



2026:AHC:123155-DB

A.F.R.
RESERVED

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 462 of 2003

Lila and another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Jawahir Yadav, Jitendra Kumar Shishodia,
Maneesh Kumar, Pranshu Gupta, V.k. Jaiswal
Counsel for Respondent(s) : Gambhir Singh, Govt. Advocate, Pankaj Bharti,
Ranvijay Singh

In Chamber

HON'BLE SALIL KUMAR RAI, J.
HON'BLE DR. AJAY KUMAR-II, J.

(Per : DR. AJAY KUMAR-II, J.)

1. Heard Shri Jitendra Kumar Shishodia, Advocate assisted by Shri Arvind Giri, Advocate, Ms. Swati Pandey, Advocate as well as Shri Pranshu Gupta, Advocate for appellant no. 2 and Ms. Archana Singh, Advocate, representing the State-respondent and perused the record.
2. The instant Criminal Appeal under Section 374(2) of Cr.P.C. has been filed against the judgment and order dated 27.01.2003 passed by Additional and Sessions Judge, Ghaziabad in Sessions Trial No. 148/1998, arising out of Case Crime No. 47/1998, (State vs. Mukesh and others), under Section 302/34 IPC and in Sessions Trial No. 149/1998, (State vs. Mukesh and others) under Sections 25 & 4/25 Arms Act, Police Station Dhaulana, District Ghaziabad, convicting and sentencing the appellants for the offence under Section 302/34 IPC for life imprisonment and Rs.10,000/- fine and in default of payment of fine, one year additional rigorous imprisonment and under Section 25 and Section 4/25 Arms Act for one year and six months rigorous imprisonment respectively.
3. During the pendency of the instant appeal, the appellant no.1 Leela had died and appeal against him was declared to have abated vide order dated 17.03.2023. In connected Criminal Appeal No. 552/2003, the appellant no.1 Mukesh had died on 18.10.2017 and the appellant no.2 Bablu had died on

17.08.20214, appeal against them was declared to have abated vide order dated 17.03.2023. The instant appeal survives adjudication only so far as it concerns the appellant no. 2 Pravesh.

4. Brief facts of the case are that the informant Mahipal filed an oral report at Police Station Dhaulana, District Ghaziabad stating that he had a land dispute case pending against Chheda, resident of his village, since around 1972. After Chheda's death, his sons Mukesh and Bablu alias Pappu were pursuing the case on his behalf. The informant had won the case in the Court of the Munsif Magistrate. Thereafter, the informant had also obtained a decree against Mukesh in connection with the case. Due to this case, Mukesh and his brother Bablu alias Pappu harbored enmity towards him and his son Jagpal Singh. On 16.04.1998, his son Jagpal and his brother-in-law (*Sadhu*) Shri Om, were going together on a bicycle from their village to Hapur via Sapnawat to meet lawyer regarding case. The informant and Rohtash Singh were following them on foot. His son Jagpal and his brother-in-law were about 50-60 steps ahead of them. At around 8:45 am, as they reached the culvert near Eklaidi on the canal embankment, four persons came from the direction of Eklaidi. These persons were Mukesh, Bablu alias Pappu, Pravesh, and Leela, all from their village. Mukesh said, *"Let's see how he takes the land. Kill the bastard!"* Then Pravesh and Leela hit Jagpal with sticks, causing him to fall off his bicycle. Mukesh then fired a shot from country-made pistol at Jagpal with intention to kill him, but the shot missed. Then, while Jagpal was lying on the ground, Mukesh attacked him with country made pistol and Bablu attacked him with a knife. Shri Om shouted and ran towards Eklaidi. They both also shouted, but Mukesh pointed the barrel of his country made pistol to them, so they jumped into the canal to save their lives. Hearing the commotion, many people from Eklaidi village chased these four accused. Mukesh was apprehended in sugarcane field of Amar Pal, but he managed to escape.

5. On the basis of aforementioned Written Report/Tehrir (Ex.Ka-1), a First Information Report bearing Case Crime No. 47/1998, under Section 302 IPC was registered on 10.04.1998 at 10:30 am at Police Station Dhaulana against the accused. Thereafter, the Investigating Officer Mahendra Pal Singh PW-5, who was posted as the then S.H.O., Dhaulana Police Station, started the investigation himself and recorded the statements of the informant Mahipal and Head Constable Mulchand Verma. He inspected the place of incident and prepared the site plan (Ex.Ka-9) of the place of incident. The Investigating Officer collected the blood stained and plain soil from the place of incident and prepared

it's recovery memo (Ex.Ka-5). Head Constable Mulchand PW-3 prepared recovery memo of a bicycle (Ex.Ka-6) and also of documents related to the deceased (Ex.Ka7). Thereafter, the Investigating Officer recorded the statement of the witness Rohtash. The inquest report (Ex.Ka-8) was prepared by Head Constable Mulchand PW-3 in his presence. Thereafter, he raided the houses of accused persons and recorded the statements of other witnesses. On 27.04.1998, the accused Mukesh, Bablu alias Pappu and Pravesh were taken into police custody for questioning and their statements were recorded. They were again taken into police custody on 02.05.1998 and a country made pistol was recovered on pointing out of accused Mukesh and a knife each on the pointing out of Bablu and Pravesh. The recovery memo (Ex.Ka-5) was prepared and sealed at the place of incident. The site plan (Ex.Ka-4) of the place of recovery was also prepared and thereafter statements of Smt. Gurdevi, Sushila Devi and Priyanka and others were also recorded.

6. On 11.04.1998 at 10:30 am, the autopsy of deceased Jagpal was performed by Dr. Shyam Khandelwal PW-4 at the District Hospital, Ghaziabad, who found following injuries on his person:

1. *Incised wound 2 cm x 1 cm x bone deep on occipital region of the head, with a fracture of the underlying bone. Blood clots were present in brain matter and the brain was lacerated.*
2. *Incised wound 1 cm x 0.5 cm x 0.5 cm, bone deep, on the left side of the forehead, in the middle part.*
3. *Incised wound 3 cm x 0.5 cm x bone deep above the left eyebrow.*
4. *Incised wound 1 1/2 cm x bone deep on the left side of the forehead above the left eyebrow. The underlying bone was found to be fractured. Blood clots were present in the brain. The brain was ruptured.*
5. *Incised wound 3 cm x 1 cm x skin deep, above the root of the nose.*
6. *Incised wound 4 cm x 1 cm x bone deep on the chin.*
7. *Incised wound 2 cm x 1 cm x bone deep just above injury number 6.*
8. *Multiple abrasions in an area of 28 cm x 13 cm on the front of the neck and right shoulder. Size ranging from 0.5 cm x 0.5 cm to 4 cm x 5 cm.*

As per opinion of the Doctor, the cause of death of the deceased was due to coma resulting from the injuries sustained on the body of the deceased.

7. After completion of the investigation, charge sheet (Ex.Ka-10) was submitted against the accused under Sections 302/34 and 120B IPC and a separate charge sheet was filed against the accused-appellant under Section 4/25 Arms Act. Thereafter, cognizance was taken upon the same and the case was committed to the Court of Sessions.

8. After hearing both the parties, charge under Section 302/34 IPC was framed against appellant-convict alongwith other accused in S.T. No. 148/1999

and a separate charge under Section 4/25 Arms Act was also framed against the appellant-convict in S.T. No.149/1999. However, the accused denied the charges levelled against him and claimed trial.

9. In order to prove it's case, the prosecution adduced six witnesses, i.e., PW-1 Mahipal Singh, (informant and son of the deceased), PW-2 Shri Om (eye witness of the incident), PW-3 Head Constable Mulchand (Scribe of Chik FIR), PW-4 Dr. Shyam Khandelwal (Autopsy Surgeon), PW-5 Mahendra Pal Singh (Investigating Officer), PW-6 Constable Mangan Singh (in whose presence knife and pistol were recovered on the pointing out of the accused persons) in S.T. No. 149/1999. The prosecution also adduced two witnesses, i.e. PW-1 Head Constable Mulchand and PW-2 Lala @ Hari Om in S.T. No. 149/1999.

10. The witnesses adduced by the prosecution have given their respective oral evidence and also proved 10 prosecution papers and 7 material objects, which were marked as exhibits. The detail of evidence in S.T. No. 148/1999, is tabulated herein below:

Sl. No.	Name	Nature of evidence	Documents proved
PW-1	Mahipal Singh	Informant and eye witness of Case Crime No. 47 of 1998 (son of deceased)	First Information Report as Ex. Ka-1 Oral Evidence of incident
PW-2	Shri Om	Eye witness of the incident	Oral Evidence of incident
PW-3	Head Constable Mulchand	Chik Writer of Crime No. 47/1998, who also made G.D. Entry of Case Crime No. 47/1998	G.D. Entry as Ex.Ka-2
PW-4	Dr. Shyam Khandelwal	Autopsy Surgeon	Post mortem report of the deceased as Ex.Ka-3
PW-5	Mahendra Pal Singh	Investigating Officer	Site Plan of place of murder as Ex.Ka-9, recovery memo of blood stained and plain soil as Ex.Ka-5, recovery memo of deceased's bicycle as Ex.Ka-6, recovery memo of documents related to the deceased as Ex.Ka-7. Inquest report as Ex.Ka-8, Site Plan of recovery as Ex.Ka-4, Charge Sheet as Ex.Ka-10.
PW-6	Constable Mangan Singh	Recovery witness of murder weapons and witness of S.T. No.149/1998	Knife as material Ex.1, cloth as material Ex.-2, knife recovered from Pravesh as material Ex.3 and cloth as material Ex.4, 0315 bore country made pistol and one cartridge recovered from Mukesh as material Exs. 5, 6 and 7. Recovery Memo of country made pistol and two knives as Ex.Ka-1 in S.T. No.149/1998.

