STATE OF U.P. A

*v.*

KRISHNA MASTER & ORS.

(Criminal Appeal No. 1180 of 2004)

AUGUST 3, 2010 B

**[HARJIT SINGH BEDI AND J.M. PANCHAL, JJ.]**

*Penal Code, 1860 – s. 302/34 – Homicidal death of six persons – Conviction u/s. 302/34 and imposition of death sentence by trial court – Acquittal by High Court – On appeal, held: Evidence of two eye-witnesses as well as doctor, who conducted post mortem, that six persons died homicidal death on account of firearm injuries – Evidence of eye witnesses, first informant, who lost his brother; and minor child, who lost five members of his family is trustworthy and unimpeachable – Evidence does not suffer from major contradictions and/or improvements nor noticeable embellishment made – FIR was lodged promptly – Sufficient electricity at the place of the incident and witnesses were able to witness the incident – Motive established by prosecution – Oral declaration by one of the deceased before his real brother-first informant implicating the accused – Thus, order of acquittal by High Court set aside and judgment of trial court restored as regards the conviction – Accused sentenced to rigorous imprisonment for life – Evidence – Criminal Law – Motive – Sentence/sentencing.* C D E F

*Evidence:*

*Oral evidence – Criteria for appreciation – Explained.*

*Rustic witness – Appreciation of evidence – Relevant factors – Held: Evidence of such witness who is not educated and comes from a poor strata of society, should be appreciated as a whole – Rustic witness cannot be expected* G

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A *to have an exact sense of time and lay down with precision the chain of events – Some discrepancies are bound to take place if a witness is cross-examined at length for days together – Such discrepancies should not be blown out of proportion.*

B *FIR – Purpose of – Held: Is to enable a police officer to satisfy himself as to whether commission of cognizable offences is indicated so that further investigation can be undertaken by him – FIR is to set criminal law in motion – It need not be an encyclopedia of all the facts and circumstances on which the prosecution relies – It is never* C *treated as a substantive piece of evidence and has a limited use.*

*Evidence Act, 1872 – 134 – Number of witness – Requirement of – Held: s. 134 provides that no particular* D *number of witnesses is required for the proof of any fact – Reliance can be placed on the solitary statement of a witness if his statement is true and correct version of the prosecution case.*

E **According to the prosecution case, respondent no. 1 was on inimical terms with 'G' and 'J' (PW 1) because of friendly relations between his daughter and the son of PW1. On the fateful day, respondent nos. 1 to 3 armed with firearms entered the house of 'G' and fired shots** F **indiscriminately resulting in death of 'G', his wife and three sons G' s another son (PW 2), a child aged 6 years, witnessed the entire incident. He was sleeping and after hearing the gun shots hid himself under the cot. PW 1 and his wife on seeing this ghastly incident left the place of incident. The respondents searched PW 1 and his family** G **members but did not find them in the house. They dragged 'B'-brother of PW 1 and shot him dead. PW 1 lodged a first information report. Investigation was carried out. The respondents were charged for commission of**

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offences u/s. 302/34 IPC. The trial court convicted the respondents u/s. 302/34 IPC and awarded them death sentence. The High Court acquitted the respondents and rejected the reference made by the trial court for confirmation of death sentence. Therefore, the appellant-State filed the instant appeal.

Disposing of the appeal, the Court

HELD: 1. On the facts and in the circumstances of the case, it is firmly established by the prosecution that the respondents are the persons who had committed six murders and, therefore, liable to be convicted u/s.302/34 IPC. [Para 18] [603-G]

2. From the evidence of two eye-witnesses as well as of PW 4, who conducted autopsy on the dead bodies of six deceased persons, there is no manner of doubt that the six deceased persons died homicidal death on account of firearm injuries. All the murders were committed in the night of August 10, 1991. The said finding recorded by the trial court and upheld by the High Court, being eminently just, is upheld. [Paras 6 and 7] [581-F-H; 582-A-B]

3.1 While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-

technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details. [Para 8] [582-C-G]

3.2 Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the Police are meant to be brief statements and could not take place of evidence in the court. Small/trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a short-coming from which no criminal case is free. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. [Para 8] [582-G-H; 583-A-C]

3.3 The first and firm impression which one gathers on reading the testimony of PW 1 is that he is a rustic witness. A rustic witness, who is subjected to fatiguing, taxing and tiring cross-examination for days together, is bound to get confused and make some inconsistent statements. Some discrepancies are bound to take place

if a witness is cross-examined at length for days together. Therefore, the discrepancies noticed in the evidence of a rustic witness who is subjected to grilling cross-examination should not be blown out of proportion. To do so is to ignore hard realities of village life and give undeserved benefit to the accused who have perpetrated heinous crime. The basic principle of appreciation of evidence of a rustic witness who is not educated and comes from a poor strata of society is that the evidence of such a witness should be appreciated as a whole. The rustic witness as compared to an educated witness is not expected to remember every small detail of the incident and the manner in which the incident had happened more particularly when his evidence is recorded after a lapse of time. A witness is bound to face shock of the untimely death of his near relative(s). Therefore, the court must keep in mind all these relevant factors while appreciating the evidence of a rustic witness. [Para 10] [585-F-H; 586-A-C]

3.4 In the instant case, when the respondents were firing from their respective fire arms, the High Court should not have expected PW 1 to mention description of the whole episode which had happened in a few minutes. The rustic witnesses cannot be expected to have an exact sense of time and so cannot be expected to lay down with precision the chain of events. The High Court gravely erred in not accepting evidence of PW 1 who being a rustic witness is not expected to always have an alert mind and so have an idea of direction, area and distance with precision from which he had witnessed the incident. In his examination in chief, PW 1 never claimed that he was standing by the side of the wall of courtyard nor was it claimed by him that he had witnessed the incident through *mokhana*, i.e. holes in the intervening walls. Though the witness was cross-

A examined for days together, he was never confronted with his statement recorded u/s. 161 Cr.P.C. wherein he had allegedly stated before the Police Officer that he had witnessed the incident through holes in the intervening wall. It cannot be understood as to how the said statement B allegedly made before the police during the investigation could have been pressed into service by the High Court to reject the substantive evidence of PW 1 tendered before the court wherein it was specifically asserted that while in his house, he had witnessed the incident of C killing of five members of G's family by the respondents by firing gun shots. The prosecution satisfactorily established that 'B' the brother of PW 1, lost his life because of gun shots fired at him. The suggestion made by the defence to the witness that he was making a false claim that 'B' was alive and that on enquiry by him, 'B' D had told him that the respondents had assaulted him with fire arms, as he was tutored by the police outside the court room was emphatically denied by him. [Para 10] [586-C-H; 587-A-C]

E 3.5 PW 1 was cross-examined for days together on the point as to where and in which direction houses of 'K', 'RS', 'D' etc. were situated. Such an attempt by defence lawyer can hardly be approved. On re-appreciation of evidence of PW 1, it is found that he did F not make major improvements in his testimony before the court; and the so-called discrepancies which are blown out of proportion by the High Court are minor in nature and do not relate to the substratum of the prosecution story. The approach of the High Court in appreciating the evidence of PW 1, who was a rustic witness, is not only G contrary to the well settled principles governing appreciation of evidence of a rustic witness but is perverse also. [Para 10] [587-C-F]

*State of U.P. v. Anil Singh* AIR 1988 SC 1998 – relied H on.

