

## STATE OF UTTAR PRADESH

v.

LALLOO &amp; OTHERS.

AUGUST 13, 1985

[S. MURTAZA FAZAL ALI AND A. VARADARAJAN, JJ.]

A. Murder trial - Evidence of eye witnesses, appreciation of - Probability of their presence at the scene of occurrence of the crime - Section 3 of the Evidence Act.

B. First Information Report - Can the authorship of the First Information Report be doubted, just because the report is long and contains all the details - Sections 144 and 145 of the Code of Criminal Procedure (Act II of 1974), 1973 read with Section 114 of the Evidence Act.

C. Conviction and sentence - Where two views leading to the guilt of the accused, on the evidence available on record are not possible, conviction is justified - Even in case of gruesome and cold-blooded murder long delay in hearing an appeal justifies conversion of death sentences into one of life imprisonment - Supreme Court Rules, 1966 Order XXII read with order XLVI and Article 142(1) of the Constitution.

Respondent Laloo and three others were charged, convicted, and sentenced to death for the commission of the offence of murder under section 302 IPC read with section 34 IPC of the deceased Babu Jaleshwar Singh under bright moonlight and at about 8 p.m. on 24.9.1974, while he was accompanied by the three eye witnesses, Ram Surat (PW 1), Subhan Sain (PW 2), Bansidhar (PW 3). The prosecution case was; (a) that there was a long standing enmity between the accused and the deceased Jaleshwar Singh who was a leading land owner and agriculturist of Mangalpura and the Pradhan of that village for over 18 or 20 years before the date of occurrence; (ii) that the deceased had stated in his complaint Ex. KA-13 dated 14.2.1973 that the accused and the one Chandrika Mallah were planning to kill him due to election and litigation enmity and were collecting money for that purpose amongst themselves; (iii) that the accused and others had moved two complaints for the removal of the deceased as Pradhan of Mangalpura; that while the first complaint had been rejected by the Sub-divisional Officer, Ballia on 10.5.1974, the second

A complaint was pending enquiry before that officer at the time of his death and factually the deceased accompanied by PWs 1 to 3 was returning after attending the case posted on that day; (iv) that while they were returning, at the end of the Moonj jungle situate about 1-1/2 furlongs away from Mangalpura village the accused respondents attacked the deceased with the tamancha (country-made pistol) and daos (long heavy knives used for slaughtering goats and cutting wood); (v) that it was Lalloo who fired with his tamancha and the deceased fell down after receiving injury on his chest and on his exhortion to sever his neck the others Ganga Dayal Gond, Sri Kishun Chamar and Jagan Nath Godaria pounced upon the deceased and cut the neck; (vi) that when PWs 1 to 3 shouted in disapproval of what the respondents were doing, Lalloo pointed his tamancha towards them and threatened to kill them and getting frightened they ran towards Gosainpur and after informing Ayodhya and Sheo that the respondents had attacked the deceased they rushed to Mangalpura where they met Kharag Bahadur (PW 6) and others and informed them also about the attack on the deceased by the respondents accused; (vii) that the first information report was written by Raghubans Tiwari (PW 16) of Mangalpura with the particulars furnished by PW 1 at the spot at about 9 p.m. on 24.9.74, and later handed over by PW 1 at Bansidh Police Station, PW 15; (viii) that PW 15 left the police station along with PW 1 and others for the scene of occurrence at 1.30 a.m. on 25.9.74 and began his investigation at the spot at 4 a.m.; (ix) that the headless body was identified to be that of the deceased Jaleshwar Singh by PWs 1,3,6 and 16 and Bachchalal (PW 5) - all of whom belonged to Mangalpura; (x) that autopsy on the body of the deceased disclosed, incised wound severing the neck completely, multiple gun shot wounds on the upper part of the front chest, and abraded contusions over the upper part of the hip; and (xi) that the doctor opined that death was due to severence of the neck by a sharp-edged and heavy cutting weapon and that the injury to the neck was sufficient in the ordinary course of nature to cause death.