11. The detail of evidence in S.T. No. 149/1999, is tabulated herein below:

Sl. No.	Name	Nature of evidence	Documents proved
PW-1	Head Constable Mulchand	Who prepared Chik FIR of Case Crime No.64/1998, U/s 4/25 Arms Act against accused Pravesh and also made entry of G.D.	FIR of Case Crime No. 64/1998 as Ex.Ka-2, G.D. Kayami as Ex.Ka-3, Charge Sheet as Ex.Ka-6
PW-2	Lala @ Hari Om	Recovery witness of one country made pistol and two knives as Ex.Ka-1	Oral Evidence of recovery of murder weapons

12. In addition to the aforementioned evidence, through list 111 kha, the prosecution has submitted a copy of the judgment passed in Appeal No. 67/65, Rajbir vs. State, a copy of the application in Execution Case No. 12/96, Mahipal vs. Mukesh, a copy of the decree dated 04.04.1998, mutation documents etc. and a copy of the order sheet in Execution Case No.12/96.

13. After conclusion of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C., in which the accused Pravesh denied the incident and stated that on the date of incident, he was not present in the village and has been falsely implicated. He further stated that no illegal weapon was recovered from his possession. The prosecution witnesses were relatives of the deceased and therefore, they were giving false testimony.

14. The accused in their defence produced five defence witnesses, i.e., DW-1 Nathi Singh, DW-2 Manvir Singh, DW-3 Arjun Singh, DW-4 Ravi Kumar and DW-5 Omveer Singh.

15. The trial Court after having heard learned counsel for the parties and after going through the entire record, vide impugned judgment and order, convicted and sentenced the appellant-convict under Section 302/34 IPC and Section 4/25 Arms Act. Hence, feeling aggrieved with the said judgment and order, the appellant-convict has filed the present criminal appeal.

16. Assailing the findings, learned counsel appearing for appellant vehemently argued that alleged eye-witness Rohtash was intentionally withheld by the prosecution, therefore, adverse inference is to be drawn against the prosecution. The informant Mahipal and prosecution witness Shri Om have not signed the inquest report and other police papers including recovery memos prepared on the spot, which shows that they were not the eye witnesses, otherwise they must have participated in police proceeding conducted on the spot after registration of the FIR. Injury no.1, which is an incised wound on the body of the deceased, is

coupled with multiple fractures, such injury cannot be caused by knife and could have been caused by some heavy sharp edged weapon not otherwise.

17. It was further argued that the depositions of PW-1 and PW-2 regarding the manner of incident is not corroborated by ocular and documentary medical evidence. PW-2 Shri Om was the star witness, who was allegedly present on the spot but his statement was recorded later on by the Investigating Officer, which affects its veracity. There are material contradictions in the depositions of PW-1 and PW-2 regarding position of dead body of the deceased and number of police personnel present on the spot. Therefore, their depositions are not trustworthy. Neither PW-1 nor PW-2 made any attempt to save the deceased, which casts doubt on their depositions. PW-2 Shri Om witness of murder case and PW-2 Hari Om witness of Arms Act, both are the chance witnesses and these witnesses cannot be relied upon. The injuries mentioned in the post mortem report do not corroborate the version of PW-1 and PW-2. In the FIR only a stick has been assigned to the appellant-convict, however, during the course of evidence, the prosecution witnesses have improved the prosecution story as put forth in the FIR by assigning knife to appellant-convict. Therefore, their depositions as well as use of knife by the appellant-convict is concerned, cannot be relied upon. The alleged recovery of knife on the pointing out of appellant-convict, is completely suspicious and the prosecution has failed to prove the same.

18. The learned trial Court has misinterpreted the evidence available on record and has not given due weightage to the defence evidence produced by the convict more particularly DW-3 and DW-5, which completely belies the prosecution story, which is against the norms of well established legal principles. The prosecution has miserably failed to prove any charge against the appellant-convict, however, the learned trial Court has misread the evidence and wrongly convicted and sentenced the appellant-convict. The learned counsel for the appellant has relied upon following case laws in support of his contentions:

i. Mahendra Singh & Others vs. State of U.P., (2022) 7 SCC 157

ii. Deny Bora vs. State of Assam, (2014) 14 SCC 22

iii. Joginder Singh vs. State of Haryana (2014) 11 SCC 335

iv. Harvinder Singh @ Bacchu vs. State of Himachal Pradesh, 2023 SCC OnLine SC 1347.

19. Learned A.G.A. for the State vehemently opposed the submissions made on behalf of the appellant-convict and submitted that first information report in the present case has been lodged promptly. There was a land dispute between the deceased and accused. The father of deceased had won the case in the

Court of the Munsif Magistrate and because of which, the deceased, who was son of the informant was murdered. PW-1 and PW-2 in their respective depositions have consistently deposed regarding date, time, place of the incident as well as manner of incident.

20. In the present case, appellant-convict alongwith his other co-accused have used stick and knives in the incident causing as many as seven incised wounds on the body of the deceased. Incised wound was caused on the occipital region of head of the deceased with a great force that underlying bone was fractured. The manner of incident as disclosed by both the eye witnesses, i.e., PW-1 and PW-2 is fully corroborated by ante-mortem injuries found on the body of the deceased. All the accused arrived at the spot with a common intention to murder the deceased, who was prosecuting the land dispute cases on behalf of the informant. The weapons used in the crime, have also been recovered on the pointing out of the accused. Knife used by the appellant-convict was also recovered on his pointing out. The depositions of PW-1 and PW-2 are reliable, which also find corroboration from oral as well as documentary medical evidence. The appellant-convict has committed murder of the deceased with the help of knife, hence while going through the evidence, it cannot be said that offence under Section 302/34 and Section 4/25 Arms Act, are not made out against the appellant-convict Pravesh. The trial Court has not committed any error of law in convicting and sentencing the appellant-convict. There is no merit in the appeal and learned A.G.A. thus urged for dismissal of appeal.

21. In the light of above arguments, following questions arise for consideration of present appeal:

(i) Whether the appellant-convict Pravesh had any motive to commit murder of the deceased or not?

(ii) Whether there is any delay in lodging FIR?

(iii) Whether non examination of alleged eye witness Rohtash is fatal to the prosecution and adverse inference is to be drawn against the prosecution or not?

(iv) Whether the prosecution could be said to have proved it's case against the appellant-convict beyond reasonable doubt?

(v) Whether multiple fractures on head can be caused by a knife or repeated blows of knife?

ANALYSIS

ORAL EVIDENCE ON RECORD

22. The prosecution has examined informant Mahipal Singh PW-1 and Shri Om PW-2 as eye witnesses of the incident and on the strength of their

depositions, the learned trial Court has decided the case against the appellant-convict. Therefore, evaluation of depositions of these two witnesses will be dealt with later on in this judgment.

23. **Head Constable Mulchand Verma PW-3** is a formal witness, who was scribe of the first information report of the Case Crime No. 47/1998 and has stated on oath that he recorded the FIR (Ex.Ka-1). He made an entry of FIR in the G.D. No.12 on 10.04.1998 at around 10:30 am, which G.D. Entry has been proved by this witness as Ex.Ka-2.

24. **Dr. Shyam Khandelwal PW-4** has conducted the post mortem examination of the deceased Jagpal on 11.04.1998 at 10:30 am and prepared his post mortem report, which has been proved by this witness as Ex.Ka-4. The injuries found by this Doctor on the person of the deceased, have already been mentioned in para-6 of this judgment. This Autopsy Surgeon found seven incised wounds on the person of the deceased. Six incised wounds out of total seven incised wounds, were found to be bone deep. One bone deep incised wound was found on the head of the deceased and on internal examination, underlying occipital bone was found fractured. Blood clots were also found to be present in the brain and brain matter was also found lacerated. Two incised wounds were found on the forehead, one incised wound was found on the root of nose and two incised wounds were found on the bone of chin of the deceased. Incised wound 1 1/2 cm x bone deep was found on the left side of forehead above the left eyebrow. The underlying bone of this incised wound on the forehead above left eyebrow was found to be fractured. Blood clots were found to be present in the brain and brain was also found ruptured. In the opinion of this Doctor, duration of above seven incised wounds and eighth injury of multiple abrasions on the front of neck and right shoulder was about one day old. Therefore, the deceased could have received these injuries on 10.04.1998 at about 8:45 am. The cause of death in the opinion of this Autopsy Surgeon was coma resulting from ante-mortem injuries. It is thus clear that death of the deceased was homicidal death. **Two incised wounds have been caused with such great force, which resulted into fracture of occipital bone and bone above left eyebrow with laceration and rupture of brain below these injuries.**

25. **The Investigating Officer, Mahendra Pal Singh PW-5** has stated that on 10.04.1998, he was posted as the then S.H.O., Dhaulana Police Station. He took over the investigation after registration of the first information report. On 10.04.1998, he also recorded the statement of the informant, inspected the place of incident and prepared the site plan, which has been proved by him as

Ex.Ka-9. He collected the blood stained and plain soil from the murder spot and prepared it's recovery memo, which has been proved by him as Ex.Ka-5. Bicycle of the deceased was seized on the spot and its recovery memo (Ex.Ka-6) was prepared. The memo for seizing documents (Ex.Ka-7) related to the deceased was also prepared by him and he also recorded the statement of the witness Rohtash. This witness stated that inquest report (Ex.Ka-8) was prepared in his presence by Head Constable Mulchand and he also prepared site map (Ext. Ka-9). He thereafter raided the house of accused and recorded statements of various other witnesses on 11.04.1998 including Shri Om PW-2. On 27.4.1998, he took the accused Pravesh, Mukesh and Bablu @ Pappu into police custody for interrogation and for recording their statements. These three accused were again taken to police custody and on their pointing out a country made pistol was recovered from Mukesh and a knife each from Bablu and Pravesh respectively. He prepared the recovery memo (Ext. Ka-1) regarding this recovery and also prepared site map (Ex.Ka-4) of the place of recovery. After recording the statements of some other witnesses and completion of investigation, he submitted charge-sheet (Ext. Ka-10).

26. PW-5 in his cross examination stated that the informant Mahipal came to Police Station at 10:30 am and filed a report, at this time Rohtash was with him and report was given verbally. Mahipal signed in Urdu in his presence and Mahipal and Rohtash stayed for about 10-12 minutes after lodging of the FIR. After recording the statement of the informant and Head Constable, he went with other Police Officials to the place of incident and informant was accompanying the Police party. They all reached place of incident at about 11:30 am. At that time, many people from both villages were present on the spot. He stayed at the spot for a considerable time and body of the deceased had not been tampered with, until he arrived. He further stated that body of the deceased was sent for post mortem at 2:30 to 3:00 pm by a tractor trolley. This witness clearly denied the suggestion of defence that the informant Mahipal did not report the incident. He further denied the suggestion that FIR was lodged later on.

