

SUPREME COURT OF INDIA

Farida Begum

Vs.

State of Uttarakhand

CrI.A.No.1560 of 2013

(N.V.Ramana,J., Mohan M.Shantanagoudar and M.R.Shah,JJ.,)

04.12.2018

JUDGMENT

M. R.Shah,J.,

1. The present appeals before this Court arise against the impugned common judgment and order dated 22.08.2012 passed by the High Court of Uttarakhand at Nainital passed in Criminal Appeal Nos. 235/2004, 239/2004 and 261/2004 by which the High Court has dismissed the said appeals preferred by the original Accused Nos.1, 2 and 5 and has confirmed the conviction and sentence imposed by the learned trial Court convicting them for the offences under Sections 302/149 and 147 of the IPC.

1.1 That, in all, eight accused were tried for the offences under Sections 147, 148 and 302/149 of the IPC for having committed murder of one Mukhtar Ahmed. That, out of the eight accused, three accused namely, Raees Ahmed (A4), Mohd. Ashraf (A2) and Raees Ahmed @ Satna (A5) were also tried for the offence under Section 25 of the Arms Act. That, during the trial, accused Mohd. Aslam (A3) died and, therefore, the case of the said accused was ordered to be abated. That, on conclusion of the trial, the learned Additional Sessions Judge, Fast Track Court, Kashipur, District Udham Singh Nagar (hereinafter referred to as “the trial Court”) held all the accused guilty for the offences under Sections 302/149 of the IPC and sentenced them to undergo life imprisonment and a fine of Rs.2,000/- each and, in case of default in paying the fine, to undergo one year RI. The learned trial Court also convicted the original Accused No.1 Smt. Farida Begum, original Accused No.6 Mohd. Nasim @ Churti and original Accused No.7 Idrish for the offence under Section 147 of the IPC and sentenced them to undergo one year RI. The learned trial Court also convicted the original Accused No.2 Mohd. Ashraf, original Accused No.4 Raees Ahmed and the original Accused No.5 Raees Ahmed @ Satna for the offences under Section 148 of the IPC and sentenced them to undergo two years RI. That the learned trial Court acquitted the original Accused Nos.2, 4 and 5 for the offence under Section 25 of the Arms Act.

1.2 Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence imposed by the learned trial Court, the original Accused No.1 Smt. Farida Begum preferred Criminal Appeal No.235 of 2004 before the High Court. The original Accused No.2 Mohd. Ashraf preferred Criminal Appeal No.239 of 2004 and original Accused No.5 Raees Ahmed @ Satna preferred Criminal Appeal No.261 of 2004 before the High Court. The original Accused No.7 Idrish preferred Criminal Appeal No.238 of 2004, Mohd. Nasim @ Churti original Accused No. 6 preferred Criminal Appeal No.240 of 2004 and Raees Ahmed original Accused No.4 preferred Criminal Appeal No.251 of 2004 before the High Court, challenging their respective conviction and sentence imposed by the learned trial Court. That, by the common impugned judgment and order, the High Court has dismissed the appeals preferred by the original Accused Nos.1,2,4 and 5 and has confirmed their conviction. The High Court, however, has allowed the appeals preferred by the original Accused Nos.6 and 7, i.e. Criminal Appeal Nos.238 of 2004 and 240 of 2004 and has acquitted them by giving them the benefit of doubt.

1.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the original Accused Nos.1,2 and 5 have preferred the present Criminal Appeals being Criminal Appeal Nos.1560/2013, 1652/2013 and 1653/2013 respectively. At this stage, it is required to be noted that so far as the original Accused No.4 Raees Ahmed is concerned, he has not preferred any appeal, however, his case shall be dealt with hereinbelow.

