

Bachau Singh and Tunku Singh, both sons of Pratap Singh arrived at the place with countrymade pistols. Bachau Singh, from a very close range, fired a shot at Ram Saran Singh (deceased) at his neck. Second shot was then fired by Tunku Singh. The complainant, Bachan Singh, immediately ran towards the courtyard (angan) out of fear. The witnesses Shiv Saran Singh @ Bagga Singh and many other persons of the village rushed to the spot on hearing the sound of gun shot. On their arrival, the accused persons ran away from the spot. They could not catch the accused persons on account of fear of the fact that the assailants were and with countrymade pistols. It was mentioned that the motive behind the murder was some property dispute. It was alleged that the deceased Ram Saran Singh @ Chhitoo Singh had previously done Pairvi in the transfer of the property by Kailash Singh to his sister's sons Hari Baran Singh and Balwant Singh. Kailash Singh was the cousin brother of Pratap Singh. It was on account of this enmity, Tunku Singh and Bachau Singh had murdered the deceased Ram Saran Singh @ Chhitoo Singh. On receiving gun shot injuries, Ram Saran Singh @ Chhitoo Singh died. Bachan Singh (complainant), leaving the deadbody on the cot under the care of Mullu carpenter and other persons of the village, came to the police station to lodge the F.I.R.

4. The FIR was scribed by Angad on the dictation of first informant Bachan Singh. Head Moharrir Dwarika, on the basis of above written report Ext. Ka-1 recorded the F.I.R. Ext. Ka-3 on 12.5.1981 at 21.05 hours. He then registered the case in the G.D. Ext. Ka-4 at its serial no. 30, on the same day. He also prepared special report Ext. Ka-5 and sent it to the

authorities, through constable shamshuddin on 13.5.1981 at 6:10 A.M. The Investigating officer Sri Balikaran Singh, P.W. 4 was not at the police station at that time. He had gone for search on that date. He reached police out post Chhivlaha in the night of 12/13.5.1981 at 2.00 A.M, where constable Mohd Arif and Jai Narain brought copy of the F.I.R and form of inquest. He thereupon proceeded to the spot and reached there on 13.5.1981 at 4.00 A.M. It was dark at that time, and the light of the lantern was inadequate so he postponed the inquest proceeding upto 6.00 A.M. In the meantime i.e. from 4.00 A.M. to 6.00 A.M. he recorded the statements of the complainant Bachan Singh, Mullu and Shiv Saran Singh alias Bagga Singh. Then in the light of the day, he started inquest proceeding, took into custody the deadbody of Ram Saran Singh alias Chhitoo and appointed witnesses of inquest. He recorded injuries in the inquest report and obtained signatures of witnesses of inquest on the inquest report Ext.Ka-6. He then prepared photolash Ext. Ka-7 and marked the places of injuries on the dead body where injuries were visible. Thereafter, he got the dead body sealed, Ext. Ka. 8. He then prepared letter to the Chief Medical Officer and challan lash, which was marked as Ext. Ka- 9 and 10 respectively. Copies of the F.I.R. and the G.D which were given to him by the constables at Chhivlaha police out post were marked as Ext Ka-11 and 12 respectively. Thereafter, the Investigating Officer handed over the dead body to Constable Sitaram and Chaukidar Huddi for carrying it for postmortem. The said Constable Sitaram obtained police form no. 33 from the R.I. Shri Rana Ext. Ka-13. The Investigating Officer recorded the statements of the witnesses of inquest, inspected the place of occurrence and prepared site-plan Ext. Ka-14. He collected

bloodstained earth and plain earth from the spot, sealed them and marked them as Ext.1 and Ext. 2. He also found blood on the cot (Charpai). He cut down pieces of bloodstained "Ban" of that Charpai and prepared Fard Ext. Ka-15. He sent all these articles to the police station through the Constable Jai Narain Singh, where an entry was made in the G.D Ext.Ka-16 at its serial no. 15 at 12:05 PM on 13.5.1981. He raided the house of the accused for their arrest, but they were not present. As they could not be arrested, he submitted report on 17.5.1981 for initiating process under Section 82/83 Cr.P.C.

