

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.658 of 2016

Arising Out of PS. Case No.-7 Year-2015 Thana- KATIHAR MUFFASIL District- Katihar

Md. Umar Ali, Son of Abdul Rashid, Resident of Village- Hazipur, Police Station- Mufassil, District- Katihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 616 of 2016

Arising Out of PS. Case No.-7 Year-2015 Thana- KATIHAR MUFFASIL District- Katihar

Suresh Yadav, son of Bhubneshwar Yadav, resident of village- Mongra, P.S.- Mufassil, District- Katihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 657 of 2016

Arising Out of PS. Case No.-7 Year-2015 Thana- KATIHAR MUFFASIL District- Katihar

Harendra Uraon @ Harendra Kumar Oraon, son of late Gunja Uraon, Resident of Village - Sardahi, Police Station - Muffasil, District - Katihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 658 of 2016)

For the Appellant/s : Mr. Y. C. Verma, Sr. Advocate.
Mr. Shailendra Kumar Dwivedi, Advocate.

For the Respondent/s : Mr. Dilip Kumar Sinha , APP

(In CRIMINAL APPEAL (DB) No. 616 of 2016)

For the Appellant/s : Mr. Gzajendra Pratap Singh, Advocate
Mr. Abdul Wadood, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 657 of 2016)

For the Appellant/s : Mr. Kanhiya Prasad Singh, Sr. Advocate.
Mr.Rana Vikram Singh, Advocate



For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

and

HONOURABLE MR. JUSTICE A. M. BADAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 18-11-2021

By these appeals, the appellants/accused persons are challenging the Judgment of conviction dated 30.04.2016 and order of sentence dated 06.05.2016 passed by the learned Sessions Judge, Katihar, Bihar in Sessions Trial No. 18 of 2016, thereby convicting them of the offence punishable under Sections 302 and 307 of the Indian Penal Code as well as under Section 27 of the Arms Act. For the offence punishable under Section 302 of the Indian Penal Code, they are sentenced to suffer rigorous imprisonment for life whereas for the offence punishable under Section 307 of the Indian Penal Code, sentence of rigorous imprisonment for 10 year is imposed on them. For the offence under Section 27 of the Arms Act, the appellants/accused are sentenced to suffer rigorous imprisonment for three years. The appellants/accused persons are also directed to pay fine of Rs.5,000/- for each offence, which is held to be proved against them. In default, they are directed to undergo simple imprisonment



for six months. Substantive sentences are directed to run concurrently. For the sake of convenience, the appellants/accused shall be referred in their original capacity.

2. The case of the prosecution projected from the police report can be summarised thus;

(a) The accused as well as injured P.W.8, Jamir Lal Uraon, and his deceased wife, Nilam Devi, were resident of Mauza Mongra Gumti Tola, falling under jurisdiction of Mufassil Police Station in Katihar District. They were having long standing dispute over the immovable property. Injured P.W.8, Jamir Lal Uraon had sold some land to accused no.3, Harendra Uraon @ Harendra Kumar Oraon (appellant of Criminal Appeal (DB) No. 657 of 2016), who got the sale deed thereof executed without permission of the Collector and that too without payment of full consideration. The accused persons were extending threats of life to the injured P.W.8, Jamir Lal Uraon and his relatives, who happens to be prosecution witnesses in this case.

(b) Nilam Devi (since deceased) used to do work of snapping photographs of pregnant women at the



Government Hospital for earning her livelihood. Injured P.W.8 Jamir Lal Uraon, being her husband used to take her to the Sadar Hospital, Katihar on motorcycle. The incident in question allegedly took place at about 3.10 P.M., of 25.01.2015, when injured P.W.8, Jamir Lal Uraon, with his wife, Nilam Devi was returning from that hospital on his motorcycle. The accused persons were also riding on the motorcycle following the motorcycle of injured P.W.8 Jamir Lal Uraon. When the motorcycle of P.W.8 Jamir Lal Uraon reached near Mother Terasa School and the compound wall of Rajiv Jaiswal, accused no. 1, Suresh Yadav (appellant of Criminal Appeal (DB) No. 616 of 2016), who was riding the motorcycle with other accused fired bullet from the firearm at the head of P.W.8, Jamir Lal Uraon. That bullet hit right side of neck and mandible region of P.W.8, Jamir Lal Uraon. Then he as well as his wife, Nilam Devi, fell down.

(c) The incident, according to the prosecution case, came to be witnessed by several persons including Ram Dayal Uraon (P.W.2), Pintu Kumr Uraon (P.W.3), Suman Devi (P.W.4), Urmila Mosmat (P.W.6), Kamal Uraon (P.W.7) etc.



(d) After firing bullet at injured P.W.8, Jamir Lal Uraon and his wife, Nilam Devi, accused persons fled from the spot by their motorcycles. Then persons gathered on the spot, took the injured to Katihar Medical College Hospital. On reaching that hospital, upon examination, the attending Medical Officer declared Nilam Devi dead. After preliminary medical treatment there at, injured P.W.8, Jamir Lal Uraon, came to be referred to the hospital at Patna for further treatment.

(e) Statement of alleged eye witness Kamal Uraon (P.W.7) came to be recorded at the Medical College, Katihar by Tuntum Paswan (P.W.10), the Officer-in-charge of Katihar Muffasil Police Station, at 4.15 P.M., of 25.01.2015. On the basis of that First Information Report, Crime No. 07 of 2015 for the offence punishable under Sections 302, 307, 120(B)/34 of the Indian Penal Code, under Section 27 of the Arms Act as well as 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act came to be registered against the accused persons and wheels of investigation were set in motion.

(f) During routine investigation, the Investigating Officer inspected the spot of the incident and seized four



empties apart from one fired bullet. Sample of blood spilled on the spot of the incident also came to be seized. Seizure list was then prepared. Inquest notes were taken and dead body of Nilam Devi was sent for autopsy. Statement of witnesses came to be recorded and on completion of investigation the accused persons came to be charge sheeted.

3. After committal, charge for the offences punishable under Sections 341, 302 and 307 read with Section 34 of the Indian Penal Code, so also under Section 27 of the Arms Act and under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act came to be framed against the accused persons who abjured the guilt and claimed trial.