4.1 Section 134 of the Evidence Act specifically provides that no particular number of witnesses shall, in any case, be required for the proof of any fact. Reliance can be placed on the solitary statement of a witness if the court comes to the conclusion that the said statement is the true and correct version of the case of the prosecution. The courts are concerned with the merit and the statement of a particular witness and not with the number of witnesses examined by the prosecution. The time-honoured rule of appreciating evidence is that it has to be weighed and not counted. The law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, where the court finds that the testimony of solitary witness is neither wholly reliable nor wholly unreliable, it may, in given set of facts, seek corroboration but to disbelieve reliable testimony of a solitary witness on the ground that others have not been examined is to do complete injustice to the prosecution. [Para 15] [594-E-H; 595-A-B]

4.2 With regard to the testimony of PW 2, a child aged 6 years, it cannot be understood as to on what principle and on which experience in real life, the High Court made an observation that it is inconceivable that a child of his understanding would be able to recapitulate facts in his memory witnessed by him long ago. There is no principle of law that it is inconceivable that a child of tender age would not be able to recapitulate facts in his memory witnessed by him long ago. PW2 claimed on oath before the court that he had seen five members of his family being ruthlessly killed by the respondents by firing gun shots. When a child of tender age witnesses gruesome murder of his father, mother, brothers etc. he is not likely to forget the incident for his whole life and would certainly recapitulate facts in his memory when asked about the same at any point of time, notwithstanding the

A gap of about ten years between the incident and recording of his evidence. It would be doing injustice to a child witness possessing sharp memory to say that it is inconceivable for him to recapitulate facts in his memory witnessed by him long ago. A child of tender age
B is always receptive to abnormal events which take place in its life and would never forget those events for the rest of his life. The child would be able to recapitulate correctly and exactly when asked about the same in future. Therefore, the ground on which the reliable
C testimony of PW 2 came to be disbelieved, can hardly be upheld. [Para 13] [591-A-H; 592-A-G]

4.3 On re-appreciation of evidence, it is found that the testimony of PW 2 is cogent, consistent and reliable. Taking into consideration the manner in which he testified
D before the Court and the fact that nothing could be elicited in his lengthy cross-examination for days together to impeach his credibility, his testimony is reliable and can be accepted without any reservations. Therefore, non-examination of his brother or sister or few others
E who had gathered near the house of deceased 'GL' after the incident is of no significance and does not affect credibility of testimony of PW 2. The High Court was not justified in brushing aside testimony of PW 2 while considering case of the prosecution against the
F respondents. [Para 15] [595-B-E]

5. In the first information report, it is clearly mentioned that at the time of occurrence, there was electricity light at the place of incident and with the help
G of the said light, the first informant (PW 1) was able to witness the incident wherein five members of deceased G's family came to be murdered by the respondents. PW 1 stated that his brother 'B', who was sleeping in his shop was dragged out from the shop by the respondents by

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breaking open the door of the shop and thereafter was murdered by them by firing gun shots. Regarding murder of 'B', it is mentioned in the FIR that electric bulb was burning at his house at the time of occurrence and, therefore, PW 1 was able to witness the murder of his brother 'B'. PW 2 stated that his father, mother and three real brothers were murdered by the respondents by firing gun shots and had asserted that at the time of the incident one bulb was burning on the main gate of his house whereas another bulb was burning on the thatched roof, i.e., near the place where the deceased had slept during the night of the incident. Though both the witnesses were cross-examined at great length, nothing significant could be brought on record from which one can, with certainty, deduce that there was no light of electricity bulbs at the place of the incident. The assertion made by the two eye-witnesses that they were able to witness the incident because of availability of sufficient electricity light gets corroboration from contemporaneous document. The contradiction and/or omission in the statement of PW 2 recorded u/s. 161 Cr. P.C. could not be brought on the record of the case. The reliable evidence of PW 1 and PW 2 cannot be brushed aside on the ground that the Investigating Officer had not taken into possession the bulbs hanging on the place of incident. The High Court was not justified in holding that there was no electric power in the whole village and that there was complete darkness on account of *Amavasya* of rainy season due to which it was impossible for the eye-witnesses to witness the incident. The visibility capacity of urban people is not the standard to be applied to the villagers. If the light available was sufficient for the accused persons to identify their targets for firing shots, there is no reason why the witnesses would not be able to identify the respondents as the assailants. [Para 15] [595-G-H; 596-A-H; 598-D-G]

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A 6.1 The FIR need not be an encyclopedia of all the facts and circumstances on which the prosecution relies. The main purpose of the FIR is to enable a police officer to satisfy himself as to whether commission of cognizable offences is indicated so that further B investigation can be undertaken by him. The purpose of the FIR is to set the criminal law in motion and it is not customary to mention every minute detail of the prosecution case in the FIR. The FIR is never treated as a substantive piece of evidence and has a limited use, i.e., C it can be used for corroborating or contradicting the maker of it. Law requires the FIR to contain basic prosecution case and not minute details. The law developed on the subject is that even if an accused is not named in the FIR he can be held guilty if prosecution D leads reliable and satisfactory evidence which proves his participation in the crime. Similarly, the witnesses whose names are not mentioned in the FIR but examined during the course of trial can be relied upon for the purpose of basing conviction against the accused. Non-mentioning of motive in the FIR cannot be regarded as omission to E state important and material fact. The omission to give details in the FIR as to the manner in which a weapon was used by accused is not material omission amounting to contradiction. In the instant case, the FIR was filed by a rustic man and, therefore, non-mentioning of motive in F the FIR cannot be attached much importance. [Para 15] [600-E-H; 601-A-C]

6.2 The FIR is not the last word in the prosecution case and in some cases detailed FIR could be a ground G for suspicion. What is relevant to find out is whether the FIR was lodged promptly or whether it is actuated by mala fides. The record of the instant case indicates that the FIR regarding gruesome murder of six persons was filed promptly and without any avoidable delay and,

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therefore, false implication of any of the respondents in such a grievous case stands ruled out. There is nothing on the record to show that the FIR was result of deliberation by the first informant with other persons. As the FIR was lodged promptly, the informant's evidence containing minor variations not affecting substratum of prosecution story cannot be discarded on the ground that motive which prompted the respondents to kill six persons was not mentioned in the FIR. The prosecution is not supposed to prove motive when it relies on direct evidence, i.e., evidence of eye-witnesses. The prosecution examined first informant as PW1 who lost his brother in the incident as well as PW2 who lost five members of his family. Their evidence is found to be trustworthy and unimpeachable. Their evidence does not suffer from major contradictions and/or improvements nor noticeable embellishment have been made by them. As the prosecution has led acceptable eye-witness account of the incident, the failure to establish motive would not entitle the respondents to claim acquittal. [Para 15] [601-C-H; 602-A]

*Superintendent of Police, CBI and Ors. vs. Tapan Kumar Singh* AIR 2003 SC 4140 – referred to.

6.3 A conjoint and purposeful reading of the FIR with the reliable testimony of PW1 and that of PW2 makes it very clear that the respondents were agitated and angry when the daughter of respondent No.1 had eloped with the son of the first informant. The evidence on record shows that during the time of first elopement, on one day son of the first informant-'AS' was spotted in the village and on learning about the fact that son of the first informant was seen in the village, the respondents were prepared to take revenge to what is known as to maintain honour of the family. However, the fact that 'AS' was likely to be assaulted by the respondents had become known

A to wife of 'G' who had fore-warned 'AS' and 'AS' had, therefore, left the village to save his life. The evidence also indicates that the fact that 'AS' had left the village all of a sudden because of information conveyed by wife of deceased 'G' that the respondents were to assault him
B was later on learnt by the respondents and, therefore, the respondents were bearing a grudge against 'G' and his wife. The record further shows that when the daughter of respondent no.1 had returned to the village, 'G' in the presence of the first informant had made a suggestion to
C respondent no.1 that he should get his daughter married with the son of the first informant upon which respondent no.1 took an objection and asked 'G' not to play with the honour of his family. Sufficient evidence was led by the prosecution to establish motive which prompted the
D respondents to kill five members of family of deceased 'G'. What weighed with the High Court in disbelieving the motive suggested by the prosecution was the fact that in the FIR lodged by PW 1, it was not stated that because wife of 'G' had forewarned 'AS' about impending assault on him by the respondents, they were not able to take
E revenge against 'AS' and that 'G' had suggested to respondent no.1 to get his daughter married with son of PW 1. The High Court held that such story was developed for the first time during trial by PW 1 who was admittedly on inimical terms with the respondents. [Para
F 15] [599-D-H; 600-A-D]