5. On the other hand the Constable Sitaram brought the deadbody in sealed cover to the mortuary and handed it over to the Chief Medical Officer. Dr. Swatantra Singh, P.W-3, who was posted as Medical Officer, Sadar Hospital, Fatehpur conducted post-mortem examination on the body of the deceased on 13.5.1981 at 4:15 PM. Upon the external examination of the deadbody, he found that the deceased was a man of average built, rigor mortis had passed off from the upper portion and was present in the lower part of the body, abdomen mild distended by greenish discolouration in both iliac fossa. He found the following two ante-mortem injuries.

1. Gun shot wound of entry in front of upper part of neck Just below the chin obliquely placed 3-1/2" 1-1/2" margins inverted. Blackening tattooing present with fracture of mandible, laceration of larynx and trachea Fracture of the rib cartilage.

2. Lacerated wound right fronto-parietal region 1/2" A 1/4" & muscle deep 2" above right ear.

6. The prosecution to prove its case, produced the following four (4) witnesses:-

1 Bachan Singh as P.W.1

2. Shiv Saran alias Vanga as P.W.2

3 Dr. Savtantra Singh as P.W.3

4. Balikaran Singh SI as P.W.4

7. 17 exhibits were also produced by the prosecution side to prove its case. PW-1 (informant Bachan Singh) in his testimony before the court has stated that both Bachau Singh and Tunku Singh are the sons of Pratap Singh and are real brothers. They reside in Amilihapal. The deceased, Ram Saran alias Chhittu was his real brother-in-law. Four or five days prior to the incident, Ram Saran (deceased) visited his home to invite his wife for his son's mundan ceremony, which was scheduled for 20.05.1981. On account of engagement in another function which had to take place at the house of complainant, he did not send his wife with the deceased to the sasural and gave assurance that 4-6 days afterwards he would bring his wife (i.e. the sister of the deceased). Subsequently, after 4-5 days, he went to Amilihapal with his wife and arrived at around 2:30 p.m. At that time, Ram Saran alias Chhittu was busy with his work. After sitting for a while, he went to the place of Mullu Carpenter alongwith Ram Saran alias Chhittu at around 4:00 pm and sat on a cot in his barn. Mullu was to go home for taking his meal. During the course of conversation with Mullu, the accused persons Tunku and Bachau arrived there, both were holding pistols with them. The accused Bachau fired at Ram Saran from

approximately four steps away, hitting him in the neck. Immediately thereafter, Tunku fired another shot at Ram Saran. This witness further states that he got scared and ran inside Mullu's house, raising an alarm. Hearing his cries and the sound of gunfire, several witnesses arrived. Both accused fled eastwards. They did not attempt to apprehend them out of fear of their firearms.

8. P.W.-1 further submits that the cousin brother of his father -Kailash was issueless. Kailash had transferred his property to his nephews and Ram Saran alias Chhittu facilitated this arrangement, which led to enmity between the accused and Ram Saran. This deed was executed two months prior to the incident. Driven by this enmity, the accused killed Ram Saran.

9. P.W.-1 states that at the time of the incident, Mullu, the carpenter lived in a house owned by Pratap Singh. The house has a door that opens northward onto the street, leading into a long hall and verandah. He was sitting on a cot in the verandah, with Ram Saran sitting nearby. As soon as Tunku and Bachau entered there, they started firing without any prior conversation. Only Ram Saran alias Chhittu was hit by the bullets. This witness ran away immediately after the first shot was fired and did not see the second shot being fired. After the accused fled, he returned to the barn. He remained there for two to four minutes as several villagers arrived. He then went to Ram Saran alias Chhittu's house, where Angad wrote a report. He left Amilihalpal at 6:00 p.m, heading on foot to the police station with Ram Shankar Sonar Dhane. He further submits that the accused are real brothers and live together in a house located east

of Mullu's house. Their house has a gate just a few steps away from Mullu's door.

