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STATE OF U.P.

v.

RAM KUMAR & ORS.

(Criminal Appeal No. 1584 of 2010)

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JULY 20, 2017

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

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Penal Code, 1860 – s. 302 – Murder – Prosecution case that week before the incident altercation between informant and his step brothers-accused person – On the fateful day, accused person with the common intention of murdering the informant came and injured the informant, killed his wife by using firearms and caused death of one, and two children by putting the whole house to fire – Award of capital punishment by trial court – However, acquittal by High Court, since prosecution failed to prove the guilt of accused – On

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appeal, held: High Court relied on small inconsistencies and untenable grounds to set aside the well considered judgment of the trial court – Evidence of PW.1 and PW.2 regarding incident and identity of the accused rightly believed by trial court – Burning of lantern being fully proved, the High Court erred in holding that lantern was not burning and that the accused could not have been

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identified – Also, FIR was not ante timed and ante dated – Thus, order passed by the High Court set aside – Capital punishment reduced to life imprisonment.

Allowing the appeal, the Court

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HELD: 1. It is clear that the High Court concluded that lantern was not burning since, had the lantern been burning, there would have certainly been blackening on the peg and on the wall near to it. The trial court noticed the evidence and gave reason for holding that blackening on the wall was not there since the lantern was burning and hanging on a peg which was a long one.

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PW.1 stated that lantern was hanging on the peg in the midst of two doors. He stated that wall was never blackened since the peg was one hand long and thick; and that lantern was covered hence, no blackening was on the wall. [Para 26] [864-G-H; 865-A]

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2. The trial court believed the statement of PW.1 and held that the statement of PW.1 that there would not have been any blackening on the wall due to the long peg is correct. The High Court, thus, without any valid and cogent reason disbelieved the burning of lantern at the relevant time which was proved source of light. As regards a question put in the cross-examination to PW.1 that light of lantern cannot go beyond 8 feet, the trial court returned finding that accused were at a distance of only 7 to 8 feet from the witness and were recognized in the lantern light by the PW.1. Further, it has come on the evidence that the IO when visited the scene of occurrence at 12.30 a.m. in the night itself lantern was shown by 'P' another son of informant and the lantern was given in the superdagi of 'P'. The High Court noted the statement of IO in regard to the lantern. The statement of the IO was not to the effect that there was no blackening on the wall. Statement was that he does not recollect as to whether there was blackening on the wall or on the peg or not. The High Court proceeded on the premises that it was stated that there was no blackening on the wall. The very premise of the High Court, thus, to reject the burning of the lantern is fallacious and is the result of the misreading of the statement of the IO. [Paras 27-30] [865-B-G]

3. Accused were all family members and well known to the witnesses. 'RP' was step brother of informant, his sons and nephew were with him. Informant also stated that 'RP' exhorted the accused to kill 'ML'. There cannot be any mistake regarding identification of the family members who apart from being family members are residing in the nearby houses. The evidence of PW.2 regarding identification of the accused was also rightly believed by the trial court. PW.2 stated that when he along with other family members bolted themselves in his Kothari, the accused came and asked him to open the door. They told PW.2 to open the door, they will not kill'. He further stated that when he did not open the door, they put the house on fire. PW.2 further stated that he had seen the accused from 'Jhiri' of the door. He further stated that he recognised them by their voices and also when the house was lit on fire, in its light he recognised the accused. There was sufficient evidence on the record which was

A rightly believed by the trial court that all the accused were present on the spot at the time of occurrence. Thus, High Court erred in holding that lantern was not burning and the accused could not have been identified. [Paras 31, 32] [865-H; 866-A-D]

B 4. The High Court stated that there was no proof regarding any earlier dispute between informant and 'RP'. The High Court observed that prosecution did not examine any other witness of the Panchyat and further the dispute was not such as to constitute immediate motive to kill the family members. When PW.1 and PW.2 both have stated that one week before the incident there was dispute between informant and 'RP' for Nabdan which was flowing in the western side near the house of 'RP'. The genesis of dispute laid there. Further observation of the High Court was that the dispute was not of such a nature, so as to give the accused any motive to kill the family members of the witnesses. The said view of the High Court cannot be accepted. On a particular incident how a human being will react is not easy to comprehend. There was no other evidence before the High Court to come to the conclusion that there was no dispute between informant and 'RP'. [Para 33] [863-D-G]

E 5. The High Court made adverse observation regarding ante dated and ante timed FIR. The High Court noticed the argument of the defence that in the inquest report prepared by the ASI, the crime number and section were written in different ink. The High Court further stated that prosecution cared least to prove the time of sending the special report and date on which FIR came before the Court concerned. The fact that in the inquest report the crime number and date are written in different ink, are not the facts on which the prosecution case can be disbelieved by the Court concerned. IO in his statement clearly stated that at 10.15 p.m. on 9.10.1995 informant reached Police Station and he was present at that time when the informant had given written report which was directed to be registered. IO also started for place of occurrence at 12.05 a.m. and reached at about 12.30 a.m. on 10.10.1995. The inquest report was also prepared on 10.10.1995 at 6 a.m. Furthermore, from Police Station the injured were sent to District Hospital and were examined at 1.45 a.m. i.e. in the night. Sequence of the events belies the argument that the FIR was not registered at the time and on the date as claimed.