6.4 The High Court committed serious error in disbelieving the oral dying declaration made by deceased 'B' before his real brother PW 1 implicating the
G respondents as his assailants. The reasons given by the High Court for disbelieving the oral dying declaration was that it was not mentioned by PW 1 either in his FIR or in his statement recorded u/s. 161 of Cr.P.C. [Para 16] [602-B-C]

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6.5 Six brutal and gruesome murders had taken place wherein fire arms were used. The hard reality of life is that the persons who lost their kith and kin in horrific incident are likely to suffer great shock and, therefore, law would not expect them to mention minutest details either in the FIR or statements u/s. 161. The question before the Court is whether the assertion made by PW 1 that soon after the incident he had gone to the place where his injured brother was lying and on enquiry by him, his brother had told him that the respondents were his assailants, inspires confidence of the Court. Reading the evidence of the witness as a whole, it has ring of truth in it. There is nothing improbable if a brother approaches his injured brother and tries to know from him as to how he had received the injuries nor is it improbable that on an enquiry being made the injured brother would not give reply/information sought from him. The assertion by PW 1 that after the incident was over he went near his injured brother and tried to know as to who were his assailants, whereupon his injured brother replied that the respondents had caused injuries to him, could not be effectively challenged during cross-examination of the witness nor could it be brought on record that because of the nature of the injuries received by 'B' he would not have survived even for few minutes and must have died immediately on the receipt of the injuries. [Para 16] [602-D-H; 603-A-B]

7.1 The High Court acquitted the respondents who were charged for commission of six murders in a casual and slipshod manner. The approach of the High Court in appreciating the evidence is not only contrary to the well settled principles of appreciation of evidence but quite contrary to the ground realities of life. The High Court recorded reasons for acquittal of the respondents which are not borne out from the record and are quite contrary to the evidences adduced by the reliable eye-witnesses.

A The High Court was not justified in upsetting the well reasoned conviction of the respondents recorded by the trial court which after observing demenour of the eye-witnesses had placed reliance on their testimony. The High Court did not take into consideration the full text of
B the evidence adduced by the witnesses and picked up sentences here and there from the testimony of the witnesses. [Para 17] [603-C-F]

7.2 There is no manner of doubt that killing six persons and wiping out almost the whole family on flimsy
C ground of honour saving of the family would fall within the rarest of rare case and, therefore, the trial court was perfectly justified in imposing capital punishment on the respondents. However, the incident had roughly taken place before 20 years, i.e., on August 10/11, 1991. The
D High Court had acquitted the respondents by judgment dated April 12, 2002. After April 12, 2002 till this date, nothing adverse against any of the respondents is reported to this Court. To sentence the respondents to death after their acquittal in the year 2002 would not be
E justified on the facts and in the circumstances of the case. [Para 19] [604-B-D]

7.3 The judgment passed by the High Court, acquitting the respondents of the offences punishable u/
F s. 302/34 IPC is set aside. The judgment of the trial court convicting each of the respondents u/s. 302/34 IPC is restored. Each respondent is sentenced to RI for life and fine of Rs.25,000/- each. Out of the amount of fine, if paid, a sum of Rs.50,000/- be paid to PW2, as compensation
G in view of the provisions of s. 357 Cr.P.C. [Para 20] [604-E-H]

Case Law Refence:

AIR 1988 SC 1998 Referred to. Para 10

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**AIR 2003 SC 4140 Referred to. Para 15** A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1180 of 2004.

From the Judgment & Order dated 12.04.2002 of the High Court of Judicature at Allahabad in Criminal Appeal No. 574 of 2001. B

Ratnakar Dass, Shekhar Raj Sharma, Chandra Prakash Pandey for the Appellant.

Imtiaz Ahmed, Naghma Imtiaz (for Enquity Lex Associates) for the Respondents. C

The Judgment of the Court was delivered by

**J.M. PANCHAL, J.** 1. The State of Uttar Pradesh has questioned legality of judgment dated April 12, 2002 rendered by Allahabad High Court in Criminal Appeal No.574 of 2001 by which judgment dated February 20, 2001 passed by the learned Special Judge (EC Act)/Additional District Judge, Farrukhabad in Sessions Trial No.17 of 1992 convicting the three respondents herein under Section 302 IPC and sentencing each of them to death with fine of Rs.10,000/- in default RI for two years for commission of murder of six persons is reversed and they are acquitted. D E

2. The facts emerging from the record of the case are as under: F

The incident in question took place on August 10/11, 1991. The first informant is one Jhabbulal. He, as well as the respondents, are residents of Village Lakhanpur, District, Farrukhabad, Uttar Pradesh. About one year before the date of incident, Sontara, daughter of the respondent No.1 had eloped with Amar Singh, son of Jhabbulal. On one day, Amar Singh was spotted in the village and on learning that Amar Singh was back in village, the respondents had made an G H

A attempt to find him out to assault him and to take revenge. However, Ramwati, wife of Guljari, had learnt about the plans of respondents. She was neighbour of Jhabbulal. Therefore, she had given prior intimation to Amar Singh about the ill designs of respondents to assault him. Thereupon Amar Singh had left
B the village and this is how his life was saved. Later on, the respondents had learnt that because of the intimation given by Ramwati, Amar Singh had left the village and he could not be targeted. Since then, the respondents were bearing a grudge against Ramwati. It may be mentioned that after 3-4 days
C Sontara and Amar Singh had returned to the village. It is the prosecution case that at that time, Guljari Lal, husband of Ramwati had suggested the Respondent No. 1, in presence of first informant Jhabbulal to get his daughter married to the son of Jhabbulal. Thereupon, respondent No.1 had taken
D exception and told Guljari Lal not to play with the honour of his family. Because of the suggestion made by Guljari Lal, the respondent No.1 was highly agitated and had animus against Guljari Lal and first informant, Jhabbulal.

Some 10 to 15 days prior to the date of incident, Sontara
E had again eloped with Amar Singh. Due to this reason the respondents had become restive and uneasy with the family of Jhabbu Lal and his neighbour Gulzari Lal. The respondent No.1, Sri Krishna Master had gone to meet Jhabbulal and told Jhabbulal that Sontara must come back to him by Sunday
F failing which no one in the world would be able to save him and family of Guljari. Because of the threat given by respondent No.1, Jhabbulal had gone to the residence of his relatives in search of his son and daughter of the respondent No.1, but he was unable to trace the missing boy and the girl.

G 3. On August 10, 1991, Ram Sewak, announced while sitting on Chabutra of Ram Sewak that, at all costs, the girl Sontara should come back. Otherwise, no one would be kept alive even for the name sake. Sontara did not come back to the village. In the midnight of August 10/11, 1991, at about 12
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hours, the respondent No.1, i.e., Shrikrishna, the respondent No.2 Ram Sewak and the respondent No.3 Kishori carrying country made pistols in their hands entered the house of Guljarilal by jumping the southern wall of the house. After entering into the house of Guljari, the respondents started firing shots indiscriminately. Because of the gun shots, Guljari, Ramwati, wife of Guljari, Rakesh, Umesh and Dharmendra sons of Guljarilal, were injured. PW2 (Madan Lal) who was sleeping at the place of incident, got up after hearing gun shots and hid himself under the cot. He witnessed the whole incident from there. First Informant Jhabbulal and his wife Lilawati, on seeing this ghastly incident, left their house and while making hue and cry entered the house of Khemkaran. The respondents after killing Guljari and his family made search for the complainant and his family members but they did not find them present in the house. At that very time, Baburam, brother of the first informant, who had entered his shop out of fear, was also dragged out by the respondents from the shop and shot dead. After resorting to indiscriminate firing, the respondents left the village and went towards the south by making two fires in the air.

