

STATE OF UTTAR PRADESH

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v.

RAM SEWAK AND ORS.

DECEMBER 18, 2002

[M.B. SHAH AND D.M. DHARMADHIKARI, JJ.]

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Penal Code, 1860—Section 302 read with Section 148—Conviction—Acquittal by High Court—Justification of—Appeal—Held: Acquittal not justified since High Court on unsubstantial grounds and merely on conjectures rejected the dying declaration of the deceased which fully established active involvement of accused and stood corroborated by other eye witnesses as also the fact of prompt filing of FIR—Hence order of acquittal set aside as against the accused actively involved.

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Appeal against acquittal—Interference by Supreme Court—Scope—Held: this Court should be slow in interfering with the verdict of acquittal—If verdict of acquittal is reasonable, this Court should not substitute its own view and reverse it into conviction.

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There were factional rivalries between the members of the accused and the complainant party. It is alleged that accused armed with fire arms and bhalas approached the house of the complainant party at midnight. One of the members of the complainant party alerted the inmates of the house. Accused party fired 15 to 20 rounds at the complainant party. Complainant party raised an alarm. Respondent No.1—accused then fired from his gun which hit the deceased. Thereafter assailants ran away from the scene. Brother of the deceased—PW 1 who was present at the scene lodged an FIR. Deceased suffered bullet injuries and was taken to the hospital. Thereafter his dying declaration was recorded, after which he died. Trial Court convicted and sentenced the respondents under Section 302 read with Section 148 IPC. However, High Court acquitted them. Hence the present appeal.

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Appellant-State contended that there was no justification for High Court to reject reliable pieces of evidence and acquit the accused since FIR was lodged promptly and Tehsildar recorded dying declaration in the presence of the doctor and other witnesses corroborated the version given by the deceased in his dying declaration.

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A Respondents-accused contended that High Court drew a conclusion of acquittal of accused on the reappraisal of the evidence which is plausible and reasonable and this Court on settled legal principles should not upset the verdict of acquittal; that the medical evidence did not corroborate the dying declaration and the evidence of eye-witnesses; and that as per the prosecution case as many as 20 rounds were fired by assailants, hence respondent No 1 alone cannot be attributed to have fired and killed the deceased by his gun.

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Disposing of the appeal, the Court

C HELD: 1.1. It is settled legal position that if a view taken by the Court recording verdict of acquittal is reasonable, this Court would not substitute its own view and reverse the verdict of acquittal into conviction. This Court should be slow in interfering with the verdict of acquittal. Further the criminal jurisprudence no doubt requires a high standard of proof for imposing punishment on an accused, but it is equally important that on hypothetical grounds and surmises prosecution evidence of a sterling character should not be brushed aside and disbelieved to give undue benefit of doubt to accused.

D [513-E, F, H; 514-A]

State of Punjab v. Bura Singh, [1985] 1 SCC 37; *State of U.P. v. Gokaram*, [1984] Suppl. SCC 482 and *State of U.P. v. Suresh*, [1981] 3 SCC 635, referred to.

E 1.2. In the instant case, High Court on unsubstantial grounds and merely on conjectures reversed a reasoned judgment of conviction of trial Court by wrongly acquitting the accused. There was no justifiable reason for High Court to have rejected the dying declaration of the deceased which fully established his active involvement and also FIR which was lodged promptly.

F Respondent No 1 was clearly named both in the FIR lodged by eye-witness and the dying declaration of the deceased. He was identified as having fired at deceased causing bullet injuries which resulted in his death. Hence, it would be unjust not to interfere. Therefore, setting aside the acquittal of respondent No 1 and confirming the judgment of conviction and sentence passed against him by trial Court is justified. [513-G; 514-A, B]

G 1.3. Both in the FIR and in the dying declaration there is an omnibus statement against four accused alleged to have been members of unlawful assembly who fired at the house of complainant. There is no evidence of actual part played by them and also to infer any common intention on their part with

H respondent no 1. Therefore conviction and sentence passed by the trial Court

is restored only against the respondent No. 1. [514-B, C]