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The High Court further observed that PW.1 has stated that he became unconscious after the incident and he was unconscious till he reached Police Station. The High Court observed that how it was possible that the FIR was dictated to 'MP'. This aspect was very carefully considered by the trial court and trial court examined and correctly analysed the said statement of PW.1. The trial court rightly believed that FIR was written on dictation by 'MP' and after FIR was read over to informant he put his thumb impression on it and the same written report was given to the Police Station which is also proved from the Police records. On the doubt expressed by the High Court regarding writing of FIR on dictation of informant since he claimed to be unconscious, this is not of any material significance on which evidence of PW.1 regarding preparing and lodging of FIR could have been doubted. [Paras 34, 35, 37] [866-H; 867-A-E; 868-F-G]

6. Reading of the judgment of the High Court clearly reveals that there are no such reasons given by the High Court on which the evidence of injured witnesses could be disbelieved, the minor inconsistencies pointed out by the High Court were inconsequential. The prosecution by cogent reason successfully proved that the accused with the common intention of murdering 'ML' came and injured 'ML', killed his wife by using firearms and caused death of 'SK' and two children by putting the whole house to fire. A perusal of judgment of the High Court gives an impression that the High Court relied on small inconsistencies and untenable grounds to set aside the well considered judgment of the trial court. There were no such grounds or reasons on which evidence of PW.1 and PW.2 regarding incident and identity of the accused could be disbelieved. [Para 38, 41] [868-H; 869-A; 870-E]

7. Two accused 'RP' and 'DS' have already died, only three accused 'RK', 'RM' and 'K' remain. The High Court acquitted the accused about 10 years ago. Taking into consideration over all facts and circumstances of the case, at this distance of time confirming the capital punishment to the accused is not an appropriate punishment. Other punishments awarded by the trial court is confirmed except capital punishment which is converted into life imprisonment. The High Court judgment is set aside. Accused 'RK', 'RM' and 'K' are directed to be taken into custody

A **forthwith to serve out the sentences awarded. [Para 42] [870G-H; 871-A]**

Brahm Swaroop and another v. State of Uttar Pradesh
(2011) 6 SCC 288 : [2010] 15 SCR 1 – referred to.

Case Law Reference

B **[2010] 15 SCR 1 referred to Para 38**

CRIMINALAPPELLATE JURISDICTION: Criminal Appeal No. 1584 of 2010.

From the Judgment and Order dated 11.10.2002 of the High Court of Judicature at Allahabad, Lucknow Bench Lucknow in Criminal Appeal Nos. 84 and 121 of 2001.

C D. K. Singh, AAG, Adarsh Upadhyay, Vikas Chaudhary, Ms. Komal Mundhra, Advs. for the Appellant.

Ajay Sharma, Ms. Nidhi, Ms. Puja Sharma, Advs. for the Respondents.

D The Judgment of the Court was delivered by

ASHOK BHUSHAN, J. 1. The State is in appeal against the judgment of the High Court of Judicature at Allahabad dated 11.10.2002 in Capital Sentence Reference No. 1 of 2001 and three criminal appeals filed by the accused.

E 2. The High Court rejected the Capital Sentence Reference made by Additional Sessions Judge and allowed the criminal appeals filed by the accused acquitting them from the charges. The Fifth Additional Sessions Judge *vide* its judgment dated 18.01.2001 had convicted the accused Ram Prasad, Ram Kumar, Ramakant, Kalloo and Daya Shankar and by order dated 19.01.2001 had awarded death sentence with other sentences.

F 3. The prosecution story, in brief, is that when at 7.30 P.M. on 09.10.1995 PW. 1 Mohan Lal was sitting outside his house and his wife, now deceased lying on a cot near him, the accused persons armed with deadly weapons reached there and on exhortation of accused Ram Prasad to kill Mohan Lal accused Daya Shankar, Ramakant and Ram Kumar started firing due to which PW.1 Mohan Lal had to run for safety but sustained firearm injuries including the wife who was present with him. The accused persons followed PW. 1 Mohan Lal inside the house and on not finding him there demanded from the other family members

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to open the door of the room in which they had locked themselves fearing for their life due to the sudden assault by the accused persons. When on demand the door was not opened the accused persons set on fire the house due to which three humans including one child and one animal lost their lives. Smt. Makhana wife of the informant PW. 1 Mohan Lal who had sustained firearm injuries also succumbed to those injuries. A

4. A written report was lodged by the injured PW.1 Mohan Lal at the police station at 10.15 P.M. the same night. According to the report lodged the accused persons were of the family of his step brother and the assault was due to the altercation which had taken place between the informant and the accused Ram Prasad his step brother one week ago. B

