani Ram and others under Section 352, I.P.C, but nothing had been brought on record to show as to what transpired after the lodging of such complaint, whether Dhani Ram or Mannu Lal had been sent for by the police in connection with that complaint or had been warned by the police or not; for ought one knows being a non-cognizable complaint no action might have been taken by the Police and the complainant might have been referred to Court. Dhani Ram has in his evidence stated that he old not know whether any such complaint had been lodged by Ram Gopal against him and others. In the absence of proper material bringing home the knowledge of such a complaint to the witness having been brought on record, it would be difficult to come to the conclusion that Dhani Ram knew that Ram Gopal was antagonistic to him or that Dhani Ram belonged to the opposite party and had come to give false evidence against the accused particularly Ram Gopal. In other words, there was no clinching material on the record on the basis of which witness Dhani Ram could be classified as partisan witness. Even assuming that Dhani Ram (P.W. 14) was to be treated as partisan witness, the High Court ought to (have considered his evidence on merits and then could have rejected it if any serious infirmities were found therein. In our view, the High Court has clearly erred in not approaching the evidence of these two material witnesses properly and considering the same in proper perspective, that is why we have considered it necessary to have a reappraisal of their evidence.

8. As stated earlier the prosecution case rests upon the testimony of these two eye-witnesses, Mannu Lal (P.W. 1) and Dhani Ram (P.W. 14), the conduct of Mannu Lal in lodging the F.I.R. immediately involving all the accused describing the main part played by each and the supporting medical evidence. The principal question would be whether the testimony of these two witnesses suffers from any serious infirmity so as to get discredited.

9. After deposing about the professional rivalry between his son Uma Shanker on the one hand and Ram Gopal (A-3) on the other, as well as about the enmity arising out of party-factions in the village, as being suggestive of the motive for the murderous assault on his son, Mannu Lal (P.W. 1) has described the incident in these words:

It was 2-2 1/2 O'clock in the day. My son Uma Shanker and I after having recited 'Katha' at the place of Jagdish Lobar (blacksmith) of my village were coming. My son was carrying SANKH, JHALAR and a DANDA for ringing the bell (ghanta) contained in a bag. He was also carrying the book of Katha Moorty (idol) of Thakurjee together with the Singhasan. He was also carrying with him a piece of new cloth, NARIAL (coconut), wheat and PRASAD and that, on his shoulder he was carrying a rifle and a belt of cartridges. Uma Shanker was going ahead and I was behind him. There was a distance of 7-8 paces in between him and me. Ram Narain and Sohan Lal were behind us. When Uma Shanker reached near Maten-ki-Mathia then accused Man Singh and Dashrath Singh challenged saying, "The enemy has come, kill him". Sughar Singh accused from towards the east fired shot with the gun at Uma Shanker, which hit Uma Shanker. After Swami Din fired shot with the gun, and at the same time Ram Gopal fired shot with the pistol. All these shots struck Uma Shanker and he fell down at that very place. Ram Narain, Sohan Lal, Dhani Ram, Ganga Prasad,

Rameshwar, Munna Lal and Raghubar have witnessed this occurrence. All these persons stopped the accused persons. Sughar Singh having aimed the gun stood there. Sughar Singh said that if any one came near, he would shoot. Swami Din and Ram Gopal also having aimed their guns said this very thing. When Uma Shanker fell down. Man Singh accused then snatched the rifle from his shoulder and Dashrath snatched the belt of cartridges. At the place where Uma Shanker had fallen he had received injuries there and blood had fallen on the ground.

He further stated that a quilt was brought from the Baithak of Raghubar on which Uma Shanker was laid and they all carried him to his house but on way he died. He then stated that he went to Orai on foot and after contacting his son Lallu at his residence at Orai, he got his F.I.R. written by him at his dictation which he lodged at the Orai Police Station at about 7.15 p. m. on that day.