2. The case of the prosecution in nutshell is as under:

That FIR was lodged on 01.07.1999 at about 9.15 PM at Police Station, Jaspur, Udham Singh Nagar by one Shahid Hussain against the accused persons for the offences under Section 302/149, 147, 148 of IPC and Section 25 of the Arms Act. It was revealed that the complainant, along with two of his companions, Mukhtar Ahmed and Mohd. Rafi after performing their evening Namaj at a Mosque in their town, reached the house of one Rafiq Ahmed (Dildar) at about 8.00 PM in the evening. It was further stated that the complainant and Mukhtar Ahmed often used to visit the house of Dildar after performing the evening Namaj. On that day, at about 8.20 PM, Dildar went inside his house to bring tea for his guests. During this period, Smt. Farida Begum (A1), Chairman, Nagar Palika, Jaspur, Mohd. Ashraf, Raees Ahmed, Raees Ahmed @ Satna, Mohd. Aslam, Naseem @ Churti and Idrish (all original accused), accompanied by one unknown person entered the house of 'Dildar', where these three guests were sitting. Out of these persons, Mohd. Aslam and Idrish caught the hands of the Mukhtar Ahmed (deceased), and Nasim @ Churti and the unknown person caught hold of the legs of Mukhtar Ahmed (deceased). While the complainant and Mohd. Rafiq objected, Smt. Farida Begam exhorted that "the son of Darji should be finished and we will see how he removes me as Chairman of the Nagar Palika". It was further stated that, on this exhortation, Raees Ahmed, Raees Ahmed @ Satna and Mohd. Ashraf fired from their respective guns which they were carrying. It was further stated that, out of three gun shots, two had hit Mukhtar

Ahmed (deceased), whereas one did not fire or mis-fired. It was further stated that thereafter Smt. Farida Begum threatened that if anyone names them to the police or approves the “no confidence motion” against her, he shall also be killed. That the case was investigated by the Investigating Officer D. K. Sharma. He, along with other Police Officers, reached the spot at about 9.15 PM. The inquest report was completed by 11.45 PM. The Investigating Officer recorded the statements of the witnesses. After preparing the inquest report, other formalities were performed to send the dead body for post-mortem. The Investigating Officer also prepared the Panchnama of the place of incident and also prepared the map. That, during the course of investigation, the respective accused came to be arrested. The Investigating Officer also recovered the firearm used in the commission of the offence and sealed them. During the course of the investigation, the Investigating Officer also collected the incriminating materials. During the course of the investigation, the Investigating Officer also collected the medical evidence as well as the report of the scientific analyst. After conclusion of the investigation, the Investigating Officer filed charge-sheet for the offences under Sections 147, 148, 302/149 of the IPC and Section 25 of the Arms Act against the respective accused. That the learned Magistrate took cognizance and committed the case to the learned Sessions Court, which was numbered as Sessions Trial Nos. 147 of 2000, 148 of 2000 and 149 of 2000. At this stage, it is required to be noted that, as such, Session Trial No. 147 of 2000 was the main case, insofar as Session Trial Nos. 148 and 149 of 2000 were against Raees Ahmed (A4) and Mohd. Ashraf (A2) for the offences under Section 25 of the Arms Act. That all the accused pleaded not guilty and, therefore, all of them came to be tried for the aforesaid offences.

3. To bring home the charge against the accused, the prosecution examined the following witnesses:

PW1	Shahid Hussain	Informant and eye-witness
PW2	Mohd. Rafi	Eye-witness
PW3	Mohd. Navi	
PW4	Naim Khan	
PW5	Dr. J. K. Goel	Who conducted the post-mortem
PW6	Sub-Inspector Nirvikar	One of the Investigating Officers
PW7	S.I. D. K. Sharma	Investigating Officer
PW8	Sub-Inspector Suresh Chandra Saxena	

3.1 That the prosecution also brought on record through the concerned witnesses the documentary evidence, such as the first information report, post-mortem report, Forensic Science Laboratory report, Panchnama of the place of incident, Panchnama of the recovery of the firearm used by the original accused No. 2 etc.

3.2 After closing of the evidence on behalf of the prosecution, the defence examined the following witnesses:

DW1 Shankar Dutta Kandpal

DW2 Ayub Alam

DW3 Naseem Ahmed, Jr. Engineer, Electricity Supply Division, Jaspur (Rural)

3.3 That the defence also brought on record the following documentary evidence:

1) Ex.D20 - the report about the electricity supply in Jaspur town on 1.7.1999.

