

**AFR**

Judgment Reserved On:16.02.2024

Judgment Delivered On:19.03.2024

Neutral Citation No. - 2024:AHC:47566-DB

**Court No. - 45****Case :-** CRIMINAL APPEAL No. - 79 of 2005**Appellant :-** Rajendra Prasad Gaur**Respondent :-** State of U.P.**Counsel for Appellant :-** S.S. Singh, Chetan Chatterjee**Counsel for Respondent :-** Govt. Advocate**Hon'ble Rajiv Gupta, J.****Hon'ble Mohd. Azhar Husain Idrisi, J.****(Delivered by Hon'ble Rajiv Gupta, J.)**

1. Heard Shri Chetan Chatterjee, learned counsel for the appellant, Shri Jitendra Kumar Jaiswal, learned AGA for the State and perused the record.

2. The instant criminal appeal has been filed against the judgment and order dated 12.08.2004 passed by Additional District and Sessions Judge (F.T.C.), Sonbhadra in Sessions Trial No.54 of 2003, arising out of Case Crime No.101 of 2003, under Sections 302 IPC, Police Station Babhani, District Sonbhadra, whereby the appellant has convicted for the offence under Sections 302 IPC and awarded the sentence of life imprisonment with a fine of Rs.5,000/- with default stipulation.

3. Shorn of unnecessary details, the prosecution story is that in front of the house of one Ramadhar Dubey, there is a '*Bramh Baba Sthan*', where every year during *Navratra* a fair is

held, in which, exorcism is practiced and '*Bhabooti*' is given to the victims by the priest. On 10.04.2003, the first informant Amerika Prasad along with his wife Gangotri, daughter Kusum, son-in-law Ram Dular and his infant child aged about 11 months Rameshwar, had reached in the fair for treatment of his wife through practice of exorcism, as his wife was suffering from mental sickness. It is further stated that on 12.04.2003, at about 10:00 a.m., he along with his wife and other family members were having their meals at a distance of 10-15 paces from '*Bramh Sthan*' and his infant child Rameshwar, aged about one year, was playing there. A large crowd had assembled there. Out of the said crowd, a person aged about 26-27 years wearing vest and underwear, having a knife in his hand came and picked up his fondling child and after moving 10 paces ahead kept the child on the ground and started stabbing him with a knife. The first informant along with his son-in-law and other family members, in order to rescue his child, tried to apprehend him, however, the appellant made his escape good. It is further alleged that he immediately rushed to provide medical treatment to the infant child, however, on the way, the infant child breathed his last. Many people present in the fair, at the scene of occurrence, had informed him that in order to offer 'human sacrifice' his child has been killed. He has brought the corpse of the child, which is kept in front of the road. The first informant reached in the police station and gave a written

scribe (*Tahrir*) to the Head Moharrir to lodge the report.

4. On the basis of a written report, marked as Ext. Ka-1, the FIR has been registered vide Case Crime No. 101 of 2003 under Section 302 IPC. Carbon copy whereof has been drawn vide G.D. Report No. 16 at 1430 hours, which has been proved and marked as Ext. Ka-4. The investigation of the said case was entrusted to the Investigating Officer (P.W.-7), who copied out the G.D. report and the chik FIR in the case diary and set out to visit the place of incident, however, outside the gate of the police station, the parents of the deceased child met him alongwith the corpse of the child.

5. The Investigating Officer thereafter, conducted inquest on the person of the deceased and prepared the inquest memo in his own hand-writing and at the same time prepared the other relevant documents namely Form 13, photo-nash, challan-nash, letter to C.M.O., letter to R.I., sample seal and thereafter sent the body of the deceased child to the mortuary for post-mortem.