27. **Constable Mangan Singh PW-6** is a witness of recovery of country made pistol and knives. He in his examination-in-chief has stated that on 02.05.1998, he was posted at Dhaulana Police Station. On that day, Mukesh, Bablu and Pravesh were taken into custody. S.H.O. Mahendra Pal Singh PW-5 brought these accused to recover the weapons (knives and country made pistol). **The accused Pravesh produced a knife after taking out from a clump of grass at the south-eastern corner of the bridge.** Mukesh also got recovered a country made

pistol, accused Pappu got recovered a knife. **Both knives recovered were found stained with blood, a recovery memo was prepared on the spot, which bears his signature. Recovery memo available in S.T. No.149/1998, has been proved by this witness as Ex.Ka-1. Knife recovered from accused Bablu was proved by this witness as Material Ex.-1, cloth as Material Ex.-2, knife recovered from accused Pravesh as Material Ex.-3 and cloth as Material Ex.-4, 0315 bore country made pistol and one cartridge recovered from Mukesh along with cloth as Material Exs. 5, 6 and 7. This witness is a witness of recovery. In his cross examination this witness stated that he had seen the murder-spot. This witness was thereafter cross-examined regarding recoveries made at the pointing out Bablu and Mukesh, however no question regarding recovery on pointing out of the present appellant was asked from this witness, therefore, his deposition regarding recovery of blood stained knife (Material Ex.3) on the pointing out of appellant-convict Pravesh, remained uncontroverted.**

28. As S.T. No. 148/1999 was decided alongwith S.T. No. 149/1999, therefore, the prosecution adduced two witnesses, Head Constable Mulchand as PW-1 and independent witness Bholu @ Hariom as PW-2 as far as Case Crime No. 64/1998 under section 4/25 of Arms Act is concerned. Head Constable Mulchand PW-1 stated in his examination-in-chief that on the basis of recovery memo (Ext.Ka-3) relating to recovery of a pistol, two knives and cartridges, he registered Case Crime No. 58/1998 under Section 25 of Arms Act against Mukesh, Case Crime No. 62/1998, 63/1998, 64/1998 under Section 4/25 of Arms Act against Bablu and Pravesh. He proved FIR (Ex.Ka-2) and GD diary entry (Ex.Ka-3) regarding these case crime numbers. This witness has also confirmed recovery memo (Ex.Ka-1) on the basis of which aforesaid FIR and GD entry were made. He proved charge-sheet no. 48 (Ex.Ka-8) against the appellant in secondary evidence by identifying the signature of Raj Singh, who after concluding the investigation has filed the aforesaid charge-sheet. He is a formal witness.

29. **Lala @ Hariom PW-2** in S.T. No. 149/1999 is a witness of recovery, who in his examination-in-chief has stated that on 02.05.1998, he was visiting relatives in Parpa village at around 12:30 pm, when he was going from Parpa to Eklaidi, he saw Police Officers standing near a jeep. Mukesh, Bablu and Pravesh, who were handcuffed, were with the Police Officers and had come there to help recover the weapons. **The Police Officers asked him to be a witness. Thereafter, Pravesh produced a knife from the east-west direction, accused Bablu also produced a knife. He stated that there was blood on the knives. He also stated**

that on the spot, the accused said that they had killed Jagpal. This witness has confirmed that the recovery memo was prepared by the Police on the spot in his presence and recovery memo bears his signature. This witness in his cross examination had confirmed that recovery took place in between Eklaidi and Parpa villages. He further stated that Mahipal is his relative and on the date of incident he was returning from Parpa and was alone, even from this witness no question regarding recovery from present appellant was asked in his cross examination. He also stated that he frequently visits Parpa village. This witness has denied the defence suggestion that he was not present on the spot and that he was giving false evidence because he is a relative.

30. **Natthi Singh, DW-1** in his deposition has stated that he knows accused Leela, who had taken the land regarding which there was litigation between Jagpal and Pravesh, which was taken by Leela on sharing basis. The aforesaid land was taken on sharing basis for one year and because of this, the informant Mahipal has falsely implicated Leela in this case. In his cross-examination, this witness fairly conceded that the Investigating Officer visited his village but, he did not tell the aforesaid fact to the Investigating Officer. He neither gave any kind of application to the Court nor Higher Authorities. Admittedly DW-1 is not an eye witness.

31. **Manvir Singh DW-2** has also deposed on the same line as that of Natthi Singh DW-1. The land, whose dispute was going on between accused Pravesh and his uncle Mahipal was taken by Leela on sharing basis from the father of accused Mukesh. This witness has stated that on the day of incident, the accused Leela was at the compound of Pradhan Chanderpal Singh and remained there till the inquest report of the deceased Jagpal was prepared, thereafter, he reached home. Accused Leela has been falsely implicated due to enmity of aforesaid land, which was taken by him on sharing basis from the father of accused Mukesh. In his cross-examination, this witness has stated that at the time of incident, he was in his compound, his compound and Village Pradhan's compound are adjacent and having no wall. Therefore, he knows that Leela was in the compound at that time. **He further stated that the inquest report was prepared in his presence and he was a witness of the inquest report and has also signed same.** However, this witness stated that he did not tell the Investigating Officer that the accused Leela was in the compound of village at the time of incident, because the Investigating Officer had not asked him anything about this. **He further stated that he was witness of inquest and accused Leela was also present at the time of inquest.** He also confirmed that

the dead body was taken away by tractor for post mortem examination in his presence. However, this witness has not stated that at which time, he received the information of death/murder of the deceased and at which time, this witness arrived at the spot with accused Leela. This witness is also not an eye witness but is a witness of inquest report.

32. **Arjun Singh DW-3** has stated in his examination-in-chief that he does not know Mukesh. **He stated that incident occurred at 7:00 am on 10.04.1998 but specifically denied his presence at the spot at the time of incident.** He further stated that two girls Beena and Jamuna, were the first to arrive at the spot. The place of incident was a furlong distance from his compound. He reached on the spot after hearing the girls' shouts. On arriving the place of incident, he saw a man lying dead there and did not recognize him. People from Parpa village were also there, who identified the deceased as Jagpal. Jaipal and Khadku were among one, who identified the deceased Jagpal and also informed Jagpal's family. This witness has stated that family members of deceased arrived on the spot around 3-4 pm and the Police arrived around 4-5 pm. The deceased's father arrived at 8:00 pm, but he denied to recognize him. He further stated that the dead body was taken at 9:00 pm. In this cross-examination, he stated that when he reached the spot, blood was flowing from the deceased's body. He further stated that he does not know Mukesh, therefore, he cannot say that Mukesh was near around the place of occurrence. **He further stated that he did not know Jagpal's father, therefore, he cannot say that whether he was on the spot or not. He further stated that he remained on the spot from 7:00 am till the Police took the body away. He fairly admitted that paper work was completed by the Police during this time, but he denied signing those papers.** He further stated that a lot of papers were prepared on the spot and however, his signature was not taken on any of the police papers. This witness is not an eye witness.

33. **Ravi Kumar DW-4** in his deposition has stated that Mukesh was married with his niece and Mukesh was in his village on the date of the incident. This witness has been examined in support of accused Mukesh regarding his plea of ali-bi. However, this witness has stated that he did not inform Sub-Inspector regarding this either orally or through written application. This witness is also not an eye witness.

34. **Omveer Singh DW-5** in his examination-in-chief has stated that deceased Jagpal was murdered at 8:00 am on 10.04.1998. He was informed by Bijendra, who was husband of Asha Balmiki of his village that a man had been killed in the village. When he reached at the spot, he saw that Jagpal of Parpa village was

lying dead. He sent Village Chowkidar Kishori to inform this to the Police at Police Post Sapnawat. Therefore, a Constable from the Police Post came on the spot and then one Sub-Inspector arrived at 5:00 pm. He further stated that he knows the complainant Mahipal, who was not present on the spot, however, he arrived at 8:00 pm and the dead body remained on the spot. Therefore, the deceased's family members did not allow the body to be moved. **The inquest of the dead body of the deceased was prepared at around 8:30- 8:45 pm and he signed the same. He further stated that he did not know any of the accused at that time. This witness in his cross-examination has admitted that recovery memos (Exs.Ka-5, Ka-6 and Ka-7) bears his signature and all these recovery memos were prepared in his presence.** He does not remember that aforesaid recovery memos were prepared prior to or before preparation of the inquest report. He was asked to sign the inquest report but he does not remember whether his signature was obtained or not, because it was night time. He denied the prosecution suggestions that inquest report was prepared at 11:00 am. He further stated that body of the deceased was covered with blood and he arrived on the spot at about 9:00 am after about half an hour of the incident. Information to police was sent orally through Chaukidar. When he arrived at spot, there was no family members of the deceased. However 200 people were present on the spot. Investigating Officer has recorded his statement. He came to know the name of the accused after registration of the FIR. **Lastly, this witness stated that he could not say whether accused named in the FIR, are the real accused persons or not, because he was not present on the spot at the time of the incident,** therefore, this witness is also not an eye witness.

35. In this case, the defence also summoned the prosecution witness Rohtash. As per prosecution story, he was an eye witness of the incident, however Rohtash appeared in person before the Court and submitted an Application No. 127-Kha that he had been summoned to give evidence in defence of the accused persons. However, he is an old and sick person and is relative of both the parties, therefore, he does not want to depose/testify. He, therefore, requested to discharge from giving his testimony.

(i) Whether the appellant-convict Pravesh had any motive to commit murder of the deceased or not?