10. It is true that this witness is related to the deceased, being his father and is also inimical to the respondents-accused and, therefore, a partisan witness and as such his aforesaid testimony has to be viewed with great caution but that by itself cannot be sufficient ground to reject it unless the same is found to be untruthful by reason of other infirmities. On examining his evidence from this angle, we do not find any grave infirmity which would go to discredit him, Mr. Mulla, counsel for the respondents-accused, leveled two or three criticisms against the testimony of this witness. It was urged that this witness knew 'Tooti-Phooti' Hindi, had not passed any Sanskrit examination and was not versed in the recitation of 'Katha' and hence would not have accompanied his son on that day and, therefore, not a natural witness to the occurrence, secondly, there was delay in lodging the F.I.R. which was done at 7.15 p.m. when the incident had occurred at 2.30 p.m. on 5-7-1971 and he could have covered the distance of seven miles from Karmer to Orai within much lesser time; thirdly, there is one omission if his evidence is compared to what he stated to the police or deposed in the Committal Court. We have already dealt with the first criticism and have pointed out earlier how in the circumstances he will have to be regarded as the most natural witness. On the second aspect the witness has clarified the position by stating that it was rainy season, that at several places water had collected on the road, that major part of the road was kachha road and because of that he reached Orai late in the evening and that he first went to his son's house, dictated a report to his son Lallu and signing the same he carried it to the Police Station where he lodged it at 7.15 p.m. with the Diwanji on duty there. Having regard to the explanation given by the witness, it is impossible to agree with the criticism made by the defence and which found favour with the High Court that there was delay in lodging the First Information Report. It was also suggested to him that the F.I.R. was lodged after consultation or confabulation but he denied it and no material is brought on record to render it reasonably probable. He admitted in cross-examination that he had not contacted the Chowkidar of the village with a view to inform him about the incident before proceeding to Orai. As regards the third criticism it may be stated that while deposing in the Committal Court he had omitted to state that a quilt was brought to the scene of incident from Raghubar's place and that they carried Uma Shanker home after putting him on that quilt. It is true that such an omission in his statement to the police as well as in the Committal Court has been brought on record but in our view the omission pertains to such a minor detail that it cannot amount to any contradiction. He was also questioned with regard to the actual assault on Uma Shanker and he gave certain details in

his cross-examination, which do not find place in his First Information Report. In our view, the part played by each accused has been broadly stated and it is not expected that all the details of how, from what distance the assault took place or where the shots landed etc. would be mentioned in the F.I.R. It is thus clear that the aforesaid aspects brought out in his cross-examination are not such as would throw any doubt on the veracity of his version given in examination-in-chief and as such notwithstanding that he is a partisan witness his story is credible and as such the High Court was not justified in rejecting his testimony.

11. The other witness Dhani Ram (P.W. 14) has deposed about the occurrence in almost similar terms as has been done by the complainant Mannu Lal (P.W. 1) and he has fully supported the complainant. At the time of occurrence this witness was doing the work of laying tiles on the roof of cattle-shed of one Achhey Lal and it was from that place, which was at a distance of about 7 paces, that he witnessed the assault. As regard this witness; two criticisms were made. First, that he was a partisan witness, and, secondly, being a resident of Orai he would not ordinarily be in Karmer on the day of the incident much less near the cattle-shed of Achhey Lal and hence his evidence should not be accepted. As regards the first criticism we have discussed in the earlier part of this judgment as to why this witness cannot be regarded as a partisan witness for want of clinching material being brought on record but even if it were assumed that the witness is to be regarded as a partisan one there is no material elicited in his cross-examination which would go to show that he is an untruthful witness. As regards the suggestion that the witness was a resident of Orai and not of Karmer and as such could not have been at Karmer at the house of Achhey Lal on the day of the occurrence, the said suggestion was based on a contradiction, which was brought out in his cross-examination. It appears that in his evidence the witness claimed to be a resident of Karmer whereas in his police statement he has stated that he was originally a resident of Orai and that during the last harvesting season he had gone to Karmer and had since then been doing labour work at the place of Achhey Lal. That he had stated so to the police has been proved by Inspector Beni Ram Govil (P.W. 17) but the witness when confronted by it stated that he could not 'say why such a wrong statement came to be recorded. However, in view of the facts that the witness had purchased a house at Karmer from one Nathu Sonar some four or five years prior to his giving evidence, that he was actually staying in that house, that his name had been included as a voter in the Panchayat of that village and that he had actually voted from that village at the general elections that were held in 1971, it does appear that the witness has been a resident of Karmer from the time he purchased the house in that village and, in fact, it is quite possible that before purchasing a house in Karmer and going to live there, he might be originally a resident of Orai. In other words, there is really no contradiction as such between his statement to the police and his evidence at the trial. It was elicited in his cross-examination that he had not mentioned to any one that accused No. 1 had fired a gun shot at the stomach of Uma Shanker but he asserted that he had not given these details because no one had asked him about it. Nothing else has been elicited in his cross-examination and that being so, it is difficult to accept the High Court's view that the evidence of this witness is liable to be discarded simply because he could be, if at all, classified as a partisan witness. In our view, the testimony of the aforesaid two eye-witnesses inspires confidence since both of them were natural witnesses to the occurrence and had deposed to what they had actually seen. The so-called improvements made by them in their evidence with regard to the manner of assault are really nothing but matters of details which they furnished during their cross-examination and cannot

