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Case :- CRIMINAL APPEAL No. - 813 of 1997

Appellant :- Rajpal Singh

Respondent :- State of U.P.

Counsel for Appellant :- A.N. Srivastava, Amicus Curiae, Himanshu Giri, Kunwar Ajay Singh, P.K. Singh

Counsel for Respondent :- Govt. Advocate

Alongwith

Case :- CRIMINAL APPEAL No. - 1169 of 1997

Appellant :- Manoj

Respondent :- State of U.P.

Counsel for Appellant :- A.K. Sachan

Counsel for Respondent :- Govt. Advocate

Alongwith

Case :- CRIMINAL APPEAL No. - 1038 of 1997

Appellant :- Munna Ram

Respondent :- State of U.P.

Counsel for Appellant :- S.Suan, Kunwar Ajay Singh(Ac), Nirbhay Kumar Bharti

Counsel for Respondent :- Govt. Advocate

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Subhash Chandra Sharma, J.

1. Heard Ms. Neelam Giri and Sri Himanshu Giri learned counsels for the appellant Rajpal Singh, Sri Kunwar Ajay Singh learned Amicus Curiae appearing on behalf of

appellants Manoj and Munna Ram @ Baba in the connected appeals and Sri Rajan Prasad Mishra learned A.G.A for the State respondents.

2. These appeals are directed against the judgment and order dated 08.05.1997 passed by the IIIrd Additional District & Sessions Judge, Kanpur Dehat in S.T. No.104 of 1992 and S.T. No. 417 of 1992 arising out of Case Crime No.191 of 1991 under Section 302, 201, 120-B IPC, P.S. Rasoolabad, District Kanpur Dehat whereby three accused/appellants namely Manoj, Rajpal Singh and Munna Ram @ Baba have been convicted of the offence under Section 302 read with Section 34 & 120-B IPC and punished for life imprisonment. The accused/appellants have also been convicted under Section 201 IPC and punished for additional five years rigorous imprisonment. Both the punishments are to run concurrently.

3. The first information report is in the nature of a written report submitted by Jeet Singh (P.W.-1) on 27.12.1991 at about 10.30 A.M. reporting that the dead body of his brother Vijay Pal Singh was found on the Chakroad near the field of Shambhu Pandit hidden in a 'paddy Payar'. It was stated therein that the deceased Vijay Pal Singh used to work in Rasoolabad and to come back daily from the workplace in the evening. On 23.12.1991, when he did not return home, he was looked after everywhere. At the time of search, the first informant came to know that the deceased had consumed liquor with some people on 23.12.1991 near the Usri Nursery and after that he had never been seen. The blood stained body cloth (अँगोछा) of the deceased was found on the Chak road near the field of Shambhu Pandit and besides that the 'Paddy Payar' was lying. Being suspicious, when 'Paddy Payar' was turned over, dead body of Vijay Pal Singh was found hidden in it. The injuries on the body of the

deceased seem to have been caused by an object like Axe (कुल्हाड़ी).

4. On the said report, the police had reached the spot, recovered blood stained and plain earth on 27.12.1991. The inquest was conducted on the same day which commenced at about 11.15 AM and concluded at about 12.20 PM. The postmortem was conducted on 28.12.1991 at about 01.00 PM. The injuries found on the person of the deceased were lacerated wounds on the forehead 6 cm x 2 cm left upper arm, chin, elbow and multiple abrasions on whole of the body. The proximate time of death was reported about 4-5 days and the cause of death was hemorrhage due to ante-mortem injuries.

5. At the outset, we may note that the genuineness of the police papers namely the chik report, the recovery memo of blood stained and plain earth, inquest report, the recovery memo of blood stained clothes of the deceased, the charge sheet as also the postmortem report was admitted by the defence and an endorsement to that can be found on the said documents. The formal proof of these documents was, thus, dispensed with and they were exhibited as Exhibit Ka-6, Exhibit Ka-10, Exhibit Ka-16, Exhibit Ka-17, Exhibit Ka-18, and Exhibit Ka-19; respectively.

6. Apart from the above papers, other documentary evidences on record are two written reports; one given by Laakhan Singh son of Mulayam Singh and another allegedly given by Chatrapal Singh son of Jaahar Singh as also a recovery memo dated 09.01.1992. The genuineness of these documents was not admitted by the defence and they are sought to be proved by the prosecution witnesses in their oral testimony. The Investigating Officer of the case and other formal witnesses had not entered in the witness box and the prosecution sought to

prove its case by five witnesses of fact.

