

A.F.R.Neutral Citation No. - 2024:AHC:197791-DB**Court No. - 45****Case :-** CRIMINAL APPEAL No. - 647 of 1985**Appellant :-** Afaq**Respondent :-** State of U.P.**Counsel for Appellant :-** J.S.Sengae, Jai Prakash Singh, M. Islam, Mohd Irteqa, Sudhir Mehrotra**Counsel for Respondent :-** Dga, Pradeep Kumar, R.B.Sahai, Sanjay Srivastava

and

Case :- CRIMINAL APPEAL No. - 469 of 1985**Appellant :-** Rais Alias Munna**Respondent :-** State**Counsel for Appellant :-** J.S.Sengar, Jai Prakash Singh, Mohd Irteqa, Mohd. Farooq, R.B.Sahai, Sudhir Mehrotra, Suresh Chandra Dwivedi, Mohd Farooq**Counsel for Respondent :-** A.G.A., Sanjay Srivastava**Hon'ble Siddhartha Varma, J.****Hon'ble Ram Manohar Narayan Mishra, J.**

1. The above criminal appeals have been heard together as appellants Afaq and Rais @ Munna who were tried together filed criminal appeals separately against the same judgement.

2. Upon an incident having taken place on 20th June, 1984 at around 7:30 a.m., wherein one Shabbir Ahmad Khan had died, his brother Saleem Khan got lodged a first information report at 8:30 a.m. As per the first information report, the brother of the first informant while was, on 20 June, 1984, at 7:30 a.m. after having answered the call of nature, going back to his home, Afaq s/o Jamaluddin Khan and Rais @ Munna s/o Shakir Khan near the Gosai Talab accosted the deceased. Afaq was carrying a razor

(ustara) while Rais was empty handed as was stated in the first information report and when Rais and Afaq met Shabbir, they entered into a verbal altercation and thereafter there was a physical fight as well. Thereafter, Rais exhorted Afaq to kill the deceased and subsequently Afaq with the help of Rais had assaulted Shabbir with the razor with an intention to kill.

3. It has been stated in the first information report that the incident was witnessed by Yakoob Khan, Nasiruddin Khan, Ali Ahmad @ Gajju Khan, Usman Khan and Abdul Hafeez. When these persons who were present at the spot asked the two assailants not to kill Shabbir then the miscreants ran towards the southern direction and ran away. The motive has also been disclosed in the first information report and it has been stated that around nine months prior to the incident, one Kuresha was married to the brother of the first informant i.e. the deceased Shabbir. However, when Kuresha had doubted that Shabbir was having an affair with the wife of Saleem then Shabbir had got angry with this false allegation, which was alleged against him and he had divorced Kuresha. In the first information report itself, it had been stated that around one month prior to the incident, there was a Panchayat in the village and the parties had come to a settlement. It had been stated that because of this enmity, the accused-Afaq and Rais had cut the throat of the deceased with an intention to kill him. In the first information

report itself there was a prayer that the investigation be done and the guilty be brought to book.

4. On 21.6.1984, it was stated that as per the information the blood-stained razor (Ex.ka5) was discovered and was taken into custody at the instance of Rais. The clothes etc. of the deceased was also taken into custody. The plain soil and the blood-stained soil were also taken into custody and were exhibited as Ex.ka11. Thereafter, upon lodging of the FIR, Panchayatnama was prepared on 20th June, 1984 itself. It commenced at 9:00 a.m. and came to an end at 10:30 a.m. This was followed by a postmortem, which was done on 20th June, 1984, itself at 5:40 p.m.