2) Ex.D32 - the register of the daily log sheet dated 1. 7.1999 (found to be having overwriting in the column of time on it).

4. That, thereafter, after completing the evidence, the accused persons came to be examined under Section 313 of the Cr.P.C. on the basis of the material on record against them. All the accused denied their involvement in the case and denied the evidence against them.

5. Thereafter, after hearing the learned counsel appearing for the parties and, on appreciation of evidence, the learned trial Court by a common judgment and order dated 23.7.2004 convicted Smt. Farida Begum (A1), Mohd. Ashraf (A2), Raees Ahmed (A4), Raees Ahmed @ Satna (A5), Mohd. Nasim @ Churti (A6) and Idrish (A7) for the offences under Sections 302/149 IPC and sentenced all of them to imprisonment of life with a fine of Rs.2,000/- and, in default of payment of fine, to undergo one year's RI. That the learned trial Court also convicted the original accused No. 1 Smt. Farida Begum, original Accused No. 6 Mohd. Nasim @ Churti and original Accused No. 7 Idrish also for the offence under Section 147 of the IPC and also convicted the original Accused No. 2 Mohd Ashraf, original Accused No. 4 Raees Ahmed and original Accused No. 5 Raees Ahmed @ Satna for the offence under Section 148 of the IPC and sentenced them to undergo two years' RI. That the learned trial Court acquitted the accused persons under Section 25 of the Arms Act. The case against the original Accused No. 3 Mohd. Aslam was ordered to be abated due to his death during the trial.

6. As observed hereinabove, the accused approached the High Court by filing their respective criminal appeals. That the High Court, by the impugned common judgment and order has dismissed the appeals preferred by the original Accused Nos. 1, 2, 4 and 5 and maintained the conviction and sentence imposed by the learned trial Court. However, the High Court has

acquitted the original Accused Nos. 6 and 7 by giving them the benefit of doubt. Hence, the original Accused Nos. 1, 2 and 5 are before this Court by way of present appeals.

7. Shri K.T.S. Tulsi, learned senior counsel, has appeared on behalf of the original Accused No.1, Shri Deepak Singh, learned counsel has appeared on behalf of original Accused No.2 and Shri K.K. Tyagi, learned counsel appeared on behalf of original Accused No.5.

7.1 Heard Shri Rajiv Nanda, learned counsel appearing on behalf of the respondent State of Uttarakhand and the learned counsel appearing on behalf of the original Complainant in each of the appeals.

8. SUBMISSIONS MADE BY SHRI K.T.S. TULSI, LEARNED SENIOR COUNSEL APPEARING ON BEHALF OF ORIGINAL ACCUSED NO. 1

Shri Tulsi learned senior counsel appearing on behalf of original Accused No.1 has vehemently submitted that, in the facts and circumstances of the case, both the High Court as well as the learned trial Court have materially erred in convicting the original Accused No.1 for the offences under Sections 302 read with Section 149 and also under Section 147 of the IPC.

8.1 It is further submitted by the learned counsel appearing on behalf of the original Accused No.1 that the conviction by both the Courts below is based upon the depositions of PWs.1 and 2 whose credibility is very doubtful and both of them are not believable. It is further submitted that, as such, there are material contradictions in the depositions of PWs.1 and 2 and other witnesses and, therefore, both the Courts below have materially erred in convicting the original Accused No.1 relying upon the depositions of PWs.1 and 2.

8.2 The learned counsel for the original Accused No. 1 has further submitted that, as such, the prosecution has failed to prove the motive and the reason for the Accused No.1 to kill/commit the murder of deceased Mukhtar Ahmed.

8.3. It is submitted that the enmity with PW.1 Shahid Hussain could not have been accepted as the reason for the original Accused No.1 exhortation that Mushtak Ahmed be shot. It is submitted that, therefore, as the prosecution has failed to prove the motive so far as the enmity between the original Accused No.1 and deceased is concerned, both the Courts below have materially erred in convicting the original Accused No.1.