really be regarded as improvements in real sense of the expression. The evidence of both of these witnesses, therefore, clearly establishes the prosecution case that on July 5, 1971 all the accused persons were lying in ambush on either side of the lane running North-South and at about 2.30 p.m. when Uma Shanker came near the Matan-ki-Mathia at the exhortation of accused Nos. 4 and 5, accused Nos. 1, 2 and 3 fired shots-accused Nos. 1 and 2 with their guns and accused No. 3 with his pistol-at Uma Shanker, which shots caused several injuries to Uma Shanker resulting in his death. The manner in which they were lying in wait, the fire-arms they were having with them, the exhortation by accused 4 and accused 5, followed by three shots aimed at Uma Shanker by accused 1, 2 and 3 from short distance, threats given by accused 1, 2 and 3 to witnesses not to question them, the manner of running away after snatching the rifle and belt of cartridges from Uma Shanker-all these are sufficient to come to the conclusion that these five accused had constituted an unlawful assembly and as members thereof committed the various offences with which they were charged.

12. Turning to the medical evidence that was furnished by Dr. Chauhan (P.W. 10), he has described the 13 ante mortem Injuries which he noticed on the dead body of Uma Shanker during the post-mortem examination as follows:

1. Lacerated wound 3 cms. diameter X muscle on anterior aspect, right arm 15 cms., below shoulder, margins inverted and blackened.
2. Lacerated wound 1 cm., diameter X muscle just into lower part of No. 1 margins inverted and blackened.
3. Lacerated wound 1 1/4 cm., diameter X muscle 1 cm. below injury No. 2 margins inverted and blackened.
4. Lacerated wound 1 1/4 cm. diameter X muscle 1 cm. out and below injury No. 1 margins inverted and blackened.
5. Lacerated wound 2 1/2 cm. diameter X 1 cm. X muscle, 1 1/2 cm. below injury No. 4 margin inverted and blackened.
6. Lacerated wound 1 cm. diameter X muscle 1 1/2 cm. below and into No. 5 margins blackened and inverted.
7. Lacerated wound 5 cm. X 3 cm. muscle obliquely on postero lateral aspect of right arm, 19 cms. below shoulder-margins everted.
8. Lacerated wound 1/2 cm. X 1 cm. X muscle on posterior aspect of right arm 2 1/2 cm into middle of No. 7 margins everted.
9. Lacerated wound 1 cm. diameter X muscle just above No. 8 margins everted.

10. Lacerated wound 5 cms. X 4 cms. X muscle obliquely in right lumbar region, 3cms. right to middle margins everted.
11. Lacerated wound 4 cms. X 2 cms. X muscle vertically, 2 cms. below No. 10 margins everted.
12. Lacerated wound 1 cm. diameter X muscle on right buttock upper part margins everted.
13. Lacerated wound 2 1/2 cms. X 1 1/2 cms. X peribonel cavity, horizontally 7 cms. left and below umbilicus margins inverted. Loops of intestines had come out through wounds. The scalp was intact.