6. An autopsy was conducted on the person of the deceased Rameshwar in Community Health Centre, Duddhi on 13.04.2003 and in the post-mortem report, the Doctor has noted as many as four ante-mortem injuries, as under:

*(i) Clean cut punctured wound 0.8 cm x 0.6 cm over temporal region of head 1 cm above Rt. Ear depth 2 cm brain matter coming out.*

*(ii) Clean cut smooth margin punctured wound*

*0.8 cm x 0.4 cm over neck Rt just below Rt ear depth 2.5 cm. Bleeding present.*

*(iii) Clean cut smooth margin punctured wound Rt. shoulder 0.8 cm x 0.6 x 1 cm deep.*

*(iv) Clean cut punctured would 0.8 cm x 0.6 cm Neck 1 cm below chin depth 1.5 cm.*

7. On internal examination, membranes are clean cut and brain has been found lacerated coming out of wound. The cause of death has been noted to be coma due to penetrating injury in brain.

8. After conducting the inquest by P.W.-7, the investigation of the instant case was handed over to P.W.-8 S.I. Keshav Ram on 12.04.2003 itself, who is said to have reached the place of incident and recorded the statement of the first informant and collected the blood stained earth and plain earth from the place of incident and kept it in a container and prepared its recovery memo, which has been proved and marked as Ext. Ka-12. The site plan was also prepared, which has been marked as Ext. Ka-11. Thereafter the Investigating Officer recorded the statement of Ramadhar Dubey, Rajesh Kumar Dubey, Ram Naresh Harijan, Gangotri Devi, mother of the deceased, Kusum, sister of the deceased and Ram Dular, brother-in-law of the deceased.

9. On 14.04.2003, on the basis of the information given by the informer, the appellant was arrested from village Chamanpur, who was identified by the first informant to have

killed his son by a knife. On his arrest, the appellant disclosed his name to be Rajendra Prasad Gaur, resident of Police Station Basantpur, District Ambikapur, Chhatisgarh, who confessed to have killed the infant child by a knife, which he had thrown in the *khalihan* of the priest and could get it recovered.

10. After effecting the arrest of the appellant, an arrest memo was prepared by the Investigating Officer and proved it as Ext. Ka-2, who also prepared a site plan of the place from where the appellant was arrested, which is marked as Ext. Ka-13 and thereafter the appellant was taken to the place, where he stated to have thrown the knife by which he killed the deceased and on his pointing, a knife was recovered from the *khalihan* of Ramadhar Dubey. The I.O. Prepared the recovery memo of the knife, which has been marked as Ext. Ka-14 and also prepared a site-plan of the place from where the knife was recovered, which has been proved and marked as Ext. Ka-15.

11. Thereafter, the Investigating Officer has recorded the statements of several other relevant witnesses and concluded the investigation by submitting the charge-sheet in the court of learned Magistrate against the appellant on 23.06.2003 vide Charge-sheet No. 11 of 2003, under Section 302 IPC, which has been proved and marked as Ext. Ka-16.

12. On the basis of the said charge-sheet, learned Magistrate had taken cognizance of the case. Since the case

was exclusively triable by court of Sessions, made over it to the court of Sessions for trial. The Sessions court vide its order dated 26.07.2003 framed the charge under Section 302 IPC simplicitor against the appellant, who abjured the said charge and claimed to be tried.

13. During the course of trial, the prosecution has examined as many as four witnesses of fact and four other formal witnesses. Their testimony in brief is enumerated hereunder.

14. P.W. 1 Amerika is the father of the deceased and the first informant and in his testimony he has stated that in village Needhra Tola Mujhariya, in front of the house of Ramadhar, there is a '*Bramh Sthan*' and on the occasion of '*Navratra*' and '*Dusshera*', a fair is held there. Ramadhar Dubey used to practice exorcism there and distribute '*Bhabhooti*'. About nine months back, he had gone in the said fair along with his wife Gangotri, son-in-law Ram Dular, daughter Kusum and infant child Rameshwar for the treatment of his wife through practice of exorcism.