10. P.W.-1 further submits that after the murder, Shivcharan Singh alias Bagga moved from Amilihalpal to Mauja Semrahara out of fear and in the cross-examination he affirmed that he was present in Amilihalpal at the time of the incident and reached there soon after hearing about Ram Saran's murder. The allegations that the family members of Mullu and Maharaj were responsible for Ram Saran's death are false. Shivcharan alias Bagga started living at Mauja Semrahara due to fear.

11. P.W.-2 Shiv Saran alias Bagga in his evidence has stated that about 15-1/2 months back he had gone to purchase articles from the shop of Sudin Teli. At about 4.00 P.M. he heard cries and noise of gun shot from the side of the house of Mullu carpenter. He rushed to that place and saw Tunku Singh and Bachau Singh, accused persons coming out of the house of Mullu and running away towards east. Both of them were, having countrymade pistols (Tamancha) in their hand.

12. P.W.-2 further states that Kailash, father of the accused, had transferred his property to his nephews. His brother Chhittu used to support Kailash in legal matters related to transfer of property. Due to his involvement, the accused started harbouring enmity with his brother. He was unaware of any legal dispute involving Kailash or his nephews against Pratap Singh or the accused concerning the land or sale deed. He further clarified that it is not true that he has been living in Marhara for 4-5 years.

13. P.W.-2 further states that Sudin's shop is located in his house, with the entrance facing east. The accused's house is situated at the southeastern corner of Sudin's house, with no other house in between. Bachan Teli's house is across the road, to the east of Sudin's residence. The other houses are located to the north of Sudin's house. Approximately 5-6 minutes after he arrived at the scene, other people began to gather. By that time, the accused had already fled away. He states that there were no other customers at Sudin's shop, nor was Sudin present at the time of the incident. His wife was managing the shop when he heard the gunshots and shoutings. He further informed the police Inspector that he had witnessed Tunku and Bachau running away after committing the murder.

14. P.W.-3, statement of Dr. Swatantra Singh and PW-4, statements of Bali Karan Singh were also recorded.

15. Thereafter, the statements of the accused, Bachau Singh and Tunku Singh were recorded under section 313 Cr.P.C and both have denied the allegation made against them.

16. Upon the conclusion of the Trial, the Additional Sessions Judge, Fatehpur on 12.10.1982 convicted the accused persons under section 302 read with 34 of I.P.C. and sentenced them for imprisonment for life. Hence, this appeal.

17. Heard Sri Amit Kumar Srivastava, learned counsel for the appellants and Sri Amit Sinha, learned Additional Government Advocate representing the State and perused the record of the case.

18. Learned counsel for the appellants argued that the prosecution's

case heavily relies upon the occurrence of the alleged murder at the residence of Mullu, the carpenter. Mullu was present with the deceased (Ram Saran alias Chhittu,) and PW-1 at his home just before the incident. Mullu was the third eye witness of the alleged occurrence. However, the prosecution failed to produce Mullu as a witness. Mullu's testimony could have provided critical evidence regarding the actual events and sequence that led to the murder. The absence of Mullu's testimony, particularly as the incident occurred at his residence, creates a significant gap in the prosecution's case. The failure to include this primary witness raises serious doubts about the authenticity and completeness of the evidence presented by the prosecution.

19. Learned counsel for the appellants further argued that PW-2, Shivcharan Singh alias Bagga, is produced as a chance witness, who claims to have been in the vicinity of the crime scene by coincidence. However, the reliability of his testimony is questionable. His presence at the scene appears unsubstantiated, as there is no clear reason why he would be at the shop near the scene of the murder.

20. Learned counsel for the appellants relied heavily on paragraphs 102, 103 and 104 of the judgment reported in (2023) 2 SCC 353: **Manoj & Ors. vs. State of Madhya Pradesh**, the same are being reproduced herein under :-

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

"Such witnesses have the habit of appearing suddenly on the scene when

something is happening and then of disappearing after noticing the occurrence about which they are called later on to give evidence.”