For coming to the conclusion as to conviction and sentence, the Trial Court accepted the evidence of PWs 1 to 3 who were examined as eye witnesses and also the evidence of PW 5 and 6 and relied upon the First Information Report given by PW 1. But on appeal, the Learned Judges of the High Court suspected the genuineness of the First Information Report as being that of PW 1 for the reason that it was quite long and contained all the details, rejected the evidence of PWs 1 to 3 about the occurrence and acquitted the respondents, although they found that the

factum of the occurrence of the crime, the prosecution case with regard to its time and the weapons used in the assault fully corroborated by medical evidence while the recovery of blood fixed the venue of the crime. Hence the appeal by the state.

Allowing the appeal and while confirming their convictions, the Court altered the sentence of death passed on them to that of imprisonment and

**HELD:** 1.1 A thorough and careful analysis of the evidence on record shows that the evidence of PWs 1 to 3 are true and reliable and that they were present at the scene and at the time of the commission of the offence. And this is not a case where two views of the evidence available on record are possible. [555 D-F]

1.2 It cannot be said that if there are ten pieces of circumstantial evidence in a case, an inference that the investigating officer did not have honest belief in the truth of the proceedings nine pieces of circumstantial evidence, merely because he had brought on record even the tenth piece of circumstantial evidence. [551 E-F]

1.3 Exhibit Ka-1 is the only first information report in the case and that it was scribed by PW 16 at the spot on the basis of particulars furnished by P.W.1 at 9 p.m. and handed over by P.W.1 at the police station at about 11.30 p.m. on the same day and that only after a case had been registered on the basis of that first information report, P.W.15 left the police station along with P.W.1 and others at 1.30 a.m. on 25.9.1974 and reached the scene of occurrence at 4 a.m. To contend that PW 1 is not the author of the first information report and it was recorded at the police station at 11 a.m. on 25.9.1974 on the evidence of P.W.16 who is a self-condemned witness who had been treated as hostile to the prosecution will not only be inconsistent but also incorrect. If it had been recorded only at that time it is improbable that copies thereof would have been delivered by PW 14 to the higher authorities in the morning of 25.9.1974. [553 B,D]

1.4 No adverse inference can be drawn from the cross-examination of PW 15 to the effect that the first parcha of the case diary which is dated 25.9.1974 bears the signature of the Deputy Superintendent of police and endorsement of his office has made on 28.9.1974 and without the seal of that office. That there was delay in the receipt of the copies of relevant records from the

A police station in the office of the Superintendent of Police though even according to the evidence of PW 16 which is unreliable the first information report was in existence at least at 11 a.m. on 25.9.1974 is incorrect. [552 G-H, 553 A-B]

B 1.5 The facts that P.W.1 was seen by PW 6 soon after the occurrence, and he got the first information report scribed by PW 16 at 9 p.m. on 24.9.74 itself and handed it over at the police station at 11.30 p.m. on the same day and accompanied PW 15 from the police station to the scene of occurrence at 1.30 a.m. on 25.9.74 probablise the evidence of PW 1 that he had gone to Ballia on 24.9.74 and left that place for Mangalpura by a bus along with the deceased. [553 G-H, 554 A]

C 1.6 The name of PW 1 not finding a place in the order sheet of the Trial Court at Ballia is not a sure base for holding that he could not have gone to Ballia on 24.9.1974. Equally the evidence of PW 2 to the effect that much jungle falls in the first route and therefore people go by that route only during the day time while the second route which is plain is normally taken by the commuters during night is convincing. The High Court failed to take note of the fact that it was night time and PW 2 would have had the company of the deceased and PWs 1 and 3. Further the examination of PW 15 at Mangalpura by PW 1 to 3 on 25.9.1974 itself also probablises their presence and witnessing the occurrence of the crime. PW 1 alone belongs to Mangalpura while PWs 2 and 3 belongs to different villages. PWs 2 and 3 are independent witnesses and PW 1 is a respectable witness as he is a member of te Gram Sabha and President of the Co-operative Society, though admittedly he was the pairokar of the deceased in the case for which he had gone to Ballia on 24.9.1974 which has a little importance. [554 B-G, 555 A,D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 320 of 1977.

G From the Judgment and Order dated 27.10.1976 of the Allaha-bad High Court in Criminal Appeal No. 1411 of 1976.

Dalveer Bhandari and Manoj Prasad for the appellants.

R.K.Garg, L.R. Singh, N.M. Popli and V.J. Francis for the respondents.