36. Learned counsel for the appellant- convict has vehemently argued that the appellant Pravesh had no motive to commit crime in question. However, learned counsel for the appellant fairly conceded that motive, if any, was with accused Mukesh, Bablu, Chanderpal and other accused Leela. In the Written

Report/Tehrir, the prosecution has come forward with a specific motive regarding long pending case of a land dispute between informant and Chheda son of Khachedu since 1972. It has also been specifically mentioned in the Written Report that after the death of Chheda, his sons Mukesh and Bablu @ Pappu were pursuing the case on his behalf, whereas on behalf of informant, his son deceased Jagpal was pursuing the aforesaid case. The informant, Mahipal PW-1, in his deposition, has affirmed these facts stated in written report and has clearly stated that the aforesaid civil case for land dispute was pending between him and father of accused Mukesh, namely Chheda. PW-1 further stated that in a case of illegal harvesting of his crop, accused Chanderpal was an accused. His son Jagpal was pursuing the aforesaid case on his behalf, whereas from other side, accused Mukesh was pursuing the case. They won the aforesaid case and got a decree in their favour. The land in dispute was auctioned, which was purchased by him in the auction of aforesaid land. In his cross examination, this witness again affirmed the aforesaid facts and has stated that the cases in the Courts of Hapur and Ghaziabad were still going on regarding the aforesaid dispute. He further affirmed the involvement of accused Chanderpal in the criminal case regarding illegal harvesting of his crop.

37. Shri Om PW-2 has also affirmed aforesaid pendency of cases regarding land dispute between the parties in his deposition. It was a clear case of the prosecution that as the land in question was purchased by the informant in an auction, therefore, the accused were having a grudge and thus, they committed the present crime. Thus, from the side of prosecution, aforesaid land dispute and purchase of land in question by the informant in an auction was the motive behind the murder of the deceased Jagpal. This question was subsequently put to all the accused in their statement recorded under Section 313 Cr.P.C.. The accused Mukesh in answer to question no. 3 has clearly stated that the aforesaid land case started in 1972 between the informant Mahipal, Chheda and father of accused Pravesh, therefore, the accused Mukesh clearly admitted pendency of aforesaid civil suit. Accused Pravesh however denied the aforesaid question no.3, but stated that there was no litigation between him i.e. accused Pravesh and informant side. Accused Pravesh kept silent regarding pendency of aforesaid civil suit between the informant and his father as was stated by his co-accused Mukesh. Accused Pravesh in answer to question no.13 has stated that whatsoever the statement of Mukesh, the same be read as his statement.

38. However, prosecution has placed on record certified copies of orders etc. relating to the land case before the learned trial Court vide its application 111-

Kha. The aforesaid documents have been annexed as 112Kh-1, 112Kh-2, 121-Kha, 117-Kha in the file of learned trial Court. The prosecution has also filed certified copy of the order-sheet of Execution No. 12/1996, Mahipal vs. Chheda as 121-Kh vide application 120-Kh.

39. DW-1 Natthi Singh, who is a defense witness has clearly stated in his deposition that the civil suit regarding land dispute was contested between deceased Jagpal and accused Pravesh etc. and the aforesaid land was taken on sharing basis by accused Leela for accused Chanderpal

40. The deposition of Manvir Singh DW-2 is much more important, as he in his deposition has clearly stated that civil suit was contested between his uncle Mahipal and accused Pravesh etc. He further stated that the land in dispute was taken by Leela from father of accused Mukesh on sharing basis. In the aforesaid civil case, Mahipal also impleaded Leela as a party. Thus, it is crystal clear that there was an enmity of land dispute between the parties. Not only the accused but their defense witnesses have also admitted this fact. Thus, admittedly on account of this, there was an enmity between both the parties on account of continuous litigation regarding land dispute since 1972.

41. We have carefully gone through the reasons recorded by the learned trial Court on this issue and we are of the opinion that the reasons given by the trial Court are in accordance with oral and documentary evidence available on record. However, as learned counsel for the appellant argued that accused Pravesh had no motive, therefore, we have carefully perused the record and find that the aforesaid argument of learned counsel is completely baseless because the defense witnesses themselves have clearly stated that in the aforesaid litigation, accused Pravesh was also a party and accused Mukesh has clearly stated in his statement recorded under Section 313 Cr.P.C. that aforesaid litigation was pending not only between his father and informant but also between father of accused Pravesh. In the light of aforesaid fact, we have perused the documents available on record. The Execution No. 32/1981 arising out of Original Suit No. 327/1970 was between the informant and accused Mukesh and Pappu, whereas Execution No. 49/1985 arising out of Original Suit No. 327/1970 was between the informant and Bramha, Jagvir and Chanderpal. Meaning thereby that in Civil Suit No. 327/1970 informant and Chheda, Bramha, Jagvir and Chanderpal were parties.

42. After the death of Chheda, his sons Mukesh, Pappu @ Bablu, daughter Meena Kumari and widow Gayatri Devi were impleaded as party. Bramha is father of present appellant Pravesh. Therefore, it is clear that father of accused

Pravesh also lost the aforesaid civil suit and therefore, he was also having a motive to commit the aforesaid crime. Thus, he (appellant-convict) cleverly made a statement in his statement recorded under Section 313 Cr.P.C. that there was no litigation between him and the informant side and concealed the fact of litigation between his father and the informant side. Therefore, the prosecution has been able to successfully prove the motive on the side of accused party more particularly in this appeal against the present appellant-convict i.e. Pravesh also.

43. Law is well settled that enmity is a double edge weapon which can be used by either of the side. It can be a ground for false implication and it can be a motive for commission of crime. The law on this issue is already well established that when ocular testimony inspires the confidence of the Court, the prosecution is not required to prove the motive. Mere absence of motive would not impinge on the testimony of a reliable eye witnesses. Motive is an important factor for consideration in a case of circumstantial evidence. But when there are direct eye witnesses, motive is not significance.

44. Hon'ble Supreme Court in **Chandan vs. State (Delhi Admn.) (2024) 6 SCC 799**, has held that the principle that the lack or absence of motive is inconsequential when direct evidence establishes the crime. In the present case, prosecution has produced PW-1 and PW-2, who in their depositions have stated that the appellant-convict has stabbed the deceased with knife along his co-accused, with common intention to murder him (deceased), therefore, motive in the present case, pales into significance. However, the prosecution has been able to prove even the motive against the appellant-convict, even from the depositions of defence witnesses as well as statement of co-accused recorded under Section 313 Cr.PC.

45. From perusal of certified copies available on the record of trial Court, it is clear that informant Mahipal succeeded in the litigation and purchased the land of the accused in an auction. Therefore, the informant side won the litigation and it was the accused side, who lost the auction. In this circumstances, the accused side had a strong motive on account of resentment that their ancestral land was taken over by the informant side by winning the litigation, therefore, we are of the opinion that the motive to commit crime is stronger on the part of the accused persons rather than informant falsely implicated them. **Question no. I is answered in the 'Affirmative'.**

(ii) Whether there is any delay in lodging FIR?

46. In the present case, on the oral information of the informant Mahipal PW-1, FIR (Ex.Ka-1) was lodged at 10:30 am. As per the FIR, time of incident was 8:45 am and place of incident was about 12 km away from the concerned Police station. As per inquest report (Ex.Ka-8), information was received in the concerned Police Station at 10:30 am on 10.4.1998 and Head Constable Mulchand arrived at the place of incident at 11:00 am and concluded the proceedings of inquest at around 12:15 pm/noon. The informant PW-1 was cross-examined at length to prove that the FIR was lodged belatedly, however, nothing material came in cross examination to doubt that he had not arrived in the concerned Police Station at the time shown in the FIR. Head Constable Mulchand PW-3 in his deposition has clearly stated that on 10.4.1998, FIR was lodged at 10:30 am, however, this witness was not cross-examined by the defence. Meaning thereby that evidence of this witness regarding registration of FIR by this witness at 10:30 am, remained uncontroverted. Investigating Officer Mahendra Pal PW-5 in his deposition has stated that aforesaid case crime number was registered in his presence and he has been thoroughly cross examined and nothing suspicious came in his cross-examination that the aforesaid FIR was not lodged in the morning of 10.4.1998. Therefore, we have carefully perused the oral as well as documentary evidence with regard to registration of the FIR at the instance of informant and we are of the opinion that the FIR was lodged promptly and there is no unnecessary delay in lodging the FIR. **Question no. II is answered in 'Negative'.**

(iii) Whether non examination of alleged eye witness Rohtash is fatal to the prosecution and adverse inference is to be drawn against the prosecution or not?

47. Learned counsel for the appellant has vehemently argued that material witness Rohtash has been intentionally withheld by the prosecution and, therefore, an adverse inference has to be drawn against the prosecution. Law on this point is well settled that it is not the number of witnesses, which is important and material for prosecution to prove it's case, rather it is the quality of the deposition of the witnesses, which is important and material for the prosecution to prove it's case.

48. In **Bhimappa Chandappa v. State of Karnataka (2006) 11 SCC 323**, the Hon'ble Supreme Court held that testimony of a solitary witness can be made the basis of conviction. The credibility of the witness requires to be tested with reference to the quality of his evidence which must be free from blemish or suspicion and must impress the Court as natural, wholly truthful and so

convincing that the Court has no hesitation in recording a conviction solely on his uncorroborated testimony.

49. The Hon'ble Apex Court in **Joy Devaraj v. State of Kerala, (2024) 8 SCC 102** has held that even otherwise, Section 134 of the Evidence Act, 1872 ordains that no particular number of witnesses is required, in any case, to prove a fact. Therefore, it is not the law that a conviction cannot be recorded unless there is oral testimony of at least two witnesses matching with each other. It is the quality of evidence and not the quantity that matters. If the evidence of a solitary witness appeals to the Court to be wholly reliable, the same can form the foundation for recording a conviction.

50. The Apex Court in the case of **Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434** has held that the prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. The accused can also examine the cited, but not examined witnesses, if he so desires, in his defence. It is the discretion of the prosecutor to tender the witnesses to prove the case of the prosecution and "the Court will not interfere with the exercise of that discretion unless, perhaps, it can be shown that the prosecution has been influenced by some oblique motive". In an extraordinary situation, if the Court comes to the conclusion that a material witness has been withheld, it can draw an adverse inference against the prosecution, as has been provided under Section 114 of the Evidence Act. Undoubtedly, the public prosecutor must not take the liberty to "pick and choose" his witnesses, as he must be fair to the Court, and therefore, to the truth. In a given case, the Court can always examine a witness as a Court witness, if it is so warranted in the interests of justice. In fact, the evidence of the witnesses must be tested on the touchstone of reliability, credibility and trustworthiness. If the Court finds the same to be untruthful, there is no legal bar for it to discard the same.

