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Cr1.A.No. 733 OF 2000
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ITEM NO.102 COURT NO.7 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.733 OF 2000@@
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JAI NARAIN ... APPELLANT(S)

VERSUS

STATE OF U.P. ... RESPONDENT(S)

(With Office Report)

Date: 13/08/2002. This/These matter(s) were called on for hearing today.@@
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CORAM:

HON'BLE MR. JUSTICE U.C. BANERJEE
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant(s) Mr. S. Sarkar, Sr. Adv. with
Mr. Kavin Gulati, Adv. for
Mr. N.S. Bisht, Adv.

For Respondent (s) Mr. T.N. Singh, Adv.
Mr. Pramod Swarup, Adv.

UPON hearing counsel the Court made the following
O R D E R

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.SP2

Heard learned counsel for the parties for
about 20 minutes.
The appeal is dismissed in terms of the
signed order.

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(K.K. Chawla) (Shelly Sengupta)@@
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Court Master Court Master

[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.733 OF 2000@@
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JAI NARAIN

APPELLANT

VERSUS

STATE OF U.P.

RESPONDENT

O R D E R@@
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.SP2

This appeal directed against the judgment of Allahabad High Court stands out today for arguments. The contextual facts depict that one Bhagwat Singh deceased and the appellants as well as Ramadhin Singh (since acquitted by the trial court) were residents of village Patara, District Hamirpur. The appellant Jai Narain was the son of Ramadhin and appellant Shyam Singh was son of appellant Hukum Singh alias Hakim Singh.

On the morning of 30th November, 1974, Bhagwat Singh, deceased, was getting constructed the wall on the western side of his vacant land through labourers including Chhutku (PW.5). The said Bhagwat Singh while sitting on 'Chabutara' in ..2/-

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front of his 'Kotha' and was supervising the construction of boundary wall, the accused persons having guns and a country made pistol fired on the labourers. Sustaining the pellet injury Chhutku (PW.5) ran away to the house of Bhagwat Singh, deceased. Observing fire and apprehending danger Bhagwat Singh deceased entered into his 'Kotha' and bolted it from inside. Chhutku (PW.5) told to Deo Singh (PW.1) the brother of Bhagwat Singh deceased that appellants and Ramadhin had surrounded Bhagwat Singh. On getting above information, Deo Singh (PW.1) rushed towards the spot along with his brothers Jai Karan Singh and Mahendra Singh. The appellants Jai Narain Singh, Hukum Singh alias Hakim Singh and Shyam Singh were pushing the doors of 'Kotha' and Ramadhin was exhorting from the 'Chabutara' in front of the 'Kotha'. Deo Singh (PW.1) challenged the appellants. Hearing the challenge of Deo Singh (PW.1) Bhagwat Singh deceased opened the door of 'Kotha'. The moment door of 'Kotha' was opened Hukum Singh alias Hakim Singh fired on the chest ..3/-

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of deceased. Sustaining the injury Bhagwat Singh deceased fell down. Appellant Shyam Singh fired on Deo Singh (PW.1). Mohan Singh (PW.4) who was coming from the house of Babu Lal Darzi also challenged the appellants. Hukum Singh alias Hakim Singh appellant fired on Mohan Singh (PW.4) and he sustained pellet injuries. Sadhu Singh

(PW.3) who was also coming from the house of Babu Lal Darzi also sustained pellet injury. Jai Karan Singh, the younger brother of Deo Singh (PW.1), grappled with appellant Shyam Singh and snatched his gun. Mahendra Singh chased Hukum Singh alias Hakim Singh, caught hold of him and tried to snatch his gun, but he pushed him away and ran away. Shyam Singh and Jai Narain appellants also ran away. Deo Singh (PW.1) and other witnesses put Bhagwat Singh deceased on a Charpai and took him to his house. Thereafter, on the way to hospital, Bhagwat Singh died.

Based on these facts, the High Court proceeded on to examine the evidence of the prosecution witnesses to wit, Deo Singh, Sadhu Singh, Mohan Singh and Chhutku. Incidentally, all the four were injured witnesses.

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Ramadhin exhorted and on his exhortation the appellants Jai Narain, Hukum Singh alias Hakim Singh and Shyam Singh fired on labourers.

The High Court on a perusal of the same did rely upon the same in the matter of passing an order of confirmation of the conviction and sentence of the accused persons. Before the High Court, however, there is a plea of alibi taken by Jai Narain. The High Court did not accept such plea since apart from the one made under Section 313 Cr.P.C. statement, there is no other acceptable statement available on record in support of the plea of alibi.

Admittedly if a person who takes the plea of alibi, burden lies on him only to prove the same. Since there is no reliable evidence, the above plea was rejected by the High Court.

The High Court, thus, on an analysis of evidence on record accepted the versions set up by

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the prosecution and rejected the plea of Jai Narain. We do not see any reason to interfere with the findings as recorded by the High Court. Incidentally, be it noted that in the normal course of events, the Apex Court is not to scrutinise the evidence once again unless there has been a total miscarriage of justice. In the contextual facts of the matter under consideration, question of there being any miscarriage of justice would not arise. On the wake of the aforesaid, we are unable to record our concurrence with the submissions of learned counsel appearing in support of the appeal. The appeal, therefore, fails and is dismissed.

.....J.
(U.C. Banerjee)

.....J.
(B.N. Agrawal)

New Delhi,
August 13, 2002.