5. The I.O., B. P. Singh who was present in the Police Station at the time of lodging of First Information Report, after lodging of the report proceeded to place of occurrence at 12.05 A.M. on 10.10.1995. At 12.30 A.M., he reached the place of occurrence. He directed Shri Nisanath Misra, Sub Inspector Police Chowki, to conduct the Inquest Report of the deceased Sarvesh Kumari, Kumari Kunti aged 03 years, and Santosh son of Ram Asrey aged 09 years. C

6. I.O. inspected the place of occurrence, collected the blood found on the spot, collected ashes of burnt chhappar and also examined the lantern (lalten) which was stated to be burning at the time of occurrence and gave it in the supurdgi of Parshuram son of Mohan Lal. I.O. had already recorded the statement of Mohan Lal, the informant at the Police Station itself. The inquest of the deceased started at 6 A.M. on 10.10.1995. D

7. Injured Mohan Lal, Ram Asrey, Smt. Shakuntla and Guddu were sent from the Police Station itself to the District Hospital. Medical examination of injured was conducted at 1.45 A.M. on 10.10.1995, which had revealed firearm injuries on different parts of the bodies of Mohan Lal. Medical examination of Ram Asrey, Shakuntala and Guddu had revealed that they were suffering from inhalation of carbon dioxide and carbon mono oxide. E

8. The postmortem was also conducted of deceased Sarvesh Kumari, Kumari Kunti, Santosh and Smt. Makhana. The postmortem report of Sarvesh Kumari, Kumari Kunti and Santosh revealed that death had occurred due to suffocation from the smoke. Postmortem of Smt. F

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A Makhana revealed fire arm injury on the chest to the extent of 15 X 17 cm. Postmortem report opined that death had occurred due to firearm injury sustained by the deceased. Postmortem of the she buffalo was also conducted by the veterinary doctor, who also opined that she buffalo died due to third-degree burns.

B 9. The Police submitted the chargesheet against Ram Prasad, Ram Kumar, Ramakant, Kalloo and Shripal on which Sessions Trial No. 6/96 was registered and against one Daya Shankar, on which Sessions Trial No. 412/96 was registered. The Prosecution produced 08 witnesses. PW. 1 Mohan Lal (informant and injured eyewitness), PW. 2 Ram Asrey (son of Mohan Lal and injured eyewitness) PW. 3 Nisanath Misra (Sub Inspector who conducted the Inquest Report of body of Smt. Sarvesh Kumari, Kumari Kunti and Santosh). PW. 4 Dr. Jalaludeen (conducted the post mortem of Smt. Sarvesh, Kumari Kunti, Santosh and Smt. Makhana) PW. 5 Dr. Veerender Kumar Trivedi, Veterinary Doctor (who conducted the postmortem of she buffalo), PW. 6 Dr. J. L. Gautam (who examined the injured, namely, Mohan Lal, Guddu, Ram Asrey, Smt. Shakuntala and Chotey Lal), PW. 7 B. P. Singh Inspector (I.O.), PW. 8 Dr. R. C. Agrawal Radiologist.

E 10. No witness was examined by defence. Statements under Section 313 Cr. P. C. were recorded of all the accused, who in their statements denied the allegation and alleged false persecution due to enmity. The trial court heard the parties and after analyzing the evidence available on record held eyewitnesses PW.1 and PW.2 trustworthy and found the guilt proved against accused Ram Prasad, Ram Kumar, Ramakant, Kalloo and Daya Shankar and looking into the heinous and barbaric murder, awarded the capital punishment to all of them. Accused F Shripal, was acquitted as having not been found involved in the crime. Learned Sessions Judge sent Reference to the High Court for confirmation of death sentence. All the convicted accused filed criminal appeals.

G 11. The High Court decided the death confirmation reference as well as criminal appeals filed by the convicted accused by its judgment and order dated 11.10.2002. The High Court by impugned judgment held that evidence of injured Mohan Lal and Ram Asrey is totally untrustworthy and unreliable. Doubt is, having created that First Information Report was ante timed and ante dated and there was no source of light to identify the assailants at the time of incident. The State H

aggrieved by the above judgment has come up with this appeal. The Respondent No. 1 Ram Prasad died and the appeal has been abated by order dated 08.03.2013. Accused Daya Shankar died during pendency of this matter and Special Leave Petition(Criminal) filed by the State was dismissed as having abated by this Court's order dated 12.02.2007. A

12. We have heard Shri D. K. Singh Additional Advocate General for the State of U. P. and Mrs. Puja Sharma, learned counsel appearing for Respondent No.2. B

13. Learned Additional Advocate General submitted:

(i) That evidence of eyewitnesses was correctly appreciated and believed by the trial court whereas, High Court on surmises and conjectures held evidence of PW. 1 and PW. 2 untrustworthy. It is submitted that appreciation of the evidence by the High Court is perverse. Without any valid reason evidence led by the prosecution has been disbelieved. C