4. In support of its case, the prosecution had examined as many as 15 witnesses. The defence of accused persons as gathered from the line of cross-examination of the prosecution witnesses as well as from their statement under Section 313 of the Code of Criminal Procedure (hereinafter referred to as “the code”) is that of total denial. The defence has examined, in all, two witnesses, namely, Bechan Uraon (D.W.1) and Bikas Uraon (D.W.2).



5. After hearing the parties, the learned trial court was please to convict the accused persons and to sentence them as indicated in the opening para of this Judgment.

6. We heard learned Senior Counsels, Sri Yogesh Chandra Verma and Sri K.P. Singh as well as learned counsel Sri Gazandra Pratap Singh for the appellants/accused.

7. By taking us extensively through the statement of the witnesses as well as record of the trial court, it is urged on behalf of the accused persons that alleged eye witnesses examined by the prosecution are, in fact, not eye witnesses to the incident and they all are related to injured P.W.8, Jamir Lal Uraon and deceased Nilam Devi. Their evidence suffers from serious infirmities and is therefore wholly unreliable as well as untrustworthy. No conviction can be based on such evidence of related witness. It is further argued that witnesses examined by the prosecution in support of charge are not only related witness but are also hostile to the accused. They are having inimical relation with the accused persons and, therefore, their evidence is untrustworthy.



8. It is further argued that First informant P.W.7, Kamal Uraon is, in fact, not an eye witness to the incident and the First Information Report itself is not containing the name of so-called eye witness P.W.2, Ram Dayal Uraon. This witness arrived on the scene of the occurrence after hearing the sound of firing and after the assailants left the spot of the incident. Though P.W.3, Pintu Kumar Uraon, is a first man to reach on the spot, he has not seen the actual firing.

9. By referring to the FIR as well as evidence of witnesses, it is, further, argued that according to the version of the prosecution witnesses, deceased Nilam Devi had sustained two bullet wounds. However this story of the prosecution is falsified by the evidence of Autopsy Surgeon, Dr. Sant Prasad Saha (P.W.9), who found only one bullet wound on dead body of Nilam Devi. The FIR as well as eye witnesses are, as such, falsified by the medical evidence. There are substantial improvement by prosecution witness during course of their evidence. Other witnesses, such as, P.W.3 Pintu Kumar Uraon, P.W.4 Suman Devi and P.W.6 Urmila Mosmat have also reached



at the spot of the incident after the incident was over and when the assailants had left the spot of the incident.

10. So far as evidence of injured P.W.8, Jamir Lal Uraon, is concerned, it is argued on behalf of the accused persons that his evidence is suspicious. If bullets were fired indiscriminately by the assailants then the prosecution ought to have clarified as to why only one bullet hit P.W.8, Jamir Lal Uraon. It is further urged that the evidence of prosecution is cryptic so far as bullet injury to deceased Nilam Devi is concerned. When the prosecution alleged that the bullets were being fired indiscriminately, in normal course, there was no occasion for people at large to witness the incident. During such incident, it is tendency of human being to hide himself for saving his life. Hence according to the learned Senior Counsel, evidence of the prosecution is wholly unworthy of credit.

11. The learned Senior Counsel appearing for the appellants severely criticized the evidence of P.W.10, Tuntun Paswan, the Investigating Officer. It is argued that, in fact, initial version of the prosecution case is deliberately suppressed by this witness. The information of commission of cognizable offence came to be received by the police



telephonically and, accordingly, Sanha came to be recorded. That entry reflecting the initial version of the incident is not placed on record. According to the learned senior counsel, this Sanha entry ought to have been treated as the FIR and the statement of P.W.7, Kamal Uraon recorded by the Investigating Officer as such cannot be the First Information Report of the subject crime. Similarly, it is urged that evidence of P.W.4 Suman Devi shows that the first statement recorded by the Investigating Officer was that of her and she had also signed on that statement. This shows that P.W.4 Suman Devi is, in fact, the First Informant in the crime in question and her FIR is suppressed by the prosecution. It is also argued that the Investigating Officer claimed that he took the injured to the hospital but other prosecution witnesses are stating that the injured were taken to the hospital by them. The prosecution witnesses have seen the Investigating Officer for the first time in the hospital and these conflicting version casts shadow of doubt on the prosecution case.

12. It is further argued on behalf of the appellants that there is serious error in framing of the charge. The accused persons were not charged for



commission of the offence punishable under Section 302 of the Indian Penal Code with the aid of Section 34 thereof and, as such, no vicarious liability can be imposed on them. There is no evidence of prior meeting of mind for active participation by the accused persons in the incident. There is no averments of causing any injury to deceased Nilam Devi by accused no.1, Suresh Yadav (appellant of Criminal Appeal (DB) No. 616 of 2016) or accused no. 2, Md. Umar Ali (appellant of Criminal Appeal (DB) No. 658 of 2016 and, therefore, they ought not to have been convicted for the offence punishable under Sections 302 of the Indian Penal Code with the aid of Section 34 thereof in absence of charge on that count. It is also argued that there is no clear evidence as to who fired a bullet at deceased Nilam Devi. There is no iota of the evidence so far as accused no. 2, Md. Umar Ali (appellant of Criminal Appeal (DB) No. 658 of 2016) is concerned.

13. On behalf of accused persons, it is, further, argued that soon after the incident injured P.W.8 Jamir Lal Uraon married with one Rubi Kumari with whom he was having affair. In fact for this reason, it was P.W.8, Jamir Lal Uraon, who had conspired to eliminate Nilam Devi and,



therefore, accused persons are entitled for benefit of doubt in the case in hand.

14. As against this, learned Additional Public Prosecutor argued that evidence of prosecution is reliable and trustworthy. The incident of killing Nilam Devi and injuring P.W.8, Jamir Lal Uraon is witnessed by several persons and they are examined by the prosecution. Evidence of prosecution is sufficient to record conviction. It is, further, argued that there is no infirmity in the Judgment of conviction and order of sentence impugned in the instant appeals.

15. We have carefully considered the rival submissions and meticulously examined the record and proceedings including the oral and documentary evidence.