51. The Hon'ble Supreme Court while summarising the law in the case of **Ravasaheb v. State of Karnataka, (2023) 5 SCC 391** has observed that when a case involves a large number of offenders, prudently, it is necessary, but not always, for the court to seek corroboration from at least two more witnesses as a measure of caution. Be that as it may, the principle is quality over quantity of witnesses.

52. The Apex Court in the case of **Avtar Singh v. State of Haryana, (2012) 9 SCC 432** has interpreted the law as :

"18. The learned counsel further submitted that though the prosecution would claim injuries on several persons of the complainant party, the other persons who were stated to have been injured or were present at the place of occurrence

were not examined. In this context, it will be relevant to refer to the decision of this Court reported in Tej Parkash v. State of Haryana [(1996) 7 SCC 322 : 1996 SCC (Cri) 412] wherein this Court held that all the witnesses of the prosecution may not be called and it is sufficient if witnesses who were essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution. The legal position has been stated in para 18 as under : (SCC p. 330)

“18. In support of his contention that serious prejudice was caused to the appellant by non-examination of Phool Singh who had been cited by the prosecution as one of the witness, Mr Ganesh relied upon Stephen Seneviratne v. R. [(1936) 44 LW 661 : AIR 1936 PC 289] , Habeeb Mohammad v. State of Hyderabad [(1953) 2 SCC 231 : AIR 1954 SC 51 : 1954 Cri LJ 338 : 1954 SCR 475] and State of U.P. v. Jaggo [(1971) 2 SCC 42 : 1971 SCC (Cri) 401] . The aforesaid decisions can be of little assistance to the appellant in the present case. What was held by the Privy Council and this Court was that witnesses who were essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution whether the effect of their testimony is for or against the case for the prosecution and that failure to examine such a witness might affect a fair trial. It was also observed that all the witnesses of the prosecution need not be called. In the present case, the witnesses who were essential to the unfolding of the narrative had been examined.”

19. The law on this aspect can be succinctly stated to the effect that in order to prove the guilt of the accused, the prosecution should make earnest effort to place the material evidence both oral and documentary which satisfactorily and truthfully demonstrate and fully support the case of the prosecution. Where there were several persons stated to have witnessed the incident and the prosecution examined those witnesses who were able to depose the nature of offence committed more accurately leaving no room for doubt about the involvement of the accused in the occurrence and the extent of their involvement with specific overt act and also were able to withstand the cross-examination by maintaining the sequence and the part played as originally stated, it will be wholly irrelevant and unnecessary to multiply the number of witnesses to repeat the same version.”

53. The Apex Court in **State of M.P. Vs. Balveer Singh, (2025) 8 SCC 545** has held that there is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subordination of witnesses.

54. Thus, law on this issue is well settled that no particular number of witnesses is required in any case to prove a particular fact. It is the quality of the evidence and not the quantity, which matters, if the evidence of a solitary witness appeals to the Court to be wholly reliable, the same can form the foundation in recording a conviction. The prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. If number of persons are injured in an incident, then it is not essential for the prosecution to examine all such witnesses and the prosecution may choose to examine such number of witnesses, who in it's opinion are essential to prove the prosecution story. In a given case, not only the accused but Court can always

examine a witness as a Court witness, if it is so warranted in the interest of justice. The defence can examine any cited witness, who has been dropped by the prosecution, if it so desires. Therefore, the prosecution can prove its story not only with the help of a reliable solitary witness, but can also call some other witnesses, not necessarily all the eyewitnesses or all the injured witnesses, which it finds essential for proving its case. There might be a number of reasons for the prosecution for not examining all the cited witnesses in a case, if quality of the oral evidence of a single witness or any number of witnesses adduced by it, are sufficient to prove its case.

55. In the present case, the informant Manipal PW-1 and Shri Om PW-2 have been examined as eye witnesses of the incident. Both of these witnesses were cross-examined on different dates and that too at length. The deposition of PW-1 started on 2.12.1999 and concluded on 25.08.2000, whereas the deposition of PW-2 started on 3.11.2000 and concluded on 04.04.2001. Thus, these witnesses were examined at length. However, prosecution witness Rohtash was summoned by the defence as a defence witness. The aforesaid prosecution witness Rohtash appeared in person before the trial Court and submitted an application clearly stating that he is a relative of both the parties, therefore, he does not want to depose and requested to be discharged from giving his testimony. Therefore, neither the prosecution nor defence has examined this witness. PW-1 and PW-2 have given detailed evidence regarding the incident, therefore, non examination of Rohtash, who is a relative of both the informant and defence, is not fatal at all to the prosecution and no adverse inference can be drawn against the prosecution for his non examination. **Question no. III is thus answered in 'Negative'.**

(iv) Whether the prosecution could be said to have prove its case against the appellant-convict beyond reasonable doubt?

56. On the point of appreciation of oral evidence of a witness the Apex Court in **Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365** held the law in following words:

“Appreciation of oral evidence

25. The appreciation of ocular evidence is a hard task. There is no fixed or strait jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

“1. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as

a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eyewitness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and out of

nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.”

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat [Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753], Leela Ram v. State of Haryana [Leela Ram v. State of Haryana, (1999) 9 SCC 525 : 2000 SCC (Cri) 222 : AIR 1999 SC 3717] and Tahsildar Singh v. State of U.P. [Tahsildar Singh v. State of U.P., 1959 SCC OnLine SC 17 : AIR 1959 SC 1012]

27. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.”

57. The Hon'ble Supreme Court in the case of **Bhagwan Jagannath Markad v. State of Maharashtra, (2016) 10 SCC 537** explained that :

“ 19. While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted [Leela Ram v. State of Haryana, (1999) 9 SCC 525, pp. 532-35, paras 9-13 : 2000 SCC (Cri) 222] . Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation

may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a "partisan" or "interested" witness may lead to failure of justice. It is well known that principle "falsus in uno, falsus in omnibus" has no general acceptability [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381, pp. 392-93, para 15 : 2003 SCC (Cri) 32] . On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness.

20. Exaggerated to the rule of benefit of doubt can result in miscarriage of justice. Letting the guilty escape is not doing justice. A Judge presides over the trial not only to ensure that no innocent is punished but also to see that guilty does not escape. [Gangadhar Behera case, (2002) 8 SCC 381, p. 394, para 17]

31. As already observed, the discrepancies of trivial nature could not be the basis of rejecting the evidence of injured eyewitnesses nor non-examination of some of the witnesses be a ground to reject the prosecution case when injured eyewitnesses were examined.

32. We may also refer to the judgment of this Court in Masalti v. State of U.P. [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] to the effect that the evidence of interested partisan witnesses though required to be carefully weighed, the same could not be discredited mechanically. When a crowd of unlawful assembly commits an offence, it is often not possible to accurately describe the part played by each of the assailants. Though the appreciation of evidence in such cases may be a difficult task, the court has to perform its duty of sifting the evidence carefully.

58. The Hon'ble Apex Court in **State of M.P. v. Balveer Singh, (2025) 8 SCC 545** has held that when eyewitness are examined at length, it is quite possible for them to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. The role of courts in such circumstances assumes greater importance and it is expected of the courts to deal with cases like one in hand, in a more realistic manner and not allow the criminals to go scot-free on account of procedural technicalities, perfunctory investigation or insignificant lacunas in the evidence as otherwise serious crimes would go unpunished.

59. In the light of above well settled legal position regarding appreciation of oral evidence, we shall now be evaluating the depositions of PW-1 and PW-2.

60. **Informant Mahipal Singh PW-1** in his deposition has stated that the incident occurred on 10.04.1998, when his son Jagpal Singh and his brother-in-law Shri Om were going from their village to Hapur on a bicycle. They had a land dispute with Chheda, (father of accused Mukesh) and accused Chanderpal was also involved in harvesting their crops. His son Jagpal was pursuing their side

and accused Mukesh was pursuing other side. On the date of incident, he (informant) and Rohtash were going together to Eklaidi to hire labourers. About 50 steps before the place of incident, his son Jagpal and his brother-in-law (Shri Om) crossed path with them and when they reached the culvert near Eklaidi, it was around 8:45 am, then four accused Mukesh, Bablu, Pravesh and Leela came out there together and Mukesh immediately said "*Beat them up and kill that bastard! Let's see how he takes the land.*" on this, accused Pravesh, Leela attacked Jagpal with sticks (lathi). Before this as soon as Mukesh spoke, Shri Om jumped off his bicycle. Mukesh had a country made pistol and Bablu had a knife. Mukesh fired from his country made pistol, but it missed. Then, Mukesh and Bablu started attacking with country made pistol and knife. Thereafter, Mukesh took out a knife from his pocket and attacked Jagpal. Accused Pravesh also took out his knife and stabbed Jagpal. When they shouted to save Jagpal, then accused pointed their country pistol on us and ran towards us. He (informant) and Rohtash jumped towards the canal. Shri Om ran towards Eklaidi, while shouting. More people came on hearing shouts. The accused fled towards Parpa village. The accused were chased. Mukesh was caught but he managed to escape. Thereafter, he (informant) and Rohtash went to the Police Station, where he dictated his report, which this witness has proved as Ex.Ka-1.

61. In his cross-examination, Mahipal Singh PW-1 fairly stated that his son (deceased) was pursuing his civil case for last 6-7 years. He also used to accompany him. His statement was taken by the Investigating Officer soon after recording of the first information report at around 10:45 am. When they arrived on spot, then, Jagpal had already passed away. Blood was oozing out from the wounds of knives blows, he (deceased) sustained several knife injuries on his face. The deceased was having stabbing marks of knives on several places of his face. He (informant) remained on the spot for half an hour. There were two girls, aged about 15/16 and 9/10 years. The deceased Jagpal was lying on the road, half on paved road and half unpaved road, towards north-east of culvert. The deceased was wearing a coca-cola colour pant and was also a wearing a full sleeved white shirt having green strips. The deceased was also wearing shoes and was carrying a bag containing papers relating to his case. He could not remember whether the Investigating Officer remained on the spot from 10:45 to 11:45 am, however, he (Investigating Officer) remained on spot for considerable length of time.