7. The charges were framed against the accused persons namely Manoj and Rajpal under Section 302 read with 34 IPC Section 201 IPC and Section 120-B IPC, whereas by a separate order, charge had been framed against the appellant Munna Ram @ Baba of hatching a conspiracy to commit the murder of Vijay Pal Singh alongwith Manoj and Rajpal in furtherance of common intention of all accused punishable under Section 120-B IPC. The accused appellants denied the charges and demanded trial.

8. Amongst five witnesses of fact, PW-1 Jeet Singh (brother of the deceased) is the first informant; PW-2 Rakesh Awasthi is the witness of last seen of deceased Vijay Pal Singh with appellants Manoj and Rajpal Singh and one more person; PW-3 Vishwa Nath Singh entered in the witness box as a witness of Extra judicial confession of appellants Manoj and Rajpal Singh who met him before the incident on 23.12.1991 at about 04.00 PM; PW-4 Chatrapal Singh is another brother of the deceased and PW-5 Laakhan Singh entered in the witness box to prove the conspiracy and a recovery allegedly made at the instance of appellant Munna Ram @ Baba.

9. The written report given by PW-1 in the police station on 27.12.1991 after discovery of the dead body of his brother Vijay Pal Singh, had been proved by him being in his handwriting and signature as Exhibit Ka-1. In the examination-in-chief, PW-1 stated that on the fateful day, deceased Vijay Pal Singh had left his house for his workplace at about 07-7.30 AM but did not return home. They kept on searching for him and then one boy Mahesh of the village informed PW-1 that he heard screams of “Bachao Bachao” near the Nursery of village Usri. All of them, then, went to search the said place. The blood

stained body cloth (अंगौछा) belonging to deceased Vijay Pal Singh was found lying at the chak road near the field of Shambhu Pandit. The dead body was found hidden in the 'Payar' of paddy in the field of Shambhu Pandit. There were injuries of a sharp edged weapon on the forehead and chin. After the recovery of the body, PW-1 went to the police station to lodge the first information report and then he met Pradeep, Rakesh Awasthi (PW-2) who told him that they had seen deceased Vijay Pal Singh alive in the company of appellants Rajpal Singh and Manoj near the Nursery and both the appellants were carrying sharp edged weapons in their hand which was like kulhari (axe).

10. PW-1 then narrates the motive of the appellant Rajpal Singh to commit the crime by saying that deceased Vijay pal Singh had mortgaged his field to Rajpal about two years back and Rajpal made him a Guarantor in a loan taken by his friend Vinod Kumar Singh. Vijay Pal Singh had received notices from the bank as the loan remained unpaid. On account of that fact, the mortgaged land was occupied by deceased Vijay Pal Singh. The appellant Rajpal was carrying grudges against the deceased due to that fact. The papers pertaining to the mortgage of the field of Vijay Pal Singh were filed in the Court and the signature of deceased Vijay Pal Singh on the same was proved as Exhibit Ka-2.

11. A separate motive was assigned to appellant Manoj that he had purchased the bicycle of the deceased for Rs.160/- but did not pay the sale consideration nor returned the bicycle.

12. In cross, PW-1 was questioned on the information given to Chatrapal, his another brother and when crossed on the alleged report given by Chatrapal to the police officer, PW-1 further stated that he had given the written report (Exhibit Ka-

1) to the police officer on 22.12.1991 at about 09-10 AM and no one told him to have witnessed his deceased brother between 23.12.1991 and 27.12.1991. The report was lodged by him after discovery of the body and after lodging of the report, he came to know that his brother had consumed liquor with some people near the Usri Nursery and, thereafter, he went missing.

13. Noticeable is the deposition of PW-1 when he says that the Investigating Officer had never recorded his statement in relation to the incident and that the Investigating Officer had recorded statement of his brother Chatrapal Singh. PW-1 had denied the suggestion that the murder was committed by some other person than the accused appellants.

14. From the statement of PW-1, it is evident that he had proved the factum of lodging of the first information report after recovery of the dead body of his brother Vijay Pal Singh on the information given by some villager, which was concealed near the Usri Nursery and also assigned motive to accused Rajpal Singh and Manoj for committing the crime.