15. On the day of incident, he was sitting near the '*Bramh Sthan*' and taking his meals along with his wife, son-in-law, daughter and infant child, when Rajendra Prasad, present in the court, came and picked up the child and took him about 15 paces away and after throwing him forcibly on the ground assaulted him with a knife. When his family members tried to

rescue him, he started threatening them. Due to fear, they could not apprehend the appellant or go near the child and the appellant ran away.

16. Thereafter, they picked up the child and rushed for providing him the medical treatment, however, on the way, the child succumbed to his injuries. The said incident is said to have been witnessed by he himself, his wife Gangotri, daughter Kusum and son-in-law Ram Dular, who is resident of Chhatisgarh. On the way, P.W. 1 got the written report (Ext. Ka-1) scribed by an unknown person, who read out the same to him, who then affixed his thumb impression on it and thereafter handed it over in the police station, on the basis of which FIR has been registered, which has been proved and marked as Ext. Ka-3.

17. While going to the police station, he had also carried the corpse of the child. The Investigating Officer had interrogated him at the police station and recorded his statement. On the third day, the Investigating Officer on identification made by the first informant had arrested the accused and prepared the arrest memo, which is proved and marked as Ext. Ka-2.

18. During cross-examination, he stated that he has been attending the said fair for the last three years during '*Chaitra Navratra*' and earlier there had been no dispute between him and appellant Rajendra. At the time of incident, he along with

his family members were taking his meals and his child was with his mother, who was feeding him from where he was picked up by the appellant and thereafter assaulted by a knife in the presence of 100-200 persons.

19. He further reiterated that, on the way to the police station, the written report of the incident was scribed, which was read out to him, who affixed his thumb impression and gave it in the police station, on the basis of which, chik FIR was drawn. At the time of incident, he was not aware of the name of the appellant, however, his name was disclosed by the residents of Jhumariya. He denied the suggestion that he was not eye-witness to the incident and falsely deposing in the case on hearsay. He further denied the suggestion that the FIR was scribed at the police station itself.

20. P.W. 2 Ramadhar Dubey is another eye-witness of the incident and is the resident of '*Bramh Sthan*' where, along with '*Bramh Sthan*', a Durga temple is situate and a pucca chabutra is constructed under Pipal tree. People suffering from evil spirits also visit the said place. About nine months back, on the eve of '*Navratra*' people from various corners had reached there and on that day, Amerika (first informant) along with his wife, son-in-law and infant child had also reached there.

21. He further stated that the wife of Amerika was mentally sick, however, had recovered and as such, she had reached there to offer prayers. At about 10:00 a.m., Amerika



along with his wife, son-in-law and daughter were taking meals and his infant child was playing, when the appellant Rajendra reached there and picked up a knife used for peeling coconut and thereafter went near the child and after picking him up walked 10-15 paces further and then threw the child on the ground and assaulted him with the knife and tried to run away. Some people tried to apprehend him, however, they were threatened. He further categorically stated that he had seen Rajendra assaulting the child by a knife, who thereafter while being taken to the hospital, succumbed to his injuries.

22. During cross-examination, he stated that wife of Amerika was suffering from evil spirits and used to visit the '*Bramh Sthan*'. He further stated that the Investigating Officer immediately after the incident recorded his statement under Section 161 Cr.P.C. At the time of incident, number of persons were present there and the child was playing with her mother and he had seen Rajendra assaulting the victim by knife and that the place of incident is 25 meters away from the '*Bramh Sthan*'.

23. He further denied the suggestion that the incident had not taken place in his presence. He has further denied the suggestion that at the '*Bramh Sthan*', sacrifices are offered and further denied the suggestion that he is falsely deposing in the court.

24. P.W. 3 Gangotri is the wife of the first informant and mother of the deceased and stated that in the '*Chaitra Navratra*', two days prior to the incident, she had reached the '*Bramh Sthan*' for offering prayer and at about 10:30 a.m. in the morning, she along with her husband, son-in-law, daughter and infant child were taking their meals, when the incident took place and has identified the witness in the court. On objection being raised by the counsel for the appellant, the witness went near the accused-appellant and by pulling his clothes, had correctly identified him.