At the time of incident, the respondents were carrying firearms and, therefore, no one dared to go near them. In the incident, Umesh and Dharmendra who had received injuries were removed to hospital but later on they also succumbed to their injuries. The written report relating to the incident was got scribed by Jhabbulal through a person named Radhey Shyam and it was submitted at the police station at about 3.30 a.m. on 11.8.1991. The Investigating Officer, Mr. Gajraj Singh recorded statements of those who were found to be conversant with the facts of the case. During the course of investigation, he took into possession Ban (the thread by which cot is woven), bed sheets etc. and prepared a memo. He also picked up 315 bore bullet lying near the dead body of Rakesh. Similarly, bullets of 315 bore lying near the cot on which Dharmendra and Umesh slept were also seized. He inspected the place of

A incident and prepared the sketch. The incriminating articles seized were sent to forensic science laboratory for analysis. He held inquest on the dead bodies and made arrangements for sending the dead body of four persons to hospital for post mortem examination. On completion of investigation, the three
B respondents were charged sheeted in the court of learned Chief Judicial Magistrate, Farrukhabad for commission of offences punishable under Section 302 read with 34 IPC. In due course, the case was committed to Sessions Court for trial.

The learned Additional Sessions Judge to whom the case
C was made over for trial framed charges against the respondents under Section 302 read with Section 34 of the Indian Penal Code 1860. The charge was read over and explained to them. However, the respondents denied the same and claimed to be tried. The prosecution, therefore, in all, examined nine
D witnesses including two eye-witnesses and produced documents to prove its case. After the recording of evidence of prosecution witnesses was over, the respondents were explained by the learned Additional Sessions Judge, the circumstances appearing against them in the evidence of the
E witnesses and recorded their statements under Section 313 of the Code of Criminal Procedure, 1973. In their further statements, case of each of the respondent was that he was falsely implicated in the case and, therefore, should be acquitted.

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The learned Judge of the Trial Court discussed the evidence of the witnesses in great detail and found that the evidence of the two eye-witnesses was trustworthy, cogent, consistent and reliable. On the basis of testimony of the two eye-witnesses, the Trial Court by judgment dated February 20,
G 2001 convicted each of the respondents under Section 302 read with Section 34 IPC. The respondents were thereafter heard by the learned Judge regarding sentence to be imposed on them for commission of offences punishable under Section 302 read with Section 34 IPC. After hearing the respondents,

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the learned Judge awarded capital punishment to each of the three respondents and fine of Rs.10,000/- in default RI for two years. A direction was given not to execute capital punishment until the same was confirmed by the High Court. It was also directed that the amount of fine paid by the respondents, be given to Madan Lal who was PW2 and son of deceased Guljari as compensation. The learned Additional District Judge, Farrukhabad under a reference sent the documents to the High Court for confirmation of the capital punishment imposed on the respondents.

4. Feeling aggrieved, the respondents preferred Criminal Appeal No.574 of 2001. The reference made by the trial court for confirmation of the death sentence awarded to the respondents, was heard along with the appeal filed by the respondents. The High Court by the impugned judgment has acquitted the respondents and rejected the reference made by the trial court, for confirmation of the death sentence, giving rise to the instant appeal.

5. This Court has heard the learned counsel for the parties at length and in great detail. This Court has also considered the documents forming part of the record.

6. The fact that each of the six deceased had died homicidal death is not disputed before this Court. The said fact was also not disputed by any of the respondents before the High Court or the trial court. From the evidence of two eye-witnesses as well as that of Dr. S.K. Gupta, PW4, who had conducted autopsy on the dead body of six deceased persons and on perusal of their respective post-mortem notes, there is no manner of doubt that the six deceased persons had died homicidal death on account of firearm injuries. The said finding recorded by the trial court and confirmed by the High Court, being eminently just, is hereby upheld.

7. The time of occurrence is also not disputed by the learned counsel of the respondents. It is admitted before this

A Court that all the murders were committed in the night of August 10, 1991. However, it was maintained by the learned counsel for the respondents that none of the respondents were assailants and, therefore, acquittal of the respondents recorded by the High Court should not be lightly interfered with by this
B Court.

8. Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the
C evidence of witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to
D find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there
E from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor
F of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the Trial Court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of
G variations or infirmities in the matter of trivial details. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the Police are meant to be brief statements and could not take place of evidence in the court. Small/trivial omissions would not justify
H a finding by court that the witnesses concerned are liars. The

prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a short-coming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it. In the deposition of witnesses, there are always normal discrepancies, howsoever, honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case albeit foolishly. Therefore, it is the duty of the Court to separate falsehood from the truth. In sifting the evidence, the Court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eye-witnesses examined in this case proves the prosecution case.

9. From the impugned judgment, it becomes evident that the High Court took into consideration the evidence tendered by PW1 Jhabbulal and PW2 Madan Lal. The High Court, at the very outset examined the evidence adduced by the prosecution with regard to five murders committed in the house of Guljari Lal and scanned the evidence of PW1, Jhabbulal. After noting that his house was undisputedly situated to the north of house of Guljari and that both the houses were separated by an intervening wall running East to West, the High Court analysed the evidence of PW1 Jhabbulal. The High Court took into consideration the claim of PW1 Jhabbulal that at the time of the incident, he was sleeping in the courtyard of his house and

A that he had woken up on hearing sounds of gun shots and was scared as a result of which he stood by the side of the wall of courtyard to save himself. On scrutiny of this witness, the High Court came to the conclusion that on his own showing, it was not possible for PW1, Jhabbulal to have witnessed the incident B which occurred inside the house of Guljari, more particularly when the two houses were separated by a wall having height of more than that of a normal person. The High Court thereafter proceeded to examine the site plan Exhibit- Ka14 and concluded that when the investigating officer had made C inspection of the scene of occurrence, PW1, Jhabbulal had claimed to have seen the incident through holes (*mokhana*) in the intervening wall, but in his substantive evidence tendered before the Court, Jhabbulal had not claimed to have seen the incident through the holes in the intervening walls. Thereafter, D the High Court again took notice of the statement made by PW1, Jhabbulal that he was standing by the side of the wall of courtyard and finally concluded that it was highly doubtful that Jhabbulal who was present inside his own house had seen the incident which occurred inside the house of Guljari.

E 10. This Court finds that the abovestated reasons are the only reasons specified by the High Court to disbelieve the eye-witness account given by PW1, Jhabbulal. In order to find out whether the reasons assigned by the High Court to disbelieve the episode of five murders narrated by witness Jhabbulal, are F sound, this Court has undertaken the exercise of going through the entire testimony of witness Jhabbulal recorded before the Trial Court. As far as the incident which had taken place in the house of Guljari is concerned, it was mentioned therein that at about 12 O'clock, in the night, Master Shri Krishna holding ponia G gun and Ram Sewak as well as Kishori holding country-made pistols tresspassed into the house of Guljari after jumping over southern side wall of the house of Gulzari and committed murder of Guljari, his wife Ramwati and son Rakesh by firing gun shots. He also mentioned in his testimony that because of the firing H of gun-shots Umesh and Dharmendra who were sons of Gulzari

were injured. According to him, on witnessing the said incident, he with his wife Leelawati left his home and went into the house of Khemkaran rasing hue and cry. It was further mentioned by the witness that the respondents had tried to trace his family and they had gone inside the shop of his brother Baburam and gunned him down after dragging him out of the shop. What was claimed by this witness was that the incident was also witnessed by Sarla Devi, daughter of Guljari, Rakesh and Madan Lal, sons of Guljari and his brothers Mohanlal, Rajaram and Kailash who were sons of Jiwan. It was asserted by him that he had witnessed the incident in the light of electric bulb. It was frankly admitted by him that no one had dared to go near to the respondents because they were carrying with fire arms.

It was further asserted by him that after the respondents had left the place opposite the shop of his brother, he had gone near his injured brother who was alive and had tried to learn from Baburam as to who had assaulted him and thereupon his brother had informed him that Shrikrishna (respondent No.1), Ram Sewak (Respondent No.2) and Kishori (Respondent No. 3) had assaulted him with fire arms. It is also mentioned by him that at his instance, FIR was reduced into writing by Radhey Shyam as dictated by him and that he had filed the same at the police station. The record of the case shows that this witness was cross-examined at great length. He was subjected to grueling cross-examination which runs into 31 pages. The first and firm impression which one gathers on reading the testimony of this witness is that he is a rustic witness. A rustic witness, who is subjected to fatiguing, taxing and tiring cross-examination for days together, is bound to get confused and make some inconsistent statements. Some discrepancies are bound to take place if a witness is cross-examined at length for days together. Therefore, the discrepancies noticed in the evidence of a rustic witness who is subjected to grueling cross-examination should not be blown out of proportion. To do so is to ignore hard realities of village life and give undeserved benefit to the accused who have perpetrated heinous crime.