Besides the above injuries, the Medical Officer also noticed that there was a communitated fracture on the right humerus as also a communitated fracture on the hip bone under injury Nos. 11 and 12. He also stated that three wad covers were recovered from the right arm and three metal pieces were also recovered from the hip bone. In his opinion, the cause of death was shock and haemorrhage on account of the above injuries. According to him the first six injuries were gunshot wounds on the right arm, being inlet wounds; the margins were inverted and blackened. Injuries Nos. 7 to 9 were exit wounds corresponding to injuries Nos. 1 to 6, The other inlet injury was number 13 while injuries Nos. 10 to 12 were exit wounds corresponding to this injury. In cross-examination it was elicited from him that no complete pellet was recovered from injuries Nos. 1 to 13. As regards metal pieces, that were recovered from injury No. 13, he could not definitely say to what they related and of what metal they were. Certain possibilities in the alternative were also elicited from him in his cross-examination, for, he first stated that injuries Nos. 1 to 6 could have been caused by one fire only and from a distance of 3 ft. but he again asserted that the injuries caused to right arm were possible to have been caused by more than one fire; similarly, the inlet injury No. 13 that had been caused near the umbilicus could have been caused from a distance of more than six feet and could have been caused by two shots, Now beyond giving approximate distance from which the shots were fired by accused Nos. 1 to 3 and further stating that during the firing the deceased had turned and Dhani Ram stating that the first shot fired by accused No. 1 had hit Uma Shanker in his stomach, no further or precise details as to the exact distance from where the shots had been fired or other parts of the body where the shots had landed etc. were given by either of the two material witnesses, namely, Mannu Lal (P.W. 1) and Dhani Ram (P.W. 14). Even so, the High Court has taken the view that the prosecution version as given by these two witnesses does not fit in with the injuries as noted in the post-mortem report. The High Court's reasoning in this behalf runs thus:

All the six injuries Nos. 1 to 6 are situated close to each other. Considering that the margins of all the injuries were blackened, the likelihood is that these are the result of one gunshot. No undue importance can be attached to the size of injuries Nos. 1 and 5 because the entry of the wads could cause a bigger wound. To expect two shots fired one after another or at the same time by two different persons to hit in the same area and both to be fired from a short range is difficult. On a consideration of the nature of these injuries Nos. 1 to 6 we are of opinion that they are the result of one gunshot.

fired from the right hand side, i.e. from the west at the time the deceased was travelling from north to south. This shot was evidently fired from a distance of about one yard.

Injury No. 13 is the inlet wound 2 1/2 cms. in length. As this injury corresponds to injuries 10 to 12, injury No. 13 must be the composite injury as a result of the pellets entering the body together. It may be mentioned here that three pieces of metal were recovered from the right hip bone showing that more than three pellets had entered the body. As the edges of gun shot wounds were not blackened, it must have been fired from some distance though not from a long distance, otherwise on account of dispersal more than one gun shot wound would have been found in that region.

In case the firing took place first of all from near the Mathh Mate we would have expected injuries on the left side. This would also show that this part of the story is not correct. The nature of the injuries also strongly suggests that the assailants were on one side i.e. towards the west and the two shots had been fired one after another by the same person or by two different persons. The prosecution version is different.

If the aforesaid reasoning is carefully scrutinised it will appear clear that quite a few assumptions have been made by the High Court and the reasoning also fails to take into account the alternate possibilities that were elicited by the defence itself in the cross-examination of the Medical Officer and it is by adopting such process of reasoning that the High Court has come to the conclusion that the prosecution version does not fit in with the medical evidence. The High Court has observed "to expect two shots fired one after another or at the same time by two different persons to hit in the same area and both to be fired from a short range is difficult". In the first instance the observation is contrary to the medical evidence, for the doctor has categorically stated in his cross-examination that the right arm injuries (being injuries Nos. 1 to 6) could be caused by two shots-a possibility which was elicited during his cross-examination by defence itself. Secondly, the conclusion based on such observation to the effect that injuries Nos. 1 to 6 are the result of one gun shot is again contrary to the direct evidence of the two witnesses, for, both of them have stated that Swami Din (A-2) and Ram Gopal (A-3) emerged from the right hand side (i. e. from the west as the deceased was walking north-south) and fired two shots in quick succession one after another which must have hit the deceased Uma Shanker on his right arm. Further, we fail to appreciate how the High Court could observe to the effect that "in case the firing took place first of all from near the Mathh Mata we would have expected injuries on the left side and this would show that this part of the story is not correct". In fact, the evidence of both the witnesses has been that it was Sughar Singh accused No. 1, who emerged from Matan-ki-Matian side, i.e. eastern side and fired the first shot and according to Dhani Ram (P.W. 14) that shot hit the deceased in his stomach. Injury No. 13 is, therefore, quite consistent with the aforesaid story of the prosecution witnesses. It is also not possible to accept the High Court's view to the effect that: "the nature of the injuries also strongly suggests that

