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along with the informant while talking with Bhola Shankar and Kuldeep Kumar Tiwari, was not examined by the prosecution as a witness. This is a crucial omission as because only due to gifting of the property by Laxmi Narain to the sons of the deceased Satya Narain which led to such bad blood between the brothers leading to the fatal incident. Learned counsel also emphasized that another crucial omission on the part of the prosecution is that Kuldeep Kumar Tiwari was not examined as a witness. Such glaring omission has cast uncertain shadows over the prosecution case. Omission to examine Kuldeep Kumar Tiwari as a prosecution witness has completely punctured the prosecution case because it was he who had written the FIR lodged by the informant besides being an eyewitness.

- 12.2. Learned counsel for the appellant finally submits that appellant has been convicted solely on the basis of suspicion. In a criminal trial, the conviction must be based on hard evidence and not on mere suspicion. Even if there is an iota of doubt as to the culpability of an accused, as in the present case, he has to be given the benefit of the doubt. That being the position, the impugned conviction and sentence of the appellant should be interfered with by this Court.
13. Learned counsel for respondent No. 1, State of U.P., has vehemently argued that conviction and sentence of the appellant is fully justified. There is no reason to interfere with the same.
  - 13.1. He submits that there was a clear motive for the accused persons, including the appellant, to have caused the murder of Satya Narain. According to him, the accused Shree Dev, deceased Satya Narain, and Laxmi Narain were the three brothers, Laxmi Narain being the youngest of the three. Since Laxmi Narayan had no issue, he executed a will in favour of the sons of Satya Narain. Shree Dev and his sons, including the appellant, were unable to come to terms with this development. They were highly agitated which led to filing of several cases by and between them. This was the real intention behind the plot to kill Satya Narain.
  - 13.2. Learned counsel for respondent No. 1 submits that the appellant was very much a part of the unlawful assembly as one of the persons at the place of occurrence which was mentioned in

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the FIR itself. That apart, in their evidence, PW-1 and PW-2, categorically stated that appellant was carrying a country-made pistol from which he fired in the air with the intent to frighten the informant and others who tried to come to the rescue of the deceased. Taking advantage of the situation, the accused persons escaped from the crime scene.

- 13.3. The evidence of PW-1 and PW-2 in this regard is unflinching. Therefore, non-recovery of the country-made pistol or any cartridge fired therefrom cannot be fatal to the prosecution case.
- 13.4. The very act of the appellant in firing from his country-made pistol to enable the accused persons to escape is clearly an overt act whereby he became part of the unlawful assembly with a common object to cause the death of the deceased. The evidence on record clearly provides that appellant was part of the unlawful assembly having the common object to kill the deceased.
- 13.5. Learned counsel for respondent No. 1 State submits that it is a case of direct evidence which clearly establish the involvement of the appellant in the killing of Satya Narain. The ocular evidence is fully supported by the medical evidence. That apart, the post incident conduct of the appellant is also a significant factor. Laxmi Narain, who could have been an important eyewitness, was killed on 25.10.1993. In that case, appellant herein along with others were named as accused. Therefore, it was not possible for the prosecution to present Laxmi Narain as a prosecution witness.
- 13.6. He, therefore, submits that there is no merit in the criminal appeal which should be dismissed.
14. Submissions made by learned counsel for the parties have received the due consideration of the Court.
15. Question for consideration is whether the prosecution could establish the culpability of the appellant in the murder of Satya Narain beyond any reasonable doubt? In other words, whether the prosecution could prove the charges against the appellant under Sections 148 and 302/149 IPC beyond any reasonable doubt?
16. To answer the aforesaid question it is necessary to briefly analyse the evidence on record. PW-1 is Shri Sarwan Kumar S/o Late Satya





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- 17.6. PW-1 denied the suggestion that the incident as reported in the FIR had not happened at the time mentioned therein and that the accused persons were falsely implicated due to previous enmity. He also denied the suggestion that the FIR (Ex.1) was not written in the handwriting of Kuldeep.
18. Bhola Shankar, son of Satya Narain, deposed as PW-2. While reiterating what was stated by PW-1 leading to the incident, he further stated that Satya Narain had cried out for help to save him when he was being assaulted by the accused persons. He stated that he alongwith other people rushed to the spot when appellant Nitya Nand fired from his country-made pistol. He asserted that he alongwith the other people had seen the accused assaulting Satya Narain. After the accused persons escaped towards the south-western side, they came to the spot where Satya Narain was lying. By that time, he was already dead with half of his body inside the water.
- 18.1. In his cross-examination, PW-2 stated that he had seen the incident with his own eyes. FIR was written by Kuldeep Kumar and his statement was also recorded by the police. He further stated that he had seen Satya Narain falling down the stairs and crying for help. At that time, PW-1 was also near him and he had also witnessed the assault.
- 18.2. He denied the suggestion that he was not present at the time of the incident and that he was not witness to the writing and lodging of the FIR. He further denied the suggestion that he was deposing falsely due to his friendship with the informant.
19. Dr. Satya Mitra, who was serving in the District Hospital, Etah, deposed as PW-3. He had carried out the post-mortem examination on the dead body of Satya Narain on 09.09.1992, following which he found the following *ante-mortem* injuries on the body of the deceased:
1. Incised wound 10 cm x 1 cm x brain matter deep over right side and back of head at left of back of upper and of right external ear. Skin muscle (scalp) bone meninges and brain cut.
  2. Multiple incised wound in an area 10 cm x 7 cm on the right side cheek and upper part of neck measuring













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is sufficient for conviction. It is clear from the evidence of PW-1 and PW-2 that the appellant was part of the unlawful assembly which committed the murder. Though they were extensively cross-examined, their testimony in this regard could not be shaken.

33. In view of what we have discussed above, we have no doubt in our mind that the trial court had rightly convicted the appellant under Section 148 IPC read with Section 302/149 IPC and that the High Court was justified in confirming the same. The question framed in paragraph 15 above is therefore answered in the affirmative.
34. Thus, we see no merit in the appeal which is accordingly dismissed.

*Result of the case:* Appeal dismissed.

*<sup>†</sup>Headnotes prepared by: Divya Pandey*