A The basic principle of appreciation of evidence of a rustic witness who is not educated and comes from a poor strata of society is that the evidence of such a witness should be appreciated as a whole. The rustic witness as compared to an educated witness is not expected to remember every small B detail of the incident and the manner in which the incident had happened more particularly when his evidence is recorded after a lapse of time. Further, a witness is bound to face shock of the untimely death of his near relative(s). Therefore, the court must keep in mind all these relevant factors while appreciating C evidence of a rustic witness. When the respondents were firing from their respective fire arms, the High Court should not have expected PW1 Jhabbulal to mention description of the whole episode which had happened in a few minutes. The rustic witnesses cannot be expected to have an exact sense of time D and so cannot be expected to lay down with precision the chain of events. In the instant case, this Court is of the firm opinion that the High Court gravely erred in not accepting evidence of PW1, Jhabbulal. Jhabbulal being a rustic witness is not expected to always have an alert mind and so have an idea of direction, area and distance with precision from which he had E witnessed the incident. It is well to notice that in his examination in chief, Jhabbulal never claimed that he was standing by the side of the wall of courtyard nor it was claimed by him that he had witnessed the incident through *mokhana*, i.e. holes in the intervening walls. Though the witness was cross-examined for F days together, he was never confronted with his statement recorded under Section 161 of the Code of Criminal Procedure wherein he had allegedly stated before the Police Officer that he had witnessed the incident through holes in the intervening wall. The witness having not been confronted with his earlier G police statement wherein he had reportedly stated that he had seen the incident through the holes in the intervening wall, this Court fails to understand as to how the said statement allegedly made before the police during the investigation could have been pressed into service by the High Court to reject the substantive H evidence of this witness tendered before the Court wherein it

was specifically asserted that while in his house, he had witnessed the incident of killing of five members of Guljari's family by the respondents by firing gun shots. The prosecution has satisfactorily established that Baburam who was brother of Jhabbulal, PW1, had lost his life because of gun shots fired at him. The suggestion made by the defence to the witness that he was making a false claim that Baburam was alive and that on enquiry by him, Baburam had told him that the respondents had assaulted him with fire arms, as he was tutored by the police outside the court room was emphatically denied by him. It is interesting to note that to confuse this witness he was cross-examined for days together on the point as to where and in which direction houses of Kailash, Rajaram Subedar, Darbari etc. were situated. Such an attempt by defence lawyer can hardly be approved. On re-appreciation of evidence of Jhabbulal, this Court finds that he has not made major improvements in his testimony before the Court and the so-called discrepancies which are blown out of proportion by the High Court are minor in nature and do not relate to the substratum of the prosecution story. To say the least, this Court finds that the approach of the High Court in appreciating evidence of PW1 Jhabbulal who was a rustic witness is not only contrary to the well settled principles governing appreciation of evidence of a rustic witness but is p verse. At this stage, it would be well to recall to the memory the weighty observations made by this Court as early as in the year 1988 relating to appreciation of evidence and the duties expected of a Judge presiding over a criminal trial. In *State of U.P. v. Anil singh*, AIR 1988 SC 1998, it is observed as under :

> "In the great majority of cases, the prosecution version is rejected either for want of corroboration by independent witnesses, or for some falsehood stated or embroidery added by witnesses. In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. The indifferent attitude of the public in the investigation of crimes could also be pointed. The public

A are generally reluctant to come forward to depose before the Court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. It is also not proper to reject the case for want of corroboration by B independent witnesses if the case made out is otherwise true and acceptable. With regard to falsehood stated or embellishments added by the prosecution witnesses, it is well to remember that there is a tendency amongst witnesses in our country to back up a good case by false C or exaggerated version. It is also experienced that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the Court to cull out the D nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is E punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform."

11. There appears to be substance in the argument of the F learned counsel for the State that the feeble and insubstantial reasons have been given to disbelieve the trustworthy evidence of eye-witness, Jhabbulal as High Court had decided to give undeserved benefit of doubt to the respondents and had appreciated the evidence of PW1 Jhabbulal to find out G drawbacks and shortcomings in his evidence when, in fact, there were none.

12. Coming to the appreciation of evidence of another eye-witness, Madan Lal, this Court finds that the first fact kept in mind by the High Court was that at the time of occurrence, this H

witness was aged about six years and that his examination in chief was recorded almost after ten years from the date of occurrence, because at the time of recording of his examination in chief before the Trial Court, he had mentioned his age to be 16 years. It was highlighted by the High Court that in his examination in chief, it was claimed by this witness that he was sleeping on a cot along with his two brothers, i.e., deceased Umesh and deceased Dharmendra whereas his mother was sleeping on another cot and that when the accused had started firing he had slipped beneath the cot over which he was sleeping, but at another place it was stated by him that he was sleeping with his mother and had taken shelter under the said cot and therefore, the witness was not consistent as to the place from where he had witnessed the incident. The High Court adverted to the statement made by this witness that his elder sister, Sarla and elder brother Rajesh were also sleeping under the Chhapper but had managed to run away and Sarla had concealed herself behind a heap of woods lying on the western side in the courtyard itself. After examining site plan Exhibit- "ka" 14 the High Court observed that in the site plan, place where Sarla had allegedly taken shelter was not indicated nor any heap of woods was shown, and finally came to the conclusion that the witness was not reliable. The High Court took into consideration the statement made by this witness that when he had come out from beneath the cot, he had seen Sarla in the house and that many persons had assembled at his house after the occurrence but he was not able to identify them as he was a small child nor any of the persons assembled near his house had asked him as to who were the assailants and what they had done and therefore the High Court deduced that this witness was not present in the house at the time of the occurrence. A strange reasoning was adopted by the High Court to come to the conclusion that the witness was not a reliable one because he was a child of about six years of age at the time of occurrence. His statement in the trial court was recorded after a gap of about 10 years. It is inconceivable that child of his understanding would recapitulate facts in his

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A memory witnessed by him long ago. One of the reasons assigned by the High Court to disbelieve this witness was that Rajesh and Smt. Sarla who were of matured age and were in a better position to depose about the incident were not produced before the Trial Court for which no explanation
B whatsoever was given by the prosecution. The High Court readily accepted submission made by the counsel for the respondents that Rajesh and Smt. Sarla were not produced before the Court because obviously they were not prepared to support the false story set up by PW1, Jhabbulal in the FIR
C which was lodged by him against the respondents on account of his personal animosity. The High Court also found weight in the submission advanced by the advocate for the respondents that had these witnesses been produced before the Court, their evidence would have gone against the prosecution. The High
D Court again took notice of the fact that according to witness Madan Lal he had taken shelter under the cot over which he was sleeping along with his two brothers Umesh and Dharmendra who were killed by the assailants in the incident and concluded that it was ridiculous to believe that this witness
E who was younger than his two deceased brothers had taken shelter under the same cot without his presence being noticed by the assailants. After noticing that Smt. Sarla and Rajesh who were elder to the witness Madan Lal were not alleged to have sustained any injury, the High Court proceeded to record a finding of fact that these three children were not present inside
F the house at the time of occurrence on the spacious plea that if Madan Lal, PW2, and Rajesh as well as Smt. Sarla had been present, they would not have been spared by the assailants and that the theory set up at the trial that all these three children had concealed themselves at different places is not only an
G improvement but does not find support from the evidence on record as well as the spot inspection made by the investigating officer.