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2.1. It was not correct on the part of High Court to come to the conclusion that in the dying declaration mention of the motive as '*parti-bandi*' was a vague suggestion and may be an outcome of some tutoring by those who had taken him to the hospital. [510-G]

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2.2. PW1 lodger of the FIR had contested election against respondent No 1, was too remote a reason to disbelieve the version in FIR and to allege false implication. Speculation of High Court that the nature of the occurrence and motive was something else is not borne out from any evidence or circumstance. Therefore High Court erred in rejecting the version of PW1 given by him promptly in the FIR and confirmed by him in the Court.

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[511-G, H; 512-A]

2.3. The non-examination of the third eye-witness who had seen the accused and identified some of the accused when proceeding towards their house is not an infirmity of a nature as to outright reject the version both of the eye-witnesses and the dying declaration. [512-D]

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2.4. High Court erred in disbelieving the prosecution version and holding the veracity of alleged involvement of respondent No 1 as doubtful. [512-E]

2.5. It is not necessary that all 20 rounds fired might have hit any of the person as they had already been alerted and had taken a cover to ward off bullets. According to the witnesses, deceased sustained bullet injury as he was on the roof top and was trying to see the assailants and the prosecution proved beyond doubt the involvement of respondent No 1 as the one who fired with his gun and killed the deceased. [513-D, E]

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2.6. Without going into possibilities that if the bullet fired gets split into pellets, one fire can cause more than one injury, even if the doctor's evidence is to be believed that one fire cannot cause two injuries, it cannot be doubted that deceased had seen respondent No 1 to have fired at him and hitting him on his shoulder and neck. [513-C]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 530 of 1991.

From the Judgment and Order dated 7.5.1991 of the Allahabad High Court in CrI. A. No. 659 of 1979.

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A Prashant Chaudhary, Pramod Swarup, Praveen Swarup and Ms. Pareena Swarup, for the Appellant.

U.R. Lalit, N.P. Midha, Bharat Sangal and Ms. Asha Jain Madan, for the Respondents.

B R.R. No. 2 Ex-Parte.

The Judgment of the Court was delivered by

DHARMADHIKARI, J. The facts revealed in this case by the evidence produced for the prosecution should be taken as a reminder to the Legislative Bodies and Social Reformers that penal laws howsoever deterrent are inadequate to prevent crimes unless there is change brought about in the way of life, thinking and outlook of the members of the communities against each other in village and cities of this country. Such a social change can be realised not only by making laws but imparting sound moral education and spiritual upliftment of the people.

D This opening comment is prompted by the tragic facts of this case. A young newly married boy of only twenty two years of age, named, Ram Sudhar Singh was shot dead. The motive for the crime alleged against the accused person is that they formed a faction in the village of influential *Thakur* community and were insisting that Jograj Singh (examined as a Court Witness) should give his daughter in marriage to a boy of the choice of the accused party. Against the wishes of the members of the accused party, Jograj Singh gave his daughter in marriage to deceased Ram Sudhar Singh. There were other factional rivalries between the members of the accused and the complainant party on past criminal incidents as well as election contest which have been highlighted by the accused in their separate defence plea recorded at the end of the trial under Section 313 of the Code of Criminal Procedure.

F The Trial Judge, i.e., First Additional Sessions Judge, Shahajhanpur, by his judgment dated 9-2-1979 and order of sentence dated 14-2-1979 convicted five accused who are respondents in this appeal before us and sentenced them to life imprisonment for offence under Section 302 read with Section 148 I.P.C. and imprisonment for two years for offence under Section 148 I.P.C. The other ten co-accused were acquitted.