5. From the side of prosecution, as many as 7 prosecution witnesses were produced. P.W.-1, Dr.Ramji Khare, had proved the postmortem and had given the details of the ante-mortem injuries, which were found on the dead-body of the deceased. P.W.-2, Ram Adhar, Head Constable, had written the chick-FIR and he had also proved the same. P.W.-3, Saleem Khan is the real brother of the deceased and he was the person who lodged the first information report. The P.W.-3 in his examination-in-chief had stated that since Kuresha was divorced by the deceased Shabbir around a month prior to the incident, there was enmity between him and the accused. It was stated that Rais was the

brother of Kuresha and Afaq was a relative of Rais. He has categorically stated that the incident had taken place on 20th June, 1984 near the Gosai Talab and that he had himself gone to the Gosai Talab to pick some mud from there. He has stated that Shabbir had returned from the Talab and had reached the place of incident after having eased himself in the morning. He has stated in his examination-in-chief that when Shabbir had reached the place of incident, then he heard the accused saying that since Shabbir had divorced his sister, he be killed. Thereafter, it has been stated that they entered into a physical fight and that Rais sat on the chest of the deceased and Afaq with the help of the razor had cut the throat to the extent that he died.

6. In the examination-in-chief itself it has been stated that the first informant had raised a hue and cry and because of which, Yakoob, Ali Ahmad, Naseeruddin, Hafeez and Usman came towards the place of incident. When all these people reached the place of incident, the accused ran away from the southern side. They had noticed that there were injuries on the body of the deceased and blood was flowing out from it. He has stated that at the place of incident itself, on his dictation Mohd. Khan had written the report and thereafter, he had put his signature on the first information report and had lodged the same.

7. In the cross-examination, P.W.-3 has somewhat changed his stand and had stated that Kuresha herself was of bad

character and, therefore, Shabbir had divorced her. He has categorically denied the fact that Shabbir was of a bad character and that he was having any affair with his (Saleem-first informant's) wife. He has, in fact, very categorically stated that it was wrong to say that Shabbir had divorced her on account of the fact that she was having an affair with him. However, in the next paragraph, he has once again stated that Kuresha had alleged that Shabbir was having an affair with his wife and thereafter upon again a question being asked as to whether Kuresha was of a bad character, he had stated that she was not of a bad character. Then again he had stated that he had forgotten to write in the first information report, that Kuresha was of a bad character.

8. Upon a question being asked as to whether there was a latrine situate in the houses of the first informant and the deceased, he had stated that there were latrines situate in their houses, but they were used only by women. He had also stated that while returning, after having answered the call of nature, the deceased Shabbir was also carrying a Lota (mug), but the mug was not found at the place of incident. Upon being asked as to whether he was actually there at the spot, he had stated that it was wrong to say that he was not there at the spot and that he was wrongly testifying the fact that he was present there at the spot. He also denied the fact that simply because there was enmity between the accused and the first informant, therefore,

the accused were being implicated.

9. Upon being specifically asked as to why he had not mentioned in the first information report that he was himself present at the place of incident, he had stated that he had, in fact, stated so while dictating the first information report, but why the scribe had missed out that statement, he did not know.

10. P.W.-4, Usman, is an eye-witness and he in his testimony has stated that on the date of incident i.e., on 20th June 1984 at around 7:30 a.m. while he was coming from Village-Adhawal towards his village along with Yakoob (P.W.-5) they had noticed that the deceased and the accused had entered into a fight and they were also abusing each other. The accused had overpowered the deceased and Rais had climbed on the chest of Shabbir and Afaq with a razor, which he had in his hand, had cut his throat. He has also stated that apart from him, the incident was witnessed by Naseeruddin, Ali Ahmad, Hafeez, Yakoob and Salim.