15. PW-2 Rakesh Awasthi is the witness who stated that he had seen the deceased Vijay Pal Singh alongwith appellants Rajpal, Manoj and one more person. As per the statement of PW-2 in the examination-in-chief, while he was going his home from Rasoolabad alongwith one Pradeep Dubey in a tempo, at about 07.00 PM, he had seen Rajpal, Manoj, Vijay Pal Singh (deceased) alongwith one more person standing near the Nursery. They were talking and Rajpal and Manoj were carrying Kulhari. He could identify the fourth person who was standing with them if came before him. Vijay Pal Singh was carrying his bicycle while talking to the appellants. PW-2 stated that he had seen them in the light of tempo. In the morning of 27.12.1991, he came to know that Vijay Pal Singh was

murdered and his body was found near the Nursery. He and Pradeep then went to the house of Vijay Pal Singh and from there they went to the Nursery where the body was discovered. The fact that they had seen the deceased alive with the appellants before he went missing was intimated by them to Chatrapal (another brother of the deceased). A report was then scribed by Chatrapal on the dictation of Pradeep. The said report was then signed by PW-2 Rakesh Awasthi and Pradeep as also Chatrapal. This report was shown to PW-2 who had proved it being the same report and it was exhibited as Exhibit Ka-3.

16. In cross, PW-2 was confronted on the point that two caretakers were residing in the Nursery which was a government Nursery and the road wherefrom they had allegedly seen the appellants alongwith the deceased was a busy road. The reason for PW-2 and another witness Pradeep traveling together in the tempo was explained by him. PW-2 when confronted as to why he did not intimate the fact of last seen to the first informant Jeet Singh, it was explained by PW-2 that when he came to know about the discovery of the dead body on 27.12.1991 at about 06.00 AM, he reached the house of Vijay Pal Singh at about 07.00 AM where he met Chatrapal and the first informant Jeet Singh was not there. He then went to the place of recovery of the dead body alongwith Chatrapal and there also he did not meet Jeet Singh. He remained at that place uptill 12.00-01.00 PM. When he reached at the spot police was already present, he was made the inquest witness. After the dead body was sealed and sent for the postmortem, the report Exhibit Ka-3 was scribed. PW-2 then stated that he had informed of having seen the appellants and the deceased together to Chatrapal when they were in the village. PW-2

stated that the Investigating Officer had interrogated him on 27.12.1991 and two and three times thereafter. He could meet the first informant Jeet Singh around 10.00-10.30 AM on 27.12.1991. PW-2 denied having information of the motive assigned to the accused Rajpal and also that he was not travelling in the tempo on 23.12.1991 and did not cross the place at about 07.00 PM. He had denied having not seen the appellants and the deceased together near the Nursery.

17. PW-3-Vishwa Nath Singh is the witness who stated that on 23.12.1991 while going somewhere, when he reached near the Nursery, he found appellants Manoj and Rajpal standing on the Medh of the field of Vijay Pal Singh. They both called him and told that Vijay Pal Singh would die from their hands as he was not paying their money. The appellants Rajpal and Manoj also told that if they caught Vijay Pal Singh on that day he would not be spared. PW-3 stated that on hearing that he did not give much attention and without saying anything to them he proceeded to his destination which was Malkhanpur. The reason given by PW-3 for not confronting the appellants Rajpal and Manoj is that they were carrying Kulhari in their hands. In the evening, he came to know that Vijay Pal Singh did not reach home and later his dead body was found near the Nursery.

18. This witness, in cross, admitted that his house was opposite the house of Vijay Pal Singh and he and Vijay Pal Singh belong to one family. He did not disclose the reason for going to Malkhanpur and stated that when he reached back home from Malkhanpur, Sun was already set. He came to know at about 10.00 PM on that day itself that Vijay Pal Singh did not reach back home but stated that he did not talk to the first informant Jeet Singh. He had denied having information that

villagers were carrying searches for Vijay Pal, the deceased. The explanation for this was offered by PW-3 with the assertion that he went to Hardoi to meet his daughter on the next morning, at about 06.00 AM, and returned back to his village in the evening of 27.12.1991. He then came to know about the recovery of the dead body from the place near the Nursery and immediately went to the said place where he met the first informant Jeet Singh.