G In the appeal preferred by the five convicted accused, the High Court

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vide judgment dated 7-5-1991 acquitted all the accused against which on grant of leave by this Court appeal has been preferred by the State of Uttar Pradesh. A

On the night between 26th and 27th May, 1978 at the house of Jograj Singh, in Village Raghunathpur, P.S. Jalalabad, District Sahajhanpur deceased (being his son-in-law) and Chandrabhan Singh, PW1 (brother of the deceased) along with other guests were present to participate in Chatti ceremony on the occasion of 8th day of the birth of a child in that family. After dinner was over at about eight in the night, Chandrabhan Singh, PW1 and Jograj Singh were conversing with each other on a platform in front of their house where a gas lantern was burning. Sometime in the midnight Nanheylal, son of Jograj Singh came running and alerted them that accused persons with fire arms were approaching towards their house to avenge the past enmity between the two factions. The allegation is that the accused were armed with fire arms like guns and pistols and Bhalas. They formed an unlawful assembly. On being alerted by Nanheylal, Chandrabhan Singh (PW1) and Court Witness Jograj Singh ran towards the house. They saw the accused taking position in the open space in the front of their house. The accused started firing. About 15 to 20 rounds were fired. The deceased and other persons standing on the roof of the house raised an alarm. Thereupon, accused Ram Sewak fired from his gun and the bullet hit the deceased. In defence, one Pehelwan Prasad of the village also fired from his licensed gun. Thereafter, the assailants ran away from the scene. The first information report of the incident (Exhibit K1) was lodged by Chandrabhan Singh, PW1 in Police Station Jalalabad at six in the morning. The police station was five miles away from the place of incident. The F.I.R. was lodged by a written complaint. The deceased who suffered bullet injury was taken to Primary Health Centre, Jalalabad where Dr. R.C. Asthana, PW3 examined his injuries vide Injury Report (Exhibit k-4) at 8.20 a.m. in the morning. The same Doctor certified him fit for recording dying declaration. The dying declaration (Exhibit K 5/2) was recorded at 8.20 a.m. in Primary Health Centre, Jalalabad by Shri R.S. Mathur, Tehsildar Magistrate, PW4. In the dying declaration the deceased clearly named accused Ram Sewak to be the assailant who fired at him with the gun causing bullet injuries on left side of his neck and shoulder. The deceased in the dying declaration also mentioned names of the four other accused who are respondents before us as the assailants who fired at the complainant party. The deceased in the dying declaration described the cause of incident as village factions (parts bandi). In Primary Health Centre, Jalalabad his condition was found serious. After recording dying declaration the deceased was sent for treatment to H

A District Hospital, Shahjhanpur where he died on the same day i.e., 27.5.1978 at 2 p.m. The postmortem was conducted by Dr. Sudhir Singh, Medical Officer, District Hospital, Shahjhanpur who found the following two gun shot injuries on the person of the deceased.

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1. Gun shot wound of entry on left side of neck lower part 5 c.m. above and laterally from medial and of left clavicle 2.5 c.m. x 2.3 c.m. x muscle. Margins are inverted.
 2. Gun shot wound entry on interior aspect of left shoulder 4.7 c.m. away and outward from left acromio-clavicular joint 2.2 c.m. x 2 c.m. x chest cavity deep.

C In the opinion of the doctor the death was due to shock and haemorrhage as a result of the injuries sustained.

D One big metallic shot was recovered from muscle of upper thoracic vertebra. Another one big and small metallic shot pieces were recovered from right side of survival vertebra.

E The accused abjured the guilt and took a defence plea of their false implication because of their enmity with the complainant party. Accused Ram Sewak in his statement under Section 313 Cr.P.C. took a defence plea that PW1 Chandrabhan Singh, brother of the deceased was related to one Mohan Singh who was charged for the murder of real brother of accused Ram Pratap Singh. Accused Ram Sewak and some of the other co-accused were witnesses in the said case on behalf of the State. On being released on bail Mohan Singh was living with Chandrabhan Singh, and that was the motive to falsely implicate the accused. According to him the incident of firing took place as some unknown decoits had attacked the house of the complainant on the alleged date of incident. Similar plea of enmity because of the criminal case against Mohan Singh was taken by the other co-accused.