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

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

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

“22. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (*Satbir v. Surat Singh* (1997) 4 SCC 192 30, *Harjinder Singh v. State of Punjab* (2004) 11 SCC 253, *Acharaparambath Pradeepan and Anr. v. State of Kerala* (2006) 13 SCC 643 and

Sarvesh Narain Shukla v. Daroga Singh (2007) 13 SCC 360). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded 14 (*vide Shankarlal v. State of Rajasthan* (2004) 10 SCC 632).”

21. The learned counsel for the appellants also relied upon paragraphs 22 to 24 of the judgment reported in (2016) 16 SCC 418 : **Harbeer Singh vs. Sheeshpal & Ors.**, the same are being reproduced herein under :-

“22. The High Court has further noted that there were chance witnesses whose statements should not have been relied upon. Learned counsel for the respondents has specifically submitted that PW5 and PW6 are chance witnesses whose presence at the place of occurrence was not natural.

23. The defining attributes of a “chance witness” were explained by **Mahajan, J., in Puran v. State of Punjab, AIR 1953 SC 459**. It was held that such witnesses have the habit of appearing suddenly on the scene when something is happening and then disappearing after noticing the occurrence about which they are called later on to give evidence.

24. In **Mousam Singha Roy v. State of W.B., (2003) 12 SCC 377**, this Court discarded the evidence of chance witnesses while observing that certain glaring contradictions/omissions in the evidence of PW 2 and PW 3 and the absence of their names in the FIR has been very lightly discarded by the courts below. Similarly, *Shankarlal v. State of Rajasthan*, (2004) 10 SCC 632 and *Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719, are authorities for the

proposition that deposition of a chance witness, whose presence at the place of incident remains doubtful, ought to be discarded. Therefore, for the reasons recorded by the High Court we hold that PW5 and PW6 were chance witnesses and their statements have been rightly discarded."

Similarly, paragraphs 20 to 23 of the judgment of the Supreme Court in **Jarnail Singh & ors. vs. State of Punjab reported in (2009) 9 SCC 719** are also being reproduced here as under :-

"20. After considering the oral as well as documentary evidence on record, the High Court came to the conclusion that the statement of Gurcharan Singh (PW18) in respect of the fact of hatching of a conspiracy by Balbir Singh and Gurdip Singh, at the Bus-stand Bassi Pathana on 21-6-2000 at 7.30/8.00 p.m. was not worthy of credence. Gurcharan Singh (PW-18), a chance witness could not explain under what circumstances he was present at the bus-stand at the said time.

21. In Sachchey Lal Tiwari v. State of U.P. (2004) 11 SCC 410, this Court while considering the evidentiary value of the chance witness in a case of murder which had taken place in a street and passerby had deposed that he had witnessed the incident, observed as under:

"If the offence is committed in a street only a passer-by will be the witness. His evidence cannot be brushed aside lightly or viewed with suspicion on the ground that he was a mere chance witness. However, there must be an explanation for his presence there."

The Court further explained that the expression "chance witness" is borrowed from countries where every

man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country like India where people are less formal and more casual, at any rate in the matter of explaining their presence. 22. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (Satbir v. Surat Singh (1997) 4 SCC 192; Harjinder Singh v. State of Punjab (2004) 11 SCC 253; Acharaparambath Pradeepan & Anr. v. State of Kerala (2006) 13 SCC 643; and Sarvesh Narain Shukla v. Daroga Singh and Ors. (2007) 13 SCC 360). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide Shankarlal v. State of Rajasthan (2004) 10 SCC 632).

23. Conduct of the chance witness, subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the village about the incident. (vide Thangaiya v. State of Tamil Nadu (2005) 9 SCC 650). Gurcharan Singh (PW-18) met the informant Darshan Singh (PW-4) before lodging the FIR and the fact of conspiracy was not disclosed by Gurcharan Singh (PW-18) and Darshan Singh (PW-4). The fact of conspiracy has not been mentioned in the FIR. Hakam Singh, the other witness on this issue has not been examined by the prosecution. Thus, the High Court was justified in discarding the part of the prosecution case relating to conspiracy. However, in the fact situation of the present case, acquittal of the said two co-accused has no bearing, so far as the present appeal is concerned."