13. The abovestated reasons are the only grounds on
H which testimony of witness Madan Lal is disbelieved by the High

Court. This Court fails to understand as to on what principle and on which experience in real life, the High Court made a sweeping observation that it is inconceivable that a child of Madan Lal's understanding would be able to recapitulate facts in his memory witnessed by him long ago. There is no principle of law known to this Court that it is inconceivable that a child of tender age would not be able to recapitulate facts in his memory witnessed by him long ago. This witness has claimed on oath before the Court that he had seen five members of his family being ruthlessly killed by the respondents by firing gun shots. When a child of tender age witnesses gruesome murder of his father, mother, brothers etc. he is not likely to forget the incident for his whole life and would certainly recapitulate facts in his memory when asked about the same at any point of time, notwithstanding the gap of about ten years between the incident and recording of his evidence. This Court is of the firm opinion that it would be doing injustice to a child witness possessing sharp memory to say that it is inconceivable for him to recapitulate facts in his memory witnessed by him long ago. A child of tender age is always receptive to abnormal events which take place in its life and would never forget those events for the rest of his life. The child would be able to recapitulate correctly and exactly when asked about the same in future. Therefore, the spacious ground on which the reliable testimony of PW2, Madan Lal came to be disbelieved can hardly be affirmed by this Court. One of the reasons given by the High Court to disbelieve testimony of witness Madan Lal is that Rajesh and Smt. Sarla who were of mature age and were in a better position to depose about the incident were not produced before the Court. It is nobody's case that witness Madan lal was in charge of prosecution case. The Public Prosecutor was in charge of the case and it was for him to decide whether Rajesh and/or Smt. Sarla should be examined or not. The evidence of witness Madan Lal, in no uncertain terms, discloses that his brother Rajesh and sister Smt. Sarla were ready to depose before the Court about the incident. However, for non-production of his brother Rajesh and his sister Sarla before the

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A Court, witness Madan Lal was never responsible. He had not taken any decision for examining his brother Rajesh and Smt. Sarla. It was the discretion and decision of the Public Prosecutor due to which his brother and sister were not examined as witnesses. At no stage of the trial, the defence B had made a request to the Trial Court to call upon the Public Prosecutor to examine Rajesh and Smt. Sarla as witnesses. It is the case of the defence that Rajesh and Smt. Sarla had witnessed the incident and if they had been examined as witnesses, they would have deposed against the prosecution C case that the respondents were not responsible for murders of five family members of Guljari and brother of the first informant. In such circumstances, it was incumbent upon and open to the defence to examine Rajesh and/or Smt. Sarla as defence witness. No prayer was made by the defence to examine D Rajesh and Smt. Sarla even as court witnesses. Therefore, for non-examination of Rajesh and/or Smt. Sarla, witness Madan Lal could not have been blamed nor his evidence could have been brushed aside in a casual manner. The acceptance of submission made by the counsel for the respondents that Rajesh and Smt. Sarla were not produced because they were E not prepared to support the false story set up by PW1, Jhabbulal in his FIR against the respondents on account of his personal animosity, is not understandable at all and appears to be figment of imagination of the defence. Nothing could be brought on record or elicited from the cross-examination of either PW1 F Jhabbulal or PW2 Madan Lal to show that they were ready and willing to allow real culprits who had committed heinous crime and virtually wiped off family of Guljari and murdered real brother of the first informant to go scot free and implicate the respondents falsely in such a serious case.

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14. One of the reasons given by the High Court for disbelieving testimony of PW2, Madan Lal is that the evidence indicated that a large number of villagers had gathered outside the door of Gulzari Lal's house but not even one of them was H examined to justify that PW2 Madan Lal was present in his

house. The High Court has further held that presence of witness Madan Lal in his house becomes doubtful because if he had been present inside the house at the time of occurrence, his presence would have been noticed by the assailants and he would not have been spared by them. To say the least, these reasons are not tenable at all. As noticed earlier, the case of witness Madan lal is that on hearing sound of gun shots, he had slipped beneath the cot and from there witnessed the whole incident. This story appears to be probable because the incident had taken place during night time in the house and therefore it was possible for the witness to slip beneath the cot without being noticed by the assailants. It is nobody's case that the respondents, while killing Guljari and his family, had seen below the cot to find out whether any other member of Guljari's family was alive or not. Therefore, to say that Madanlal must not have been inside the room otherwise he would have been killed by the assailants is a far fitted reason which does not appeal to this Court. It is true that it has come in evidence that a large number of villagers had gathered outside the door of Guljari Lal's house. But this Court is of the opinion that it was not necessary for the prosecution to examine any of the witnesses to prove that he had seen PW2 Madan Lal in Madan Lal's house. PW2 Madan Lal himself is competent to state before the Court whether he was present in his house at the time of incident. Witness Madan Lal has given evidence in a simple manner without making any noticeable improvements and/or embellishments and, therefore, it was not necessary for the court to seek corroboration to his assertion that he was in his house when the incident had taken place. What is relevant to notice is that the court cannot forget the fact that at the time of incident, PW2 Madan Lal was a tender aged child. Normally, a child aged six years is not expected to be out of house at the dead of night and he is expected to be in the company of his parents. Moreover, the testimony of witness Lajveer Singh, PW3, who was posted at Police Station, Kayamganj, Farrukhabad shows that after registration of offences, ASI Gajraj Singh had recorded statements of those persons who

A were found to be conversant with the facts of the case and Gajraj Singh had also recorded statement of witness Madan Lal on August 11, 1991. If witness Madan lal had not been present in his house at the time when the incident had taken place, his police statement would not have been recorded by
B ASI Gajraj Singh at all. Thus, the reasons on which presence of PW2, Madan Lal is doubted is against the weight of evidence, human conduct and preponderance of probabilities. Further, at the time of incident, PW2, Madan Lal was of tender age and, therefore, incapable of nurturing any grudge against
C any of the respondents. No evidence could be produced nor any suggestion was made to witness Madan Lal during his cross-examination that something serious had happened between the date of incident and recording of evidence of witness Madan Lal in court, between Madan Lal and the
D respondents that Madan Lal was out to implicate the respondents falsely in such a serious case.

15. One of the grounds mentioned by the High Court in the impugned judgment for disbelieving the case of the prosecution is that Rajesh who was brother of PW2, Madan Lal and Smt.
E Sarla who is sister of witness Madan Lal as well as few of those who had collected near the door of the house of Guljari after the incident were not examined as witnesses in this case. As far as this ground is concerned, the Court notices that Section 134 of the Indian Evidence Act specifically provides that no
F particular number of witnesses shall, in any case, be required for the proof of any fact. It is well known principal of law that reliance can be placed on the solitary statement of a witness if the court comes to the conclusion that the said statement is the true and correct version of the case of the prosecution. The
G courts are concerned with the merit and the statement of a particular witness and not at all concerned with the number of witnesses examined by the prosecution. The time-honoured rule of appreciating evidence is that it has to be weighed and not counted. The law of evidence does not require any particular
H number of witnesses to be examined in proof of a given fact.

However, where, the court finds that the testimony of solitary witness is neither wholly reliable nor wholly unreliable, it may, in given set of facts, seek corroboration but to disbelieve reliable testimony of a solitary witness on the ground that others have not been examined is to do complete injustice to the prosecution. This Court, on re-appreciation of evidence, finds that the testimony of witness Madan Lal is cogent, consistent and reliable. Taking into consideration the manner in which witness Madan Lal had testified before the Court and the fact that nothing could be elicited in his lengthy cross-examination for days together to impeach his credibility, this Court is of the view that his testimony is reliable and can be accepted without any reservations. Therefore, non-examination of his brother or sister or few others who had gathered near the house of deceased Guljari Lal after the incident is of no significance and does not affect credibility of testimony of the said witness.

Cumulative effect of the above discussion is that the High Court was not justified in brushing aside testimony of PW2, Madan Lal while considering case of the prosecution against the respondents.