the assailants were on one side i.e. towards the west and the two shots had been fired one after another by the same person or by two different persons; but the prosecution story is different. In our view, according to the prosecution version, Sughar Singh accused No. 1 emerged from Matan-ki-Matian (eastern side) and fired a shot in the stomach of the deceased and immediately thereafter Swami Din accused No. 2 and Ram Gopal accused No. 3 who had emerged from the western side fired a shot each, which shots must have hit the right arm of the deceased. This version of the prosecution witnesses would not be noted in the post-mortem report and medical evidence of Dr. Chauhan. It is therefore, impossible to accept the view of the High Court that the prosecution version does not fit in with the medical evidence on record. After all the incident of firing upon the deceased had taken place in broad-day-light at about 2.30 p.m. during the course of which the three assailants had used fire arms, namely, two guns and one pistol and such an incident had been witnessed by the two prosecution witnesses, namely, Mannu Lal (P.W. 1) and Dhani Ram (P.W. 14) from the close quarters and their evidence substantially tallies with the medical evidence on record especially in the light of the alternate possibilities elicited from the medical officer in his cross-examination by the defence itself. In view of such direct evidence of eye-witnesses of the firing being available on record some inconsistency relating to distance from which gun shots were fired between the evidence of medical expert and the eye-witnesses would be of no significance whatsoever vide *Karnail Singh v. State of Punjab*. However, as stated above, we are clearly of the view that the prosecution evidence pertaining to the assault by guns and pistol substantially tallies with the medical evidence available on the record.

13. Having regard to the above discussion, it will appear clear that none of the reasons given by the High Court for rejecting the prosecution case and acquitting the accused is substantiated by material on record. In the first place, there is no delay in lodging the F.I.R. as has been suggested by the High Court. Secondly, the evidence of the two eye witnesses, Mannu Lal (P.W. 1) and Dhani Ram (P.W. 14), cannot be rejected only on the ground that they are partisan witnesses-in fact, Dhani Ram (P.W. 14) cannot be regarded as partisan witness. But, even otherwise, both the witnesses appear to be natural witnesses to the incident in question and the testimony of both of them does not suffer from any serious infirmity and far from being inconsistent with the medical evidence, receives corroboration from it.

14. Mr. Mulla appearing for the respondents-accused faintly argued that the prosecution ought to have examined Jagdish Lohar, to prove that both the father and the son had gone to his place for reciting the Katha, especially when the defence had suggested in the cross-examination of Mannu Lal (P.W. 1) that neither the father nor the son had gone for reciting the 'Katha' at Jagdish Lohar's place but it did not and, therefore, an adverse inference should be drawn against the prosecution on that account. It is not possible to accept this contention for it is clear to us that the earlier part of the prosecution story that both the father and the son had gone to the place of Jagdish Lohar for reciting Satya Narain Katha was not essential for unfolding the prosecution case. Whatever may be the reason which had taken both the father and the son out of their house that day, the real part of the story which the prosecution had to establish was that the incident of firing on deceased Uma

Shanker had taken place on the day of the occurrence while they were returning together after completing their outside work whatever it was. We have already stated that on account of the fear or apprehension of ganger to his life Uma Shanker was always carrying a rifle and a belt of cartridges with him whenever he went out and it was natural for his father to be with him and, in our view, such a contention which was raised before the learned Sessions Judge had been rightly rejected by him.