(ii) Referring to the finding of the High Court that there was no source of light at the time of occurrence, it is contended that burning of lantern at the time of occurrence was proved by eyewitnesses PW. 1 and PW. 2 which lantern was also shown to the I.O., who examined the same in the same night. The High Court misdirected in observing that since there was no blackening on the wall, the burning of lantern is doubtful. PW.1 had already clearly explained in his statement that peg on which lantern was hung, was long one hence there was no blackening on the peg or wall. Without considering the statement of PW. 1, High Court unnecessarily jumped to the conclusion that there was no light and accused could not have been identified. D E F

(iii) The High Court had also committed error in holding that prosecution failed to prove that there was dispute regarding Nabdan. Eyewitnesses proved that one week before the incident, there was dispute between the parties who were no other than step brother of Mohan Lal, step brother's sons and one nephew of Ram Prasad. G

(iv) Observation made by the High Court that there were doubts regarding date and time of lodging of the FIR were nothing but surmises and conjectures by the High Court. A written report H

A was given to the Police Station at 10.15 P.M. on the same night. Immediately thereafter, I.O. reached at the place of incident in the same night at 12.30 A.M. The mere fact that on the Inquest Report FIR No. was written by different ink cannot be the basis for observing that FIR was ante timed or ante dated.

B (v) The doubt has been expressed by the High Court that when Mohan Lal himself stated that after incident he became unconscious then how can he dictate the FIR, which case of defence was properly dealt by the Sessions Judge who had examined and correctly explained the statement of Mohan Lal regarding his unconsciousness.

C (vi) Minor contradictions and omissions cannot be the basis for rejecting the prosecution theory. The High Court had tried to dig out the minor contradictions and omissions on the basis of which a capital is sought to be made, which is clearly against the settled law.

D 14. Learned counsel appearing for Respondent No. 2 supported the judgment of the High Court and have submitted that capital punishment awarded by the trial court in any view of the matter could not be sustained in the facts of the present case.

E 15. We have considered, the submission of the learned counsel for the parties, gone through the judgments of the High Court and the trial court and have also perused the lower court records including the statement of the witnesses and other materials on record.

F 16. The prosecution case is mainly based on oral evidence of PW.1 Mohan Lal and PW.2 Ram Asrey. Mohan Lal received the firearm injuries fired upon him by the accused and on the same day after lodging of the First Information Report he was sent to the District Hospital for medical examination. Dr. J.L. Gautam, Emergency Medical Officer, District Hospital, Hardoi had examined Mohan Lal at 1.45 a.m. on 10.10.1995. Three injuries were noticed on the body of the injured. Doctor G opined that all injuries were caused due to firearm. In this reference, it is relevant to notice that Smt. Makhana, wife of Mohan Lal, was also lying on the cot near the door of the house of Mohan Lal. At 7.30 p.m. accused came and fired both on Mohan Lal and his wife. Smt. Makhana, wife of Mohan Lal died while being taken to the District Hospital. On 10.10.1995 H in the evening postmortem of Smt. Makhana was conducted. The injuries

which were all ante mortem were noted in postmortem report (translated in English from Hindi) to the following effect: A

“Wound of insertion of the bullet in front of the chest which was in 15 c.m. X 17 c.m. area. The wound was deep up to 3 c.m. X 3 c.m. flesh of the chest. The wound was lacerated from front to inner side of the body and direction of potholes were from front to back.” B

17. The medical injury report of PW.1 as well as postmortem report of Smt. Makhana clearly supports the prosecution case regarding the manner in which accused came and fired on the Mohan Lal and his wife who were at that time outside the house. The medical report fully corroborates the time of incident i.e. 7.30 p.m. as claimed in the FIR. C

18. The trial court in its judgment after perusing the evidence recorded finding in paragraph 19 of the judgment that there is no dispute that on 9.10.1995 at 7.30 p.m. in the evening the incident of firing of gunshots at the house of informant had taken place due to which he sustained gunshots injuries and his wife Makhana died. Thereafter the fire was lit to the house of Mohan Lal. It is relevant to extract the following observation recorded by the trial court in paragraph 19 of the judgment: D

“19. ...I deem it important to mention that the evidence available on the file and from the statements given by the accused persons under Section 313 Cr.P.C. and on the basis of the arguments made before me this fact does not remain disputed that on 9.10.95 at 7.30 p.m. in the evening the incident of firing of gunshots at the house of the plaintiff Mohan has taken place due to which he sustained gunshots injuries and due to gunshots injuries his wife Makhana died. Thereafter the fire was lit to the house of the plaintiff Mohan Lal, due to which the persons who have closed themselves inside the room to save them, out of them Sarvesh Kumari and two children Km. Kunti and Santosh have died due to suffocation of the smoke of the fire and one she buffalo of the plaintiff also died and the son of the plaintiff and the wife of his son and two others were adversely affected by the smoke of the fire...” E F G

19. PW.1 Mohan Lal in his statement has clearly stated that one week before the incident with regard to eastern Nabdan of informant there has been talks between informant and Ram Prasad. Ram Prasad H