62. In this cross-examination, PW-1 further stated that on the spot, there were 3-4 Sub Inspectors, 2-3 Constables and one driver. He further stated that his

signature was not taken on any paper. He affirmed that on the date of incident, he and Rohtash were going from their village to hire labourers for harvesting their crops. The statement of brother-in-law of the deceased, namely, Shri Om was probably taken on the next day or day after next day by the Investigating Officer. He further confirmed that accused Chanderpal used to pursue this case between him and Chanderpal, which was pending since 1975. Before Chanderpal, Chheda was pursuing the aforesaid case. His litigation against the father of the accused Mukesh is pending since 1972 regarding chakbandi. The aforesaid cases are pending in the Courts of Hapur and Ghaziabad. **The disputed land is 6 bigha, which was owned by Jagvir, Brahma and Chanderpal.** The aforesaid land was purchased by this witness in an auction. He also purchased another land of 9 bigha, however, Mukesh etc. did not have any relation with this land. The accused Chanderpal is also an accused of illegal harvesting of his (PW-1's) crops. This incident is of 10.04.1998 and had occurred toward western side of village Eklaidi. **Just before the incident, the deceased Jagpal had crossed him and moved about 50 steps ahead at the time of incident. The accused came from eastern side, i.e., from Eklaidi. The statement of this witness in examination-in-chief and aforesaid reply in cross-examination fully corroborated the site plan (Ex.Ka-9).** The accused Mukesh was wearing black pant and a dirty white shirt, Bablu was wearing a full-sleeved shirt and Pravesh was wearing brown colour pant and a grey half-sleeved shirt. Mukesh had a country made pistol, Pravesh had a stick in his hand and Bablu had a knife in his hand and Leela also had a stick in his hand. All the accused persons had surrounded the deceased, therefore, he could not run at the time of incident. It was Mukesh, who exhorted and said *"Kill the bastard, I will see how he gets the land."* and fired a shot from country made pistol, which missed. At the behest of Mukesh, Leela and Pravesh attacked the deceased with sticks, Jagpal fell down from his bicycle, Bablu has stabbed him 2-3 times. Mukesh also took out a knife, he was also having a country made pistol in his other hand. **The present appellant-convict Pravesh and Mukesh also stabbed the deceased. Pravesh was also having a stick in his other hand. When Jagpal fell down his head was in northern direction and his legs were in southern direction.** He reached the Police Station at 10:15 -10:30 am, soon after his arrival, he lodged the first information report and soon after registration of FIR, his statement was recorded by the Investigating Officer. The Police arrived at the spot of incident at about 11:15 am. The inquest report was prepared, blood stained soil was collected, dead-body of the deceased was sealed and several documents were prepared. However, he

has not signed any such papers. This witness denied suggestion of defence that he was not present on the spot, therefore, he has not signed any documents. He further stated that he cannot tell that how long the Police party was present at the spot but they have stayed for a considerable period. He did not go along with the dead body and he cannot tell at which time, the dead body was taken for the post mortem.

63. **Shri Om PW-2** was brother-in-law of the deceased Jagpal, who in his examination-in-chief stated that on 10.4.1998 he was going to Hapur with Jagpal Singh by a bicycle. Jagpal was riding it (bicycle) and he was sitting behind. A bag, in which documents were kept, was hanging on the front handle of the bicycle. When they reached near culvert of the canal track, opposite to unpaved path near village Eklaidi then at 8:45 am Mukesh, Leela, Pravesh and Bablu came towards Eklaidi in front of them. Mukesh said, let us see how he takes the land and exhorted for killing him. Mukesh had country made pistol in his hand. Bablu had a knife in his hand. Both Leela and Pravesh were having sticks in their hands. He jumped from the bicycle and Leela and Pravesh attacked the bicycle with sticks because of which, Jagpal fell down on the ground from his bicycle. Mukesh shot at Jagpal, which was missed, thereafter, Mukesh with butt of his country made pistol and Bablu with knife started assaulting Jagpal on his face. **Mukesh and Pravesh also took out their knives and attacked Jagpal**, he ran screaming towards Eklaidi on which many people of Eklaidi came on the spot, then accused after hitting Jagpal ran away in the opposite direction. The people of Eklaidi chased them, Mukesh was caught in the field of Amarpal, however, he was freed by Amarpal and thereafter he ran away. When he returned to the culvert, Jagpal had already died. He admitted that the informant Mahipal and Rohtas also arrived at the spot along with people of Eklaidi. Mahipal and Rohtash were coming behind them, whom they met in the way. Mahipal and Rohtash went to Police station.

64. PW-2 in his cross examination stated that he had not run from the spot, however, he was only at a distance of 10 steps from the place of incident. He saw the incident from there and Police arrived on the spot after about 2 and ½ hours of the incident (which is around 11:15 am). Police party was consisting of 3-4 Sub Inspectors and 7-8 Constables. **Feet of the deceased were in southern direction whereas his head was in northern direction.** Handle of the bicycle was in northern direction whereas back side bicycle was in western direction. His right leg was entangled in the back side of wheel of the bicycle. When Mukesh exhorted and threatened to kill, he immediately get away from bicycle to save his

life because accused were armed with weapons. Police party remained on the spot for about 1 ½-2 hours. Inquest report was prepared in his presence. He had not gone along with dead body, therefore, he cannot tell who accompanied the dead body. He knew appellant Pravesh even before the incident. As soon as the accused persons exhorted, he jumped from the bicycle and after going 10-15 steps, stood there and watched. Pravesh and Leela firstly struck with sticks, he cannot tell whose stick hit first. **He also stated that Pravesh also hit with a knife. Pravesh was having a stick in his left hand and Pravesh had assaulted the deceased with knife once or twice.** Mukesh also attacked the deceased with knife. Bablu, Mukesh and Pravesh were carrying knife in the hands. The incident took place in 2-3 minutes. He did not attempt to save his brother-in-law because accused were carrying weapons in their hands. Two girls came and remained present on the spot. He chased the accused with people of Eklaidi because he was hoping that his brother-in-law has been left alive and that was the reason that he immediately did not return to his brother-in-law. However, when he returned, then he found his brother-in-law dead. Father of the deceased was about 50 steps behind them. When he returned back on the spot, he saw the deceased's father sitting in *Taanga*. Father of the deceased arrived on the spot after lodging the FIR at about 11.30 am on a Jeep, he was accompanied by Police party and Rohtash. Police personnel were 11-12 in numbers, who collected blood stained soil and also prepared documents of the deceased. Police also recorded statement of Rohtash and prepared deceased's inquest report, however, he has not signed any papers. Police remained on the spot for about 1:30- 1:45 hours. The dead body was sent for post mortem examination at around 12:30 noon. He cannot tell who accompanied the dead body for post mortem as he has not gone to the mortuary. He denied the defense suggestion that he did not recognize Pravesh. When he was cross examined on behalf of accused Chanderpal he stated that he saw accused from a distance of 4-5 steps. After getting off bicycle he ran towards eastern direction and after running for 10-15 steps he stopped and kept standing there for 3-4 minutes and watched the incident. After the incident, he ran towards southern side for chasing the accused for about 1 km.

65. The examination-in-chief of informant Mahipal Singh PW-1 was conducted on 2.12.1999, however, his cross-examination was deferred and this witness was cross-examined at length on 12.05.2000, 24.05.2000, 24.08.2000 and 25.08.2000. Similarly, the examination-in-chief of Shri Om PW-2 was conducted on 03.11.2000, however, his cross-examination was also deferred and PW-2 was

also cross-examined at length on 15.03.2001 and 04.04.2001. It is thus, fairly clear that lot of time was taken by the defence in conclusion of cross-examination of both these witnesses. Both these witnesses have been cross-examined extensively that too on different dates, therefore, some contradictions are bound to occur in their depositions. Learned counsel for the appellant has drawn attention of this Court towards the contradictions regarding different numbers of Police Personnel present near the dead body of the deceased when the Police party arrived on the crime scene, however, this contradiction is not a material contradiction. We have carefully gone through the depositions of both these witness, however, their depositions as far as date, place and manner of incident is concerned, remained consistent and whatever contradictions are there in their depositions, those contradictions are minor contradictions, which do not affect the credibility of prosecution story.

66. Hon'ble Supreme Court in **Motiram Padu Joshi and others vs. State of Maharashtra (2018) SCC 429**, has clearly observed that it is unreasonable to contend that evidence given by a related witness should be discarded only on the ground that such witness is related. It is fairly well settled that relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Hon'ble Supreme Court in this case, has also observed that evidence of eye witnesses cannot be doubted on the ground that they did not intervene in the attack nor made attempts to save the deceased. On witnessing a crime, each person reacts in his own way and their evidence cannot be doubted on the ground that the witness has not acted in a particular manner. Therefore, evidence of an eye witness, is not to be disbelieved simply because he has not reacted in a particular manner. In this case, PW-2 and PW-3 and PW-4 stated that on seeing a number of accused armed with deadly weapons, they got frightened and went inside the house and stood near the window and saw the occurrence, however Hon'ble Supreme Court held that their evidence cannot be doubted on the ground that they did not intervene in the attack nor made attempt to save the deceased. In this case, the name of PW-2 was mentioned in the FIR, but the names of PW-3 and PW-4 were even not mentioned whereas all these were brothers of the deceased.

67. In the present case, PW-1 and PW-2 are father and brother-in-law (Sadhu) of the deceased respectively. However, their relationship is not a factor to affect the credibility of these witnesses. Both these witnesses have clearly deposed in their depositions that the accused were armed with deadly weapons and when

PW-1 shouted to save his son, then accused threatened PW-1 and his companion with country made pistol, on which, they jumped into canal. PW-2 in his deposition has clearly stated that he jumped from bicycle to save his life and he could not save his brother-in-law (Sadhu) because accused were armed with deadly weapons. Thus, it is apparently clear that PW-1 and PW-2 got frightened and saved their lives. Therefore, their evidence cannot be doubted on the ground that they neither intervened in the attack nor made attempts to save the deceased. We are, therefore, not impressed with the argument advanced by the learned counsel for the appellant-convict on this point.