15. Turning to the specific plea of alibi which was put forward by the respondent-accused No. 1, it is well-settled that the burden of substantiating such a plea and making it reasonably probable is upon him. In our view, the learned Sessions Judge has given substantial reasons for rejecting this plea. The case of respondent-accused No. 1 was that on the day of occurrence he was not in village Karmer but had gone to Allahabad in connection with the filing of a writ petition of his uncle Jamuna Dass, pertaining to the latter's gun licence which had been suspended by the District Magistrate on June 9, 1971, and in support of such a writ petition he had sworn an affidavit before Mr. S.K. Tandon, Advocate, the Oath Commissioner, at about 7.30 p.m. on July 5, 1971 In the office of Shri Dwivedi, Advocate, at Allahabad. In support of this plea, accused No. 1 examined two witnesses, namely, Shri Dharam Pal Singh, Advocate (D.W. 1) and Shri S.K. Tandon (Advocate, Oath Commissioner) (D.W. 2). The affidavit said to have been so sworn by accused No. 1 on that day has been produced at Exh. Kha-3. The learned Sessions Judge has pointed out several suspicious circumstances which throw considerable doubt on the point whether the said affidavit had really been sworn or not by accused No. 1 on the day of occurrence at 7.30 p.m. at Allahabad. In the first place, he has pointed out that the writ petition, to support which the affidavit was said to have been sworn was presented before the High Court on July 9, 1971, which was again withdrawn or taken back from the High Court on July 9, 1971 itself and there was no such urgency as to have the affidavit sworn by the accused No. 1 before the Oath Commissioner, Shri Tandon in the office of Shri Dwivedi, Advocate, long after the office hours at 7.30 p.m. on July 5, 1971. Secondly, the affidavit itself produced at Exh. Kha-3, which was to be sworn was first prepared in the name of Jamuna das, the uncle of accused No. 1 and not in the name of accused No. 1 but later on, it appears, that the name of Jamuna das was struck out and the name of accused No. 1 Sughar Singh was inserted, Thirdly, the actual time when the affidavit was sworn in as mentioned in the affidavit itself shows some alteration made therein; it appears that at first 1.30 p.m. was written in the affidavit but later on the figure '1' was changed to figure '7' in a clever manner which alteration becomes clear if the figure 7.30 p.m. is viewed with the help of a magnifying glass. Fourthly, apart from the document Exh. Kha-3, which contains alterations, the most important piece of evidence which could have clinched the matter was the record which is required to be maintained by the Oath Commissioner pertaining to the several affidavits which were sworn before him but the Oath Commr. Shri Tandon, Advocate, was not able to produce the register which was required to be maintained by him containing the entry relating to the swearing in of this particular affidavit. The learned Sessions Judge has pointed out that the Oath Commissioner under the Bules was required to maintain a register in which he had to make entries relating to various affidavits which were sworn before; him along with the names of the persons who identified the deponents be fore him. But in this case astonishingly enough Shri Tandon had not made any entry pertaining to the affidavit in question in his register and in fact, he could not produce his register. His explanation was that the register was not with him and he had submitted the same for checking in the Administrative Section in the Allahabad High Court; but when the above register was

summoned from the High Court it was reported that such register had never been submitted by Shri Tandon in the Administrative Section for checking purposes. Shri Tandon then stated that in the absence of the above register he made an entry pertaining to the affidavit in question on loose papers and that even those loose papers had been misplaced. Lastly, the Sessions Judge has pointed out that even after the incident was over at 2.45 p.m. it was possible for accused No. 1 to reach Allahabad in four hours by about 7.15 p.m. on that day by a fast taxi. Having regard to these circumstances, which emerged on record, the learned Sessions Judge, in our view, was right in rejecting the defence case and in coming to the conclusion that the plea of alibi put forward by accused No. 1 had not been established or rendered reasonably probable by him. The High Court has not dealt with this plea at all.

16. In view of the above discussion we are clearly of the view that the Sessions Judge was right in coming to the conclusion that the prosecution had established its case against all the accused beyond reasonable doubt and the High Court was clearly in error in interfering with the convictions recorded by the learned Sessions Judge against each of the accused-respondents. We accordingly allow the appeal, set aside the acquittal recorded by the High Court and restore the convictions recorded by the Sessions Judge against each of the respondent-accused.

17. As regard the sentence, however, we feel that having regard to the considerable time that has elapsed since the date of the occurrence and having regard to the fact that the High Court's decision of acquittal in their favour is being set aside by us, the extreme penalty of 'death ought not to be imposed upon respondents Nos. 1, 2 and 3 (original accused Nos. 1 to 3) and instead, for the offence of murder of Uma Shanker committed by them each one of them should be sentenced to life imprisonment. Subject to this modification in the sentence qua respondents 1 to 3 under Section 302, I.P.C. all other convictions recorded against all the respondents-accused under various counts as well as the sentences imposed upon them by the learned Sessions Judge on those counts are restored.