- A asked to close the Nabdan on which informant stated that Nabdan is on Gramsamaj land and not in Ram Prasad's land hence it will not be closed by the informant. Ram Prasad extended threat of killing to the informant due to which the accused harboured enmity with the informant. He further stated that on 9.10.1995 at about 7.30 p.m., when he was sitting near southern door and his wife was lying on the cot towards south, lantern
- B was also burning on the peg above the door, at that time from northern side accused persons came having guns in their hands. Ram Prasad immediately exhorted others to kill Mohan Lal. By that time he could only stand up from earth and his wife could sit on the cot, Daya Shanker, Ramakant and Ram Kumar fired on which witness ran inside the house.
- C When he stood up he received firearm shot and when he entered into the house second firearm shot hit him. His wife also received firearm shot injuries. When accused entered, the witness ran from inside by western side door and went out from the house. Accused ran behind the witness. The other family members, who were present inside the house, bolted themselves in the room of Ram Asrey. The accused asked them
- D to open the door and when they did not open the door, the accused set the house on fire. He stated that when he ran he had seen the accused. He further stated that certain persons of the village came and accused ran away. Due to suffocation wife of Munna, daughter of Munna and son of Ram Asrey died. Ram Asrey his wife and son also became
- E unconscious. A buffalo also died in this incident. Villagers put off the fire. He further stated that he dictated the written report to Maujiram, Pradhan and after completion of dictation, FIR was read over to him and he put his thumb impression on it. PW.1 along with his wife and other persons who were unconscious proceeded to Police Station and at
- F 10.15 p.m. written report was given to the Munshi of the Police Station who registered the report. He along with two Police Constables was sent to District Hospital and on the way his wife died. PW.2 Ram Asrey, son of Mohan Lal, also supported the prosecution case. He stated that his father and mother were sitting outside the house and a lantern was burning above the door and other family members including Ram Asrey
- G were inside. Accused came and fired on which father of the witness ran inside the house and told that accused had arrived with firearms and have fired. Ram Asrey and other family members bolted themselves in a 'Kothari'. All the accused asked them to open the door. When they did not open the door, Daya Shanker told if the door was not open, put the house on fire, accused put the house on fire. Due to suffocation of the
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smoke of fire, Sarvesh Kumari wife of Munna, Kunti daughter of Munna and Santosh son of Ram Asrey died and one buffalo also died. Ram Asrey, his wife and his son Guddu became unconscious due to suffocation. Ram Asrey in his cross-examination also stated that lantern was burning. He has seen the accused from 'Jhiri' of the door. Further, he had recognised the accused from their voices who asked the witness to open the door.

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20. After marshalling the evidence on record, the trial court returned the following findings:

"The fact that the witnesses had colluded with the Accused Persons has not been contradicted.

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There has been no delay in lodging the FIR. Further, merely because PW-1 has stated in his main examination that he had got the report written at home through Maujiram Pradhan, while in his argument he has stated that he got it written at the police station, does not make the FIR a concocted one.

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The said witness has stated that he was brought to the police station in a state of unconsciousness by the Pradhan, to which the defence has stated that it was not possible for him to lodge the FIR. However, he hid and waited quietly for the Accused Persons to leave for the safety of his life, and therefore, he had not become immediately unconscious due to the fire. Further, as soon as he ran towards his house, he warned his son, PW-2, and informed him quickly that the Accused Persons had attacked him. Therefore, statement given by PW-1 as regards his unconsciousness is hyperbolic.

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The fact that there is insertion of the name of Shripal in the written complaint, while PW-1 has denied his involvement in the incident, does not render the written complaint bad or incorrect. Further, his name may have been added by mistake of the Pradhan, as PW-1 has not stated anywhere about him firing any shots, but has in fact, stated that he helped put out the fire at the place of the incident. Similarly, even in the statement of PW-2, the name of Shripal is not mentioned anywhere.

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Merely because the wall on which the lantern was hanging

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A *was not blackened, does not mean anything, as the peg/rod on which it rested was long one.*

B *It was argued by the defence that the visibility in the light of the lantern was only up to 8 steps, and so it was not possible for PW-1 to see the Accused Persons. However, the Accused Persons were at a distance of only 6 to 7 feet, and therefore, it was not hard to identify them in the light. Even otherwise, the Accused Persons were not outsiders, and it was easy to recognize them from their voices.*

C *The argument that no cartridges or tikkahs were found on the place of incident is of no consequence, as the place of occurrence of the said incident is not disputed. Further, it was the negligence on the part of the IO if he could not find bullet marks, and the benefit of such negligence cannot be given to the defence.*

D *The witness, PW-2, Ram Ashrey recognized the Accused-Respondents from the side of the door of the room in which he was locked, as well as from their voice. Further, the light from the burning thatched roof also aided his vision.”*

E 21. The trial court awarded capital sentence noticing the gruesome and barbaric act and murder committed by the accused. The High Court while deciding the Death Reference and appeals has set aside the judgment of the trial court and acquitted all the accused.