H The Judgment of the Court was delivered by

VARADARAJAN, J. This appeal by special is by the State of Uttar Pradesh against the acquittal of the respondents Lalloo, Ganga Dayal Gond, Sri Kishun Chamar and Jagan Nath Godaria by the High Court, reversing the judgment of the trial court which convicted them and sentenced them to death under section 302 IPC for the murder of one Babu Jaleshwar Singh at about 8 p.m. on 24.9.1974.

The case of the prosecution has been set out in the judgments of the courts below. Therefore, it is not necessary to set out in detail the facts of the case in this judgment. Suffice it to say that the prosecution case is that there was long standing enmity between the respondents and the deceased Jaleshwar Singh who was a leading land owner and agriculturist of Mangalpura and the Pradhan of that village for 18 or 20 years before he was murdered at about 8 p.m. on 24.9.1974 at the end of the moonj jungle situate about 1-1/2 furlongs away from Mangalpura village when he was coming along the footpath running through that moonj jungle in the company of Ram Surat (PW 1), Subhan Sain (PW 2), Bansidhar (PW 3) by the respondents attacking him with a tamancha (country-made pistol) and daos (long heavy knives used for slaughtering goats and cutting wood). There was bright moonlight during that night it being the day of Bhado Sudi 9 and there were also torch-lights with P.Ws. 1 and 3. P.Ws. 1 to 3 belongs respectively to Mangalpura, Ram Nagar and Shankerpura which is situate about 1-1/2 miles north of Mangalpura. P.W.1 is Adhyaksha (President) of the Co-operative Society of Mangalpura besides being a member of the Gram Sabha of that village. The respondent Jagan Nath belongs to Gosainpur which being a nearby village is included in Mangalpura Gram Sabha while the other three respondents belong to Mangalpura itself. The respondent, Jagan Nath is also a member of the same Gram Sabha. There was admittedly long-standing enmity between the respondents and the deceased Jaleshwar Singh right from 1959. The deceased had stated in his complaint Ex.Ka-13 dated 14.2.1973 that the respondents and one Chandrika Mallah were planning to kill him due to election and litigation enmity and were collecting money for that purpose amongst themselves. The respondents and others had moved two complaints for the removal of the deceased as Pradhan of Mangalpura. The first of those complaints had been rejected by the Sub-Divisional Officer, Ballia on 10.5.1974 while the second was pending enquiry before that Officer at the time of his death. The deceased accompanied by PWs 1 to 3 was returning on 24.9.1974 from Ballia where he had gone in connection with the enquiry into the second complaint which had been posted on that day. The facts relating to the admitted enmity between the respondents and the deceased are mentioned in para 10 of the trial court's judgment.

A  
B  
C  
When the deceased was going a little ahead of PWs. 1 to 3 in the eastern end of the moonj jungle, the respondents emerged from the moonj plants, armed, Lalloo with a tamancha, Sri Kishun and Ganga Dayal with daos and Jagan Nath with a whip. Lalloo fired with his tamancha and the deceased fell down after receiving injury on his chest. Therefore, Lalloo exhorted the other respondents for cutting the neck of the deceased whereupon the other respondents pounced upon the deceased for severing his neck. When P.Ws 1 to 3 shouted in disapproval of what the respondents were doing, Lalloo pointed his tamancha towards them and threatened to kill them. They, therefore, got frightened and ran towards Gosainpur and after informing Ayodhya and Sheo that the respondents had attacked the deceased they rushed to Mangalpura where they met Kharag Bahadur (PW 6) and others and informed them also about the attack on the deceased by the respondents. Subsequently all of them went to the scene of occurrence and found the deceased's headless body lying in a pool of blood.

D  
E  
The first information report was written by Raghubans Tiwari (PW 16) of Mangalpura with the particulars furnished by PW 1 at the spot at about 9 p.m. on 24.9.1974. It was handed over by P.W.1 at Bansidh police station at 11.30 p.m. on 24.9.1974 to the Sub-Inspector of police P.W.15. P.W.15 left the police station along with P.W 1 and others for the scene of occurrence at 1.30 a.m. on 25.9.1974 and he began his investigation at the spot at 4 a.m.