8.4 It is further submitted by the learned counsel appearing on behalf of the original Accused No.1 that both the Courts below have materially erred in not properly appreciating the fact that the dimension of the room in which the incident had taken place was such that it was impossible to believe that 11 persons were present in the room, when the incident allegedly took place. It is further submitted that, therefore, the story put forward by PWs.1 and 2 and the prosecution is totally unbelievable and,

therefore, the impugned judgment and order of conviction and sentence insofar as convicting the original Accused No.1 deserves to be quashed and set aside.

8.5 It is further submitted that, as such, there are material contradictions so far as the electricity at the time of incident was or not. It is submitted that, in fact, the accused has been able to prove by leading the cogent evidence, namely, examining D-3 - the officer of the Electricity Supply Division that at the time of the alleged incident there was no electricity supply. It is further submitted that the same has been established and proved even by producing documentary evidences Exh.D-20/D-34. It is submitted that, therefore, it was not possible for any of the prosecution witnesses to identify the accused. It is submitted that, therefore, both the Courts below have materially erred in convicting the original Accused No.1.

8.6 It is further submitted that even the original accused No.1 was successful in proving by examining DW-2, the son of the owner of house, that the original Accused No.1 was not present at the time of alleged incident. It is submitted that DW-2 in his deposition categorically stated that the original Accused No.1 and others were not involved in the murder of deceased Mushtak Ahmed.

8.7 It is further submitted that the High Court ought to have acquitted the original Accused No.1 also by giving her the benefit of doubt, as was given to original Accused Nos.6 and

7. It is submitted that once the case against the original Accused Nos.6 and 7 has not been believed and consequently they are acquitted by giving them benefit of doubt, similar benefit of doubt ought to be given to the other accused, more particularly, Accused No.1 also.

8.8 Making the above submissions and relying upon the decisions of this Court in the case of *Jainul Haque v. State of Bihar*¹; *Pandurang Chandrakant Mhatre v. State of Maharashtra*²; *Vaijayanti v. State of Maharashtra*³ and *Hoshiar Singh v. State of Punjab*⁴, it is requested to allow the present appeals and acquit the original Accused No. 1 for the offences for which she has been convicted.

9. Shri Deepak Singh, learned counsel appearing on behalf of original Accused No. 2 has adopted the submissions made by Shri K.T.S. Tulsi, learned senior counsel appearing on behalf of original Accused No. 1 and, as such, has reiterated what was submitted on behalf of original Accused No. 1. In addition, learned counsel appearing on behalf of original Accused No. 2 has also relied upon the decisions of this Court in *Mohinder Singh v. State of Punjab*⁵; *Willie (William) Slaney v. State of Madhya Pradesh*⁶; *Balaka Singh v. State of Punjab*⁷; *Phani Bhusan Das v. State of West Bengal*⁸ and *Suresh Rai v. State of Bihar*⁹.

9.1 Making above submissions and relying upon the above decisions, it is requested to allow the appeal preferred by original Accused No. 2 and acquit him for the offences for which he has been convicted.

10. Shri K.K. Tyagi, learned counsel appearing on behalf of original Accused No. 5, has vehemently submitted that, so far as original Accused No. 5 is concerned, as looking to the dimension of the room which was hardly 10' x 10', it was not possible for the original Accused Nos. 4 & 5 to fire. It is further submitted that, therefore, the story put forward by the prosecution that the original Accused Nos. 4 and 5 were present and they fired, is unbelievable.

10.1 It is further submitted by the learned counsel appearing on behalf of original Accused No.5 that, even otherwise, the prosecution has failed to prove by leading cogent evidence that, in fact, the original Accused Nos. 4 and 5 fired from the firearms. It is submitted that neither the firearm alleged to have been used by the original Accused No. 5 had been recovered, nor even the bullet was recovered/seized. It is submitted that even there is no scientific evidence like ballistic report on record which would suggest and/or prove that, in fact, original Accused No. 5 fired from the firearm, as alleged by the prosecution and as stated by PWs 1 and 2. It is further submitted that, as such, the original Accused Nos. 4 and 5 both are entitled to be acquitted by giving them benefit of doubt on the very ground on which the High Court acquitted the original Accused Nos. 6 & 7 by giving the benefit of doubt.