16. At the very outset, it is to be seen as to whether the prosecution has proved that Nilam Devi, wife of P.W.8, Jamir Lal Uraon died homicidal death on 25th January, 2015. In order to prove homicidal death of Nilam Devi, evidence of Autopsy Surgeon Dr. Dr. Sant Prasad Saha (P.W.9) of Sadar Hospital, Katihar is of vital importance. This witness has conducted the postmortem examination on dead body of Nilam Devi. His evidence



shows that during the course of postmortem examination on the dead body, he found one round shaped perforating wound on the left side of hip of the dead body having margins inverted ½” in diameter, deep into pelvic cavity. It was wound of entry of the bullet. Evidence of this witness, further, shows the extensive internal injury caused by the bullet. Pelvic and abdominal cavity of the dead body was full of blood. Left ilium (Hip bone) was found fractured during the autopsy. There was rupture of aorta, bladder and lower intestine. During the course of postmortem examination, P.W.9, Dr. Sant Prasad Saha found a bullet lodged in the inner abdomen wall of right iliac fossa. Duly sworn testimony of P.W.9, Dr. Sant Prasad Saha is corroborated by the contemporaneous report of postmortem examination (Ext.3) and it shows that Nilam Devi died due to shock and hemorrhage caused by the bullet injury. This evidence coupled with the inquest report and eye witnesses version of Ram Dayal Uraon (P.W.2), who also happens to be the Panch witness to the inquest, Pintu Kumar Uraon (P.W.3), Suman Devi (P.W.4), Urmila Mosmat (P.W.6) and Jamir Lal Uraon (P.W.8) to the effect Nilam Devi died in



the incident is sufficient to hold that the prosecution has proved that Nilam Devi died homicidal death.

17. Now let us examine whether by its evidence, the prosecution is successful in bringing home the guilt to the accused persons. P.W.8 Jamir Lal is an injured witness. He received gun shot injury in the incident in question. It is not even remotely suggested to him by the defence that he came to be injured in some other incident. The fact that P.W.8 Jamir Lal was injured at the time of and in the same occurrence and almost as a part of the occurrence is not even questioned by the defence in the instant case. He is thus most natural witness. There is inbuilt guarantee that a person injured in the occurrence is an eye witness to the incident. If medical evidence is further corroborating version of such injured witness then very convincing grounds are required to discard the evidence of such witness.

18. In the matter of Bonkaya V/s. State of Maharashtra - 1995 (2) SCC 447, Hon'ble Supreme Court has held that injured witnesses are stamped witnesses whose presence admits no doubt as being themselves



victims, they did not leave the real assailants and substitute them with innocent persons.

19. It is well settled that evidence of injured eye witness cannot be discarded in toto on the ground of inimical disposition towards the accused or improbabilities of narrating the details of actual attack. His evidence has to be scrutinized with caution taking into account the factum of previous enmity and tendency to exaggerate and to implicate as many as possible. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be interested. A witness is interested only when he derives some benefit from the result of the litigation. If evidence of injured witness is otherwise reliable and trustworthy then it carries more weight and cannot be thrown away merely because it is not corroborated by any independent witness. Little discrepancies cannot make evidence of injured witness unacceptable, when his evidence as a whole has a ring of truth.

20. Keeping in mind these principles let us now examine testimony of injured P.W.8 Jamir Lal in order



to ascertain whether explicit reliance can be placed on his version and whether he is a witness of truth.

21. It is in evidence of injured P.W.8 Jamir Lal Uraon that at about 3 P.M. of 25.01.2015, he along with his wife were returning on the motorcycle and at that time, accused no. 1 Suresh Yadav and accused no. 2 Md. Umar Ali, accused no.3 Harendra Uraon along with Gurudeo Mandal, Sikardar Uraon and one unknown person were following on motorcycles. When his motorcycle reached near the Mother Teresa School, accused no. 1 Suresh Yadav fired a bullet at his ear and that bullet hit right side of his neck causing his fall. He, further, testified that accused persons then started firing bullets and at that time, his wife Nilam Devi was requesting accused no. 3, Harendra Uraon by addressing him as *Mukhiya*, not to kill her. As testified by P.W.8, Jamir Lal Uraon, a bullet hit below the waist of his wife Nilam Devi. Thereafter, as stated by this witness, he become unconscious. This witness stated that after the incident, he took treatment at the hospital at Patna for one and half month.

22. So far as motive for commission of this crime is concerned, as deposed by injured P.W.8, Jamir Lal



Uraon, he sold 44 decimal land to accused no.3, Harendra Uraon, who got the sale deed of that land registered, even, without permission of the Collector and that too without payment of full consideration. Hence as per version of injured P.W.8 Jamir Lal Uraon, he filed a case against accused no. 3 Harendra Uraon in the court and feeling aggrieved by this action, the accused persons were extending threat to kill him and one such incident took place just 10 to 15 days prior to the incident in question. Injured P.W.8, Jamir Lal Uraon, while in the dock identified all accused persons.

23. To discredit him, the defence has cross-examined this injured witness Jamir Lal Uraon thoroughly but we are unable to find out any material from his cross-examination which would cast a shadow of doubt on his version about the incident. This witness fairly admitted that his 10 years old son named Bikram was with him at the time of incident. It is elicited from his cross-examination that the first bullet was fired from the distance of about two to two and half feet and after the bullet hit him, he fell down. However, P.W.8 Jamir Lal Uraon categorically denied the suggestion that he became



unconscious immediately on suffering a fall. Cross-examination of this witness shows that he became unconscious after about five to ten minutes after sustaining the gunshot wound. His cross-examination, further, reveals that he was discharged from the hospital on 11.03.2015 and then he married one Rubi Kumri on 17.04.2015. He denied the suggestion that he was having affair with said Rubi Kumari and, therefore, he eliminated his wife Nilam Devi.

24. No doubt, P.W.8, Jamir Lal Uraon, apart from being the injured witness was having dispute with the accused persons and more particularly accused no. 3, Harendra Uraon, however his evidence, even if, scrutinized minutely, nowhere create suspicions in judicial mind. In a very natural way, he narrated the incident of assault on him and that of murderous assault on his wife Nilam Devi by the accused persons. Enmity is a double edged weapon. Evidence of this witness reflects that accused persons and particularly, accused no. 3 Harendra Uraon was having long standing dispute with this witness over an immovable property. This witness had filed a case in the court of law because of that dispute. Therefore, it



can be certainly inferred that because of grudge against this witness, the accused persons had indulged in commission of this act of crime. This witness had full opportunity to see happening of the entire episode of indiscriminate firing by the accused persons, which has resulted in death of his wife Nilam Devi apart from sustaining severe wound by him. The material elicited from his cross-examination is cementing the prosecution case on this aspect.