22. The High court by giving following reasoning and finding has set aside the judgment of the trial court and acquitted the accused:

F *“As regards the fact of the dispute between the Accused and PW-1 as regards the Nabdan, the prosecution has not examined any other witnesses or the panchayat. Therefore, in the absence of the evidences of the panchas, it will not be safe to place reliance on the same. Further, the dispute was not of such a nature, so as to give the Accused Persons any motive to kill the family of the witnesses/complainants.*

G *Since all the parties belonged to the same family, it appears unlikely that the Accused Persons attempted to kill them or had any motive to do so.*

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The High Court has observed that PW-1 stated in his examination in chief that he got the report written by Maujiram Pradhan, and put his thumb impression on it, after the same was read out to him. In his cross-examination(16.02.1999 – after 4 years), he has stated that he fell unconscious after his house was set on fire, and it was in that state that the Pradhan took him to the Police Station, where the written report was prepared. He also stated that he had never asked the scribe to note down the name of Shripal.

It has been argued that the complaint was written in one ink, while the case number and sections were written in a different ink and stroke, and it appears that the FIR was not in existence on 10.10.1995. The High Court has held that although it is not possible to prove that the said FIR was ante dated and ante times, but the facts and circumstances create a doubt in the mind. Nothing in this regard has been explained by PW-3.

It was not natural on the part of PW-1 to dictate an FIR soon after the incident in his house, and his natural conduct would have been to take the injured to the hospital.

Had the lantern been burning on the wall every day, the same would have created a black mark on the said wall. [IO has stated that he does not recollect the factum of the blackening.]

Ram Ashrey could not have identified the Accused or the culprits in the light created by flamer of the burning chapper, as this was not mentioned in the FIR. It is also unbelievable that the flames would have come to high as to create enough light for such identification. Further, he fact that he came to know of the same also from his father does not inspire confidence.”

23. We have noticed the findings and reasoning given by the trial court as well as by the High court. We have also gone through the oral evidence of the witnesses and exhibits on the record.

24. One of the main reasons for acquittal of the accused given by the High Court is that there was no source of light, lantern was not burning on the date of incident since there was no blackening on the

A wall, hence it was not possible for PW.1 and PW.2 to identify the accused. The prosecution failed to prove the guilt of accused. We proceed to examine the first issue pertaining to source of light and the burning of lantern.

25. Before we examine the evidence pertaining to source of light, burning of lantern and identification of accused by PW.1 and PW.2, it is necessary to refer to judgment of the High Court in the above reference. With regard to burning of lantern following is the discussion of the High Court:

“Ram Asrey PW.2 has tried to support on the point of the burning of the lantern. In his cross-examination he says that it is wrong to say that he identified the culprits in the lantern light. He says on page 6 that the lantern was burning towards south of the place, where his father was sitting. The investigating officer, Sri. B.P. Singh, who inspected the lantern and prepared fard, says that he does not recollect as to whether there was blackening on the wall or on the peg where lantern was allegedly burning at the time of the incident.

Learned counsel for the appellants have submitted that the discrepancy in between the evidence of Mohan Lal and his son Ram Asrey in regard to the actual place of burning of the lantern and absence of any blackening etc. on the wall or on the peg, creates doubt whether lantern was actually burning at the relevant time.

After careful scrutiny of the evidence on record, we find ourselves in agreement with the learned counsel for the appellants. Had the lantern been burning and hanging in a peg as usual, there would have certainly been some blackening on the peg and on the wall near to it.”

26. From the above, it is clear that the High Court concluded that lantern was not burning since, had the lantern been burning, there would have certainly been blackening on the peg and on the wall near to it. The trial court had already noticed the evidence given in the above context and gave reason for holding that blackening on the wall was not there since the lantern was burning and hanging on a peg which was a long one. We again revert on the evidence of PW.1. In his statement he has

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stated that lantern was hanging on the peg in the midst of two doors. He stated that wall was never blackened since the peg was one hand long and thick. He further stated that lantern was covered hence no blackening was on the wall. A

27. The trial court as noted above has believed on the statement of PW.1 and held that the statement of PW.1 that there would not have been any blackening on the wall due to the long peg is correct. The High Court, thus, without any valid and cogent reason has disbelieved the burning of lantern at the relevant time which was proved source of light. B

28. A question was also put in the cross-examination to PW.1 that light of lantern cannot go beyond 8 feet. The trial court had returned finding that accused were at a distance of only 7 to 8 feet from the witness and were recognized in the lantern light by the PW.1. C

29. There is one more reason by which the above view of the High Court regarding not burning of lantern is out rightly to be rejected. It has come on the evidence that the IO when visited the scene of occurrence at 12.30 a.m. in the night itself lantern was shown by Parshuram another son of informant and the lantern was given in the superdagi of Parshuram. The High Court has noted the statement of IO in regard to the lantern as extracted above which was to the following effect: D

"...he does not recollect as to whether there was blackening on the wall or on the peg where lantern was allegedly burning at the time of the incident..." E

30. The statement of the IO was not to the effect that there was no blackening on the wall. Statement was that he does not recollect as to whether there was blackening on the wall or on the peg or not. The High Court proceeded on the premises that it was stated that there was no blackening on the wall. The very premise of the High Court, thus, to reject the burning of the lantern is fallacious and is the result of the misreading of the statement of the IO. The burning of lantern being fully proved, the High Court committed error in putting off the light of lantern from the case. F G

31. It is also relevant to note that accused were all family members and well known to the witnesses. Ram Prasad was step brother of informant, his sons and nephew were with him. Informant has also stated H

A that Ram Prasad exhorted the accused to kill Mohan Lal. There cannot
be any mistake regarding identification of the family members who apart
from being family members are residing in the nearby houses.