F  
G  
The headless body was identified to be that of the deceased Jaleshwar Singh by PWs. 1,3,6 and 16 and Bachchalal (P.W 5) all of whom belong to Mangalpura. The trunk was further identified to be that of the deceased Jaleshwar Singh with reference to the towel (Ex. II), ganj (Ex. III), kurta (Ex. IV), dhoti (Ex. V), chhata (Ex. VI), hand-kerchief (Ex. XI), letter (Ex. XII) addressed to the deceased on which he had written that he had given Rs.10 to PW 1 for bringing witnesses and thumb-impression of the deceased which had been compared with his undisputed thumb impression. Autopsy on the body of the deceased Jaleshwar Singh disclosed (1) incised wound severing the neck completely; (2) multiple gun shot wounds on the upper part of the front chest and (3) abraded contusions over the upper part of the hip. The doctor opined that death was due to severance of the neck by a sharp-edged and heavy cutting weapon and that the injury to the neck was sufficient in the ordinary course of nature to cause death.

H  
The entire prosecution case against the respondents rests on the evidence of PWs 1 to 3 who were examined as eye-witnesses and

also on the evidence of PWs 5 and 6. The learned Sessions Judge accepted their evidence and relied upon the first information report given by PW 1 and found that all the respondents had committed the brutal murder of Jaleshwar Singh on account of the admitted enmity and he accordingly convicted and sentenced them to death under section 302 read with section 34 I.P.C. But on appeal the learned Judges of the High Court suspected the genuineness of the first information report as being that of PW 1 and rejected the evidence of PWs 1 to 3 about the occurrence and acquitted the respondents although they found:

"The medical evidence leaves no room for doubt as to the factum of the occurrence, and the prosecution case with regard to its time and the weapons used in the assault also receives broad corroboration from it. The place of occurrence (near the eastern end of the jungle of moonj plants in village Mangalpura) is also fixed up by the recovery of blood from there."

The case of the prosecution is that the informant PW 1 got the first information report scribed by PW 16 at the spot at about 9 p.m. on 24.9.1974 and presented it at the police station at 11.30 p.m. on the same day to the Sub-Inspector of police PW 15 and that PW 15 left the police station after registering the case to the scene of occurrence along with PW 1 and others at 1.30 a.m. on 25.9.1974 and began his investigation at 4 a.m. The names of the respondents as the assailants of the deceased as well as the names of PWs. 1 to 3 as those of eye-witnesses are mentioned in the first information report and all the three witnesses had been examined by PW 15 on 25.9.1974 itself although, as stated earlier, PW 1 alone belongs to Mangalpura and PWs. 2 and 3 belong to Shankerpura and Ram Nagar respectively. The prosecution relied on the evidence of PW 5 who has stated that he saw all the respondents sitting and talking under cover of the munjahani near about the scene of occurrence at about nightfall on 24.9.1974 and that at about 8.30 or 8.45 p.m. on that day he heard shouts that the respondents whose names he has mentioned were beating Babu Jaleshwar Singh. On hearing those shouts PW 5 ran and on the way he met PW 6 and others and he went along with them to the scene of occurrence and saw the headless body of the deceased Jaleshwar Singh lying there. The evidence of PW 6 is that when he was sitting at his house at about 8 p.m. on the day of occurrence he heard the alarm "Run up people, I am being killed". He took up lathi and lantern and asked his companions to proceed, and when all of them were about 50 yards

A away from the out-skirts of the village, PW 6 saw PW 1 and others coming and PW 1 told him that Lallo had shot the deceased Jaleshwar Singh with pistol, that Sri Kishun and Ganga Dayal armed with daos and Jagan Nath armed with Kora (whip) were sitting on the chest of the deceased and Lalloo had said "cut the neck of sala-Pradhan" and that they (PWs 1 to 3) ran away from the scene when  
B Lalloo aimed and pistol at them. Thereafter PW 6 and others went to the scene of occurrence and found the headless body of Jaleshwar Singh lying there, and subsequently PW 1 got the report written by PW 16 and proceeded with it to the police station.

C The learned Judges of the High Court rejected the first information report of two grounds, namely, that it is quite long and contains all the details and that PW 1 is not the author of its contents. They rejected the evidence of PWs 1 to 3 as unreliable but accepted the evidence of PW 16 that he wrote the first information report at the police station in the presence of his own father and others to the dictation of PW 15. They acquitted the respondents and set aside the conviction and the sentence awarded to them by the trial court.