G The learned Judge of the Trial Court on appreciation of evidence came to the conclusion that on the basis of mention of names of five accused (respondents herein) in the First Information Report (Exhibit K-1) and the clear mention of their names in the dying declaration recorded by the deceased (Exhibit K 5/2) coupled with the oral testimony of PW1 Chandrabhan Singh and Court Witness Jograg Singh, the participation of the respondents-accused was conclusively proved. The learned Trial Judge, therefore, convicted and sentenced all the five accused for offences under Section 302 read with H Section 148 I.P.C. and Section 148 I.P.C.

In the appeal preferred by the accused persons the High Court acquitted all the accused. By reappreciating the evidence it concluded that the dying declaration which was recorded when other members of the complainant party were present in the hospital cannot be safely relied upon. The High Court also did not find the version of the incident given by alleged eye-witness Chandrabhan Singh and the Court witness Jograj Singh as reliable. The oral testimony of the above two eye-witnesses was rejected on the ground that in the background of the past enmity between the two factions in the village the possibility of false implication of the accused was not ruled out.

Learned counsel appearing for the State took us through the evidence on record. It is submitted that in an incident in which First Information Report was lodged so promptly and dying declaration was recorded by Tehsildar in the presence of the Doctor, there was no justification for the High Court to reject such highly reliable pieces of evidence and acquit the accused. It is also argued that the two eye-witnesses Chandrabhan Singh, PW1 and Jograj Singh, the Court witness corroborate the version of the deceased given in his dying declaration. In such circumstances, on behalf of the State it is argued, that a sound judgment of conviction passed by the Trial Court has been upset by the High Court on unsubstantial grounds.

On behalf of the accused learned Senior Counsel made strenuous effort to highlight various infirmities in the prosecution case for supporting the judgment of acquittal. On behalf of the accused learned counsel argued that on the reappreciation of the evidence as is done by the High Court a conclusion has been drawn which can be said to be plausible and reasonable. This Court on settled legal principle should not upset the verdict of acquittal given by the High Court. It is submitted that this Court should refrain from embarking upon reappreciation of the evidence to come to a contrary conclusion and convict the accused.

We have heard counsel for the parties and gone through the evidence on record with meticulous care. We are also conscious of our limitations in deciding an appeal against acquittal. It is settled legal position that if a view taken by the Court recording verdict of acquittal is reasonable, this Court would not substitute its own view and reverse the verdict of acquittal into conviction. It is by keeping these limitations in our minds we have scrutinized the evidence. We find that the High Court has on very unsubstantial and minor infirmities, wrongly/acquitted the accused. Accused Ram Sewak was clearly named both in the promptly lodged F.I.R. by eye-witness PW1,

A Chandrabhan Singh and in the dying declaration of the deceased. He was identified as having fired at the deceased causing bullet injuries on his left neck and shoulder. It is rarely to be found in a criminal case that the description of the incident and injury described in the dying declaration gets full corroboration from the medical evidence contained in Injury Report and Postmortem Report.

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After examining the evidence on record, we find that there was no justifiable reason for the High Court to have rejected such evidence of sterling quality like the dying declaration of the deceased and the First Information Report, promptly lodged.

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The High Court has found the dying declaration unworthy of reliance by assigning following reasons in its judgment:

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“Not only this, according to the dying declaration the enmity was of ‘*parti-bandi*’. If there was any such thing like pressurization by these accused persons, it should have been known to the deceased also. The absence of any such thing itself and then reference to the *parti-bandi* gives an impression that though the deceased was asked to name certain persons, he could not understand the reason and took resort to commonly known cause of enmity, that is, ‘*parti-bandi*. Obviously, he or members of his family had no occasion to ‘*parti-bandi*’ with residents of village of in-laws’ howsoever close it may be. These factors not only make the statement of P.W.1 Chandrabhan Singh unworthy of credit but also cast, shadow on the veracity of the so-called dying declaration. Of course, the Magistrate could not do anything better than to remove the persons who were there but he could not undo the effect of words which had already been conveyed.”

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We find that the aforesaid reasoning of the High Court for rejecting dying declaration is highly speculative and fallacious.