32. The evidence of PW.2 Ram Asrey regarding identification of
the accused was also rightly believed by the trial court. Ram Asrey in
B his statement has stated that when he along with other family members
bolted themselves in his Kothari, the accused came and asked him to
open the door. They told that 'Ram Asrey open the door they will not
kill'. He further stated that when he did not open the door, they put the
house on fire. Ram Asrey further stated that he had seen the accused
C from 'Jhiri' of the door. He further stated that he recognised them by
their voices and also when the house was lit on fire, in its light he
recognised the accused. There was sufficient evidence on the record
which was rightly believed by the trial court that all the accused were
present on the spot at the time of occurrence. We are, thus, of the view
that High Court erred in holding that lantern was not burning and the
D accused could not have been identified.

33. The High Court has further stated that there was no proof
regarding any earlier dispute between informant and Ram Prasad. The
High Court has observed that prosecution has not examined any other
witness of the Panchyat and further the dispute was not such as to
E constitute immediate motive to kill the family members. When PW.1
and PW.2 both have stated that one week before the incident there was
dispute between informant and Ram Prasad for Nabdan which was
flowing in the western side near the house of Ram Prasad. The genesis
of dispute laid there. Further observation of the High Court is that the
dispute was not of such a nature, so as to give the accused any motive to
F kill the family members of the witnesses. We do not subscribe the above
view of the High Court. On a particular incident how a human being will
react is not easy to comprehend. There was no other evidence before
the High Court to come to the conclusion that there was no dispute
between informant and Ram Prasad. The said observations were based
G on no evidence. It is, however, relevant to note that the High Court
itself has observed that where prosecution has adduced direct evidence
on the point of actual occurrence, search for motive is only academic
and with a view to clear the conscience of the Court.

34. The High Court has also made adverse observation regarding
H ante dated and ante timed FIR. The High Court has noticed the argument

of the defence that in the inquest report prepared by the ASI, Nishant A
Mishra on 10.10.1995 the crime number and section were written in
different ink. The High Court further stated that prosecution cared least
to prove the time of sending the special report and date on which chick
FIR came before the Court concerned. The fact that in the inquest report
the crime number and date are written in different ink, are not the facts B
on which the prosecution case can be disbelieved by the Court concerned.
IO in his statement clearly stated that at 10.15 p.m. on 9.10.1995
informant reached Police Station and he was present at that time when
the informant had given written report which was directed to be registered.
IO also started for place of occurrence at 12.05 a.m. and reached at
about 12.30 a.m. on 10.10.1995. The inquest report was also prepared C
on 10.10.1995 at 6 a.m.

35. It is further relevant to note that from Police Station the injured
were sent to District Hospital and were examined at 1.45 a.m. I.e. in the
night. Sequence of the events belies the argument that the FIR was not
registered at the time and on the date as claimed. The High Court D
further observed that PW.1 has stated that he became unconscious after
the incident and he was unconscious till he reached Police Station. The
High Court has observed that how it was possible that the FIR was
dictated to Maujiram Pradhan. This aspect was very carefully considered
by the trial court and trial court had examined and correctly analysed the
aforesaid statement of PW.1. E

36. The trial court has dealt with the aforesaid statement in the
following manner:

‘ “...Mohan Lal P.W.1 has stated during the course of his
arguments that after the fire was lit he had become F
unconscious and in the condition of his unconsciousness he
had been brought by the Pradhan to the Police Station. On
this point it has been stated on behalf of the defence side that
if he had become unconscious as to how he had got written
the report Ext.ka-1 by speaking himself. In my opinion the
statement given by Mohan Lal PW-1 during the course of G
argument is hyperbolic. Some time the witnesses used to
emphasize their statement by speaking hyperbolically. Even
then on analyzing all the evidences it is known that what is
the reality. Mohan lal PW-1 has clearly stated in his arguments
that immediately on hitting the gunshot to him he had run and H

A *went inside the house and then stated at his western side of*
the house and did not go to the village and remained
concealed himself and he said that he had not made noise
because the accused persons would have killed him. Until
the accused persons remained at my house. I remained
B *concealed myself. After there going I had cried. From this it*
is evident that after fire was lit to his house Mohan Lal PW-1
was not unconscious. Not only this Ram Asarey P.W-2 has
stated that on hitting the gunshot to his father he came by
running inside the house and he ahd told the incident of firing
of gunshots and thereafter my father (Mohan Lal) came outside
C *by running. Thus it is clear that the statement which has been*
given by Mohan Lal with regard to his unconsciousness that
is hyperbolic statement. On this basis it is not in the interest
of justice to have any doubt with regard to reality of written
report Ext.ka-1, because the witness P.W.1 has not become
unconscious. The statement which has been given by Mohan
D *Lal P.W.1, from that it is evident that after getting the written*
report Ext.ka-1 written all the injured persons were taken to
the police station, and if it may be accepted for the sake of
arguments that the written report was got written on reaching
the police station, only on this basis the written report Ext.ka-
E *1 cannot be said to be doubtful, because this statement of*
Mohan Lal P.W.1 has not been challenged in which he has
stated that he has got the report written by speaking to the
Pradhan and the Pradhan has written the same which I have
spoken.”