D Mr. Dalveer Bhandari, learned counsel for the appellant State of Uttar Pradesh took us through the evidence of PWs 1 to 3 and the other witnesses as also through the judgments of the courts below and submitted that the learned Judges of the High Court were not justified in holding that PW 1 is not the author  
E of the first information report and that it was written by PW 16 at the police station to the dictation of PW 15. He also submitted that the learned Judges of the High Court were not justified in rejecting the evidence of the eye-witnesses. PWs. 1 to 3 also of PWs. 5 and 6 and acquitting the respondents. On the other hand, Mr. R.K. Garg, learned counsel for the respondents  
F submitted that the first information report is not the "brain child" of PW 1 and that it had been prepared at 11 a.m. on 25.9.1974 as stated by PW 16 after PW 15 had visited the scene of occurrence and seen the injuries found on the headless body of the deceased Jaleshwar Singh. He submitted that the evidence of PW 1 that he had gone to Ballia in connection with the enquiry  
G into the complaint filed for the removal of the deceased Jaleshwar Singh from the office of Pradhan of Mangalpura village and that he was accompanying him from Ballia and was present at the time of the occurrence is not believable at all having regard to the fact that although it is stated in the first information report that PW 1 went to Ballia alongwith the deceased Jaleshwar  
H Singh he has admitted in his evidence that he did not go with the

deceased to Ballia and stated that he went to Ballia separately and reached the office of the Sub-Divisional Officer only at about 1.30 p.m. on 24.9.1974 and also that his name is not mentioned in the order sheet relating to that case. He further submitted that the learned Judges of the High Court were justified in rejecting the evidence of not only PW 1 but also of PWs. 2 and 3 as unreliable and that it would appear from the fact that the investigating officer had gone in search of circumstantial evidence by way of dress, shoes, letter, thumb-impression etc., mentioned above for identifying the headless trunk as that of the deceased Jaleshwar Singh that he did not believe the testimony of PWs. 1 to 3 who are put forward as eye-witnesses in the case.

In our opinion the submission that the investigating officer PW 15 had no faith or honest belief in the testimony of PWs. 1 to 3 regarding the identity of the headless trunk as that of the deceased Jaleshwar Singh merely because he had looked up for other circumstantial evidence to connect the headless trunk with the deceased Jaleshwar Singh has to be stated only to be rejected, for it is impossible to hold from the fact that the investigating officer looked up for some corroborative circumstantial evidence that he did not have faith or belief in the testimony of PWs. 1 to 3 as regards the identity and therefore it is not possible to rely upon the evidence of PWs. 1 to 3 as regards the identity and therefore it is not possible to rely upon the evidence of PWs 1 to 3 that they witnessed the occurrence. It will be unreasonable to hold that if there are 10 pieces of circumstantial evidence in a case an inference that the investigating officer did not have honest belief in the truth of the preceding 9 pieces of circumstantial evidence merely because he had brought on record even the tenth piece of circumstantial evidence.

The learned Judges of the High Court were not justified in basing their conclusion that PW 1 is not the author of the first information report and that it was recorded at the police station at 11 a.m. on 25.9.1974 on the evidence of PW 16 who is a self-condemned witness who had been treated as hostile to the prosecution. It is not possible to accept the evidence of PW 16 who was admittedly present in the police station along with his father and others and had consulted his father before writing the first information report and wrote it after his father asked him to write it that he wrote it to the dictation of PW 15 at 11 a.m. on 25.9.1974 and dated it as 24.9.1974 as desired by PW 15. The evidence of PW 16 is highly discrepant, for he has stated in one

A portion of his evidence that along with his father and others he reached the police station at about 10 a.m. on 25.9.1974 and returned from there at about 11 a.m. leaving only PW 1 at that place. In another portion of his evidence he has stated that PW 15 came to the scene of occurrence at 8 or 9 a.m. on 25.9.1974 and that he (PW 16) started along with others to proceed to the police station for the scene of occurrence only at about 9 a.m. on that day when PW 15 arrived. He has further stated PW 15 started for the scene of occurrence after he and the other persons reached the police station and that too only after the first information report was lodged at the police station. He has also stated that he too accompanied PW 15 when he started from the police station at 10 or 10.30 a.m. and that he does not know at what time PW 15 reached the scene of occurrence. Thus, it is seen that PW 16 has given highly discrepant evidence regarding the time at which he reached the police station along with his father and others including PW 1 as also about the time at which he claims to have written the first information report to the dictation of PW 15 after getting the approval of his father for writing the same.