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The prosecution evidence shows that there was enmity and rivalry between the two groups in the village and this fact has also been admitted in the defence plea of all the accused under Section 313 Cr.P.C. Chandrabhan Singh, PW1 has also mentioned marriage of deceased with the daughter of Jograj Singh as the cause of annoyance of the accused party. It was, therefore, not correct on the part of the High Court to come to the conclusion that in the dying declaration mention of the motive as ‘*parti-bandi*’ was a vague

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suggestion and may be an outcome of some tutoring by those who had taken

him to the hospital. It was natural that the injured was carried to the hospital. Dying declaration given by the deceased cannot be held as tainted merely because he was carried by his relations or friends to the hospital. There is no suggestion of tutoring to the deceased before he made dying declaration. Apart from the above omission, Jograj Singh, Court Witness has helped the prosecution to the extent of confirming that deceased, soon after he was hit by a bullet, had mentioned accused Ram Sewak to have hit him with the bullet from his gun on his neck and shoulder. Chandrabhan Singh, PW1 also makes a mention of Ram Sewak to have hit the deceased, in the written complaint submitted by him promptly within few hours. If at all it was a case of tutoring, nothing prevented the deceased to have named apart from five persons other co-accused. There was no apparent cause to falsely implicate amongst the accused only Ram Sewak to have fired at him. It is also not the case that Ram Sewak was the arch enemy or the leader of the other faction. In such circumstances, the High Court could not have on imagination discarded the dying declaration as not voluntary and an outcome of possible tutoring.

The First Information Report which was promptly lodged and clearly implicating accused Ram Sewak as the assailant, who hit the deceased with bullet from his fire arm, has similarly been rejected on flimsy grounds. PW1 Chandrabhan Singh, lodger of the F.I.R. had in the past contested election against Ram Sewak for membership to Teachers' Association. This was too remote a reason to disbelieve the version in the First Information Report and to allege false implication. In disbelieving the version of PW1 Chandrabhan Singh in the First Information Report and in deposition in the Court, the High Court observes thus:

“PW1 Chandrabhan Singh appears to have had some election rivalry in the matter of Shikshak Sangh with Ram Sewak. The testimony of such a witness has to be seen with greatest possible caution specially in the circumstances mentioned above. The use of word ‘parti-bandi’ in the so-called dying declaration of the deceased, as a matter of motive, also might have its value in the light of this admitted election rivalry. The chances that the concurrence was something else and was given a shape of attempt to commit murder due to this election rivalry cannot be ruled out, specially when no one else than the person who had this grievance, i.e., PW1 Chandrabhan Singh is coming forward to say a word in support of this contention.”

From the observation made above, we find that the High Court has given undue importance to some election contest for Teacher's Association

A which may not be an incident of very recent past and as grave an issue as to falsely implicate a person who might not have even participated in the crime. This speculation of the High Court that the nature of the occurrence and motive was something else is not borne out from any evidence or circumstance. The accused took a defence plea that on the date of incident unknown dacoits had attacked the house of Jograj Singh. Such a defence plea was on the face of it utterly false and imaginative. If it was an attack of dacoits there would have been entry of the dacoits into the house to rob some valuables from the inmates but nothing of that sort had happened nor any such suggestion was made to the prosecution witnesses. It was, therefore, not correct on the part of the High Court to have rejected the version of PW1 given by him promptly in the First Information Report and confirmed by him in the Court.

Similarly, the High Court gave undue importance to the fact that boy Nanhe Singh, son of Jograj Singh who had gone running to alert the inmates of the house and had mentioned the names of the assailants was not examined by the prosecution. The accused were known to the complainant party from before and there was no question of mis-identity. The incident was witnessed and some of the accused were identified by Chandrabhan Singh and were told to Court Witness Jograj Singh. The non examination of the third eye-witness Nanhey Singh, who had also seen the accused and identified some of the accused when proceeding towards their house is not an infirmity of a nature as to outright reject the version both of the eye-witnesses and the dying declaration.