19. PW-3 then stated that he stayed near the dead body throughout the whole night. The Investigating Officer had sealed the body at about 04.00 AM (in the morning) and then he alongwith the first informant Jeet Singh, Chatrapal and other persons went with the dead body which was sent to Kanpur around day time. After the dead body was sent to Kanpur he came back to the village. PW-3 stated that he did not talk to the Investigating Officer at the place of the incident and for the first time he disclosed the confession of the appellants to Jeet Singh. The statement of PW-3, according to him, was recorded by the Investigating Officer after 10 to 12 days of the incident.

20. PW-4 is Chatrapal Singh, another brother of the deceased who was living in Kanpur at the time of the incident. He stated that he came to know about the death of his brother Vijay Pal on 27.12.1991 and then reached the village alongwith the person who gave him information. When he reached near the Nursery, the police was preparing papers relating to the body. He met Pradeep Singh at that place who had disclosed him of having seen the deceased with the appellants. Later, he came to know that the conspiracy for murder was hatched by appellant Munna Ram @ Baba and that fact was disclosed to him by Laakhan Singh on 09.01.1992. They all then went to the hut of Munna Ram @ Baba on 09.01.1992 who confessed that

he could make recovery of bicycle and Shoes of the deceased. PW-4 Chatrapal stated that at the time of the recovery of shoes and bicycle of the deceased at the instance of appellant Munna Ram @ Baba, the Investigating Officer was present and the memo of recovery was prepared by the Investigating Officer at the spot. After preparation of the same, it was read over to them and he and other witnesses then put their signatures. This recovery memo was proved by PW-4 as Exhibit Ka-4. The report given by Laakhan Singh in the police station on 09.01.1992 was also proved by him having written before him and bearing his signature as Exhibit Ka-5.

21. In cross, PW-4 stated that an application was given by him to the investigating officer on 27.12.1991 at the spot before the dead body was sent for postmortem, which was written by him at about 09.00-9.30 AM but the said application was not proved by this witness saying that it was not available on the record.

22. PW-4, in cross, had shown ignorance about the time when he gave the report dated 27.12.1991. He, however, clarified that he did not include the name of Munna Ram @ Baba in his report given on 27.12.1991 as he was not aware of the conspiracy hatched by him by that time.

23. We may note at this juncture, that the prosecution did not show the application 'Exhibit Ka-3' to PW-4 Chatrapal in the Court and the said application was exhibited on the statement of PW-2 as a signatory. The discussion in this regard will be made in the later part of the judgment.

24. PW-4 further stated that he remained in the village for about 15 to 20 days and reiterated that on 09.01.1992 while he was talking to Laakhan Singh (PW-5), they all went to the hut of Munna Ram @ Baba which was barely 2 to 2.5 km from

the village. The Investigating Officer also reached at the hut of Munna Ram @ Baba at about 06.30 AM and from there they all went to the place wherefrom bicycle and shoes were recovered. The recovery was made from a place which was about 150 to 250 meters away from the road, whereas the body was found from a place about 100 meters away from the road. When confronted about the recovery and that the recovery memo was prepared in the police station, PW-4 admitted that the entire proceeding was conducted in the police station. The report regarding recovery was given by Laakhan Singh on 09.01.1992 which was signed by him. PW-4 then stated that the Investigating Officer had recorded his statement on 09.01.1992 itself at the spot of the recovery and before that day the Investigating Officer did not interrogate him. When confronted as to why the fact of recovery being made in the presence of the Investigating Officer had not been mentioned in his previous version under Section 161 Cr.P.C., PW-4 stated that the reason was not known to him.

25. PW-5 Laakhan Singh is the witness who was produced by the prosecution to prove the conspiracy hatched by three appellants namely Rajpal, Manoj and Munna Ram @ Baba.