11. He had stated that Afaq had run away with the razor with which he had killed Shabbir and thereafter in the same breath he had stated that the razor was, in fact, left behind by Afaq. It has also been stated by him that thereafter when the accused had run away, he had also gone near the place of incident and had seen that Shabbir had died by then and from his body blood was

coming out. He has, in paragraph no. 12 of his cross-examination stated that one day prior to the date of incident i.e. in the evening/night of 19.6.1984, he had gone to village Adhawal. He had stated that Yakoob had also accompanied him. They had both gone to see some dry wood and had also gone to see the tree which Yakoob had purchased and had planned to give it to the P.W.-4 on contract for cutting the same. He had stated that he had reached the village Adhawal at around 7:00 to 8:00 PM in the evening/night and in the night after they had seen the tree which they intended to cut they had slept in the village itself. He has, however, upon being asked as to in whose house he had slept, he had said that he did not remember the same. However, on the next day he himself and Yakoob had proceeded for their village from Adhawal. He had not cut any tree in Adhawal. He has, thereafter, stated that even after the incident he had not cut the trees which Yakoob had planned to entrust him for the cutting of the same. However, 2 -3 days later he did cut them. He has very categorically stated that the verbal altercation which took place between the accused and Shabbir was heard by him. Why the police had not recorded his statement in that manner he was not aware. He has, however, stated that he had also informed the police that apart from him, the incident was also seen by Salim i.e. the first informant. He has also stated that along with all the persons who had collected at the place of incident he had tried to restrain the accused. But when all of them had tried to go

towards the accused then the accused had threatened them with dire consequences and, therefore, they did not go near the place of incident.

12. P.W.-5 is, Yakoob, who has also stated somewhat the same things as had been stated by P.W.-4 Usman Khan. However, despite the fact that all the witnesses were related to each other he was trying to give out in his cross examination that he was not closely related with the informant and the deceased. He had also stated that he had gone to Adhawal on the day prior to the date of the incident and while coming back had witnessed the incident. He has stated that the village Adhawal was around 1 mile away from his own village. He has stated that in Adhawal his cut wood was lying and that he had purchased some wood in the village itself. He had, however, quite contrary to what P.W.-3 had stated got recorded that he had not purchased any tree. He had only purchased some wood from Siya Ram, Ram Narayan etc. He has also stated that Usman had accompanied him to the village Adhawal and that they had remained at Adhawal in the night prior to the date of incident and had slept there. He had stated that the next day they had returned to their village. He has also stated that when the verbal altercation was going on between the accused and the deceased then he was only 15 steps away from the place of incident. However, he has stated that because Afaq was having a razor, none of the persons present had tried to

placate the accused persons or to save the deceased from the accused persons.

13. P.W.-6 is Mohd. Khan, the witness of the recovery of the blood stained Ustara.

14. P.W.-7 is Jagvir Kateriya was the Investigating Officer.

15. Learned counsel for the appellant Sri V.P. Srivastava, learned Senior Counsel, assisted by Sri J.P. Singh and Sri Rajeev Nayan has argued that as a matter of fact the witnesses P.W.-3, P.W.4 and P.W. 5 were not there at the place of incident at all. He submits that, in fact, P.W.-3 had got the information about the death of his brother Shabbir from someone else and he had implicated the brother of the estranged wife (Kuresa) for the murder of his own brother Shabbir. Learned counsel for the appellant has stated that in the first information report, the first informant had, because of the fact that he was not there on the spot and he was getting the first information report lodged on the basis of some information he had got from someone else, he had not stated in the first information report at all that he was present on the spot. In fact while giving out the motive, he had stated that Kuresa had doubted her own husband with regard to the fact that he was having an affair with the wife of Salim. Learned counsel for the appellant, therefore, states that if the first informant had been on the spot and had got the first information report lodged