10.2 It is further submitted that, as such, even the original Accused No. 5 is acquitted for the offence under the Arms Act and, therefore, also both the Courts below have materially erred in convicting the original Accused No. 5.

10.3 Making above submissions, it is requested to allow the appeal preferred by the original Accused No. 5 and quash and set aside the judgment and order passed by both the Courts below convicting the original Accused No. 5.

11. Shri Rajiv Nanda, learned counsel appearing on behalf of the State of Uttarakhand and the learned counsel appearing on behalf of the original complainant have supported the impugned judgment and order of conviction and sentence imposed by the learned trial Court and confirmed by the High Court, convicting the original Accused Nos. 1, 2 and 5 for the offences under Sections 302/149 IPC and other offences for which they are convicted.

11.1 It is further submitted by the learned counsel appearing for the State that, so far as the original Accused No. 1 is concerned, the motive for her to exhort the deceased has been established and proved and the same has been discussed by the learned trial Court as well as the High Court in detail.

11.2 It is further submitted that, even otherwise, as has rightly been observed by the High Court and the learned trial Court that in view of the overwhelming evidence on record, more particularly, the depositions of PWs 1 and 2 the eye witnesses, the presence of original Accused Nos. 1 and 2 is established and proved beyond doubt and the prosecution has been successful in proving the case against the original Accused Nos. 1 and 2, the motive may be inconsequential. It is submitted that, as

such, the motive by the original Accused No. 1 has been established and proved beyond doubt.

11.3 It is further submitted by the learned counsel for the State that, in the present case, the prosecution has been successful in proving the case against the original Accused Nos. 1 and 2 by leading cogent evidence, more particularly, by examining PWs 1 and 2 and other witnesses. It is submitted that both PWs 1 and 2 have fully supported the case of the prosecution and even they are fully cross-examined by the defence, however, in the cross-examination, the defence has not been successful in proving anything contrary to what the aforesaid two witnesses have stated in their examination-in- chief.

11.4 It is further submitted that, as such, there are no material contradictions in the depositions of PWs 1 and 2, as alleged, on behalf of the original Accused Nos. 1 and 2.

11.5 Now, so far as the submissions on behalf of the original Accused Nos. 1 and 2 that at the time of incident there was no electricity supply and reliance placed upon the deposition of DW-3, Junior Engineer of the Electric Supply Division is concerned, it is vehemently submitted that, as such, the learned trial Court as well as the High Court have given cogent reasons to disbelieve the deposition of DW-3. It is submitted that, as rightly observed by the Courts below, DW-3 deposed in favour of the Accused No. 2 to favour the accused persons. It is submitted that his conduct is very much doubtful and even it is established and proved from the cross-examination of the said witness that the document Ex.D-34 was concocted and false one and there was interpolation by mentioning the specific time, only with a view to suit the case of the accused. It is submitted that, therefore, the DW-3 is not believable at all and, as such, both the Courts below have rightly not believed the story put forward by the accused that there was no electricity supply at the time of the incident.

11.6 It is further submitted that even the prosecution has been successful in proving by leading cogent evidence that at the time of the incident there was electricity supply.

11.7 Now, so far as the submission made on behalf of the original Accused No. 5 that he shall also be entitled for the benefit of doubt and is entitled to the acquittal on the very ground on which the other accused - original Accused Nos. 6 came to be acquitted by the High Court is concerned, it is submitted that the case against the original Accused Nos. 6 & 7 and the original Accused Nos. 4 & 5 will be different and is not comparable and, therefore, merely because the other original Accused Nos. 6 & 7 are acquitted by giving them benefit of doubt, the other accused, more particularly, the original Accused Nos. 4 and 5 shall not be entitled to acquittal.