Paragraph 10 of the judgment reported in 1976 Criminal L.J. 1568 :

Bahal Singh vs. State of Haryana is also being reproduced herein under :-

"10. As to the presence of P. Ws. 4 and 5 at the time and place of occurrence the trial Court entertained grave doubts. If by coincidence or chance a person happens to be at the place of occurrence at the time it is taking place, he is called a chance witness. And if such a person happens to be a relative or friend of the victim or inimically disposed towards the accused then his being a chance witness is viewed with suspicion. Such a piece of evidence is not necessarily incredible or unbelievable but does require cautious and close scrutiny. In the instant case, P.Ws. 4 & 5 were agnatic relations of the deceased one of them a close one. The reason given by them for being at the place of occurrence did not appear to be true to the trial Court. There was not any compelling or sufficient reason for the High Court to differ from the evaluation of the evidence of the two chance witnesses. It may well be as remarked by the High Court that the respondent was also their collateral but they appeared to be partisan witnesses on the side of the prosecution and hence their testimony was viewed with suspicion by the trial Judge."

22. The counsel for the Appellants has argued that both PW-1 (Bachan Singh) and PW-2 (Shivcharan Singh alias Bagga) are close relatives of the deceased, Ram Saran alias Chhittu. PW-1 is the brother-in-law of the deceased, while PW-2 is his sibling. As interested parties with direct familial ties, they have a vested interest in securing a conviction against the accused. Their testimonies may be biased due to their relationship with the deceased and their motive to seek retribution. It is a well-established legal principle that the testimony of related and interested witnesses should be

scrutinized closely. Here, there is a strong possibility of bias in their statements, particularly as the prosecution failed to produce any independent or impartial witnesses to corroborate their claims.

23. Counsel for the appellants has relied upon the judgment of the Supreme Court passed in Criminal Appeal No. 1105 of 2010 (**Md. Jabbar Ali and Others V.State of Assam in paragraphs 55, 56 and 57**)

"55. It is noted that great weight has been attached to the testimonies of the witnesses in the instant case. Having regard to the aforesaid fact that this Court has examined the credibility of the witnesses to rule out any tainted evidence given in the court of Law. It was contended by learned counsel for the appellant that the prosecution has failed to examine any independent witnesses in the present case and that the witnesses were related to each other. This Court in a number of cases has had the opportunity to consider the said aspect of related/interested/partisan witnesses and the credibility of such witnesses. This Court is conscious of the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded, however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinized with greater care and circumspection. In the case of Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381, this Court held that the testimony of such related witnesses should be analysed with caution for its credibility.

56. In Raju alias Balachandran v. State of Tamil Nadu, (2012) 12 SCC 701, this Court observed:

"29. The sum and substance is that the evidence of a related or interested witness should be meticulously and

carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in Dalip Singh ((1953) 2 SCC 36: AIR 1953 SC 364] and pithily reiterated in Sarwan Singh [(1976) 4 SCC 369] in the following words: (Sarwan Singh case [(1976) 4 SCC 369, p. 376, para 10)

"10.... The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration."

*57. Further delving on the same issue, it is noted that in the case of **Ganapathi v. State of Tamil Nadu, (2018) 5 SCC 549**, this Court held that in several cases when only family members are present at the time of the incident and the case of the prosecution is based only on their evidence, Courts have to be cautious and meticulously evaluate the evidence in the process of trial.*

24. Learned counsel for the appellants also argued that in a criminal trial, it is the duty of the prosecution to prove the guilt of the accused beyond a reasonable doubt. In this case, the prosecution's case is marred by inconsistencies and the absence of critical witnesses. The trial court relied heavily on the testimonies of PW-1 and PW-2, both of

whom are close relatives of the deceased. The lack of corroborative evidence from impartial witnesses and the failure to include a primary witness (Mullu) casts significant doubt on the prosecution's version of events. That the testimony from interested or partisan witnesses must be corroborated by independent witnesses to establish guilt beyond reasonable doubt.

25. The prosecution claims that the murder was motivated by a property dispute. According to the prosecution, Ram Saran Singh had helped Kailash Singh, cousin of the appellants' father, in transferring property to Kailash's nephews, which allegedly led to animosity between the appellants and the deceased. However, there is no direct evidence of a property dispute between Kailash and the appellants and no credible testimony was presented to confirm the existence of any conflict over the property. Bachan Singh (PW-1), while mentioning the property transaction, admitted that he was unaware of any litigation or dispute between Kailash and Pratap Singh (the appellants' father). Furthermore, there was no independent corroboration or documentary evidence regarding the property dispute, thus failing to establish a clear and compelling motive also two gunshots were allegedly fired as per the prosecution. However, the postmortem report evidences only one injury and the story of the second shot is not at all evidenced by any collection of empty cartridges etc. This makes the witnesses unbelievable.

26. Per contra, learned Additional Government Advocate has argued that as many as two eye-witnesses have supported the prosecution story. The testimony of these witnesses is without any blemish. Minor discrepancies are not sufficient to

erode credibility of the eye-witnesses. Testimony of all eye-witnesses is natural, trustworthy and inter se coherent and consistent with the normal human conduct. There is no contradiction in the medical and ocular evidence placed by the prosecution. Regarding the delay in lodging the FIR and other police and medical proceedings, cogent explanation has been furnished by the side of the prosecution at the stage of the FIR itself, which cannot be disbelieved. Evidence of the eye-witnesses cannot be brushed aside only on the ground of chance witness or relationship not corroborated by the evidence of any other independent witness; the only requirement is that their evidence should have been examined with due care and caution.

27. We are definitely of the view that when both the eye-witnesses have deposed that several villagers arrived at the scene shortly after the incident, but none of these other potential witnesses was produced by the prosecution, raising doubts as to why only P.W.-2 was brought forward as a witness. The selective choice of witnesses, excluding other neutral individuals who could have offered unbiased testimony, suggests an attempt by the prosecution to construct a narrative favorable to its case. This casts significant doubt on P.W.-2's credibility and the overall reliability of the prosecution's case.

28. When the prosecution's case heavily relies on the occurrence of the alleged murder at the residence of Mullu, the carpenter. Mullu was present with the deceased, (Ram Saran alias Chhittu,) and P.W.-1 at his home just before the incident. Mullu was the third eye witness of the alleged occurrence, However, the prosecution failed to produce Mullu as a witness. Mullu's testimony could have provided critical

evidence regarding the actual events and sequence that led to the murder. The absence of Mullu's testimony, particularly as the incident occurred at his residence, creates a significant gap in the prosecution's case. The failure to include this primary witness raises serious doubt about the authenticity and completeness of the evidence presented by the prosecution.

29. Upon consideration of arguments of learned counsel for the parties and scrutinizing the record of the case, this Court is of the opinion that the lower court failed to properly assess the material and relevant evidence. Notably, the main eyewitness, Mullu Carpenter, whose testimony was crucial for the interests of justice, was not presented as a prosecution witness. Furthermore, P.W-1 and P.W-2 are relatives of the deceased, with no additional evidence to substantiate their statements and P.W-2 is identified as a chance witness. On these grounds, this Court finds sufficient reason to overturn the decision of the court below.

30. In view of what has been indicated herein above, we are of the view that the prosecution has failed to prove the guilt of the appellants beyond reasonable doubt.

31. The appeal therefore, stands allowed. The impugned judgment and order dated 12.10.1982, passed by the 4th Additional Sessions Judge, Fatehpur in S.T. No. 497 of 1981 is set-aside. The appellants, Tunku Singh and Bachau Singh are on bail. They need not to surrender. The sureties and the bail bonds are discharged.

32. Learned counsel for the appellants is directed to comply with the provisions of Section 437-A of Code of Criminal Procedure.