himself then he would definitely have mentioned that Shabbir was having an affair with the informant's wife and would not have said that Shabbir was having an affair with the wife of one Salim and, therefore, learned counsel for the appellant states that it was highly improbable that the first informant was there on the spot. Learned counsel for the appellant has further stated that Usman Khan and Yakoob Khan had come up with a concocted story that they had one day prior to the date of incident gone to the neighbouring village Adhawal and that they had slept there in the night and had come to their village on the subsequent morning at around 7:30am and had witnessed the entire incident. Learned counsel for the applicant states that there are any number of contradictions in the statements of P.W.-4 and P.W.-5 and those contradictions were not minor contradictions which could be brushed aside/ignored by the Court. He has made an endeavour to take the Court through the statements of P.W.-4 which is to be found at page 39 and has stated that in paragraph no. 12 of it, he had stated that P.W.-4 Usman Khan had gone with P.W.-5 Yakoob Khan to the neighbouring village Adhawal and there Yakoob had purchased certain trees and he had planned to give the job of cutting those trees to Usman Khan. He has, thereafter, stated that he did not remember as to where exactly Usman Khan had slept in the night of 19/20.6.1984. Quite contrary to that, learned counsel for the appellant has drawn the attention of the Court to the statement of P.W.-5 wherein in

paragraph no. 9 Yakoob Khan has stated that they had gone to the village Adhawal which was around 1 mile away and there Yokoob Khan's cut wood was already lying. He had very categorically again, quite contrary to what P.W.-4 had stated, got recorded that he had not purchased any tree etc. and that the cut wood was bought from Siya Ram and Ram Narayan etc. He has also stated that he had not taken Usman to the village Adhwal for any specific purpose but he had just taken him for no reason whatsoever. Learned counsel for the appellant has further stated that though Usman Khan had stated that they had slept in the house of some villager of the village Adhawal but P.W.-5 Yakoob Khan had stated that they had slept where the wood was cut and had not slept in anybody's house.

16. Learned counsel for the appellant has stated that when Adhawal was just 1 mile away from the village of Usman and Yakoob it could have been very convenient for them to have reached back their village in the cool of the evening of June 1984 itself and there was no requirement for them to have slept there at the village Adhawal. Learned counsel for the appellant, therefore, states that the witnesses P.W.-4 and 5 were chance witnesses. They had absolutely no occasion to be present near the place of incident. Learned counsel for the appellants relied upon a decision of the Supreme Court in **(2023) 2 SCC 352 : Manoj and Ors. vs. State of U.P.** and has submitted that a chance

witness cannot be taken to be a reliable witness and, therefore, the testimony of a chance witness could not be in any manner used to convict an accused. Learned counsel for the appellant states that as per the law laid down by the Supreme Court, testimony of a chance witness should be utilised by the prosecution very cautiously. He submits that the evidence of the chance witness requires a very cautious and strict scrutiny and if there was any slackness in the explanation about the presence of the chance witness at the place of incident then his deposition ought to be rejected. Since learned counsel for the appellant relied heavily on paragraphs 102, 103 and 104 of the judgment reported in **(2003) 2 SCC 353 : Manoj & Ors. vs. State of Madhya Pradesh**, the same are being reproduced here as under :-

"102. A chance witness is one, who appears on the scene suddenly. This species of witness was described in *Puran v. State of Punjab* (AIR 1953 SC 459), in the following terms:

"Such witnesses have the habit of appearing suddenly on the scene when something is happening and then of disappearing after noticing the occurrence about which they are called later on to give evidence."

103. This court has sounded a note of caution about dealing with the testimony of chance witnesses. In *Darya Singh v. State of Punjab* (AIR 1965 SC 328), it was observed that:

"...where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts examine

the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, Courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence.....If the criminal Court is satisfied that the witness who is related to the victim was not a chance-witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised.”

104. In *Jarnail Singh v. State of Punjab* [(2009) 9 SCC 719] again, this Court held that:

“22. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (*Satbir v. Surat Singh* (1997) 4 SCC 192 30, *Harjinder Singh v. State of Punjab* (2004) 11 SCC 253, *Acharaparambath Pradeepan and Anr. v. State of Kerala* (2006) 13 SCC 643 and *Sarvesh Narain Shukla v. Daroga Singh* (2007) 13 SCC 360). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide *Shankarlal v. State of Rajasthan* (2004) 10 SCC 632).”