25. True it is that this witness after death of his wife Nilam Devi in the incident in question has immediately re-married. However, this fact is not sufficient to cast a shadow of doubt on his version nor by this act it can be inferred that this witness had conspired to eliminate Nilam Devi. One can have a look at the evidence of Medical officer, who had attended and treated this injured witness soon after the incident for eliminating such hypothesis advanced by the defence.

26. P.W. 13, Dr. Manish Anand of Medical College Hospital, Katihar had examined P.W. 8 Jamir Lal Uraon soon on 25.01.2015 after the incident of sustaining gunshot wound. It is in the evidence of P.W. 13, Dr.



Manish Anand, that upon examination of P.W.8, Jamir Lal Uraon, he found that said witness had sustained a lacerated wound of 6/5 C.M. with muscle and bones exposed in the right side of the face near mandible. This Medical Officer further testified that 4 to 5 pieces of bones were found in the wound area. As per the version of Dr. Manish Anand, the wound suffered by P.W. 8, Jamir Lal Uraon was grievous to dangerous in nature caused by a weapon. In cross-examination, this witness stated that it is not possible for him to say from which bullet the victim was injured. This implies that the defence is not disputing the fact that P.W.8, Jamir Lal Uraon had having gunshot wound at about 4.30 P.M. of 25.01.2015 when P.W.13, Dr. Manish Anand, had examined him. It is thus explicit that P.W.8 Jamir Lal Uraon came to be injured in the occurrence which has been alleged by the prosecution. Evidence of P.W. 13 Dr. Manish Anand is duly corroborated by the contemporaneous injury certificate (Ext.8) issued by him. The medical evidence on record, as such, shows P.W. 8 Jamir Lal Uraon had suffered severe wound in the incident of firing on him and that too on the most vital part of his body. Hence, the theory of the defence that P.W.8, Jamir



Lal Uraon, had conspired to eliminate his wife Nilam Devi does not deserve a moments consideration, because normally in such process, one may get more than what is bargained.

27. Thus despite close scrutiny we see no infirmity in evidence of this injured witness P.W.8 Jamir Lal Uraon. Though, he has added few more person as assailants, those are not even charge sheeted by the police and such improvement by this witness is not going to the root of the matter so far as the case against the accused persons is concerned.

28. Common ground urged for discrediting other prosecution witness is that they are related to the victims and are having inimical disposition against the accused persons. Let us therefore put on record the law relating to appreciation of evidence of related witnesses and the witnesses having enmity against the accused.

29. **In the matter of Namdeo V/s. State of Maharashtra reported in AIR 2007, SC(Supp) 100 (1),** Hon'ble Supreme Court has held in para 42 thus :-

42. From the above case-law, it is clear that a close relative cannot be characterised as an 'interested witness. He is a 'natural' witness. His evidence, however, must be scrutinized



carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the 'sole' testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.

30. In the matter of Vinay Kumar V/s. State of Bihar reported in AIR 2008, Supreme Court, 3276, the Hon'ble Supreme Court after taking review of the law on this aspect has held thus in para 6 to 8, 10 and 13:-

6. Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if pleas of false implication is made. In such cases, the Court has to adopt careful approach and analyse evidence to find out whether it is cogent and credible.



7. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such an enmity against the accused to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism” and the mere fact of relationship far from being a foundation is offer a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts”.

8. The above decision has been followed in Guli Chand and Ors. V. State of Rajasthan (1974(3) SCC 698) in which Vadivelu Thevar V.s State of Madras (AIR 1957 SC 614) was also relied upon.

9. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. Thus theory was repelled by this Court as early as in Dalip Singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent



witnesses. Speaking through Vivian Bose J.,
it was observed-

We are unable to agree with the learned Judges of a High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such a observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – 'Rameshwar v. State of Rajasthan'. (AIR 1952 SC 54 at P.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel”.

10. Again in Masalti and Ors. V. State of U.P., (AIR 1965 SC 202) this Court **observed** (Pp 209-210, Para 14)

“But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard arid fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence;



but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct”.

13. The over insistence on witnesses having no relation with the victims often results in criminal justice going away. When any incident happens in a dwelling house the most natural witnesses would be the inmates of that house. It is un-pragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen any thing. If the Court has discerned from the evidence or even from the investigation records that some other Independent person has witnessed any event connecting the incident in question then there is justification for making adverse Comments against non-examination of such person as prosecution witness. Otherwise merely on surmises the Court should not castigate a prosecution for not examining other persons of the locality as prosecution witnesses. Prosecution can be expected examine only those who have witnessed the events and not those who have not seen it though the neighbourhood may be replete with other residents also. (See State of Rajasthan V/s. Teja Ram and Ors. (AIR 1999 SC 1776).

31. Similarly, in the matter of **Seeman @ Veeranam V/s. State by Inspector of Police, reported in AIR 2005, Supreme Court, 2503**, Hon'ble Supreme Court has held in para 4 thus :-

4. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness or the sole witness, or both, if otherwise the same is found credible. The witness could be a relative but that does not mean to reject his statement in totality. In such a case, it is the paramount duty of the Court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the



evidence on record of such interested sole witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinizing the evidence of the interested sole witness. The prosecution's non-production of one independent witness who has been named in the FIR by itself cannot be taken to be a circumstance to discredit the evidence of the interested witness and disbelieve the prosecution case. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement.

32. With this position of law on record, let us examine evidence of witnesses which according to the prosecution case are witnesses who had actually witnessed the incident to ascertain if their version is corroborating the testimony of the injured P.W.8 Jamir Lal Uraon.

33. P.W.2, Ram Dayal Uraon, apart from being a *Panch* on inquest is claiming to be an eye witness to the incident. It is in his evidence that at about 3 P.M. of 25.01.2015, he was at the railway gate and had heard sound of firing a bullet emanated from the distance of 200 yards. He reached on the spot but the accused persons threatened him and therefore, he stopped at the distance of 100 yards from the actual spot of the incident. P.W.2 Ram Dayal Uraon



further narrated that accused no. 1, Suresh Yadav, accused no.2, Md. Umar Ali and accused no. 3, Harendra Uraon as well as three others were present on the spot and were threatening to kill by firing bullets. They were having two motorcycles. As per the version of this witness, the accused persons fired bullets at P.W.8 Jamir Lal Uraon and deceased Nilam Devi from the pistols held by them. He categorically deposed that accused no. 1, Suresh Yadav fired a bullet at P.W. 8 Jamir Lal Uraon and accused no. 3 Harendra Uraon fired a bullet at Nilam Devi. As testified by him, the accused persons thereafter went towards western side and he along with others took injured to the hospital. This witness has also identified all accused persons. This witness is related to injured P.W.8, Jamir Lal Uraon. Deceased Nilam Devi is stated to be daughter of his co-brother and P.W. 8, Jamir Lal Uraon is his nephew.