25. She further stated that the appellant, on the day of incident, had taken away her child and after throwing him on the ground assaulted him with a knife and when her husband, son-in-law and daughter tried to rescue him, he threatened them and ran away. His son thereafter, while being taken to the Babhani hospital succumbed to his injuries. She further stated that they had no enmity with the appellant and she is an eye-witness of the incident.

26. During cross-examination, she stated that at the time of incident, large number of persons were present there in the fair. At the time, when the appellant picked up her child, he was not having a knife in his hand. Prior to the incident, there has never been any quarrel or altercation between them. Rajendra, on the day of incident, came and picked up her child but did not hurl abuses, however, she showed her ignorance as to how

such statement has been recorded by the Investigating Officer.

27. She further categorically stated that she was not acquainted with the appellant at the time of incident and his name was disclosed by the priest. She further stated that she had no knowledge where the written report was scribed. She further stated that the appellant Rajendra Prasad gave 4-5 blows by knife to her child. She further denied the suggestion that on account of earlier enmity, she is falsely deposing in the court.

28. P.W.-4 Ram Dular is the another eye-witness and son-in-law of the first informant, who was present at the time of incident. He stated that about 11 months back, he along with his wife Kusum Kumari, father-in-law Amerika, mother-in-law Gangotri had visited '*Bramh Sthan*' two days prior to the incident. On the day of incident, at about 10.30 a.m. he along with his wife, father-in-law Amerika, mother-in-law Gangotri and brother-in-law (infant child), were taking meals. He further stated that the infant child was playing, when Rajendra Prasad armed with a knife, used for peeling coconut, came and picked up the child and after taking him 10-15 paces away assaulted him with a knife by keeping him on the ground. When they tried to rescue the child, the appellant challenged them and ran away. Thereafter, while being taken to the Babhani hospital, the child succumbed to his injuries and his father-in-law lodged the FIR. He further identified the appellant in the court and stated

that he assaulted Rameshwar with a knife.

29. During cross-examination, he stated that he was interrogated by the Investigating Officer, who recorded his statements. He further categorically stated that his brother-in-law Rameshwar was killed by a knife. The name and address of the appellant was not known to them but was later disclosed by the priest and his men. He further stated that at the time of picking the child, no abuses were hurled by the accused-appellant nor they were threatened.

30. He denied to have given any statement to the police that the appellant came there armed with knife and started hurling abuses in retaliation to the earlier incident during last '*Navratra*', when he was abused by them. At the time of incident, large number of persons had assembled there. He further stated that the FIR was not scribed in his presence. He further stated that the police has truthfully recorded in his statement that on the way to the hospital, an unknown person met them and his father-in-law disclosed him the entire incident, who scribed the same on a piece of paper on which his father-in-law affixed his thumb impression and who asked him to deliver it at the police station Babhani.

31. He further stated that the assailant had given four-five blows to his brother-in-law by a knife and that he was arrested two-three days after the incident. He denied the suggestion that under the pressure of his father-in-law and mother-in-law, he is

falsely deposing in the court.

32. P.W. 5 Kedar Yadav is the Head Moharrir, who had drawn the chik FIR (Ext.Ka-3), on the basis of written report given to him, proved and marked as Ext. Ka-1 and thereafter G.D. report was drawn by him, which is marked as Ext. Ka-4. During cross-examination, he categorically stated that the first informant got the written report scribed outside the police station and had reached there alone.

33. P.W. 6 Doctor U.P. Pandey is the Medical Officer at Community Health Centre, who had conducted autopsy on the person of the deceased and proved the autopsy report and contents thereof, which has been exhibited as Ext. Ka-5.

34. During cross-examination, he stated that the victim may die instantaneously or within one hour of receiving the injuries. He further stated that the injuries could be caused by a pointed object. He denied that he has no knowledge of '*summi*' and except the injuries noted by him in the post-mortem report, there were no other injuries.

35. P.W. 7 Ram Samujh Yadav is the Sub-Inspector in whose presence, the instant case was registered and who was entrusted with the investigation. He after copying the G.D. report and the chik FIR in the case diary proceeded to the place of incident, however, the first informant along with the corpse had reached at the gate of police station, as such, he

conducted the inquest at the gate of the police station itself and drawn the inquest memo along with other relevant documents namely challan-nash, photo-nash, letter to R.I., letter to C.M.O. and sample seal and wrapped the dead body in a sealed cloth, which was sent for autopsy. The inquest report and other relevant documents have been proved and marked as Ext. Ka 6 to Ka-10.

36. During cross-examination, he has stated that the inquest was conducted by the side of the road outside the gate of the police station in presence of his parents and number of other persons.

37. P.W. 8 Keshav Ram is the second Investigating Officer of the instant case, who was later entrusted with the investigation of the case. He after recording the statement of the first informant under Section 161 Cr.P.C. reached the place of incident and had collected the blood stained earth and plain earth from the place of incident and prepared its recovery memo, which is proved and marked as Ext. Ka-12. He further prepared the site plan, which has been proved and marked as Ext. Ka-11.

38. Witnesses were also interrogated by the IInd Investigating Officer at the place of incident and an attempt was made to arrest the accused person. Further on 14.04.2003, at the pointing out of the first informant and the other witnesses,

the appellant was arrested and his arrest memo was prepared, which has been proved and marked as Ext. Ka-2 and the site plan, from where the arrest was made, was also prepared, which has been proved and marked as Ext. Ka-13.

39. After the arrest, on the disclosure made by the appellant, he was taken to the place of incident and from the '*khalihan*' of Ramadhar Dubey, got recovered the knife (*summi*), the recovery memo of which was also drawn and proved as Ext. Ka-14 and its site plan was also prepared, which has been marked as Ext. Ka-15. The material exhibits were also produced before the court along with blood stained black '*tabeez*' and knife on which human blood was found as per the forensic report, which has been proved as material Exts. Ka-3 and Ka-4.

40. During cross-examination, on being questioned as to whether the material Ext. Ka-4 is, in fact, a knife or a '*summi*', he stated that it is both '*summi*' as well as a knife, which is used for peeling coconut. He further stated that the witnesses in their statements recorded under Section 161 Cr.P.C. had disclosed him that on the last '*Navratra*', there had been some altercation between first informant and Rajendra Prasad and in that background to settle the score personally, the instant incident had occurred.

41. He further stated that after two days of the incident, the assailant was arrested and on his disclosure, the weapon of assault was recovered and further stated that all the witnesses in their testimony had disclosed to him that prior to the incident, the accused person hurled abuses and threatened them. He further stated that the first informant in his statement had disclosed that on the way to the police station, he got the FIR scribed by an unknown person and then reached in the police station and lodged the FIR.

42. He denied the suggestion that he falsely got the FIR registered against an innocent person and further denied the suggestion that on the basis of suspicion, the priest was taken at the police station. He further denied the suggestion that the appellant was arrested from his house and a conspiracy to falsely implicate him was made against the accused.

43. Thereafter, the statement of the accused under Section 313 Cr.P.C. has been recorded by putting all the incriminating circumstances to the appellant. The appellant denied all the incriminating circumstances and stated that he was not on inimical terms with the first informant, however, the defence has not led any evidence to prove its case.

44. The trial court after appreciating the evidence on record has held that the prosecution has successfully established its case against the appellant by relying upon the



testimony of all the prosecution witnesses, whose presence at the place and time of the incident has been cogently and clearly established and who being the parents, sister and brother-in-law of the deceased are natural witnesses. The explanation tendered by the appellant is false and inadequate.

45. Learned counsel for the appellant has submitted that the incident in question has not taken place in the manner as alleged by the prosecution and some unknown person killed the deceased and the appellant has been falsely implicated by creating eye-witness account of the incident in the form of statements of P.W. 1, P.W. 3 and P.W. 4, who are close relatives of the deceased being his father, mother and brother-in-law respectively and are highly interested and partisan witnesses, therefore, their testimony is liable to be discarded.

46. Learned counsel for the appellant has next submitted that the recovery shown to be made at the pointing out of the appellant is a pointed weapon '*summi*' and not a knife and therefore, the injuries found on the person of the deceased cannot be said to be caused by the said '*summi*' which further creates serious dent in the prosecution story.

47. Learned counsel for the appellant has next submitted that the appellant was not known to the accused and subsequently he has been falsely implicated on the instigation of other witnesses.

48. Learned counsel for the appellant has further submitted that the recovery of knife has not been proved and it is stated to be recovered from an open place, which is unacceptable to all.

49. Learned counsel for the appellant has next submitted that in the FIR, the appellant has not been named and he has not been put to test identification parade, which makes the prosecution story further doubtful.

50. Learned counsel for the appellant has next submitted that the prosecution has not been able to prove its case against the appellant beyond reasonable doubt and as such, he is liable to be acquitted by setting aside the order of conviction and sentence recorded by the trial court, which is bad in law.

51. Per contra, learned AGA has submitted that in the instant case, a prompt FIR has been lodged by the father of the deceased and it is a broad day light murder of an infant child aged about one year in presence of his parents, sister and brother-in-law, whose presence at the time and place of incident is quite natural and entire prosecution story cannot be thrown over-board merely on the ground that the witnesses are interested and partisan.

52. Learned AGA has further submitted that P.W. 2 is an independent witness, resident of the place of incident and is acquainted with both the accused as well as the first informant,

who categorically in his statement has stated that he had seen the appellant assaulting one year old child of the first informant by a knife and thereafter escaping from the place of incident and has truthfully deposed in the court, which lends corroboration to the prosecution story and inspires confidence. He has further submitted that each of the eye-witnesses i.e. P.W. 1, P.W.3 and P.W. 4 has correctly identified the appellant in the court and there remains no doubt about his identity.

53. Learned AGA has further submitted that the identity of the appellant had also been disclosed by the priest, who was well acquainted with the appellant, therefore, there was no question of holding the test identification parade for identifying the appellant.

54. Learned AGA has further submitted that the eye-witnesses have cogently and unerringly proved the participation of the appellant in the instant case and the defence has not been able to elicit any doubt about the credibility of the said witnesses.

55. Having considered the rival submissions made by learned counsel for the parties and having gone through the material on record and the evidence adduced, it is evident that the incident is said to have taken place in the broad day light in presence of parents, sister and brother-in-law of the deceased, who was an infant child aged about one year by assaulting him

with a knife. The FIR, admittedly, has been promptly lodged in the police station and the manner and place of incident has been cogently and unerringly established by the prosecution. Though the factum of enmity has been pleaded by the appellant in his statement recorded under Section 313 Cr.P.C. but no evidence in this respect has been led. The nature of injury as pointed out by the Doctor in the post-mortem report clearly indicates that it could have been caused by the knife or a 'summi', a pointed object alike a knife.

56. The identity of the appellant had already been disclosed by the witnesses and therefore, there was no question of holding the test identification parade of the appellant for determining his identity as pleaded by the counsel for the appellant.

57. It is germane to point out here that the Hon'ble Apex Court in the case of ***Kishore & others Vs. State of Punjab, Criminal Appeal No.1465 of 2011*** dated 07.02.2024 has held as under:-

*8. It is true that a test identification parade is not mandatory. The test identification parade is a part of the investigation. It is useful when the eyewitnesses do not know the accused before the incident. The test identification parade is usually conducted immediately after the arrest of the accused. Perhaps, if the test identification parade is properly conducted and is proved, it gives credence of the identification of the accused by the concerned*

*eyewitnesses before the Court. The effect of the prosecution's failure to conduct a test identification parade will depend on the facts of each case.*