Yet another ground assigned by the High Court for disbelieving the testimony of first informant Jhabbulal and that of PW2 Madan Lal is that there was no electricity light in the village and, therefore, the claim made by both the witnesses that they had witnessed the incident in the light of electricity is untrustworthy. To begin with, this Court proposes to refer to the First Information Report lodged by witness Jhabbulal. The said report was brought on the record as Exhibit Ka-1. In the report, it is clearly mentioned that at the time of occurrence of the incident, there was electricity light at the place of incident and with the help of the said light, the first informant was able to witness the incident wherein five members of deceased Guljari's family came to be murdered by the respondents. The witness Jhabbulal has further stated that his brother Babu Ram, who was sleeping in his shop was dragged out from the shop

A by the respondents by breaking open the door of the shop and thereafter was murdered by them by firing gun shots. Regarding murder of Babu Ram also, it is mentioned in the First Information Report that electric bulb was burning at his house at the time of occurrence of the incident and, therefore, he was
B able to witness the murder of his brother Babu Ram. PW2, Madan Lal has stated that his father, mother and three real brothers were murdered by the respondents by firing gun shots and had asserted that at the time of the incident one bulb was burning on the main gate of his house whereas another bulb
C was burning on the thatched roof, i.e., near the place where the deceased had slept during the night of the incident. Though both the witnesses were cross-examined at great length by the learned counsel for the defence, nothing significant could be brought on record from which one can, with certainty deduce
D that there was no light of electricity bulbs at the place of the incident. Apart from what is mentioned by the two eye-witnesses regarding sufficiency of electricity light in which they had witnessed the incident, the sketch of the spot prepared by the Investigating Officer on August 11, 1991 in the presence of
E independent witnesses and produced as Exhibit Ka-14 shows that point 'L' mentioned in the panchnama of place of occurrence, a bulb has been shown burning at the main gate of the house of PW2 Madan Lal whereas another bulb is shown burning at the place mentioned as 'AL'. Thus, assertion made by the two eye-witnesses that they were able to witness the
F incident because of availability of sufficient electricity light gets corroboration from contemporaneous document, namely, Exhibit Ka-14. According to the High Court, the place pointed by PW2, Madan Lal where an electric bulb was hanging has not been shown in the site plan and on the contrary it has been
G shown at a different place. Even if it is assumed that the place mentioned by PW2, Madan Lal where an electric bulb was hanging is different from the place shown in the site plan, the fact remains that an electric bulb was hanging at the place of incident which is completely ignored by the High Court. It is
H relevant to notice that PW2, during the course of recording of

his statement before the Court had mentioned that he had shown to the Investigating Officer the place where the bulb was hanging but he was not in a position to specify the reason as to why the place shown by him to the Investigating Officer was not mentioned in the site plan. It may be mentioned that the Investigating Officer ASI Gajraj Singh, unfortunately, expired before the commencement of the trial and, therefore, another officer was examined who had taken a little part in the investigation. Thus, the contradiction and/or omission in the statement of the witness recorded under Section 161 of the Criminal Procedure Code could not be brought on the record of the case. In such circumstances, there was no reason for the High Court to disbelieve the claim made by PW2 Madan lal that he had shown to the Investigating Officer the place where the bulb was hanging. Jhabbulal had stated in this evidence that Guljari had taken electric line illegally be putting a wire on the main line which proceeded to the tube well of Suresh Chand DW1. The High Court relied upon the testimony of Suresh Chand that no villager had taken electricity from his tube well line and thereafter concluded that there was complete darkness in the whole village on account of Amavasya of rainy season and, therefore, it was not possible for the two eye-witnesses to witness the incident. It becomes absolutely necessary for this Court to scan the evidence of DW1. DW1 in his evidence before the Court stated that he was having a tubewell in village Lakhanpur prior to the date of incident and that tubewell was being operated with the electric power. It was also mentioned by him that the electricity connection was in running condition and that the electricity line passes through the village. What is stated by the witness is that during the night of the incident, he was not present in his village Lakhanpur but had gone to his sister's house situated in another village and that he had come back to his village on the third day of the date of the incident. If this witness was not present on the date of incident, he was least competent to depose before the Court as to whether on the date of incident there was electricity light in the village or not. A specific question as to whether on the fateful night

A electricity was taken illegally by putting Katiya to his wire was put to this witness. This witness was not able to answer this specific query naturally because he had admitted that on the date of incident he was not present in the village. The Trial Court rightly observed that it was not concerned with the question B whether the electric power was being consumed by the villagers legally or illegally and that the Court was only concerned with the question whether there was sufficient light on the date of incident to enable the witnesses to see the incident. The High Court has misread the evidence of DW1 Suresh Chand as well C as that of PW2 Madan Lal, wherein it was asserted by him that he had also taken illegal electricity connection and was consuming the same through the bulbs which according to him were burning on the date of incident. Thus the reliable evidence of PW1 and PW2 cannot be brushed aside on the ground that D Investigating Officer had not taken into possession the bulbs hanging on the place of incident. Thus, the High Court was not justified in holding that there was no electric power in the whole village and that there was complete darkness on account of *Amavasya* of rainy season due to which it was impossible for E the eye-witnesses to witness the incident. Further, the visibility capacity of urban people is not the standard to be applied to the villagers. PW2 Madan Lal has stated that the respondents had brought with them torches but as light of electricity was available in the house, torches were not put on. Thus, according to PW2 Madan Lal the respondents had in the light of electric F bulb recognized the deceased persons and had fired gun shots on them. Further, if light available was sufficient for the accused persons to identify their targets for firing shots, there is no reason why the witnesses would not be able to identify the respondents as the assailants. The statement of PW1 Jhabbulal G that Guljari had taken electric line illegally by putting a wire on the main line which proceeded to the tube well was disbelieved by the High Court on the ground that the Investigating Officer had not mentioned either in the site plan or in the inspection note that electric line had been taken in an unauthorized manner H from the main line which proceeded to the tube-well of Suresh

Chand. It is common experience of one and all that site plan or panchnama of place of incident is being prepared to indicate the state of things found at the place of incident. In site plan, Investigating Officer is not supposed to note whether electric line had been taken in an unauthorized manner or not. That is not the purpose for which site plan is prepared in a criminal case. Thus, without sufficient reason the High Court disbelieved the claim made by PW1 Jhabbulal that deceased Guljari had taken electric line illegally by putting a wire on the main line. On the facts and in the circumstances of the case emerging from the record, this Court is of the opinion that the High Court was not justified in coming to the conclusion that there was complete darkness in the whole village and, therefore, it was not possible for the eye-witnesses to see the incident.

The High Court has further held that motive alleged against deceased Guljari was developed for the first time during trial by witness Jhabbulal and there was no motive for the respondents to commit the murders of as many as five persons of the family of Gulzari Lal. A conjoint and purposeful reading of FIR with the reliable testimony of PW1 Jhabbulal and that of PW2 Madan Lal makes it very clear that the respondents were agitated and angry when the daughter of respondent No.1 had eloped with the son of the first informant. The evidence on record further shows that during the time of first elopement, on one day son of the first informant, i.e., Amar Singh, was spotted in the village and on learning about the fact that son of the first informant was seen in the village, the respondents were prepared to take revenge to what is known as to maintain honour of the family. However, the fact that Amar Singh was likely to be assaulted by the respondents had become known to wife of Guljari who had fore-warned Amar Singh and Amar Singh had, therefore, left the village to save his life. The evidence also indicates that the fact that Amar Singh had left the village all of a sudden because of information conveyed by wife of the deceased Gulzari that respondents were to assault him was later on learnt by the respondents and, therefore, the