34. Cross-examination of P.W.2, Ram Dayal Uraon, reveals that from the place of firing his house is at a distance of 1000 cubits. He was taking a walk at the railway crossing and was exactly at the grocery shop when the incident in question commenced. He further stated in the cross-examination that on hearing sound of firing, he reached at the



spot which is located near the gate of the railway crossing. As per his version from the cross-examination, his relatives also reached on the spot. He then put the injured in the Tempo and carried them to the hospital.

35. This witness (P.W.2), Ram Dayal Uraon, was also subjected to the cross-examination on the point of enmity with the accused persons. He stated in the cross-examination that P.W.8, Jamir Lal Uraon and accused no. 1, Suresh Yadav were having dispute in respect of the land. As per his version, the accused no. 1, Suresh Yadav, had slapped him much earlier to the incident in question. As accused no. 1, Suresh Yadav, was dealing in land, this witness in cross-examination has stated that he was also having dispute with the accused no. 1, Suresh Yadav in respect of the land.

36. Being a related witness, having inimical disposition with the accused, evidence of P.W. 2, Ram Dayal Uraon, requires strict scrutiny. However, overall scrutiny of this witness makes it clear that he was very near to the scene of occurrence at that time of incident and has reached at the spot immediately but was stopped at some distance by the accused by threatening him. He had an ample opportunity to witness the incident from the distance of 100 yards as stated



by him in evidence. The testimony of this witness regarding firing bullets towards injured P.W.8 Jamir Lal Uraon and deceased Nilam Devi by accused persons is not at all shattered in the cross-examination. This witness, apart from naming accused persons has also stated that two unidentified persons and Gurudeo Mandal were compacting the accused persons but this improvement made by P.W.2 Ram Dayal Uraon is in no way beneficial to the accused persons. His evidence so far as acts of accused persons is consistent with the version of the prosecution. Therefore, even, though this witness can be said to be related to the victim, his versions regarding the incident is having a ring of truth. Though an attempt was made to create suspicion regarding testimony of P.W.2, Ram Dayal Uraon for the reason that his name is not appearing in the FIR, it need to mention that the FIR cannot be an encyclopedia of the crime and such non mention of the name of this witness threat is of no importance. Evidence of this witness P.W. 2 Ram Dayal Uraon as such fully corroborates the version of injured P.W.8 Jamir Lal Uraon and demonstrates the complicity of the accused in the crime in question.



37. P.W.3 Pintu Kumar Uraon also claims to be an eye witness to the incident of firing bullet at P.W.8 Jamir Lal Uraon and deceased Nilam Devi. He stated that when he was watering the field on 25.01.2015, he heard the sound of firing bullet and rushed on the spot to see accused no.1 Suresh Yadav, accused no.2 Md. Umar Ali and accused no.3 Harendra Uraon with one Gurudeo Mandal. As per version of this witness, there were in all six assailants. He stated that accused Suresh Yadav, Md. Umar Ali, Harendra Uraon and Gurudeo Mandal were firing bullets at P.W.8 Jamir Lal Uraon. As per his version, P.W.2 Ram Dayal Uraon, P.W. 4 Suman Devi, P.W.6 Urmila Devi and P.W.7 Kamal Uraon reached there and the injured were taken to the hospital at Katihar by Tempo. This witness has also identified the accused persons.

38. Cross examination of P.W.3 Pintu Kumar Uraon shows that he is related to the victims. He first heard the sound of firing of the first bullet and then reached on the spot and subsequently heard the sound of firing 4-5 bullets. His cross examination further shows that P.W.8 Jamir Lal Uraon and Nilam Devi were lying unconscious when he went near them. In cross examination, P.W.3 Pintu Kumar Uraon claimed that he is the one who reached the spot first in time



and two minutes thereafter other people including other prosecution witnesses reached on the spot of the incident.

39. Cautious analysis of evidence of this witness makes it clear that except the incident of firing the first bullet, he had seen all subsequent even occurring on the spot of the incident. It is clear from his cross examination that he had witnessed the accused persons firing bullets on P.W.8 Jamir Lal Uraon and deceased Nilam Devi. It is seen from his cross examination that when he went near P.W.8 Jamir Lal Uraon and Nilam Devi, he found them unconscious. It is but natural that this witness would have reached near the victims only after the assailants left the spot. Hence, no overbearing importance can be given to his statement that in the cross examination that he saw the victims lying unconscious when he reached near them. By that it cannot be inferred that this witness has not seen the incident. Ultimately, when there is firing by more than one assailant, it is not expected of a normal human being to put himself in the zone of firing. However, it is clear from evidence of P.W.3 Pintu Kumar Uraon, who immediately rushed on the spot of the incident that he had seen the later part of the incident, which took place after firing of the first



bullet by the accused persons. The evidence of this witness, thus shows that all accused persons were indulged in firing, which caused wounds to P.W.8 Jamir Lal Uraon and deceased Nilam Devi. Improvement made by him to implicate Gurudeo Mandal is inconsequential. This witness has duly identified the accused persons before the court. Thus, version of this witness is also fully corroborating the evidence of injured P.W.8 Jamir Lal Uraon.

40. Evidence of P.W.4 Suman Devi, who happens to be the niece of P.W.8 Jamir Lal Uraon and daughter of first informant P.W.7 Kamal Uraon so also that of P.W.8 Urmila Uraon does not seem to be reliable and trustworthy though these witnesses have claimed to have seen the incident of murderous assault on the victims of the offence. P.W.4 Suman Devi in her cross examination has clearly accepted the fact that she reached on the spot of the incident along with P.W.6 Urmila Uraon. They both were working together at the time of the incident. P.W.4 Suman Devi was cutting the grass whereas P.W.6 Urmila Uraon was cutting the fire wood. P.W.6 Urmila Uraon has stated in her cross examination that after hearing five gun shot, she



stopped the cutting of the fire wood, then it appears that she along with P.W.4 Suman Devi went to the spot of the incident together, as claimed by P.W.4 Suman Devi. Thus, it is hard to place explicit reliance on the version of both these witnesses. It needs to mention here that P.W. 6 Urmila Uraon is sister of injured P.W.8 Jamir Lal Uraon. It is not safe to rely the evidence of these witness because the same is laconic and in every probability, both these witnesses reached on the spot of the incident after the incident was over.