The High Court in disbelieving the prosecution version, also gave importance to the so called undisputed fact that on the same day of the incident, there was marriage of sister of accused Ram Sewak and his participation in the crime, therefore, was highly improbable.

The incident took place at about midnight. Assuming, although there is no definite evidence of actual marriage function of the sister of accused Ram Sewak to have been scheduled on that day, it was possible for accused Ram Sewak to have accompanied other co-accused in the midnight to avenge the past enmity. The appreciation of this part of the evidence by the trial Judge ought not to have been rejected by the High Court and hold the veracity of the prosecution version of alleged involvement of accused Ram Sewak as doubtful.

H From the evidence discussed above, we find that apart from oral evidence,

the evidence of dying declaration was clinching so as to fully establish active involvement of accused Ram Sewak. He was identified to have fired at the deceased and caused bullet injuries to the deceased which resulted in his death. A

Learned counsel appearing for the accused also commented on the medical evidence as not corroborating the dying declaration and the evidence of the eye-witnesses. It is argued that Dr. Sudhir Singh, PW2 who conducted the autopsy on the dead body of the deceased in his cross examination has very clearly stated that the two bullet injuries on the left side of neck and shoulder could not have been caused by one fire. The learned Trial Judge in appreciating the above evidence of the Doctor has observed that if the bullet fired gets split into pallets, there is a possibility of one fire causing more than one injury. Without going into such possibilities, even if the Doctor's evidence is to be believed that one fire cannot cause two injuries, it cannot be doubted that the deceased had seen Ram Sewak to have fired at him and hitting him on his shoulder and neck. B C D

Learned counsel for the accused then argued that as per the prosecution case as many as 20 rounds were fired by the assailants hence accused Ram Sewak alone cannot be attributed to have fired and killed the deceased by his gun. It is true that the prosecution version is that about 20 rounds were fired. It is however not necessary that all rounds fired might have hit any of the person as they have already been alerted and had taken a cover to ward off bullets. According to the witnesses, deceased sustained bullet injury as he was on the roof top and was trying to see the assailants. On the above state of evidence, the prosecution has proved beyond doubt the involvement of accused Ram Sewak as the one who fired with his gun and killed the deceased. Learned counsel for the accused argued that on the appreciation of the evidence as the conclusion drawn by the High Court can be said to be a reasonable and possible view, this Court should not upset the verdict of the acquittal. E F

It is true that this Court should be slow in interfering with the verdict of the acquittal but as found by us, in this case, a reasoned judgment of conviction of the Trial Court has been reversed by the High Court on unsubstantial grounds and merely on conjectures, it would be unjust not to interfere. See: *State of Punjab v. Bura Singh*, [1985] 1 SCC 37 and *State of U.P. v. Gokaram*, [1984] Suppl. SCC 482. See also: *State of U.P. v. Suresh*, [1981] 3 SCC 635. The criminal jurisprudence no doubt requires a high standard G H

A of proof for imposing punishment on an accused, but it is equally important that on hypothetical grounds and surmises prosecution evidence of a sterling character should not be brushed aside and disbelieved to give undue benefit of doubt to the accused. On the evidence, as discussed above, the High Court was not justified in rejecting the dying declaration, evidence of PW1 Chander Bhan Singh who corroborated his promptly lodged FIR and court witness Jodgraj Singh. We, therefore, find ourselves fully justified in upsetting the acquittal of accused Ram Sewak and confirming the judgment of conviction and sentence passed against him by the Trial Judge.

C So far as other four accused are concerned, both in the F.I.R. and in the dying declaration there is an omnibus statement against them to have been members of unlawful assembly who fired at the house of the complainant. There is no other evidence of actual part played by them. There is no evidence also to infer any common intention on their part with accused Ram Sewak. For the reason aforesaid we allow this appeal only as against respondent-accused Ram Sewak and restore the judgment of conviction and sentence passed against him by the Trial Court. The appeal as against the other co-accused is hereby dismissed. The bail bond furnished by the accused Ram Sewak is hereby cancelled and he be taken into custody for his imprisonment as directed by the Trial Court.

N.J.

Appeal disposed of: