



2026:AHC:130142-DB

Reserved
A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 400 of 2005

Khalid and another

.....Appellants

Versus

State of U.P.

.....Respondent(s)

Counsel for the Appellants	: Bhavya Sahai, Mohd. Samiuzzaman Khan, N.i. Jafri, Noor Mohammad, R.p. Singh, S.p. Singh Raghav, Sunil Kumar Yadav
Counsel for the Respondent	: Govt. Advocate, Siddharth, Sunil Singh

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE SAURABH SRIVASTAVA, J.

(Delivered by Hon'ble J.J. Munir, J.)

1. This criminal is directed against the judgment and order of Mr. Shri Prakash, the then Additional District and Sessions Judge, Fast Track Court No.2, Ghaziabad, dated 25.01.2005 in Sessions Trial No. 82 of 1994, under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short, 'IPC'), convicting the appellants Khalid and Nannu of the offence punishable under Section 302 read with Section 34 IPC and passing a sentence of life imprisonment upon each of them, besides imposing a fine in the sum of Rs.10,000/- each, together with a direction that in the event of failure to pay the fine, the appellant in default would undergo one year rigorous imprisonment.

2. Pending this appeal, appellant No.2, Nannu, died on 30.04.2021 and this appeal was ordered to abate on his behalf by an order of this Court dated 21.01.2022. Therefore, this appeal shall now proceed at the behest of appellant No.1, Khalid alone. However, for the sake of convenience, while detailing the course of proceedings and discussing evidence, necessary reference would be made to appellant No.2, Nannu, as regards his role in the crime at the relevant time by describing him as 'appellant No.2' or 'Nannu'.

3. A written information was given by the first informant, Wahiuddin son of Abdul Majid, a resident of Bani Sarai, Meerut, to the Station House Officer, Police Station Bhojpur, District Ghaziabad on 07.01.1990 at 10.25 p.m. regarding an incident that happened earlier in the day at 3.00 p.m., where his son Sarafraz @ Pappu was murdered. The written information says that on 07.01.1990 at about 3.00 p.m., his son Sarafraz @ Pappu was called over by his nephew Khalid (appellant No.1) through his servant, Nannu (appellant No.2) to the latter's barn (*gher*). At that time, the informant and his son were there in their barn. The informant's son, in response to the message, set about for his nephew's barn and the informant too followed him. When the informant's son reached Khalid's barn, the latter told him that he was sending his servant to pick up Sarafraz's tractor-trolley and that Sarafraz should not refuse to oblige him, like he had done the day before yesterday. In response, Sarafraz said that his trolley was not currently free as they had to send a trolley full of chaff to Meerut. Upon hearing this, Khalid uttered a vulgar abuse and said that today the trolley would carry their consignment of paddy first and that Sarafraz's chaff would be dispatched later. Upon hearing these words, Sarafraz said that Khalid should not abuse and talk politely and that, if the latter had so much of fascination for the trolley, he should get his own repaired. To this Khalid reacted by saying that Sarafraz would not relent like this and asked his

servant Nannu to catch hold of Sarafraz. Nannu caught hold of Sarafraz from the rear side, whereas Khalid picked up a double barrel gun, that was at hand, and aiming it at his son, was about to shoot, when the informant suddenly caught hold of the weapon. In consequence, when Khalid opened fire, the deflected lead hit Khalid's servant Nannu in his lower limbs. In a quick manoeuvre, Khalid drew out a pistol from the waist of his pant and shot the informant's son in the head. Sarafraz collapsed and was rushed by the informant on his Jeep car to Meerut, reaching the Pyare Lal Sharma Hospital for medical aid. The doctors declared Sarafraz dead. It is further reported by the informant that at the time of occurrence, Iqbal son of Ibrahim and the informant's other son, Sartaj @ Babli were also present.

4. On the basis of the aforesaid written report, which is marked Ex. *Ka-1*, the Police registered a check First Information Report (for short, 'FIR') on 07.01.1990 at 10.25 p.m., giving rise to Crime No.2 of 1990, under Section 302 IPC, P.S. Bhojpur, District Ghaziabad. The case was registered *vide* G.D. Entry No. 44 dated 07.01.1990. The check FIR is on record as Ex. *Ka-5*, whereas G.D. Entry No.44 is marked as Ex. *Ka-6*.

5. The appellant Nannu was examined for his injuries by the Medical Officer, Primary Health Centre, Bhojpur, Ghaziabad on 07.01.1990 at 7.30 p.m. brought by his father Ummad Ali. He had a firearm wound sustained to his left lower limb.

6. The Inquest was held on 07.01.1990, commencing 10.15 p.m. and ending 11.30 p.m. The inquest report is on record as Ex. *Ka-9*.

7. The dead body of the deceased was subjected to autopsy on 08.01.1990, where a gunshot wound of entry 0.5 x 0.5 cm cranial cavity deep on the left side of head, 2.5 cm above the left

ear was noted. In addition, an abrasion was also noticed. The autopsy report is on record and marked as Ex. *Ka-2*.

8. The Investigating Officer investigated the crime and drew up a site-plan, which is on record as Ex. *Ka-7*. After completion of investigation, he submitted a charge-sheet dated 09.02.1990 against both the appellants Khalid and Nannu, marked Ex. *Ka-8*.

9. The appellants were produced before the learned Magistrate, who took cognizance and furnished them copies of the relevant prosecution papers as provided under Section 207 Cr.P.C. Thereafter, the case against them was committed to the Court of Sessions for trial on 31.01.1994.

10. After committal, the case came up before Mr. N.K. Garg, the then Additional District and Sessions Judge, Fast Track Court No.2, Ghaziabad on 08.09.2003 for framing of charges. The learned Judge proceeded to frame a charge under Section 302 IPC against the appellant Khalid and another charge against Nannu, the deceased appellant, under Section 302/34 IPC.

11. The prosecution examined the following witnesses in support of their case:

1. PW-1 – Jalis Ahmad, who scribed the written information on the dictation of the first informant,
2. PW-2 – Sartaj @ Babli, brother of the deceased,
3. PW-3 – Iqbal, cousin of the deceased,
4. PW-4 – Dr. V.K. Bajpayee, who conducted postmortem of the deceased,
5. PW-5 – Dr. P.S. Agrawal, who examined the injuries of the accused, Nannu,
6. PW-6 – HCP Rakesh Kumar Tyag, the then Head Moharrir, who drew up the check FIR and made other G.D. entries,

7. PW-7 – Constable No. 629 Ravi Kiran Singh, in whose presence inquest, challan lash, photo lash, letter to the CMO, letter to the RI etc. were prepared.

12. The prosecution produced the following documentary evidence:

Sr. No.	Exhibit No.	Exhibited documents with brief particulars
1	Ex. Ka-1	Written report dated 07.01.1990 lodged with Police Station Bhojpur, District Ghaziabad, proved by PW-1, Jalis Ahmad
2	Ex. Ka-2	Postmortem report dated 08.01.1990, proved by PW-4, Dr. V.K. Vajpayee
3	Ex. Ka-3	Injury report of Nannu dated 07.01.1990, proved by PW-5, Dr. P.S. Agrawal
4	Ex. Ka-4	Application for examination of the injuries of Nannu given by him to the Medical Officer, PHC, Bhojpur, dated 07.01.29, proved by PW-5, Dr. P.S. Agrawal
5	Ex. Ka-5	<i>Check</i> FIR dated 07.01.1990, proved by PW-6, HCP Rakesh Kumar
6	Ex. Ka-6	Carbon Copy of GD Entry No.44 Time 22.25 hours dated 07.01.1990, proved by PW-6, HCP Rakesh Kumar
7	Ex. Ka-7	Site-plan of the place of occurrence dated 08.01.1990, proved by PW-6, HCP Rakesh Kumar
8	Ex. Ka-8	Charge sheet dated 09.02.1990, proved by PW-6, HCP Rakesh Kumar
9	Ex. Ka-9	Inquest report dated 07.01.1990, proved by PW-7, Constable Ravi Kiran Singh
10	Ex. Ka-10	Challan Lash dated 08.01.1990, proved by PW-7, Constable Ravi Kiran Singh
11	Ex. Ka-11	Letter to the C.M.O. dated 08.01.1990, proved by PW-7, Constable Ravi Kiran Singh
12	Ex. Ka-12	Photo Lash dated 08.01.1990, proved by PW-7, Constable Ravi Kiran Singh
13	Ex. Ka-13	Letter to the R.I. dated 08.01.1990, proved by PW-7, Constable Ravi Kiran Singh

13. After the prosecution evidence was over, the statement of the accused-appellant Khalid under Section 313 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') was recorded by the learned Trial Judge on 24.09.2004 and that of the deceased appellant Nannu on 17.08.2004. After trial, the learned Additional District and Sessions Judge by his judgment and order impugned held the appellants guilty of the offence punishable under Section 302 read with Section 34 IPC and passed sentences upon them as hereinabove mentioned.

14. Aggrieved, this appeal has been preferred by both the convicts Khalid and Nannu. Nannu being dead, as already pointed out, this appeal has been heard at the behest of Khalid alone.

15. Heard Mr. Ayush Singh, learned Counsel for the appellant, Mr. Sunil Singh, learned Counsel appearing on behalf of the informant and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate on behalf of the State.

The evidentiary value of the FIR

16. The first informant in this case, Wahiuddin, was admittedly dead before the case went to trial, and, therefore, never entered the witness-box to prove the FIR. The scribe of the FIR, Jalis Ahmad, was examined as PW-1. The question is, could Jalis Ahmad prove the contents of the FIR, and, if not, what could he prove by his testimony in the dock and what would be the evidentiary value of the FIR.

17. This question has engaged the attention of the Courts much in the past as well and the issue has also been considered that if the informant is dead, could the FIR be proved with the aid of Section 32 of the Indian Evidence Act, 1872 (for short, 'Evidence Act'). The question fell for consideration before a Division Bench of this Court in **Pradeep v. State of U.P., 2022 SCC OnLine All 1139**. In **Pradeep** (supra), to which one of us (J.J. Munir, J.) was party, it was held:

"20. There is a distinctive feature about this case, where the first informant, Satya Prakash has been abducted some time in the year 2007, a fact that can be reckoned about the time of its occurrence from the testimony of PW-2, Ram Autar. Ram Autar, in his examination-in-chief on 02.04.2008, has stated that Satya Prakash was abducted 6-7 months ago. He does not know, whether he is dead or alive. It has figured in the judgment of the learned Trial Judge that a photostat copy of the FIR is on record, where, relating to the abduction of Satya Prakash, a crime was registered against Pradeep and some other persons under Section 364 IPC. Thus, Satya Prakash was no longer available to testify in the dock. It is for this reason that the FIR lodged by Satya Prakash has been proved by

PW-2, Ram Autar, who is the scribe of the written first information.

30. Learned Counsel for the appellants has urged that until time when the trial was held, hardly two years had passed by and apart from the FIR accusing Pradeep of causing Satya Prakash to be abducted, there was no proof that he was dead. He further argues that Satya Prakash's death cannot be presumed until the lapse of seven years without him being heard of by any one of those, who would naturally have known of his whereabouts. In short, Satya Prakash cannot be presumed to have suffered a civil death by time the trial was held.

31. We are of opinion that unless the case be one where the first informant is dead and what he reports through the FIR are facts related to the cause of his death, the FIR is not admissible as substantive evidence under Section 32 of the Indian Evidence Act, 1872. Their Lordships of the Supreme Court in *Munnu Raja v. The State of Madhya Pradesh*⁵ decisions, do not doubt the principle that an FIR can qualify as a dying declaration, if the informant dies in consequence of injuries that he reports through the FIR, or to put it more in the form of principle, if the FIR has some nexus with the informant's death. If the informant, after lodging the FIR, were to die a natural death, the FIR cannot be read as substantive evidence with the aid of Section 32 of the Evidence Act. Here, the informant has not reported anything that bears any nexus with his death. Moreover, it is not established whether the informant is dead or alive. What is true is that he is untraceable and there is an allegation that he has been abducted by the appellant, Pradeep, which now stands vindicated with Pradeep's conviction for that offence. The fact remains, however, that the first informant, who is the author of the FIR, could not be produced at the trial.

32. The moot question is whether the FIR, in the absence of the informant being produced in the dock, would be admissible for the purpose of corroborating or contradicting the eye-witnesses who have testified at the trial. In our opinion, that cannot be done. In fact, the FIR is the earliest account of the occurrence and it is only the author of the FIR, that is to say, the first informant, who can prove its contents. It is he alone who can be cross-examined to contradict or corroborate him. Once he proves the FIR, the account can be looked into to judge the probity of other witnesses and their testimony also. But, in the absence of the informant entering the witness-box to prove the FIR, its contents cannot be held to be proved by examining the scribe, who has written it, or the police personnel, who have registered it. The scribe i.e. PW-2 has testified that the informant dictated the FIR to him by word of mouth, which he reduced to writing. He read over the contents to the first informant, who signed the FIR after understanding the same. The evidence of PW-2, Ram Autar, is competent to establish that the written information is one that was narrated to the scribe by the informant and is faithfully transcribed. It proves that it was written by the

scribe, PW-2 and signed by the informant, but does not prove the contents of the FIR.

33. An FIR is nevertheless the basis to set the process of criminal law in motion and it is proved that the FIR here was lodged by the first informant and registered at the police station. On its basis, investigation could and did commence, where material had to be collected and was collected. It is on the basis of that material that the appellants have been charge-sheeted and tried. It is on the basis of evidence led at the trial that the appellants have been found guilty beyond reasonable doubt, a conclusion that they assail before us. Admissibility and evidenciary value of an FIR, in the context of a dead first informant, whose death was not connected to the occurrence reported through the FIR, was considered by the Gujarat High Court in *Bhavanbhai Premjibhai Vaghela v. State of Gujarat*⁶ in an interlocutory challenge raised to the order of the Trial Court. The order challenged before the High Court had permitted the contents of the FIR to be proved by the Investigating Officer entering the witness-box, because pending trial, the first informant had suffered a natural death. The accused had objected to it and said that the Investigating Officer could not prove the contents of the FIR. The Trial Court rejected the objection and permitted the Investigating Officer to prove the FIR. This order was challenged under Article 227 of the Constitution, where, after survey of authority bearing on the issue, it was held in *Bhavanbhai Premjibhai Vaghela* (supra):

"11. The basic purpose of filing a First Information Report is to set the criminal law into motion. A First Information Report is the initial step in a criminal case recorded by the police and contains the basic knowledge of the crime committed, place of commission, time of commission, who was the victim, etc. The term 'First Information Report' has been explained in the Code of Criminal Procedure, 1973 by virtue of Section 154, which lays down that:

"Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

12. F.I.Rs. can be registered by a victim, a witness or someone else with the knowledge of the crime. The police can record three different kinds of statements. The first kind of statement is one which can be recorded as an F.I.R., the second kind of statement is one which can be recorded by the police during the investigation, and the third kind of statement is any kind of statement which would not fall under any of the two categories mentioned above. Evidence is the matter of testimony manifesting the fact on a particular precision or circumstances. The First Information Report is not by itself a

substantial piece of evidence and the statement made therein cannot be considered as evidence unless it falls within the purview of Section 32 of the Evidence Act. It is an admitted fact that the original first informant because of the injuries caused by the applicants. The relative importance of a First Information Report is far greater than any other statement recorded by the police during the course of the investigation. It is the foremost information the police gets about the commission of an offence and which can be used to corroborate the story put-forward by the first informant under Section 157 of the Evidence Act or to contradict his version by facts under Section 145 of the Act in case he is summoned as a witness in the case by the Court. It may happen that the informant is the accused himself. In such cases, the First Information Report lodged by him cannot be used as an evidence against him because it is embodied in the basic structure of our Constitution that a person cannot be compelled to be a witness against himself.

13. x x x

14. If the informant dies, the First Information Report can be, unquestionably, used as a substantive evidence. A prerequisite condition must be fulfilled before the F.I.R. is taken as a substantive piece of evidence i.e. the death of the informant must have nexus with the F.I.R. filed or somehow having some link with any evidence regarding the F.I.R. This is what has been explained by the Supreme Court in the case of *Damodar Prasad v. State of U.P.*, [(1975) 3 SCC 851 : (1975) 3 SCC 851 : AIR 1975 SC 757].

15. There are plethora of decisions taking the view that an F.I.R. can be a dying declaration if the informant dies of his injuries after lodging the same. [See *Munna Raja v. State of M.P.* ((1976) 3 SCC 104 : (1976) 3 SCC 104 : AIR 1976 SC 2199)].

16. Another important thing is that for an F.I.R. lodged by a deceased person to be treated as substantial, its contents must be proved. It has to be corroborated and proved for there to be any value of the same in the case. The F.I.R. can be used by the defence to impeach the credit of the person who lodged the F.I.R. under Section 154(3) of the evidence Act. In case the death of the informant has no nexus with the complaint lodged i.e. he died a natural death and did not succumb to the injuries inflicted on him in relation to a matter, the contents of the F.I.R. would not be admissible in evidence. In such circumstances, the contents cannot be proved through the Investigating Officer. The Investigating Officer, in the course of his deposition, should not be permitted to depose the exact contents of the F.I.R. so as to make them admissible in evidence. All that is permissible in law is that the Investigating Officer can, in his deposition, identify the signature of the first informant and that of his own on the First Information Report and he can depose about the factum of the F.I.R. being registered by him on a particular date on a particular police station.

17. It is absolutely incorrect on the part of the Trial Court to say that in the absence of the first informant, the police officer can prove the contents of the F.I.R. as per Section 67 of the Evidence Act.

18. In the case of *Harkirat Singh v. State of Punjab*, [(1997) 11 SCC 215 : (1997) 11 SCC 215 : AIR 1997 SC 3231], the Supreme Court observed as under:

"In our considered view, the High Court was not justified in treating the statement allegedly made by Kharaiti Ram during inquest proceedings as substantive evidence in view of the embargo of Section 162, Cr. P.C. Equally unjustified was the High Courts reliance upon the contents of the FIR lodged by Walaiti Ram who, as stated earlier, could not be examined during the trial as he had died in the meantime. The contents of the FIR could have been used for the purpose of corroborating or contradicting Walaiti Ram if he had been examined but under no circumstances as a substantive piece of evidence."

19. In the case of *Hazarilal v. State (Delhi Administration)*, [(1980) 2 SCC 390 : (1980) 2 SCC 390 : AIR 1980 SC 873], the Supreme Court, in para 7, observed as under:

"The learned counsel was right in his submission about the free use made by the Courts below of statements of witnesses recorded during the course of investigation. Section 162 of the Code of Criminal Procedure imposes a bar on the use of any statement made by any person to a Police Officer in the course of investigation at any enquiry or trial in respect of any offence under investigation at the time when such statement was made, except for the purpose of contradicting the witness in the manner provided by S. 145 of the Indian Evidence Act. Where any part of such statement is so used any part thereof may also be used in the re-examination of the witness for the limited purpose of explaining any matter referred to in his cross-examination. The only other exception to this embargo on the use of statements made in the course of an investigation relates to the statements falling within the provisions of S. 32 (1) of the Indian Evidence Act or permitted to be proved under Section 27 of the Indian Evidence Act. Section 145 of the Evidence Act provides that a witness may be cross-examined as to previous statements made by him in writing and reduced into writing and relevant to matters in question, without such writing being shown to him or being proved but, that if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The Courts below were clearly wrong in using as substantive evidence statements made by witnesses in the course of investigation. Shri. H.S. Marwah, learned counsel for the Delhi Administration amazed us by advancing the argument that the earlier statements with which witnesses were confronted for the purpose of contradiction could be taken into

consideration by the Court in view of the definition of "proved" in Section 3 of the Evidence Act which is, "a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man, ought, in the circumstances of the particular case to act upon the supposition that it exists". We need say no more on the submission of Shri. Marwah except that the definition of proved does not enable a Court to take into consideration matters, including statements, whose use is statutorily barred."

20. I have to my benefit a very lucid and erudite judgment rendered by a learned Single Judge of the Madhya Pradesh High Court in the case of *Umrao Singh v. State of M.P.* [1961 Criminal L.J. 270]. In this case, the petitioners Umrao Singh and Kunwarlal were convicted of the offence punishable under Section 323 of the Penal Code and sentenced to two months rigorous imprisonment. The case of the prosecution was that on 27th August 1959, the petitioners named above belaboured Barelal who had gone out to graze his cattle, and who was blamed by the accused to have caused damage to their crops. Barelal, however, died a natural death after six months of the occurrence, but before he could be examined as a witness. It was contended that the F.I.R. lodged by Barelal could not be considered by the Courts below and that the evidence of the solitary witness, Pannala was unreliable, as he was not mentioned in the list of witnesses filed by the prosecution. In this set of facts, the Court observed as under:

"4. It is true that the first information report is not by itself a substantive piece of evidence and the statement made therein cannot be considered as evidence unless it falls within the purview of S. 32 of the Evidence Act. It is an admitted fact that Barelal did not die because of the injuries caused by the petitioners. Section 32 was inapplicable.

5. It is true that in the list of witnesses Pannalal's name has been mis-spelt as "Dhannalal", but this doubt is removed when the first information report is looked into. There, Pannalal's name is mentioned. Shri. Dey contends that it is not permissible to look at the F.I. R. at all. In my opinion this argument cannot be accepted. It is proved by Ram Ratan P.W. 6 that he recorded the report which was lodged by Barelal. There is a distinction between factum and truth of a statement. It has been aptly pointed out by Lord Parker C.J. in *R. v. Willis*, [1960] 1 WLR 55 that evidence of a statement made to a witness by a person who is not himself called as witness may or may not be hearsay.

It is hearsay and inadmissible when the object of the evidence is to establish what is contained in the statement; it is not hearsay and is admissible when it is proposed to establish by the evidence not the truth of the statement but the fact that it was made. According to Ram Ratan, Barelal mentioned Pannalal's name to him. Applying the above dictum,

Ramratan's evidence is inadmissible to prove that Pannalal was in fact present at the time of the occurrence; but Ram Ratan's statement is admissible to prove that Barelal had mentioned the name of Pannalal to the witness."

35. The first informant, for whatever reason not being available or produced in the witness-box to prove the contents of the FIR, we are of opinion that the FIR cannot be looked into to corroborate or contradict the prosecution witnesses. The contents of the FIR are not proved. It is also held that the FIR is not one that has any nexus with the death of the informant and, therefore, not admissible as substantive evidence under Section 32 of the Evidence Act. However, the fact that the FIR was dictated by word of mouth by the informant to PW-2, who has transcribed it and that it bears the signatures of the first informant and the scribe, are well proved. The registration of the FIR at the police station on the date and the time specified is also proved. This Court must also say that the fact that the FIR is not proved for the informant's absence does not impair the prosecution in establishing its case at the trial on the basis of material collected during investigation and proved by leading cogent evidence."

18. We are fortified in the view that we have taken in **Pradeep** and followed here by the Supreme Court in **Lalita v. Vishwanath and others, 2025 SCC OnLine SC 370**, where it is observed:

"34. Another important thing is that for an F.I.R. lodged by a deceased person to be treated as substantial, its contents must be proved. It has to be corroborated and proved for there to be any value of the same in the case. The F.I.R. can be used by the defence to impeach the credit of the person who lodged the F.I.R. under Section 154(3) of the Evidence Act. In case the death of the informant has no nexus with the complaint lodged i.e. he died a natural death and did not succumb to the injuries inflicted on him in relation to a matter, the contents of the F.I.R. would not be admissible in evidence. In such circumstances, the contents cannot be proved through the Investigating Officer. The Investigating Officer, in the course of his deposition, should not be permitted to depose the exact contents of the F.I.R. so as to make them admissible in evidence. All that is permissible in law is that the Investigating Officer can, in his deposition, identify the signature of the first informant and that of his own on the First Information Report and he can depose about the factum of the F.I.R. being registered by him on a particular date on a particular police station.

35. It is absolutely incorrect on the part of the Trial Court and the High Court to say that in the absence of the first informant, the police officer can prove the contents of the F.I.R. as per Section 67 of the Evidence Act.

36. In the case of *Harkirat Singh v. State of Punjab* [(1997) 11 SCC 215 : AIR 1997 SC 3231], this Court observed as under:-

"In our considered view, the High Court was not justified in treating the statement allegedly made by Kharaiti Ram during inquest proceedings as substantive evidence in view of the embargo of Section 162, Cr. P.C. Equally unjustified was the High Courts reliance upon the contents of the FIR lodged by Walaiti Ram who, as stated earlier, could not be examined during the trial as he had died in the meantime. The contents of the FIR could have been used for the purpose of corroborating or contradicting Walaiti Ram if he had been examined but under no circumstances as a substantive piece of evidence."

37. In the case of *Hazarilal v. State (Delhi Administration)* [(1980) 2 SCC 390 : AIR 1980 SC 873], this Court, in para 7, observed as under:-

"The learned counsel was right in his submission about the free use made by the Courts below of statements of witnesses recorded during the course of investigation. Section 162 of the Code of Criminal Procedure imposes a bar on the use of any statement made by any person to a Police Officer in the course of investigation at any en-quiry or trial in respect of any offence under investigation at the time when such statement was made, except for the purpose of contradicting the witness in the manner provided by S. 145 of the Indian Evidence Act. Where any part of such statement is so used any part thereof may also be used in the re-examination of the witness for the limited purpose of explaining any matter referred to in his cross-examination. The only other exception to this embargo on the use of statements made in the course of an investigation relates to the statements falling within the provisions of S. 32 (1) of the Indian Evidence Act or permitted to be proved under Section 27 of the Indian Evidence Act. Section 145 of the Evidence Act provides that a witness may be cross-examined as to previous statements made by him in writing and reduced into writing and relevant to matters in question, without such writing being shown to him or being proved but, that if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The Courts below were clearly wrong in using as substantive evidence statements made by witnesses in the course of investigation. Shri. H.S. Marwah, learned counsel for the Delhi Administration amazed us by advancing the argument that the earlier statements with which witnesses were confronted for the purpose of contradiction could be taken into consideration by the Court in view of the definition of "proved" in Section 3 of the Evidence Act which is, "a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man, ought, in the circumstances of the particular case to act upon the supposition that it exists". We need say no more

on the submission of Shri. Marwah except that the definition of proved does not enable a Court to take into consideration matters, including statements, whose use is statutorily barred."

38. We have to our benefit a very lucid and erudite judgment of the Madhya Pradesh High Court in the case of *Umrao Singh v. State of M.P.* [1961 Cri LJ 270]. In this case, the petitioners *Umrao Singh* and *Kunwarlal* were convicted of the offence punishable under Section 323 of the Penal Code and sentenced to two months rigorous imprisonment. The case of the prosecution was that on 27th August 1959, the petitioners named above belaboured *Barelal* who had gone out to graze his cattle, and who was blamed by the accused to have caused damage to their crops. *Barelal*, however, died a natural death after six months of the occurrence, but before he could be examined as a witness. It was contended that the F.I.R. lodged by *Barelal* could not be considered by the Courts below and that the evidence of the solitary witness, *Pannala* was unreliable, as he was not mentioned in the list of witnesses filed by the prosecution. In this set of facts, the Court observed as under:—

"4. It is true that the first information report is not by itself a substantive piece of evidence and the statement made therein cannot be considered as evidence unless it falls within the purview of S. 32 of the Evidence Act. It is an admitted fact that Barelal did not die because of the injuries caused by the petitioners. Section 32 was inapplicable.

*5. It is true that in the list of witnesses Pannalal's name has been mis-spelt as 'Dhannalal', but this doubt is removed when the first information report is looked into. There, Pannalal's name is mentioned. Shri. Dey contends that it is not permissible to look at the F.I. R. at all. In my opinion this argument cannot be accepted. It is proved by Ram Ratan P.W. 6 that he recorded the report which was lodged by Barelal. There is a distinction between factum and truth of a statement. It has been aptly pointed out by Lord Parker C.J. in *R. v. Willis* [1960] 1 WLR 55 that evidence of a statement made to a witness by a person who is not himself called as witness may or may not be hearsay.*

It is hearsay and inadmissible when the object of the evidence is to establish what is contained in the statement; it is not hearsay and is admissible when it is proposed to establish by the evidence not the truth of the statement but the fact that it was made. According to Ram Ratan, Barelal mentioned Pannalal's name to him. Applying the above dictum, Ramratan's evidence is inadmissible to prove that Pannalal was in fact present at the time of the occurrence; but Ram Ratan's statement is admissible to prove that Barelal had mentioned the name of Pannalal to the witness."

19. In this case, as already remarked, the FIR was attempted to be proven by PW-1, Jalis Ahmad son of Riazuddin, who is

admittedly the scribe of the FIR. This witness in his testimony has said that he had scribed the FIR on the dictation of Wahiuddin on 07.01.1990, reducing to writing whatever Wahiuddin dictated. After the dictation was over, the contents were read over to Wahiuddin and he signed the same in the presence of the scribe, PW-1. It is further said that the witness's name appears on the written report as the scribe. This witness has clearly said that Wahiuddin, PW-1, was already dead, that is to say, by time the trial commenced. The written information was read over to the witness, who verified the fact that this is the same written report that he had transcribed. It was exhibited as Ex. *Ka-1*. Considering the fact that Wahiuddin was dead by time the case went to trial and the FIR does not relate to the cause of his death or as to any circumstances of the transaction which resulted in his death, to borrow the phraseology of Section 32(1), the contents of the FIR cannot be held proved by the scribe. The evidence of PW-1, the scribe of the FIR, would, therefore, be limited to proving the facts that the FIR was dictated by word of mouth by the informant to PW-1, who has transcribed it and that it bears signatures of the first informant and the scribe as well. The registration of the FIR at the police station on the date and time specified is also proved. But, mere non-proof of the FIR, as held by us in **Pradeep**, does not impair the prosecution from proving their case otherwise by producing evidence in the dock. Of course, the prosecution would have one disadvantage that the earliest account of the occurrence is not available, of which an FIR, duly proved in accordance with law, is a treasured and reliable repository unless impeached by very cogent evidence about its veracity.

The date, time, place and manner of occurrence

20. On the basis of evidence available on record, there is little quarrel about the date, time and place of occurrence. The date was 07.01.1990, the time 3.00 p.m. and the place of occurrence

was the appellant Khalid's barn, located on his farmhouse. The farmhouses of the appellant Khalid and the deceased were located close-by in Village Nahli. We accept these facts to be established on the basis of the prosecution evidence. The principal issue involved in this case is about the manner of occurrence and who inflicted the fatal injury. The charge is upon the appellant that he shot the victim Sarafraz @ Pappu to death.

21. Now, in this regard, the most dependable testimony is that of Sartaj @ Babli son of the late Wahiuddin, a brother of the deceased and the informant's son. According to the prosecution, he is an eye-witness of the occurrence. According to this witness, in his examination-in-chief, he has said that on 07.01.1990, his brother Sarafraz @ Pappu was murdered. That day, he along with his father Wahiuddin and younger brother, the deceased Sarafraz and Iqbal, a cousin of the deceased were at the farmhouse of the deceased's family, situate at Village Nahli, P.S. Bhojpur. They had gone over there. As soon as they reached the farm, they received a message from Khalid through his servant Nannu, the other co-accused, that Khalid was calling Sarafraz over. The time was about quarter to three in the afternoon. The deceased Sarafraz started out in response to Khalid's call to meet him at the latter's farmhouse. The witness's and the deceased's father, Wahiuddin, and the witness himself along with Iqbal, trailed his brother to Khalid's farmhouse. As soon as the party arrived there, Khalid demanded of his brother, the deceased, lending of the latter's tractor-trolley, a proposal which the witness's brother promptly declined on the ground that their own chaff had to be carried to destination.

22. Upon the deceased telling Khalid that the tractor-trolley was not available, Khalid abused the deceased. Sarafraz, the deceased, told him to mind his language. At the drop of these words from Sarafraz, Khalid exhorted his servant Nannu to catch

hold of the deceased, saying that he would not agree with ease. Nannu caught hold of Sarafraz from his backside and Khalid, picking up his gun, aimed it at Sarafraz. The witness's father, at that time, intervened and forced the barrel downwards, in consequence of which the projectiles from the gun, that was fired to shoot Sarafraz, hit Nannu in his lower limbs. At this stage, Khalid took out a pistol from the pocket of his pant and shot Sarafraz, hitting him in the head. In consequence of the gunshot wound, Sarafraz collapsed. Thereupon, Khalid and Nannu, collecting their weapons, escaped. The witness put his brother in the Jeep and rushed him to Pyare Lal Hospital, Meerut, where the doctors declared him dead.

23. There are some oddities about the prosecution case that appear from the testimony of PW-2, who is an eye-witness, and also PW-3. Whereas PW-2 is the brother of the deceased, PW-3 is the latter's cousin, that is to say, he is the deceased's father's sister's son. It would be important to note that Khalid too is a cousin of the deceased and he is the deceased's father's brother's son. The place of occurrence is not the deceased's farmhouse or any part of it, but the appellant's farmhouse. The oddity that creeps into the prosecution account is due to the fact that when Khalid called the deceased over through his servant Nannu, the deceased's father, PW-2 and PW-3, all trailed him to Khalid's farmhouse and right into the *gher*, where Khalid and the deceased met and had a verbal altercation to begin with. There is no evidence to the effect that the relationship between the deceased or his family and Khalid or his family was in any manner soured by any dispute or otherwise. To the contrary, the two not only had adjoining farmhouses, but it seems from the evidence that they were on reasonably amiable terms. If the terms between parties were good and it was commonplace for Khalid to call Sarafraz and for him to go there, there was no reason why on occasion, when Sarafraz went over to Khalid at the latter's call, his father,

brother and cousin trooped behind him. The relevant part of PW-2's cross-examination in this regard may be noticed the way it has been recorded by the learned Trial Judge. It reads:

"मैंने नन्नू से नहीं पूछा था कि क्यू बुलाया है। खालिद इससे पहले भी बुला लेता था और सरफराल चला जाता था। मुझे भी बुला लेता था ओर मैं भी चला जाता था। घटना वाले दिन खालिद के बुलाने पर सरफराज के साथ हम तीनों भी चले गये थे। इसकी कोई खास वजह नहीं है। हमसे सरफराज या अन्य किसी ने खालिद के यहां चलने को नहीं कहा था यू ही चल दिये थे।"

24. The alternative hypothesis why besides the deceased, PW-2, PW-3 and their late father were at the place of occurrence and how actually the deceased was shot and Nannu received fatal injuries, also figures from PW-2's cross-examination, where it is said:

".....यह कहना गलत है कि घटना से पहले खालिद ने हमारी ट्राली माँगी थी और वह खराब कर दी थी। यह कहना गलत है कि हमने खालिद से अपनी ट्राली ठीक कराने को कहा हो और उसने कहा हो कि ऐसा तो हो ही जाता है। यह कहना गलत है कि इस बात पर मेरे वालिद बन्दूक लेकर और हम तमंचे लेकर खालिद के घेर पर पहुँचे ओर उस पर हमला किया। यह कहना भी गलत है कि हमारी चलाई गई गोली से नन्नू जख्मी हुआ और खालिद ने अपनी जान बचाने के लिए सरफराज को कौली भरी हो और हमारे द्वारा चलाई गई गोली सरफराज को लगी हो। यह कहना गलत है कि हमने पुलिस से मिलकर मुलजिमान के विरुद्ध झूठा मुदकमा कायम कराया हो।"

25. The suggestion is that there was a dispute that erupted between the families of the two brothers and their children, who are collaterals, over the use of the deceased's tractor-trolley. Tempers ran high about the issue of borrowing the tractor-trolley, in consequence of which the deceased's father entered Khalid's farmhouse with a gun and PW-2 and PW-3 with country-made pistols. They opened fire injuring Nannu. Khalid, in order to save his life, caught hold of Sarafraz, making a shield out of him. When the witnesses and their party opened fire, Sarafraz sustained a bullet injury, in consequence of which he died.

26. It must be noticed here that Nannu lodged a cross-version under Section 307 IPC with P.S. Bhojpur, that was registered as Crime No.2-A of 1990 on 10.02.1990 at 3.45 p.m. The accused in the said FIR are Wahiuddin, Sarafraz (the deceased), Sartaj (PW-2) and Iqbal (PW-3). In his statement under Section 313

Cr.P.C., Khalid took the following defence in answer to the question, if he had any other thing to say:

"जी, सरफराज वगैरह मेरे (घेर) पर हथियारों से लैस होकर आये थे, उनके द्वारा चलायी एक गोली नचू को लगी तथा दूसरी गोली चलाते समय धक्कम धक्का होने के कारण इन्ही की गोली सरफराज को लगी तथा उन लोगों ने इस अपराध से बचने के लिये ही हम पर झूठा मुकदमा कराया है।"

27. The appellant has also produced documents in defence and one of these is the FIR in the cross-case, giving rise to Crime No.2-A of 2005, under Section 307 IPC, which is on record as paper No. 63-*Kha* / 3. This FIR was lodged by Nannu, Khalid's servant. It says that on 07.01.1990, Khalid was taking out *moonji* (paddy crop), when at about 3.00 p.m., Khalid's uncle Wahiuddin, carrying a gun in his hand and his son Sarafraz @ Pappu and Sartaj @ Babli armed with country-made pistols, besides Iqbal son of Ibrahim also carrying a country-made pistol, entered their barn, saying it with an abuse that they had ruined their trolley and Khalid should get it repaired. In response, Khalid said that what is there to turn abusive about it, because in farming work, such things happen. He also said that you also use our trolley and that he had not damaged the trolley. To this, Wahiuddin said with another abuse that Khalid had the dare to argue with him and saying so opened fire, aiming at Khalid. The informant (Nannu) came between the assailant and Khalid, on account of which he received gunshot injuries to his leg. Khalid, in order to save himself, caught hold of Sarafraz, making a shield out of him. Iqbal then opened fire at Khalid, which instead of hitting the desired target, struck Sarafraz.

28. This is the cross-version that the appellant has come up with. However, the Police did not accept the cross-version and put in a final report, which was pending until judgment was passed in this case. The Trial Judge discounted this defence on the ground that apart from a final report being put in by the Police, though not conclusive as proceedings were pending until then, the FIR, that as lodged by Nanny, was after a delay of a little over one month. It

is also remarked that against the first informant of the cross-case, FIR had been registered on 08.01.1990, and, therefore, the cross-version was a defence set up to escape the consequences. It is also remarked by the learned Trial Judge that 14 years have rolled by, but the final report is still pending and the appellants have not secured any orders from the Court.

29. It is to be seen, therefore, if the prosecution, going by the manner of occurrence, have established their case beyond reasonable doubt. It is quite another matter that the cross-version that Khalid's servant and appellant No.2 (since deceased) came up with, did not convince the Police into filing a charge-sheet. Possibly, they could not have done that after putting in a charge-sheet on the first informant's version here. The oddities in the prosecution case noticed so far, based as it is on the eye-witness account of PW-2, do not end at Wahiuddin, Sartaj and Iqbal following Sarafranz when the latter went over to Khalid's barn upon his call. We may remark here that this conduct of trailing Sarafranz to Khalid's barn could have been understood if there were any evidence of a hostility between the two families. There is none.

30. The oddity about the prosecution story continues when one looks to the manner of assault propounded by the prosecution: firstly, it is an absolutely unbelievable story by the very nature of things that Khalid would have asked Nannu to catch hold of Sarafranz for the purpose of enabling him to shoot the victim. In the standing position, a man, who catches hold of the victim, who is shot from the opposite direction, always runs the risk of being shot himself. Therefore, the story is highly improbable; almost unbelievable. The next strong improbability about the manner of occurrence is that if Nannu had caught hold of Sarafranz from the backside to disable him as he was being shot by Khalid, the flying lead from the shot would certainly have hit Nannu, even if the barrel was pushed down by Wahiuddin, but not without injuring

Sarafraz in his legs or foot or the lower part of his body. Sarafraz has sustained no injury referable to the gunshot that hit Nannu, when Wahiuddin pushed the barrel of the gun down, according to the prosecution, as Khalid opened fire from his gun. It is almost fantastic to think that the lead would have flown around Khalid's lower limbs, as if those were in bulletproof armour, and work their way around to hit Nannu in his left lower limb.

31. This is all the more so because Nannu's injury report, Ex. *Ka-3*, shows that what he received were pellet injuries and the weapon used was apparently a double barrel shotgun. This kind of a firearm, where there is a spread of pellets, could never have left Sarafraz unscathed in his lower limbs, if Nannu had received injuries in the manner described by the prosecution. Both the aforesaid infirmities casts a grave shadow of doubt about the veracity of the prosecution case.

32. Turning to the testimony of PW-3, the fabric of the prosecution story is no doubt consistent between both the eye-witnesses and the examination-in-chief for this reason is unremarkable. About this rather strange behaviour of Wahiuddin following his son, when he went to Khalid and PW-2 and PW-3 following Wahiuddin, is testified to by PW-3 in the following words:

"हमारे पहुंचने के थोड़ी देर के बाद यानि 4-5 मिनट के बाद खालिद नौकर सरफराज को बुलाने आया था। उसने कहा कि खालिद बुला रहा था। सरफराज ने नहीं पूछा कि मुझे क्यों बुला रहा है। हम तीनों में से भी किसी ने नहीं पूछा कि खालिद क्यों बुला रहा है। उसके कहते ही सरफराज उसके साथ चल दिया सरफराज ने हम से किसी से नहीं कहा कि मेरे साथ चलो। चूँकि वहीदुद्दीन चल दिये इसलिए हम भी चल दिये। सरफराज से हम 1-2 कदम के फासले पर चल दिये।"

33. There is, therefore, no earthly reason assigned by this witness as well as to why three men followed Sarafraz to Khalid's barn, located in his farmhouse when the latter called him over. As already remarked, in the testimony of PW-3 as well, there is no evidence about any such hostility between parties, which might have made Wahiuddin or the two witnesses fear for Sarafraz, if he went to Khalid alone. There is absolutely a meaningless

explanation offered by PW-3 as well. All that he says is that because Wahiuddin went after Sarafraz, PW-2 and PW-3 followed suit. This explanation about the presence of the three men, besides Sarafraz at Khalid's barn, is indeed very odd; something that we have remarked about earlier in this judgment in greater detail. This behaviour of the three eye-witnesses, one of whom is dead, that is to say, the first informant Wahiuddin, by itself casts a grave cloud of doubt on the prosecution.

The prosecution case if proved beyond reasonable doubt

34. It is too well settled a proposition that the prosecution have to prove their case, whether it be direct or circumstantial evidence by the exacting criminal standard, that is to say, proof beyond reasonable doubt. Reference in this connection may be made to: **Vijayee Singh v. State of U.P., (1990) 3 SCC 190, Sunil Kundu v. State of Jharkhand, (2013) 4 SCC 422, Anand Ramachandra Chougale v. Sidarai Laxman Chougala, (2019) 8 SCC 50, Vasudev v. State of M.P., (2022) 4 SCC 735, and Pawan Kumar Sharma v. Manoj Kumar, 2026 SCC OnLine SC 934.**

35. Here, we have found the evidence produced by the prosecution despite the consistent account of witnesses to be inherently unreliable and untrustworthy for the reasons indicated above.

36. In our opinion, the appellant Khalid is entitled to the benefit of doubt.

37. In the result, this appeal succeeds and is **allowed**. The impugned order dated 25.01.2005 passed by the Additional District and Sessions Judge, Fast Track Court No.2, Ghaziabad, is hereby **set aside** and the appellant acquitted of the charge. He is in jail. He shall be set at liberty forthwith unless wanted in any other case.

38. The appellant Khalid shall execute a personal bond in the sum of Rs.25,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for his appearance, in the event of an appeal being preferred against his acquittal.

39. Let this judgment and order be communicated to the Chief Judicial Magistrate, Ghaziabad and through him to the Jail Superintendent, wherever the appellant is serving, for prompt compliance.

40. Let the lower court records be returned.

(Saurabh Srivastava, J.) (J.J. Munir, J.)

July 01, 2026

Anoop