D The evidence of Uma Shankar Upadhyya (PW 10) who was Head Constable at Bansidh police station is that PW 1 came to the police station at 11.30 p.m. on 24.9.1974 with the first information report (Ex.Ka-1) and that on the basis of that report he prepared the check report (Ex.KA-21). It has been elicited in his cross-examination that Constable Ram Naresh Singh (PW 14) left the police station carrying the special reports to his superior officers at 6.05 a.m. on 25.9.1974. In answer to questions put to him in cross-examination PW 14 has stated that he carried the special reports to his superior officers from the police station in the morning of 25.9.1974. The investigating officer (PW 15) has stated in his evidence that after receipt of the first information report at the police station in his presence he took up investigation immediately and left the police station to the scene of occurrence along with PW 1 and others at about 1.30 a.m. on 25.9.1974 and reached the scene of occurrence at about 4 a.m. after some delay as he had to cross a river on the way and wait for some time to call the boats-men. No doubt it has been elicited from PW 15 in the cross-examination that the first parcha of the case diary which is dated 25.9.1974 bears the signature of the Deputy Superintendent of Police made on 28.9.1974 but not the seal of that office. From that fact alone it could not be inferred that there was delay in the receipt of the copies of relevant records from the police station in the

office of the Superintendent of Police though it may be that the endorsement in that office had been made only on 28.9.1974, for even according to the evidence of PW 16 which is unreliable the first information report was in existence at least at 11 a.m. on 25.9.1974. In these circumstances, we accept the evidence of PW 16 and find that Ex.Ka-1 is the only first information report in the case and that it was scribed by PW 16 at the spot on the basis of particulars finished by PW 1 at 9 p.m. and handed over by PW 1 at the police station at about 11.30 p.m. on the same day and that only after a case had been registered on the basis of that first information report PW 15 left the police station along with PW 1 and others at 1.30 a.m. on 25.9.1974 and reached the scene of occurrence at 4 a.m. The learned Judges of the High Court, in our opinion, erred grievously in holding on the unreliable evidence of PW 16 alone that the first information report (Ex.Ka-1) was recorded at the police station at 11. a.m. on 25.9.1974. If it had been recorded only at that time it is improbable that copies thereof would have been delivered by PW 14 to the higher authorities in the morning of 25.9.1974 itself.

A  
B  
C  
D

The learned Judges of the High Court have rejected the evidence of PW 1 for two reasons, namely (1) that whereas he had stated in the first information report that he went to Ballia along with the deceased on 24.9.1974 he has stated in his evidence that he went to Ballia only later at about 1.30 p.m. on that day and did not accompany the deceased from Mangalpura and (2) that the name of PW 1 is not mentioned in the order-sheet of the Sub-Divisional Officer, Ballia relating to the case in connection with which the deceased had gone to Ballia on that day. No doubt there is discrepancy between the recital in the first information report and the evidence of PW 1 on the question whether PW 1 went along with the deceased to Ballia on 24.9.1974 or had gone to Ballia separately and met the deceased at that place at about 1.30 p.m. on that day. It is not a material discrepancy. It would appear from the fact that on the letter (Ex.XII) an endorsement had been made by the deceased to the effect that on 24.9.1974 he had given Rs.10 to PW 1 for bringing witnesses that PW 1 who was his pairokar might have gone to Ballia with or without witnesses on 24.9.1974. If he had not gone to Ballia on that day and had not accompanied the deceased from Ballia when he left that place for Mangalpura it is not probable that PW 1 would have been seen by PW 6 soon after the occurrence or he could have got the first information report scribed by PW 16 at 9 p.m. on 24.9.1974 itself and handed it over at the police station at 11.30 p.m. on the same day and accompanied PW 15 from

E  
F  
G  
H

A the police station to the scene of occurrence at 1.30 a.m. on 25.9.1974. Therefore, we accept the evidence of PW 1 that he had gone to Ballia on 24.9.1974 and had left that place for Mangalpura by a bus along with the deceased and was present at the time of occurrence and had witnessed the same. The learned Judges of the High Court had not rejected the evidence of PW 2