68. It was strenuously argued by the learned counsel for the appellant that P.W.1 and P.W.2 inspite of being eyewitnesses and also inspite of being present on spot at the time of inquest proceedings, had not signed police papers including the inquest report, therefore, they are not the eye witnesses and were not present on the spot. There is no requirement of law that an eyewitness, who if present on the spot at the time of inquest proceedings, is required to sign the inquest report and other recovery memos so as to prove his presence on the spot as well as to prove that he is an eye witness of the incident.

69. Hon'ble Supreme Court in **Brahm Swaroop and Another Vs. State of U.P., A.I.R. 2011 Supreme Court 280** in para 7 of this judgment has categorically held that evidence of eye witnesses cannot be discarded, if their names do not figure in the inquest report prepared at the earliest point of time. The inquest report cannot be treated as substantive evidence but may be utilized for contradicting the witnesses of inquest. The whole purpose of preparing an inquest report is to investigate into and draw up a report of the apparent cause of death, describing such wounds as may be found on the body of the deceased and stating as in what manner, or by what weapon or instrument such wounds appear to have been inflicted. The object of the proceedings under Section 174 Cr.P.C. is merely to ascertain whether a person died under suspicious circumstances or met with an unnatural death and, if so, what was its apparent cause.

70. Similarly, Hon'ble Supreme Court in **Radha Mohan Singh Vs. State of U.P., (2006) 2 SCC 450** in para 15 has clearly held that an investigation under Section 174 Cr.P.C. is limited in scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174. In **Shakila Khader v. Nausher**

Gama AIR 1975 SC 1324 the contention raised that non-mention of a person's name in the inquest report would show that he was not an eye witness of the incident was repelled on the ground that an inquest under Section 174 Cr.P.C. is concerned with establishing the cause of death and only evidence necessary to establish it need be brought out. The same view was taken in **Eqbal Baig v. State of Andhra Pradesh, AIR 1987 SC 923**, that the non-mention of name of an eye-witness in the inquest report could not be a ground to reject his testimony. The view taken in **Podda Narayan v. State of A.P. (supra)** was approved by a three-Judge Bench in **Khujji @ Surendra Tiwari v. State of Madhya Pradesh, AIR 1991 SC 1853** and it was held that the testimony of an eye-witness could not be discarded on the ground that their names did not figure in the inquest report prepared at the earliest point of time. There is absolutely no requirement in law of mentioning the details of the FIR, names of the accused or the names of the eye-witnesses or the gist of their statement nor it is required to be signed by any eye-witness. **Therefore, the contention of learned counsel for the appellant that P.W.1 and P.W.2 are not the eyewitnesses as they have not signed the inquest report or other police papers falls flat.**

71. The learned counsel for the appellant-convict had also argued that the statement of PW-2 was recorded late by the Investigating Officer and, therefore, it loses significance. However, PW-5 in his deposition, has clearly stated that the statement of Shri Om PW-2 was recorded on 11.04.1998, i.e. on the very next day of the incident. Thus, there is no such delay, which caused any doubt on the deposition of PW-2 merely on the ground that his statement was recorded on the next day of the incident. Moreover, law on this issue is also well settled that delay in recording witness statement is not fatal per se.

72. The Hon'ble Apex Court in **Firoz Khan Akbar Khan Vs. State of Maharashtra, 2025 SCC OnLine SC 627** has clearly held that delay in recording the statement of witness would not draw an adverse inference against the prosecution case if the delay is adequately explained.

73. In the present case, the Investigating Officer conducted a number of proceedings on 10.04.1998 and even recorded the statement of informant and Chik Writer, prepared site plan, prepared recovery memos and got prepared inquest report and thereafter on the very next day has recorded the statement of Shri Om and, therefore, there is no delay in recording the statement of PW-2. Thus, the arguments of learned counsel for the appellant convict on this point is devoid of any merit.

74. The defense has examined Nathi Singh DW-1, Manvir DW-2, Arjun Singh DW-3, Ravi DW-4 and Omvir DW-5 as defense witnesses before the learned trial Court. All of these witnesses were not eye witnesses of the incident, therefore, their depositions as far as presence of accused on the spot, more particularly the present appellant- convict is concerned, is of no significance.

75. DW-1 has deposed that the accused Leela was falsely implicated because he took the disputed land on sharing basis whereas a case regarding this disputed land was going on between Jagpal and Pravesh etc. DW-2 is a witness of alibi of accused Leela and DW-4 is a witness of plea of alibi of accused Mukesh. Both DW-1 and DW-4 were not present on the spot at the time of incident. Village Parpa is not far away from the place of incident, therefore, deposition of DW-1 as far as plea of alibi of accused Leela is concerned, was not helpful to the defense. However, deposition of DW-4 as far as plea of alibi of accused Mukesh is concerned, does not inspire any confidence as inspite of arrest of accused Mukesh he never informed higher authorities in writing regarding this plea of alibi.

76. Learned counsel for the appellant- convict had argued that the depositions of DW-3 and DW-5 belies the prosecution story as well as presence of PW-1 on the spot.

77. DW-3 in his deposition has stated that he arrived on the spot at 7:00 am on 10.4.1998 and remained there from 7:00 am till the Police took the body away for post mortem at 9:00 am. This witness has fairly conceded that he did not know father of the deceased, therefore, he cannot say whether he was present on the spot or not. This witness has deposed that two girls Beena and Jamuna were to first to arrive on the spot. He further stated that the family members of the deceased arrived on the spot around 3-4 pm and police arrived around 4-5 pm, whereas DW-5 has stated that the deceased Jagpal was murdered at 8:00 am and on receiving this information he reached on the spot at 9:00 am and saw Jagpal lying dead. Thereafter, he sent village Chaukidar to inform Police Post Sapnawat whereupon Police Force arrived at 5:00 pm. However, this witness admitted that recovery memos i.e. Ex.Ka-5, Ex.Ka-6 and Ex.Ka-7 were prepared in his presence and all these recovery memos bears his signature. Both of these witnesses are not eye witnesses. DW-3 arrived on the spot at 7:00 am and he also stated that incident had also occurred at 7:00 am, whereas DW-5 has stated the time of incident to be 8:00 am. DW-5 sent village Chaukidar for informing the

Police after seeing the deceased Jagpal lying dead on the spot, however, as per DW-3, Police arrived at 5:00 pm.

78. The aforesaid village Chaukidar, Kishori, has not been examined by the defense. As per oral as well as documentary evidence available on record, it was informant Mahipal PW-1 who has lodged the FIR, upon which, Police arrived on the spot. In spite of sending village Chaukidar, Kishori, to police post Sapnawat, the Police Force arrived only at 5:00 pm, is not believable at all.

79. The FIR (Ex.Ka-1) has been registered at 10:30 am and as per the inquest report (Ex.Ka-8), the information was received in the Police Station at 10:30 am and Head Constable Mulchand, who conducted the inquest proceedings, started the inquest proceedings at 11:00 am and the inquest proceedings were concluded at 12:15 pm/noon. In this background, the deposition of Manvir Singh DW-2 is important as he was the witness of inquest report and has confirmed in his cross examination that the inquest report was prepared in his presence and he had signed the same. He also fairly conceded that he took his tractor for post mortem.

80. DW-2 nowhere in his deposition has stated that the inquest proceedings were not conducted from 11:00 am to 12:15 pm/noon. Therefore, it is Manvir DW-2 who has also affirmed the inquest proceedings and therefore, the depositions of DW-5 and DW-3 are found to be unreliable. Moreover, it is not possible for DW-3 and DW-5 to remain present from 7:00 am to 9:00 am on the spot on the date of incident. DW-5 in his deposition has also stated in examination in chief that inquest was prepared in his presence and he has signed the same, however, a perusal of inquest report (Ex.Ka-8) reveals that Manvir DW-5 is neither Panch witness nor it carries his signature.

81. We have carefully perused the depositions of DW-3 and DW-5 and are of the opinion that both of these witnesses are not reliable. Therefore, we are not in agreement with the argument of learned counsel for the appellant- convict that deposition of all defense witnesses more particularly DW-3 and DW-5 either belies the prosecution story or makes the presence of PW-1 doubtful on spot.

82. The learned counsel for the appellant has relied upon certain case laws in support of his contention.

83. In **Mahendra Singh and Others Vs. State of Madhya Pradesh, (2022) 7 Supreme Court Cases 157**, the Hon'ble Supreme Court has observed that when sole witness is found wholly unreliable, then no conviction could be based on his testimony. In this case, the Hon'ble Supreme Court has also observed that same

treatment is required to be given to the defence witness (es) as is to be given to prosecution witness (es).

84. The Hon'ble Supreme Court in **Deny Bora Vs. State of Assam, (2014) 14 Supreme Court Cases 22** has observed that where statement of sole witness is recorded after 2 years and 6 months of the incident and the incident of firing at the deceased by the appellant – accused has occurred in the presence of sole witness and he kept such an incident without disclosing to anyone, defies prudence and baffles commonsense. The Hon'ble Supreme Court has also observed that such a sole witness is wholly unreliable and other material witnesses were withheld in an appeal against acquittal.

85. The Hon'ble Supreme Court in **Joginder Singh Vs. State of Haryana, (2014) 11 Supreme Court Cases 335** has observed that failure to examine material witness is not a mathematical formula for discarding the weight of testimony howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the Court levelled against the prosecution should be examined in the background of the facts and circumstances of each case. This was again an appeal against acquittal and the Hon'ble Supreme Court extended benefit of doubt to the co-accused while recording his acquittal.

86. In **Harvinder Singh alias Bachhu Vs. State of Himachal Pradesh, 2023 SCC OnLine SC 1347**, the Hon'ble Supreme Court has observed that in the case of a sole eyewitness, the witness has to be reliable, trustworthy, his testimony worthy of credence and the case proven beyond reasonable doubt. This was a case based on circumstantial evidence in which the trial Court acquitted the accused, however, High Court reversed the acquittal and Hon'ble Supreme Court reversed the conviction of the High Court and affirmed the acquittal of trial Court.