A respondents were bearing a grudge against wife of Gulzari and against Gulzari. The record further shows that when the daughter of the respondent No.1 had returned to the village, Guljari in the presence of the first informant had made a suggestion to the respondent No.1 that he should get his B daughter married with the son of the first informant upon which the respondent No.1 had taken an offence and asked Gulzari not to play with the honour of his family. This Court is of the opinion that sufficient evidence has been led by the prosecution to establish motive which prompted the respondents to kill five C members of family of deceased Guljari. What weighed with the High Court in disbelieving the motive suggested by the prosecution was the fact that in the FIR lodged by PW1 Jhabbulal, it was not stated that because wife of Gulzari had forewarned Amar Singh about impending assault on him by the D respondents, the respondents were not able to take revenge against Amar Singh and that Gulzari had suggested to the respondent No.1 to get his daughter married with son of PW1. The High Court held that such story was developed for the first time during trial by witness Jhabbulal who was admittedly on inimical terms with the respondents. As far as this aspect is E concerned, this Court notices that the FIR need not be an encyclopedia of all the facts and circumstances on which the prosecution relies. The main purpose of the FIR is to enable a police officer to satisfy himself as to whether commission of cognizable offences is indicated so that further investigation F can be undertaken by him. The purpose of the FIR is to set the criminal law in motion and it is not customary to mention every minute detail of the prosecution case in the FIR. FIR is never treated as a substantive piece of evidence and has a limited use, i.e., it can be used for the corroborating or contradicting G the maker of it. Law requires FIR to contain basic prosecution case and not minute details. The law developed on the subject is that even if an accused is not named in the FIR he can be held guilty if prosecution leads reliable and satisfactory evidence which proves his participation in crime. Similarly, the H witnesses whose names are not mentioned in the FIR but

examined during the course of trial can be relied upon for the purpose of basing conviction against the accused. Non-mentioning of motive in the FIR cannot be regarded as omission to state important and material fact. As a principle, it has been ruled by this Court that omission to give details in the FIR as to manner in which weapon was used by accused is not material omission amounting to contradiction. Further, this is a case wherein FIR was filed by a rustic man and, therefore, non-mentioning of motive in the FIR cannot be attached much importance. In *Superintendent of Police, CBI & Ors. vs. Tapan Kumar Singh*, AIR 2003 SC 4140, it has been held by this Court that mere absence of indication about source of light in the FIR for identifying assailants does not, in any way, affect prosecution version. The FIR is not the last words in the prosecution case and in some cases detailed FIR could be a ground for suspicion. What is relevant to find out is whether the FIR was lodged promptly and whether it is actuated by mala fides. The record of this case indicates that FIR regarding gruesome murder of six persons was filed promptly and without any avoidable delay and, therefore, false implication of any of the respondents in such a grievous case stands ruled out. There is nothing on the record to show that FIR was result of deliberation by the first informant with other persons. As the FIR was lodged promptly, the inform ant, i.e., Jhabbulal's evidence containing minor variations not affecting substratum of prosecution story cannot be discarded on the ground that motive which prompted the respondents to kill six persons was not mentioned in the FIR. Further, it is well settled that the prosecution is not supposed to prove motive when prosecution relies on direct evidence, i.e., evidence of eye-witnesses. In this case, the prosecution has examined first informant as PW1 who has lost his brother in the incident as well as PW2 Madan Lal who lost five members of his family. Their evidence is found to be trustworthy and unimpeachable. As observed earlier, their evidence does not suffer from major contradiction and/or improvements nor noticeable embellishment have been made by them. As the prosecution has led acceptable eye-witnesses

A account of the incident, this Court is of the firm opinion that failure to establish motive would not entitle the respondents to claim acquittal.

16. There is yet another evidence in form of oral dying declaration which implicates the respondents in the murder of
B six persons i.e. oral dying declaration made by deceased Baburam before his brother Jhabbulal. The High Court committed serious error in disbelieving the oral dying declration made by deceased Baburam before his real brother Jhabbulal (PW1) implicating the respondents as his assailants. The
C reasons given by the High Court for disbelieving oral dying declaration was that it was not mentioned by witness Jhabbulal either in his FIR or in his statement recorded under Section 161 of Cr.P.C. As observed earlier FIR need not be an encyclopedia of minute details of the incident nor it is necessary
D to mention therein the evidence on which prosecution proposes to rely at the trial. The basic purpose of filing FIR is to set the criminal law into motion and not to state all the minute details therein. It is relevant to notice that six brutal and gruesome murders had taken place wherein fire arms were used. The
E hard reality of life is that the persons who has lost kith and kin in horrific incident is likely to suffer great shock and therefore law would not expect him to mention minutest details either in his FIR or statement under Section 161. The question before the Court is whether the assertion made by the witness that
F soon after the incident he had gone to the place where his injured brother was lying and on enquiry by him, his brother had told him that the respondents were his assailants, inspires confidence of the Court. Reading the evidence of the witness as a whole, this Court points that it has ring of truth in it. There
G is nothing improbable if a brother approaches his injured brother and tries to know from him as to how he had received the injuries nor it is improbable that an enquiry being made the injured brother would not give reply/information sought from him. The assertion by witness Jhabbulal that after the incident was over he had gone near his injured brother and tried to know as
H

to who were his assailants, whereupon his injured brother had replied that the respondents had caused injuries to him, could not be effectively challenged during cross-examination of the witness nor it could be brought on record that because of the nature of the injuries received by Baburam he would not have survived even for few minutes and must have died immediately on the receipt of the injuries.

17. The net result of the above discussion is that the High Court has acquitted respondents who were charged for commission of six murders in a casual and slipshod manner. The approach of the High Court in appreciating the evidence is not only contrary to the well settled principles of appreciation of evidence but quite contrary to ground realities of life. The High Court has recorded reasons for acquittal of the respondents which are not borne out from the record and quite contrary to the evidences adduced by the reliable eye-witnesses. The High Court was not justified in upsetting well reasoned conviction of the respondents recorded by the Trial Court which after observing demeanour of the eye-witnesses had placed reliance on their testimony. The High Court has not taken into consideration the full text of the evidence adduced by the witnesses and picked up sentences here and there from the testimony of the witnesses to come to a particular purpose. For example, the High Court has not ' ken into consideration the whole testimony of DW1 before coming to the conclusion that there was complete darkness in the village which prevented the eye-witnesses from witnessing the incident. The general impression this Court has gathered is that appreciation of evidence by the High Court is cursory and has done injustice to the prosecution.

18. On the facts and in the circumstances of the case, this Court is of the firm opinion that it is firmly established by the prosecution that respondents are persons who had committed six murders on August 10/11, 1991 and, therefore, liable to be convicted under Section 302 read with Section 34 IPC.

19. This Court has heard the learned counsel for the parties regarding sentence to be imposed on each respondent for

having committed offence punishable under Section 302 read with Section 34 IPC. This Court notices that the Trial Court had sentenced all the three respondents to capital punishment. There is no manner of doubt that killing six persons and wiping almost the whole family on flimsy ground of honour saving of the family would fall within the rarest of rare case evolved by this Court and, therefore, the Trial Court was perfectly justified in imposing capital punishment on the respondents. However, this Court also notices that the incident had roughly taken place before 20 years, i.e., on August 10/11, 1991. Further, the High Court had acquitted the respondents by judgment dated April 12, 2002. After April 12, 2002 till this date, nothing adverse against any of the respondents is reported to this Court. To sentence the respondents to death after their acquittal in the year 2002 would not be justified on the facts and in the circumstances of the case. Therefore, this Court is of the opinion that interest of justice would be served if each of the respondent is sentenced to RI for life and a fine of Rs.25,000/- each in default RI for two years for commission of offence punishable under Section 302 read with Section 34 IPC.

20. For the foregoing reasons, the appeal succeeds. The judgment dated April 12, 2002 rendered by the High Court of Judicature at Allahabad in Criminal appeal No.574 of 2001 acquitting the respondents of the offences punishable under Section 302 read with Section 34 IPC is hereby set aside. The judgment of the Trial Court convicting each of the respondents under Section 302 read with Section 34 IPC is hereby restored and each respondent is accordingly convicted under Section 302 read with Section 34 IPC. For the commission of offence punishable under Section 302 read with Section 34 IPC, each respondent is sentenced to RI for life and fine of Rs.25,000/- each, in default, RI for two years. Out of the amount of fine, if paid, a sum of Rs.50,000/- be paid to PW2, Madan Lal, as compensation in view of the provisions of Section 357 of the Code. The appeal accordingly stands disposed of.

N.J. Appeal disposed of.