17. Still further, learned counsel for the appellant stated that not only were they chance witnesses. From the statements made before the Court it could clearly be gathered that they were wholly unreliable. Their statements may not be relied upon at all. To differentiate between a wholly reliable witness; partly reliable witness and a wholly unreliable witness, learned counsel for the appellants has relied upon **AIR 1957 SC 614 (Vadivelu Thevar vs. The State of Madras)**. He has for that purpose, relied upon paragraph no. 11 which is being reproduced here as under:-

“11. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that “no particular number of witnesses shall, in any case, be required for the proof of any fact”. The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in *Sarkar's Law of Evidence* — 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in Section 134 quoted above. The section enshrines the well recognized maxim that “Evidence has to be weighed and not counted”. Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.”

18. Learned counsel for the appellants still further has relied upon **(2022) 7 SCC 157 (Mahendra Singh and others vs. State of Madhya Pradesh)**. Since learned counsel for the appellants has read out paragraph no. 12 of the judgement, the same is being reproduced here as under:-

12. It will be apposite to refer to the following observations of this Court in its celebrated judgment in *Vadivelu Thevar* [*Vadivelu Thevar v. State of Madras*, 1957 SCR 981 : AIR 1957 SC 614] : (AIR p. 619, paras 11-12)

“11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

19. To further bolster his point and to still further elaborate on the issues as to who was a reliable witness and who was not a reliable witness, the counsel for the appellant further relied upon **(2022) 12 SCC 200 (Rajesh Yadav and another vs. State of**

Uttar Pradesh. Since the learned counsel for the appellants has read out paragraph no. 20 of the judgement the same is being reproduced here as under:-

20. We have already indicated different classification of evidence. While appreciating the evidence as aforesaid along with the matters attached to it, evidence can be divided into three categories broadly, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. If evidence, along with matters surrounding it, makes the court believe it is wholly reliable qua an issue, it can decide its existence on a degree of probability. Similar is the case where evidence is not believable. When evidence produced is neither wholly reliable nor wholly unreliable, it might require corroboration, and in such a case, court can also take note of the contradictions available in other matters.

20. Learned counsel for the appellants has further submitted that as per the first information report when at the time when Salim was watching the entire incident and had chosen not to help out his own brother by going near the place of incident then it becomes quite probable that he was not there at the spot at all. He has further stated equally improbable was the presence of Yakooob Khan, Naseeruddin Khan, Ali Ahmad, Usman Khan and Abdul Hafees at the place of incident. Learned counsel for the appellants states that none of those six persons present at the place of incident ever tried to go near the place of incident where just two persons were mauling the deceased by a small razor (ustara). Learned counsel for the appellants states that six able bodied young people could have easily overpowered the two of the accused who were only carrying a razor and were not armed

with any firearm etc.

21. Learned counsel for the appellant, therefore, states that the entire story of the prosecution becomes unbelievable and could not be relied upon to convict the appellants.

22. Learned counsel for the appellants further states that even the recovery as was done under Section 27 of the blood stained razor was a false recovery. Learned counsel for the appellant has stated that the P.W.-4 had in his examination in chief stated that Afaq after having committed the crime ran with the razor but he thereafter himself had stated that he had left the razor there on the spot. Learned counsel for the appellants therefore states that why a recover was required of the instrument which had been left behind was not clear and in fact remained a mystery. Learned counsel for the appellants further states that Afaq who had used the razor to kill the deceased could have definitely thrown the razor in the pond which was neighbouring the place of incident and would not have hidden the same behind a tree.

23. Learned counsel for the first informant Sri Ram Krishna holding brief of Sri Sanjay Srivastava has argued that when there were three prosecution witnesses who claimed themselves to be eye witnesses then it mattered little that Naseeruddin, Ali Ahmad, Abdul Hafees etc. who allegedly were at the place of incident did not appear in the witness box. Learned counsel for the first

informant states that even if the three eye witnesses were related to the first informant and the deceased their testimony could not be thrown out because they had definitely seen the incident and thereafter had deposed so in the court. Learned counsel for the informant further states that the incident took place at 7:30am and very promptly the first information report was got lodged and, therefore, there was not an iota of doubt that the accused Rais and Afaq had killed the deceased and, therefore, they were rightly convicted. Learned counsel for the informant, in this regard, relied upon **2016(11) ADJ 815 : Dalbir Singh vs. State of U.P.**

24. Learned AGA Sri C.B. Dhar Dubey has also adopted the argument as had been made by learned counsel for the first informant.