*9. In this case, the evidence of both eyewitnesses was recorded within one year of the date of the incident. There is no significant time gap between the date of the incident and the identification by the witnesses before the Court. If the evidence of these two witnesses is reliable and inspires confidence, the conviction can be based on their testimonies.*

58. Even in the instant case, at the time of arrest, the appellant has been identified by the first informant. The appellant was well-known to P.W. 2, who had disclosed his identity to the witnesses and even in the court, he has been correctly identified by each of the witnesses, as such, non-holding of test identification parade in the instant case, as submitted by the counsel for the appellant, would not adversely affect the prosecution case.

59. The testimony of all the four eye-witnesses, except minor contradictions, do not suffer from any shortcomings to doubt their credibility. Their presence at the scene of incident is quite natural and being a broad day light incident has been witnessed by them. It is well settled principle of law that, if the evidence has a ring of truth, the discrepancies, inconsistencies and infirmities cannot be a ground for rejecting the evidence. Moreover, it is important to note that in the present case, all the

eye-witnesses P.W.1, P.W.3 and P.W.4 are rustic witnesses.

60. The basic principle of appreciation of evidence of a rustic witness who is not educated and comes from a poor strata of society is that the evidence of such a witness should be appreciated as a whole. The rustic witness as compared to an educated witness is not expected to remember every small detail of the incident and the manner in which the incident had happened more particularly when his evidence is recorded after a lapse of time. Further, a witness is bound to face shock of the untimely death of his near relative(s). Therefore, the court must keep in mind all these relevant factors while appreciating evidence of a rustic witness.

61. It is further germane to point out here that looking to the testimony of P.W.1, P.W.3 and P.W.4, they are the eye-witnesses, present at the time and place of incident and there is no reason for them to spare the actual assailant and falsely implicate the appellant in the instant case.

62. Moreover, the instant case is a classic case of blind faith and unfortunate realities of our times still prevalent in remote areas. Human/child sacrifice has been practiced on a number of different occasions and in many different cultures. Human/child sacrifice is typically intended to bring good fortune and to appease the Gods, which in our opinion, shocks the conscience of the civilized society and is to be condemned by one and all, to curb such social evils.

63. Considering the entire aspect of the matter and taking a holistic view of the circumstances in which the present offence has been committed, we are of the view that the judgment and order passed by the trial court is well considered and discussed and the trial court has rightly held that the prosecution has succeeded to prove the guilt of the accused-appellant beyond reasonable doubt, as such, the impugned judgment and order passed by the trial court is liable to be upheld and the appeal has no force and it is, accordingly, liable to be dismissed.

64. Accordingly, the present criminal appeal is **dismissed**. The conviction and sentence against the accused-appellant vide impugned judgment and order dated 12.08.2004 is hereby confirmed. The appellant is in jail. He is directed to serve out the sentence imposed upon him by the trial court.

65. Let a copy of this order be forwarded to the trial court along with the record for information and compliance.

**Order Date :- 19.03.2024**  
Subham

**Court No. - 45****Case :-** CRIMINAL APPEAL No. - 79 of 2005**Appellant :-** Rajendra Prasad Gaur**Respondent :-** State of U.P.**Counsel for Appellant :-** S.S. Singh, Chetan Chatterjee**Counsel for Respondent :-** Govt. Advocate**Hon'ble Rajiv Gupta, J.****Hon'ble Mohd. Azhar Husain Idrisi, J.**

Mr. Chetan Chatterjee, Advocate was appointed an Amicus Curiae in the instant case. He has rendered valuable assistance to the Court. The Court quantifies Rs.10,000/- to be paid to Mr. Chetan Chatterjee, Advocate towards fee for the able assistance provided by him in hearing of the instant criminal appeal. The said payment shall be made to Mr. Chetan Chatterjee, Advocate by the Registry of this Court within one month from today.

**Order Date :-** 19.03.2024

Subham