41. P.W.4 Suman Devi in her cross examination has stated that her statement came to be recorded by the police at the hospital, first in time and she signed that statement. According to the learned senior counsel appearing for the accused persons, such statement of P.W.4 Suman Devi needs to be considered as a First Information Report. However, we find no substance in such contention. P.W.4 is rustic witness. Her omnibus statement in her cross examination cannot be given any undue importance, particularly, when evidence of Investigating Officer P.W.10 Tuntun Paswan and that of P.W.7 Kamal Uraon shows that the first information of commission of cognizable offence



with requisite details came from P.W.7 Kamal Uraon, whose statement was recorded at 04.15 P.M. on 25.01.2015 at the Sadar Hospital, Katihar. Half hearted cross examination of P.W.4 Suman Devi, as such, is not of any assistance to the defence.

42. Now, let us examine evidence of the first informant/P.W.7 Kamal Uraon. He happens to be the brother of injured Jamir Lal Uraon and claimed to have reported the incident to P.W.10 Tuntun Paswan, the Investigating Officer. In chief examination, this witness claimed that while going towards Sirsa, he heard the sound of gun shot coming from the side of Mother Teresa School. He testified that accused persons, namely, Suresh Yadav, Md. Umar Ali and Harendra Uraon along with Gurudeo Mandal came on two motorcycles. Accused no.1 Suresh Yadav fired a bullet at P.W.8 Jamir Lal Uraon. All accused persons had also fired bullets in the incident. As per his evidence, deceased Nilam Devi was also hit by the bullet, which caused wound below her waist. He testified that other eye witnesses examined by the prosecution also reached there. P.W.7 Kamal Uraon further stated that he took the injured to the hospital and, thereafter, within 10



minutes, the Police Station Officer came and recorded his statement at the hospital. This statement of P.W.7 Kamal Uraon, recorded at 04.15 P.M. was treated as F.I.R. by the Investigating Officer.

43. As per version of this witness P.W.7 Kamal Uraon, some empty cartridges were lying on the spot, which came to be seized by the police. This witness reiterated that the prosecution party is having a dispute with the accused persons since prior to three years.

44. Evidence of this witness, who is closely related to victims is not at all inspiring confidence about its truthfulness. Though in chief examination, he claimed his presence on a road leading to Sirsa square in cross examination he stated that at the time of the incident, he was at the door of his house, which is near railway gate and at that time he was holding his child. It is elicited from the cross examination of this witness that he reached on the spot of the incident after 5 to 7 minutes. His evidence shows that Mother Teresa School is at the distance of about 200 yards from his house. The railway gate is also situated at the distance of 200 yards from the spot of the incident. As per version of this witness so also



as gathered from the evidence of other witnesses, the incident took place in front of Mother Teresa School. It is, thus, clear that P.W.7 Kamal Uraon was at the distance of about 200 yards from the spot of the incident. In fact, his evidence gives an indication that when he heard the sound of firing bullets, he was at his house holding his child. After 5-7 minutes thereafter, he reached on the spot of the incident. Thus, in all probabilities, this witness had reached the spot of the incident after the incident. The material elicited from the cross examination of this witness is not allowing us to place reliance on the evidence of this witness as the same is not free from doubt. This is particularly so because even the witnesses examined by the defence viz. D.W.1 Bechan Uraon and D.W.2 Vikas Uraon have stated that at the time and on the date of the incident P.W.7 Kamal Uraon was with them. It is trite that the witnesses examined by the defence are required to be given same treatment as is given to the witnesses of the prosecution. Evidence of the defence witnesses coupled with the material elicited from the cross examination of the first informant P.W.7 Kamal Uraon makes it probable that this first informant might not have witnessed the actual



incident of assault on the victims and, we therefore feel it safe to keep the evidence of this witness out of consideration so far as the actual incident of assault on the victim is concerned.

45. Now, comes the evidence of P.W.10 Tuntun Paswan, the Investigating Officer. His evidence has been criticized by the learned counsel appearing for the appellants on several counts. However, it needs to mention hear that laconic evidence of the Investigating Officer or defects in investigation cannot enure to the benefit of the accused persons if eye witness account of the incident coming from the mouth of the prosecution witnesses is found to be trustworthy. Be that as it may, as per version of P.W.10 Tuntun Paswan, at about 03.10 P.M., information of the incident was received at the Police Station. At 04.00 P.M., this Investigating Officer claimed to have reached at the Sadar Hospital, Katihar and at 04.15 P.M., he recorded the F.I.R. of P.W.7 Kamal Uraon. He took inquest notes. Thereafter, he went to the spot of the incident and seized four empty cartridges and one fired bullet from the spot of the incident by preparing the seizure memo (Ext.6) in presence of P.W. 11 Md. Asraf and



P.W. 12 Md. Jalal. As per version of this witness, the spot of the incident was in front of Mother Teresa School and gate of the land of Rajiv Jaiswal. Thereafter, P.W.10 Tuntun Paswan recorded the statement of the witnesses including that of P.W.4 Suman Devi. In the light of this evidence of P.W.10 Tuntun Paswan, it is not possible to hold that P.W.4 Suman Devi is the first informant in this case. Though cross examination of this witness shows that there was telephonic information about firing of bullets at the husband and wife by criminals leading to recording of Sanha Entry, it is not possible to hold that the said Sanha Entry should have been the First Information Report. Ultimately, P.W.10 Tuntun Paswan had not received that information and he was not aware as to who had received that telephonic information and who had recorded the Sanha Entry. The cross examination of P.W.10 Tuntun Paswan on this aspect is half hearted leading us to nowhere. The cryptic information passed on the police station by making a telephonic call cannot be recorded as the First Information Report of commission of cognizable offence under Section 154 of the Code of Criminal Procedure. Therefore, it cannot be said that the



prosecution have suppressed the initial version or genesis of the incident.