F 37. The trial court rightly believed that FIR was written on dictation
by Maujiram Pradhan and after FIR was read over to informant he put
his thumb impression on it and the same written report was given to the
Police Station which is also proved from the Police records. On the
doubt expressed by the High Court regarding writing of FIR on dictation
of informant since he claimed to be unconscious, we are of the view that
G this is not of any material significance on which evidence of PW.1
regarding preparing and lodging of FIR could have been doubted.

38. Reading of the judgment of the High court clearly reveals that
there are no such reasons given by the High Court on which the evidence
of injured witnesses could be disbelieved, the minor inconsistencies

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pointed out by the High Court were inconsequential. This Court has held in *Brahm Swaroop and another vs. State of Uttar Pradesh, 2011(6) SCC 288*, that statement of injured witnesses is generally considered to be very reliable. In paragraphs 27 and 28 following has been stated:

“27. Injured witness Atar Singh (PW 1) has been examined, his testimony cannot be discarded, as his presence on the spot cannot be doubted, particularly, in view of the fact that immediately after lodging of FIR, the injured witness had been medically examined without any loss of time on the same day. The injured witness had been put through a gruelling cross-examination but nothing can be elicited to discredit his testimony.

*28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. “Convincing evidence is required to discredit an injured witness.” (Vide *State of U.P. v. Kishan Chand (2004) 7 SCC 629, Krishan v. State of Haryana(2006)12 SCC 459, Dinesh Kumar v. State of Rajasthan.(2008) 8 SCC 719, Jarnail Singh v. State of Punjab (2009) 9 SCC 719, Vishnu v. State of Rajasthan (2009) 10 ACC 477, Annareddy Sambasiva Reddy v. State of A.P. and Balraje v. State of Maharashtra (2010) 6 SCC 673.*)”*

39. This Court further in the above case has laid down that minor discrepancies in the statement of witnesses of trivial nature cannot be a ground to reject evidence. In paragraph 32 following has been laid down:

“32. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution’s case, may not prompt the court to reject the evidence in its entirety. “Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions.” Difference in some minor details, which does not otherwise affect the core of the prosecution case, even if

A *present, would not itself prompt the court to reject the evidence*
on minor variations and discrepancies. After exercising care
and caution and sifting through the evidence to separate truth
from untruth, exaggeration and improvements, the court comes
to a conclusion as to whether the residuary evidence is
 B *sufficient to convict the accused. Thus, an undue importance*
should not be attached to omissions, contradictions and
discrepancies which do not go to the heart of the matter and
shake the basic version of the prosecution witness. As the
mental capabilities of a human being cannot be expected to
 C *be attuned to absorb all the details, minor discrepancies are*
bound to occur in the statements of witnesses. (See State of
U.P. v. M.K. Anthony_(1985) 1 SCC 505, State of Rajasthan
v. Om Prakash (2007) 12 SCC 381), State v. Saravanan (2008)
17 SCC 587 and Prithu v. State of H.P. (2009) 11 SCC 588)”

D 40. In the above judgment also this Court while considering the
 inquest report laid down that omissions in the inquest report are not
 sufficient to put the prosecution out of court.

E 41. The prosecution by cogent reason has successfully proved
 that the accused with the common intention of murdering Mohan Lal
 came and injured Mohan Lal, killed his wife by using firearms and caused
 death of Smt. Sarvesh Kumari and two children by putting the whole
 house to fire. A perusal of judgment of the High Court gives an impression
 to us that the High Court relied on small inconsistencies and untenable
 grounds to set aside the well considered judgment of the trial court.
 There were no such grounds or reasons on which evidence of PW.1 and
 PW.2 regarding incident and identity of the accused could be disbelieved.

F 42. As noted above, two of the accused Ram Prasad and Daya
 Shankar have already died, only three of the accused Ram Kumar,
 Ramakant and Kalloo remain. The High Court has acquitted the accused
 by its judgment dated 11.10.2002 that is about 10 years ago. Taking into
 consideration over all facts and circumstances of the case, we are of
 G the view that at this distance of time confirming the capital punishment
 to the accused is not an appropriate punishment. We confirm other
 punishments awarded by the trial court except capital punishment which
 is converted into life imprisonment. The High Court judgment dated
 11.10.2002 is set aside. The appeal is accordingly allowed. The above

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mentioned three accused, Ram Kumar, Ramakant and Kalloo are directed A
to be taken into custody forthwith to serve out the sentences awarded
as above.

Nidhi Jain

Appcal allowed.