25. Having heard the learned counsel for the parties, we are definitely of the view that when the first informant had got the first information report lodged, he had nowhere mentioned that whether he was present on the spot. He has, in fact, while describing the motive in a strange manner described that the wife of Shabbir, Kuresa, was having an affair with Saleem. He forgot that he himself was Saleem and was lodging the first information report. This gives a doubt in the mind of the Court that in fact someone else who had an intention to implicate Rais and Afaq got the first information report lodged. In fact, a doubt also

comes to the mind of the Court that in fact Salim was not there on the spot and that he was not an eye witness at all. Further the Court finds that the P.W.-4 and P.W.-5 had stated that they had gone to the neighbouring village Adhawal which was only 1 mile away and they had slept in the village in the previous night and had only come to their village on the date of incident at 7:20am. The Court feels, therefore, that the story which the P.W.-4 and P.W.-5 had come up with, was a concocted story and could not be believed. They were, as had been submitted, chance witnesses who had no occasion to be present at the place of incident and only to make them eye witnesses they had been planted by the prosecution. Still further, if we peruse the statement of P.W.-4 and P.W. -5, we find that there were material contradictions in their statements. P.W.-4 had stated that Yakoob had taken him to the village Adhawal where he had bought a tree and he was planning to give the work of cutting the same to P.W.-5 but Yakoob in his statement had stated that he had gone to look up certain trees which he had purchased in the neighbouring village Adhawal and that he had taken Usman Khan for no reason whatsoever. All these contradictions were not minor contradictions and, therefore, they create a doubt in the mind of the Court that whether the prosecution witnesses 3, 4 and 5 were at all there at the place of incident. To top it all, the Court finds it strange that six persons who were allegedly there as per the first information report had not cared to intervene in the fight between

the deceased and the accused persons. The accused persons Rais and Afaq were just two young men and from the side of the informant, Salim, there were Yakoob, Naseeruddin, Ali Ahmad, Usman Khan and Abdul Hafees. All of them were young able bodied persons but they chose just to be on lookers and kept seeing the incident from a very short distance. In fact, if the statements of P.W.-4 and P.W.-5 are perused it becomes clear that they were standing only 10 to 15 steps away from the place of incident. This appears absolutely strange to the Court. If an incident of the kind which had been reported in the first information report had taken place and six persons were just onlookers then it becomes hard to believe that the incident was actually seen by six young able bodied persons. They had for reasons only known to them refrained from intervening in the scuffle which was happening and which resulted in the murder of Shabbir Ahmad. We, therefore, do find that P.W.-3 was a witness who was not there at the place of incident at all and so was the case with P.W.-4 and P.W.-5 who were also chance witnesses and had been planted by the prosecution in a manner which could not be believed. They were thus wholly unreliable witnesses and on the basis of the testimony of unreliable witness the accused could not be convicted.

26. We, therefore, are of the view that the charges as were framed on the 16th of November, 1984, by the court below were

not proved and, therefore, we hold that the appellants Rais and Afaq were not guilty of the charges as were levelled against them.

27. The judgement and order dated 31.1.1985 passed by the Sessions Judge, Fatehpur, is set aside. Both the appeals are **allowed** and the appellants Rais and Afaq are acquitted of the charges levelled against them. The appellants Rais and Afaq are on bail. The bail bonds are cancelled. Sureties are discharged.

Order Date :- 17.12.2024

PK

(R.M.N. Mishra,J.)

(Siddhartha Varma,J.)