11.8 It is further submitted that even the original Accused No.4 has not preferred any appeal against his conviction and sentence and has accepted the judgment and order

passed by both the Courts below convicting him for the offences under Sections 302/148 IPC.

11.9 Now so far as the submissions on behalf of the accused that as the accused persons came to be acquitted for the offence under the Arms Act and, therefore, the accused are entitled to be acquitted, it is submitted that merely because the accused are acquitted for one offence, ipso facto, they shall not be entitled to the acquittal for the other offences, if the other offences are proved against the accused. It is submitted that, in the present case, both the Courts below have rightly convicted the accused for the offences under Sections 302/149 and 302/148 of the IPC, more particularly, relying upon the depositions of PWs 1 and 2 and on appreciation of the entire evidence on record.

11.10 Making above submissions, it is requested to dismiss the present appeals.

12. Learned counsel appearing on behalf of the original complainant has fully supported the judgment and order passed by both the Courts below convicting the original accused, by further submitting that even the motive by the original Accused No. 1 to bestow the deceased has been established and proved, which has been elaborately discussed by the learned trial Court in paragraph 48. Therefore, it is requested to dismiss the appeals preferred by the accused.

13. Heard the learned counsel appearing on behalf of respective parties at length. We have gone through and considered the impugned judgment and order passed by the High Court as well as the learned trial Court. We have also considered in detail and reappreciated the entire evidence on record.

14. Now, so far as the impugned judgment and order passed by the High Court maintaining the conviction and sentence imposed by the learned trial Court, while convicting the original Accused No. 1 for the offences under Sections 302/149 and Section 147 of the IPC is concerned, we have heard the learned counsel appearing on behalf of the accused as well as the State and have reappreciated the evidence on record. For the reasons stated hereinbelow, we are of the opinion that both the Courts below have not committed any error in convicting the original Accused No. 1.

14.1 The presence of original Accused No. 1 at the time of the incident has been established and proved beyond doubt by the prosecution. The witnesses, more particularly, PWs 1 and 2, in no uncertain words, have clearly stated that the original Accused No. 1 came to the place of the incident and that she started shouting and told to kill the deceased. The role attributed to the original Accused No. 1 clearly suggests that the original Accused No. 1 committed the offence punishable under Sections 302/149 IPC. PW1 has categorically stated that the original Accused No. 1 Smt. Farida Begum came inside the room from the eastern side and, from the northern door, the other accused entered. PW1 categorically stated that the original Accused No. 1 exhorted and said that the deceased must be finished and further stated that she

will see how the “no confidence motion” is passed against her. The said witness has further stated that, immediately thereafter, Mohd. Ashraf who was carrying Tamancha shot at Mukhtar Ahmed (deceased). The deposition of the said witness PW1 has been further supported by the deposition of PW2 Mohd. Rafi. Both the aforesaid two witnesses are thoroughly cross-examined by the defence, however, nothing adverse to the case of the prosecution has been brought from the cross-examination.

14.2 Now, so far as the submission on behalf of original Accused No. 1 that the prosecution has failed to prove the motive to kill the deceased by the original Accused No. 1 is concerned, at the outside, it is required to be noted that it has come on record that the original Accused No. 1 was having enmity with the deceased Mukhtar Ahmed due to municipality politics. PW1, in his evidence, has categorically stated that the deceased Mukhtar Ahmed was elected as the Chairman of the Municipality, Jaspur in the election prior to the election at the time of occurrence and that his wife Smt. Sameena Begum had contested the next election for the post of the Chairman against Smt. Farida Begum and Sameena Begum had lost that election. He has further stated that Smt. Sameena Begum, the wife of the deceased, had challenged the election of A-1 in the court by filing an election petition. That Smt. Farida Begum (A1) was facing ‘no confidence motion’. The Investigating Officer PW7 had categorically stated that as the deceased Mukhtar Ahmed was opposing the actions taken by the original Accused No. 1 Farida Begum in the municipality and that Smt. Farida Begum was the Chairman and Mohd. Aslam was the Councillor in the Municipality and that the deceased Mukhtar Ahmed had got an election petition filed through his wife against Smt. Farida Begum, it could be the cause of committing the murder of Mukhtar Ahmed by the accused persons.