46. P.W.10 Tuntun Paswan so also injured P.W.8 Jamir Lal Uraon have admitted the presence of a boy aged about 10 years on the spot. Evidence of P.W.8 Jamir Lal Uraon shows that the said boy was his son, who was travelling with him at the time of the incident. An attempt is made to cast doubt on the prosecution case for the reason that this child witness is not examined by the prosecution. However, it is well settled that when the available evidence is sufficient to infer the guilt of the accused persons, non-examination of other witnesses, which may be available, is of no consequence. Ultimately, the child was just 10 years of age and he must have suffered a trauma of the incident of gruesome attack on his parents leading to death of his mother and causing critical injuries to his father. Hence, non-examination of the child witness, who happens to be the son of the deceased Nilam Devi is not fatal to the prosecution case.

47. Though P.W.11 Md. Asraf and P.W. 12 Md. Jalal have turned hostile, evidence of P.W.10 Tuntun Paswan, the Investigating Officer , is sufficient to hold that there



was seizure of 4 empty cartridges and fired bullet from the scene of the occurrence. It is not a rule of law that seizure memo cannot be said to be proved unless and until it is vouched by the Pancha witnesses. Evidence of P.W.10 Tuntun Paswan is satisfactory on this aspect and is not scattered in the cross-examination.

48. It seems to us that solitary statement in cross examination of P.W.10 Tuntun Paswan to the effect that on visiting the spot of the incident, he saw the injured and took them to the Medical College Hospital, Katihar for treatment is an incorrect statement. Over all, scrutiny of evidence of this witness makes the chronology clear. This witness reached the Hospital at 04.00 P.M. whereas the spot came to be inspected by him much later at 06.15 P.M. of 25.01.2015.

49. It is well settled that “falsus in uno falsus in omnibus” (false in one thing, false in every thing) is neither a sound rule of law nor a sound rule of practice. It is inapplicable to criminal cases in India, as witnesses may be partly truthful and partly false in their evidence. Experience shows evidence of many witnesses contains a grain of untruth or some exaggeration or embellishment.



This many a times happens perhaps due to fear in the mind of witnesses that their testimony may be rejected. The court should not disbelieve evidence of such witnesses altogether if they are otherwise trustworthy. Discrepancies in deposition of witnesses are always there however honest or truthful they may be. Discrepancies caused due to normal error of observation, normal error of memory due to lapse of the time, due to mental disposition, impaired mental faculty due to impact or shock caused due to incident needs to be ignored. The prosecution case would fall only where inconsistencies in it goes to the root of the case. Otherwise, it becomes the duty of the court to sift truth from falsehood by culling out nuggets of truth from evidence of witnesses examined by the prosecution. If such exercise is possible, their evidence cannot be discarded wholly. In view of this settled position of law, the entire evidence of P.W.10 cannot be jettisoned.

50. We have perused the evidence of P.W.1 Gyan Nath Poddar, who is declared hostile by the prosecution. No part of his evidence is supporting the prosecution. It cannot be used to further the defence of the accused persons. Similarly, P.W.5 Vishnu Dev is also not an eye



witness to the incident. His evidence is of no relevance as the same is formal in nature. Similarly, it is seen that the evidence of P.W.14 Asgar Ali and P.W.15 Premchand Chaudhary is not of much importance. P.W.14 Asgar Ali got an information about the incident from newspaper P.W.15 Premchand Chaudhary is Police Officer, who signed the printed F.I.R.

51. The foregoing discussion makes it clear that the prosecution has proved the fact that the accused persons had fired bullets from the fire arm causing fatal injury to Nilam Devi and grievous to dangerous wound to P.W.8 Jamir Lal Uraon on 25.01.2021. We find the evidence of injured P.W.8 Jamir Lal Uraon, P.W.2 Ram Dayal Uraon and P.W.3 Pintu Kumar Uraon in respect to the incident in question as trustworthy and reliable. In a criminal case, the prosecution is obliged to prove charges beyond all reasonable doubts. Though, this standard of proof is a higher standard, there is however, no absolute standard. Though it was argued that because of various minor discrepancies, the prosecution is not free from doubt, no substance is found in such submission as the doubt must be that of a reasonable man. It must be actual, substantial and



reasonable. The prosecution is not required to meet any and every hypothesis put forward by appellants/accused persons. To be reasonable, a doubt must be based upon reason and common sense. It should grow out of evidence in the case. The concept of proof beyond all reasonable doubts cannot stretched too much to mean proof of rigid mathematical precision. Therefore, we do not find any merit in the submission of the learned counsel for appellants that case of prosecution is doubtful.

52. It is argued on behalf of the appellants/accused that because of error in framing of charge against accused persons, the trial itself was vitiated and the accused persons ought not to have been convicted by the leaned trial court. In the present case, charge has been framed under Section 302 of the Indian Penal Code simplicitor and no charge was framed under Section 302 read with Section 34 of the Indian Penal Code by the learned trial court. Therefore, according to the learned Senior Counsel, appearing for the accused, vicarious liability cannot be imposed on the accused.

53. In order to appreciate this contention, it is necessary to have a look of Section 215 of the Code of



Criminal Procedure which deals with the effect of the error in the charge. As per provision of Section 215 of the Criminal Procedure code, no error in stating the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars, shall be regarded as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of Justice. Code of Criminal Procedure is a code of procedure and is designed to further the ends of Justice. The object is that the accused should be given a full and fair trial in accordance with the principles of natural Justice. Generally omission to frame a charge is not per se fatal. If the accused is told and clearly understood the nature of offence for which he was being tried and if the case against him is fairly explained to him with full opportunity of defending himself then mere mistake in procedure, mere inconsequential errors and omissions in the trial are regarded as inconsequential unless the accused can show substantial prejudice caused to him.

54. At this juncture, provisions of Section 464 of the Code are material. According to this provision, no finding, sentence or order by a court shall be deemed invalid



merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge, unless in the opinion of the court of appeal, a failure of justice has in fact occasioned thereby.

55. Thus, on the aspect of non-framing of the charge under Section 302 read with Section 34 of the Indian Penal Code, what remains material is a question of prejudice. In the case in hand, having regards to all circumstances, it is difficult to hold that prejudice has occasioned or that there is resonable probability of prejudice to accused persons due to framing of the charge simplicitor for Section 302 of the Indian Penal Code and non-framing thereof with the aid of Section 34 of the Indian Penal Code. Ultimately, this is not a case of complete omission or absence to frame a charge for the offnece punishable under Section 302 of the Indian Penal Code.