87. We have carefully perused the above case laws and in the light of detailed analysis done by us of the evidence available on record, the above case laws are not of any help to the appellant–convict for the reasons that the present case is a case based on direct evidence and it is an appeal against conviction. The facts of all above case laws are entirely different than the present case in hand.

88. Learned counsel for the appellant-convict has argued that the prosecution witnesses have improved the prosecution story as put forward in the first information report by assigning knife to appellant-convict whereas, no such knife has been attributed in the FIR. It is settled law that FIR is not encyclopedia and if the necessary details are there, on its basis, detailed narrations by the witnesses cannot be doubted. It is also not expected that FIR shall contain all details of the

prosecution case. It may be sufficient, if broad facts of the prosecution case about the occurrence appears in the FIR.

89. Hon'ble Supreme Court in **M.G. Eshwarappa and others vs. State of Karnataka, (2017) 4 SCC 558**, in paragraph 20, has clearly held that if necessary details are in FIR, then on its basis, detailed narration by the witnesses cannot be doubted. In this case, defence argued that there was no details of assault of the FIR and the story narrated by the PW-1 Rajeshwari was nothing but an improvement. Hon'ble Supreme Court after going through the record found that all the necessary facts were narrated in the FIR and only the details like from which side particular accused came were not stated.

90. In the present case, the FIR contains broad facts of the prosecution story all the name of accused have been mentioned, specific weapons have been assigned to them. However, accused Pravesh was stated to be armed with stick in his hand and it is specifically stated that Pravesh hit Jagpal with stick, which caused Jagpal to fall of his bicycle, even causing of injuries by knives has been clearly stated in the FIR, which is promptly lodged by the informant Mahipal PW-1. We have carefully gone through the FIR, (Ex.Ka-1) as well as depositions of PW-1 and PW-2 and found that accused Pravesh was not only present on the spot but actively participated in the crime. It was the blow of sticks by Pravesh which caused the fall of the deceased from his bicycle and thereafter assault was started on the deceased Jagpal. PW-1 and PW-2 both have been cross-examined extensively regarding accused Pravesh having a knife in his one hand and he also attacked Jagpal with his knife, causing incised injuries, but nothing contradictory came in their depositions. Therefore, we do not find any improvement as alleged by the learned counsel for the appellant-convict in the light of the necessary details being clearly disclosed in the FIR, both PW-1 and PW-2 have narrated in detail the incident and therefore, their depositions as far as use of knife by accused Pravesh in the assault is concerned, cannot be doubted.

91. The learned counsel for the appellant-convict also argued that PW-1 and PW-2 are the chance witnesses, therefore, not reliable. A chance witness is the one who happens to be at the place of occurrence of an offence by chance, and therefore, not as a matter of course. In other words, he is not expected to be at the said place. A person walking on a street witnessing the commission of an offence can be a chance witness. Merely because a witness happens to see an occurrence by chance, his testimony cannot be eschewed though a little more scrutiny may be required at times. This again is an aspect which is to be looked

into in a given case by the court. The evidence of a chance witness therefore, requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence. Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded

92. Let us examine the evidence of PW-1 and PW-2 with caution and close scrutiny in order to ascertain whether their presence on the spot is properly explained and whether they fall under the category of wholly reliable witnesses, in order to base conviction of accused on their testimonies. At the same, time it will have to be kept in mind that merely because the eye witnesses are the family members of the deceased, their evidence cannot per se be discarded. Relationship is not a factor to affect credibility of a witness. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. At the same time it needs to be kept in mind while appreciating evidence of such witness that when feelings run high and there is personal cause for enmity, there is a tendency to drag in an innocent person against whom a witness has a grudge, along with the guilty. In the case of **Balraje @ Trimbak Vs. State of Maharashtra, reported in (2010) 6 SCC 673**, the Apex Court has held that when the eye witnesses are stated to be interested and inimically deposed against the accused, it would not be proper to conclude that they would shield the real culprit and rope in an innocent person. If after careful analysis and scrutiny of their evidence, the reason given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same.

93. The evidence of chance witness can be accepted provided statement of such witness adequately explains the presence of such witness and such evidence stands the test of caution and close scrutiny.

94. In the light of above well settled position of law we have again carefully perused the depositions of PW-1 and PW-2. Admittedly PW-1 is father of deceased and PW-2 is his brother-in-law (Sadhu) of the deceased. It has consistently come in their evidence that PW-2 was accompanying the deceased on the fateful day on bicycle whereas PW-1 was going with Rohtash to hire labourers. Both PW-1 and Rohtash were going together on their feets and deceased Jagpal and Shri Om PW-2 crossed them on the way. Both these witnesses have been extensively cross-examined but defense miserably failed to make any dent in their depositions as far as their presence on the spot is concerned. Both of these witnesses have also been grilled extensively that why

they were present on the spot on the date of incident and in spite of their extensive grilling, their depositions remained consistent. Therefore, we are of the opinion that neither their presence on the scene is doubtful nor their evidence is suspicious. There is no reason that why PW-1 and PW-2 would shield actual culprits and falsely implicate the appellant – convict. Therefore, evidence of PW-1 and PW-2 cannot be discarded on the ground that they are the chance witnesses and they are related to the deceased in the light of their trustworthy depositions.

95. In spite of in-depth cross examination of PW-1 and PW-2 spanning over months that too on several dates, nothing suspicious has come in their evidence regarding any doubt over their presence on the date, time and place of incident. Both PW-1 and PW-2 were present on the spot at the time of incident. PW-1 has proved the site plan (Ex.Ka-1) both in his examination-in-chief as well as in his extensive cross-examination. PW-2 in his deposition is also consistent about the place of incident.

96. PW-1 and PW-2 in their respective cross-examination have consistently stated that after the incident, head of the deceased was in northern direction and his (deceased) legs were in southern direction. Therefore, when these witnesses have been cross-examined so extensively and they remained consistent regarding even the position of the dead body, therefore, their depositions are trustworthy. The depositions of both these witnesses as far as manner of incident is concerned, are also not only consistent but are corroborating each others deposition. The manner of incident as narrated by these witnesses is also corroborated by the ante mortem injuries found on the body of the deceased by the Autopsy Surgeon, which have been duly recorded in post mortem report of the deceased. Therefore, we are of the opinion that the prosecution has been able to prove the presence of PW-1 and PW-2 on the spot at the time of incident and both these witnesses saw the incident and had narrated the same consistently. Therefore, their depositions are reliable.

97. In the present case, Investigating Officer had recovered country made pistol, empty cartridges and blood stained knife on the pointing out of the accused but these weapons were not sent to forensic science laboratory for examination. However, this is merely a lapse on the part of Investigating Officer and in the light of reliable evidence given by PW-1 and PW-2, which found full corroboration from the oral as well as documentary medical evidence available on record. The present appellant-convict cannot claim any benefit of lapse of Investigating Officer. The prosecution has also successfully proved the recovery

of knife on the pointing out of the appellant-convict Pravesh. Thus, from the above analysis, it is crystal clear that prosecution has successfully prove its case against the appellant-convict beyond reasonable doubt. **Question No. IV is accordingly answered in 'Affirmative'.**

(V) Whether multiple fracture on head can be caused by a knife or repeated blows of knife.

98. It has come in the depositions of P.W.1 and P.W.2 that present appellant-convict and his other co-accused/associates stabbed the deceased at the time of incident with knives. The learned counsel for the appellant argued that no multiple fractures can be caused by stabbing from knife below injury no. 1. The prosecution has proved the post-mortem report (Ex.Ka.-3) of the deceased and has also examined the autopsy surgeon Dr. Shyam Khandelwal as P.W.4. The Autopsy Surgeon (PW-4) found seven incised wounds and one injury of multiple abrasion as ante-mortem injuries on the body of the deceased at the time of post-mortem. There is no injury of multiple fracture in one particular incised wound. However, underline bone below injury no.1 and 4 were found fractured and both of these injuries were of incised wound. Therefore, these injuries have been caused by a sharp edged weapon with such a hard blow that underline bone below these injuries got fractured. As per reliable depositions of PW-1 and PW-2, knives were used in the incident, therefore, these injuries have been caused by the blows of knife and thus the injuries so found on the body of the deceased and the oral testimony of PW-1 and PW-2 are fully corroborated by oral as well as documentary medical evidence. The defence has not cross-examined this Autopsy Surgeon and, therefore, his deposition, remained uncontroverted. **Question No. V is thus decided accordingly.**

99. In the light of foregoing discussions and considering the entire aspects of the matter and looking to the circumstances, under which the present offence has been committed, we are of the view that the impugned judgment and order passed by the trial Court is well thought and well discussed and the trial Court has rightly held that the prosecution has succeeded to prove the guilt of the surviving appellant-accused beyond reasonable doubt. The conviction in the case in hand is a right ending and sentence as imposed is proper. As such, the impugned judgment and order passed by the trial Court is liable to be upheld and the Appeal having no force is liable to be dismissed.

100. No good ground to interfere in the well reasoned judgment of the trial court is made out. Thus there is no merit in the present criminal appeals. Consequently, the judgment and sentence dated 27.01.2003 passed by

Additional and Sessions Judge, Ghaziabad in Sessions Trial No. 148/1998, arising out of Case Crime No. 47/1998, (State vs. Mukesh and others), under Section 302/34 IPC and in Sessions Trial No. 149/1998, (State vs. Mukesh and others) under Sections 25 & 4/25 Arms Act, Police Station Dhaulana, District Ghaziabad, qua surviving appellant-convict Pravesh, is hereby '**Affirmed**'.

101. The appellant Pravesh is in jail. He shall serve out remaining part of sentence imposed upon him by the trial Court.

102. Let a copy of the judgment be provided immediately to the appellant Pravesh through concerned Superintendent Jail, free of cost.

103. The record of the 'Trial Court' be sent back immediately with a copy of this judgment for necessary information and compliance.

104. The Appeal fails and is hereby **Dismissed**, qua surviving appellant Pravesh.

105. Pending applications including bail applications, if any, stand disposed of accordingly.

(Dr. Ajay Kumar-II,J.) (Salil Kumar Rai,J.)

May 29, 2026

Monika