B that on 24.9.1974 he had been to Ballia to meet his ailing relation Shamshuddin Sain at Baheri in Ballia and was in his house upto 4 or 4.30 p.m. He has stated that he thereafter boarded the bus in which the deceased and PW 1 were seated for proceeding to his village for which he had to get down from the bus and cross a river. They have rejected the evidence of PW 2

C that he was present along with the deceased at the time of the occurrence and had seen the occurrence merely because after one crosses the 'dah' (river) there are two routes to proceed to Shankerpura one of them going from the ghat towards Shankerpura and the second towards Mangalpura on the west and then north to reach Shankerpura, and the learned Judges thought that it is improbable that PW 2 would have taken the route which is longer by 1 or 1-1/2 miles instead of the shorter route proceedings from the ghat. The learned Judges have failed to give the importance which it deserves to the evidence of PW 2 that much jungle falls in the first route and therefore people go by that route only during day time and the second route is plain and therefore they go through that route during night. They have also failed to take note of the fact that it was night time and PW 2 would have had the company of the deceased and PWs. 1 and 3, if he went by the longer route and would have had to go all alone if he went by the shorter route running through the ghat. The learned Judges have rejected the evidence of PW 3 who is a trader in bullocks merely because he has stated in his evidence that on 24.9.1974 he went to Ballia for purchasing a weak bullock whereas he had purchased a stronger bullock for Rs. 1200 from nearabout his village a few days later. They have observed that it is improbable that PW 3 would have gone to Ballia on 24.9.1974 for purchasing a weak bullock when strong bullocks were available in neighbourhood itself. PW 3 who trades in bullocks might purchase weak as well as strong bullocks depending upon the need as rightly submitted by Mr. Dalveer Bhandari. The fact that PW 3 had gone to Ballia for purchasing a weak bullock is not a sufficient reason for disbelieving his evidence that he had gone to Ballia on 24.9.1974 for purchasing a bullock and that he travelled by the bus in which the deceased and PWs. 1 and 2 were travelling on their return from Ballia on that day. As stated earlier the name of not only PW 2 but those of PWs.1 and 3 as eye-witnesses are mentioned

H

in the first information report which has been found to have been recorded at 9 p.m. itself at the spot and to have been handed over at Bansidh police station at 11.30 p.m. on the same day. PWs 1 to 3 have all been examined by PW 15 at Mangalpura on 25.9.1974 itself. It is not probable that they would have been easily and readily available for examination on 25.9.1974 itself if they had not been present at the time of the occurrence and had not witnessed the occurrence. PW 1 alone belongs to Mangalpura while PWs 2 and 3 belong to different villages as already mentioned. We, therefore, accept the evidence of PWs 2 and 3 as well regarding their presence at the time of the occurrence and witnessing the scene. PWs. 2 and 3 are independent witnesses, and PW 1 is a respectable witness as he is a member of the Gram Sabha and President of the Co-operative Society though admittedly he was the pairokar of the deceased in the case for which he had gone to Ballia on 24.9.1974. The name of PW 1 not finding a place in the order sheet is not a sure basis for holding that he could not have gone to Ballia on 24.9.1974. PWs. 1 to 3 have deposed about the occurrence as mentioned above, and we are of the opinion that there is no convincing reason for rejecting their evidence as unreliable and that the learned Judges of the High Court were not justified at all in rejecting their evidence for the flimsy reasons mentioned by them. We are also of the opinion that the learned trial Judge was absolutely justified in accepting the evidence of the prosecution witnesses and convicting the respondents for the offence of murder and that the learned Judges of the High Court had not justification whatsoever for reversing that judgment and acquitting the respondents. This is not a case where two views on the evidence available on record are possible. We, therefore, allow the appeal and affirm that of the learned trial Judge convicting the respondents for the offence of murder of Jaleshwar Singh. But though the case is of gruesome and cold-blooded murder and the learned Sessions Judge was justified in awarding the sentence of death having regard to the fact that the occurrence took place over a decade ago, we sentence the respondents to undergo imprisonment for life. The bail bonds of the respondents who are on bail are cancelled, and they shall be taken into custody forthwith for serving the remaining part of the sentence.