14.3 Even otherwise, it is required to be noted that, in the present case, the presence of the Accused Nos. 1 and 2 at the time of the incident has been established and proved beyond doubt. The role attributed to them has also been established and proved by the prosecution by leading cogent evidence. The testimony of the eye witnesses fully supports the case of the prosecution. Under these circumstances, as rightly observed by the learned trial Court and confirmed by the High Court, the aforesaid defence shall not help the accused persons.

14.4 Reliance has been placed upon the deposition of DW3, the Junior Engineer of the Electricity Supply Department, by the learned counsel appearing on behalf of original Accused Nos. 1 and 2 in support of their case that, at the time of the incident, there was no electricity supply and, therefore, it was not possible for PWs 1 and 2 to identify the accused persons. At the outset, it is required to be noted that, both the learned trial Court and the High Court have disbelieved the deposition of DW3. From the cross-examination of DW-3, it appears that he had concocted the document Ex.D-32 and that there interpolation by inserting the time which suits the accused. On re-appreciation of the deposition of DW-3, we are also of the opinion that the said witness is not reliable and trustworthy and that he had given the deposition only with a view to favour the accused persons. In the cross-examination of DW-3, the

prosecution has succeeded in proving that there was interpolation and overwriting in Ex.32 on the timing and 20.15 PM has been shown as 20.30 PM. Thus, as rightly observed by the learned trial Court as well as the High Court, the defence had made an unsuccessful attempt to prove that there was no electricity supply at the time of incident and that DW-3 had attempted to favour the accused persons for some special reasons and had tempered with the departmental records. We are in complete agreement with the findings recorded by the learned trial Court and confirmed by the High Court while not believing DW-3.

14.5 Now, so far as the submission made by Shri Tulsi, learned senior counsel appearing on behalf of the original Accused No. 1 that there are contradictions in the deposition of PWs 1 and 2 and DW-2 is concerned, on considering the entire deposition of PWs 1 and 2, we do not find any material contradictions which may destroy the case of the prosecution. Sometime there may be minor contradictions. However, unless those contradictions are such material contradictions which may destroy the case of the prosecution, the benefit of such contradictions cannot be given to the accused. In the present case, we do not find any material contradictions in the deposition of PWs 1 and 2 which may destroy the case of the prosecution.

14.6 Now, so far as the submission made on behalf of the original Accused No. 1 that as the original Accused Nos. 6 and 7 are acquitted by the High Court and, therefore, the number of other accused shall be five or less than five and, therefore, the conviction of the original Accused No. 1 for the offence punishable under Section 302 with the aid of Section 149 IPC, is not sustainable is concerned, the same has no substance. It is required to be noted that, from the very beginning, the case of the prosecution was that 7 to 8 persons entered the house with a common intention to kill the deceased. It is required to be noted that the original Accused Nos. 6 and 7 are acquitted by giving the benefit of doubt and on the ground that the story put forward by the prosecution that they caught hold of the deceased, is not believable. There is no finding by the High Court while giving the benefit of doubt and acquitting the original Accused Nos. 6 and 7 that they were not present at the time of the incident. Therefore, the overt act and the role attributed to them is not believable. Even otherwise, so far as original Accused No. 1 and even original Accused No. 2 are concerned, we are of the opinion that the prosecution in the present case has proved beyond doubt the case against them individually for the offence under Section 302 of IPC.

14.7 Now, so far as the reliance placed by the learned counsel appearing on behalf of the original Accused Nos. 1 and 2 upon the decisions of this Court referred to hereinabove is concerned, we are of the opinion that, on facts, the said decisions shall not be applicable to the facts of the case, more particularly, the overwhelming evidence in the form of depositions of PWs 1 & 2 and PW7, which prove the case against the original Accused Nos. 1 and 2 beyond doubt.