56. It is, by now, well settled that in deciding whether mistake in framing the charge operates to the benefit of the accused, the court is required to see whether the accused is reasonably misled during the trial against him. It is required to be seen whether objection to the nature of the charge was taken at the early stage. In the



case in hand, the accused are defended by their Advocates during the course of the trial. Searching cross-examination of prosecution witnesses has been conducted on behalf of the accused persons from all possible angles as discussed by us in forgoing paras. The learned Advocates appearing for the accused person never objected to the nature of the charge during the course of the trial. It needs to be put on record that the charge against the accused persons came to be framed in presence of their learned Advocates and after hearing the learned Public Prosecutor as well as the learned defence Advocates.

57. The tone and tenor of the cross-examination of prosecution witnesses and suggestions given to the prosecution witnesses makes it clear that the accused persons were knowing the exact nature of allegations against them. It is not pointed out to us by the learned Senior Counsel appearing for the accused persons as to how accused were in fact misled by error in framing the charge and how this irregularity has occasioned in failure of justice. Even in their examination under Section 313 Cr.P.C., the accused were specifically informed that they along with others were present on the scene of occurrence,



they attempted to stop the deceased and the injured P.W. 8 Jamir Lal and when the injured did not stop, the accused persons opened indiscriminate fire from the pistol held by them causing death of Neelam Devi apart from causing wound to vital part of body of P.W.8, Jamir Lal Uraon.

58. Now, let us examine whether accused persons are proved to have committed murder of Neelam Devi, attempt to commit murder of P.W. 8 Jamir Lal Uraon and other offence held to be proved by the learned trial Court, in furtherance of their common intention. The common intention presupposed prior concert. It requires prearranged plan for convicting accused vicariously for the criminal act of another and should have been done in furtherance of their common intention by all of them. Prior meeting of mind, as such, is a must apart from participation in crime. Common intention is a question of fact depending upon circumstances of each case. It is to be inferred from the surrounding circumstances and the conduct of accused persons during the incident. As stated, in foregoing paras, evidence of prosecution witnesses including that of injured P.W. 8 Jamir Lal Uraon, P.W. 2 Ram Dayal Uraon and P.W. 3 Pintu Kumar Uraon



unerringly points out that three accused persons indulged in indiscriminate firing from the pistols held by them, which resulted in causing death of Neelam Devi apart from causing wound to P.W. 8 Jamir Lal Uraon.

59. In the matter of **Krishnan and another V/s State Rep. By Inspector Of Police – AIR 2003 Supreme Court 2978(1)**, the Hon'ble Supreme Court while explaining this concept of vicarious liability has held in paragraphs 28 to 32 thus :-

28. It is to be seen whether the accused persons in furtherance of their common intention caused the death of the deceased on the alleged date, time and place. A charge under S. 34 of I.P.C., presupposes the sharing of a particular intention by more than one person to commit a criminal act. The dominant feature of S. 34 is the element of participation in actions. This participation need not in all cases be by physical presence. Common intention implies acting in concert. There is a pre-arranged plan which is proved either from conduct or from circumstances or from incriminating facts. The principle of joint liability in the doing of a criminal act is embodied in S. 34 of the I.P.C. The existence of common intention is to be the basis of liability. That is why the prior concert and the pre-arranged plan is the foundation of common intention to establish liability and guilt.

1. Section 34 deals with the doing of separate acts, similar or diverse, by several persons, if all are done in furtherance of common intention, each person is liable for the result of them all as if he had done them himself for 'that act' and 'the act' in the latter part of the section must include the whole section covered by a 'criminal act' in the first part, because they refer to it. Constructive liability under S. 34 may arise in three well-



defined cases. A person may be constructively liable for an offence which he did not actually commit by reason of :-

1. the common intention of all to commit such an offence (Section 34)

2. his being a member of a conspiracy to commit such an offence (Section 120-A)

3. his being a member of unlawful assembly the members whereof knew that an offence was likely to be committed (Section 149) Section 34 is framed to meet a case in which it may be difficult to distinguish between the acts of individual members of a party or to prove exactly what part was taken by each of them. The reason why all are deemed guilty in such cases is, that the presence of accomplices gives encouragement, support and protection to the person actually committing the act. The provision embodies the commonsense principle that if two or more persons intentionally do a thing jointly it is just the same as if each of them had done it individually.

30. In view of the factual aspects highlighted above, the inevitable conclusion is that accused Krishnan and Ganesan are equally liable for commission of offence.

31. Applicability of Section 34 depends upon the facts and circumstances of each case. As such no hard and fast rule can be laid down as to the applicability or non-applicability of the Section 34. For applicability of the Section, it is not necessary that the acts of several persons charged with commission of an offence jointly, must be the same or identically similar. The acts may be different in character but must have been actuated by one and the same common intention in order to attract the provision.

32. The fact situation in the present case has great similarity with those in Charan Singh Vs. State of Punjab (AIR 1998 SC 323). In that case principal accused gave a gandas blow from the sharp side on the head of the deceased. That was the fatal blow. Co-accused also assaulted the deceased with the gandas on the backside near the shoulder of the deceased.



It was held that attack at different places on different sides of the weapons of assault did not show absence of common intention.

60. Under a prearranged plan by acting in concert, the accused persons indulged in indiscriminate firing on P.W.8 Jamir Lal Uraon and deceased Nilam Devi with sole intention to kill them. Bullets were fired at the vital part of body of the deceased so also P.W.8 Jamir Lal Uraon by accused persons and this conduct makes them jointly liable for the result of their acts. Act of firing bullets by the accused was done with an intention to cause death of Nilam Devi and P.W.8 Jamir Lal Uraon. Nilam Devi succumbed to the bullet injury whereas P.W.8 Jamir Lal Uraon survived from the murderous assault. It is well settled that in order to justify conviction under Section 307 of the Indian Penal Code, only an intent coupled with some overt act is sufficient. Seat on injury to P.W.8 Jamir Lal Uraon and the weapon used reflect the intent of the accused persons. All accused as such are proved to have committed the offences punishable under Sections 302 and 307 of the Indian Penal Code in furtherance of their common intention. These offences are committed by them by using the firearms in contravention of Section 5 of the Arms Act 1959.



61. In the result, Appeals fail and the same are,
accordingly, dismissed.

(A.M. Badar, J)

Ashwani Kumar Singh, J: I agree.

Bhardwaj/-

(Ashwani Kumar Singh J)

AFR/NAFR	
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