15. It is further required to be noted that so far as the original Accused No. 2 is concerned, PWs 1 and 2 have categorically stated that, along with Farida Begum, the original Accused

No. 2 also entered and he fired from his firearm. His presence and the overt act attributed to him has been established and proved by the prosecution beyond doubt. The firearm used in the commission of the offence by the original Accused No. 2 has been recovered at the instance of original Accused No. 2 himself. There is a direct evidence in the form of the eye witnesses - PWs 1 and 2, which fully supports the case of the prosecution even after thorough cross-examination by the defence.

16. In view of the further reasons stated above, we are of the opinion that the High Court as well as the learned trial Court have rightly convicted the original Accused Nos. 1 and 2.

17. Now, so far as the conviction and sentence imposed by the learned trial Court and confirmed by the High Court convicting the original Accused No. 5 is concerned, we are of the opinion that the original Accused No. 5 shall be entitled to be acquitted by giving the benefit of doubt on the same grounds on which the High Court acquitted the original Accused Nos. 6 and 7 by giving them benefit of doubt. Looking to the dimension of the room and the role attributed to the original Accused Nos. 4 and 5, we are of the opinion that the original Accused Nos. 4 and 5 are required to be acquitted by giving them benefit of doubt, as has been given to the original Accused Nos. 6 and 7 by the High Court. At this stage, it is required to be noted that so far as the acquittal of the original Accused Nos. 6 and 7 by the High Court is concerned, the same has been accepted by the State and same has attained the finality.

17.1 It is also required to be noted that even otherwise so far as Accused No. 5 is concerned, the prosecution has even failed to prove beyond doubt that in fact Accused No. 5 fired from his firearm, which as such has missed, as alleged. There is no evidence on record in the form of recovery of weapon or even the missed bullet. Therefore also A-5 is entitled to be acquitted by giving him benefit of doubt.

17.2 At this stage, it is also required to be noted that so far as the original Accused No. 4 is concerned, he has not preferred any appeal against his conviction and sentence. However, there may be number of reasons for that, including the financial constraint. However, we cannot lose sight of the fact that his case is similar to that of the original Accused No. 5 and even original Accused Nos. 6 and 7. Therefore, we take suo moto cognizance and we are of the opinion that the original Accused No. 4 is also entitled to acquittal by giving him benefit of doubt, as the case of the original Accused No. 4 is similar to that of original Accused No. 5 and even the original Accused Nos. 6 and 7.

18. In view of the above and for the reasons stated above, Criminal Appeal No. 1560 of 2013 preferred by original Accused No. 1 and Criminal Appeal No. 1652 of 2013 preferred by the original Accused No. 2 stand dismissed by confirming the judgment and order passed by the learned trial Court and confirmed by the High Court convicting the original Accused Nos. 1 and 2 for the offences under Sections 302/149 and Sections 147 & 148 IPC. The conviction and sentence of the original Accused Nos. 1 and 2 imposed by the trial Court and confirmed by the High Court, is hereby maintained. It appears that the original Accused No. 1 (Smt.

Farida Begum) is on bail. On her conviction and sentence being confirmed by this Court, her bail bond shall stand cancelled and she shall surrender before the Court concerned to serve out the remaining sentence within a period of two weeks from the date of this judgment.

18.1 In view of the above and for the reasons stated above, the Criminal Appeal No. 1653 of 2013 preferred by the original Accused No. 5 is hereby allowed. The original Accused Nos. 4 and 5 (Raees Ahmed and Raees Ahmed @ Satna) shall stand acquitted for the offences for which they were convicted by the learned trial Court and confirmed by the High Court by giving them benefit of doubt. The original Accused Nos. 4 and (Raees Ahmed and Raees Ahmed @ Satna) shall be released forthwith, if not required in any other case.

Judgment Referred.

¹(1974) 3 SCC 0543

²(2009) 10 SCC 0773

³(2005) 13 SCC 0134

⁴(1992) Supp. 1 SCC 0413

⁵AIR 1955 SC 0762

⁶AIR 1956 SC 0116

⁷(1975) 4 SCC 0511

⁸(1994) SCC (Cri) 1752

⁹(2000) 4 SCC 0084