26. As per the statement of PW-5, he went to the hut of Munna Ram @ Baba on 23.12.1991 at about 10.00 AM to meet him. On that day, he gave donation on the asking of Baba for the construction of his hut which was Rs.50/-; 2-3-4 persons were sitting in the hut of Baba and they were having Charas. Amongst them, he could identify Manoj, Rajpal and Baba and one more person was there who was not known to him. PW-5 had also identified appellants Manoj & Rajpal present in the Court. He then stated that he eavesdropped on the conversation

of appellants Manoj, Rajpal with Munna Ram @ Baba when they were saying that they had agreed to the suggestion of Munna @ Baba that they would kill Vijay Pal Singh on that very day but they had no weapon with them; the accused Munna Ram @ Baba then told that he had Kulhari and it was enough to kill Vijay Pal Singh and that they can come in the evening to take Kulhari. PW-5 stated that after hearing that he went to Rasoolabad from where he had to go to Kanpur for some business purpose. When he came back to the village, he came to know about the murder of Vijay Pal Singh, he then disclosed the above noted facts to the family members of the deceased. They all then went to the hut of Munna Ram @ Baba where he could not be found. They then kept on making enquiry privately and on 09.01.1992 when they met Baba in his hut, they nabbed and threatened him that he would be killed. It was then Baba disclosed about the place where bicycle and shoes of deceased Vijay Pal Singh were concealed. The recovery of the above two articles was made at the instance of appellant Munna Ram @ Baba who was nabbed by PW-5 alongwith Chatrapal, Puttan Khan, Vijay Bahadur and many other villagers and was then taken to the police station. The report exhibited as Exhibit Ka-5, was proved by this witness (PW-5) being in his handwriting and signature carrying thumb impression of the witnesses.

27. PW-5 stated that the said report was prepared by him and given in the police station alongwith the recovered articles namely bicycle and shoes of the deceased. The accused Munna Ram @ Baba was also handed over to the police at the same time. The recovery memo exhibited as Exhibit Ka-4 was then shown to this witness and he had proved his signature on the same. Lakhan Singh (PW-5) stated that his house was located in

front of the house of PW-1 Jeet Singh. On being confronted as to why he did not disclose the conspiracy hatched by three accused persons to anyone prior to 09.01.1992, PW-5 explained that he did not mention the said fact as he thought that the accused persons were talking under intoxication of Charas and could not think that they would actually commit murder. PW-5 also stated that he went to Kanpur on 23.12.1991 and after coming back to village on 27.12.1991 when he met Chatrapal he was not aware that the report of the murder had already been lodged in the police station and that against whom the said report was lodged.

28. On being confronted about his version in the written report exhibited as 'Exhibit Ka-5' that he knew about lodging of the first information report of the incident, PW-5 had denied his statement in the said report. PW-5 then stated that he was interrogated by the Investigating Officer and denied the suggestion that he knew that Munna Ram @ Baba was interrogated by the police earlier. PW-5 had denied suggestion of enmity or fight with accused Manoj and Rajpal and also denied the suggestion that he did not hear anything on the date of the incident and that the report 'Exhibit Ka-5' was written by him being of the community of the deceased. PW-5 had also denied the suggestion that he did not go to the hut of Munna Ram @ Baba and that he was making statement at the instance of Jeet Singh, the brother of the deceased.

29. It may be relevant to note, at this juncture, that the alleged recovered articles namely the bicycle and shoes of the deceased were not produced in the Court and as such were not identified by those persons in whose presence they were allegedly recovered at the instance of accused Munna Ram @ Baba.

30. After going through the statements of the prosecution witnesses, it may also be pertinent to note, at this stage itself, that the entire case rests on circumstantial evidence of last seen, extra judicial confession, recovery of certain articles belonging to the deceased at the instance of one of the appellant Munna Ram @ Baba and the written reports regarding the last seen and recovery of articles given to the Investigating Officer by PW-4 and PW-5, during the course of the investigation.

31. Before dealing with the arguments of the learned counsel for the appellants, we also find it apposite to go through the case diary as the Investigating Officer of the case had not been produced in the witness box. The reason being that in a case of circumstantial evidence, the evidence collected by the Investigating Officer to crack the case assumes significance. We have already noted above that the papers prepared and proved by the prosecution witnesses (PW-1 to PW-5) were not admitted by the defence and were exhibited on the testimony of these witnesses. As to what extent the witnesses have been able to prove those documents would be subject matter of further deliberation while analyzing their testimony.

32. It is pertinent to note, however, that the case diary reveals that the Investigating Officer at Parcha No.'1' extracted the Chik report, the written report dated 27.12.1991 of the first informant and a written report given by Chatrapal (in the margin) that two witnesses namely Pradeep Kumar Dubey and Rakesh Awasthi had lastly seen the deceased with the accused persons namely Manoj and Rajpal and noted that the copy of the written report given by Chatrapal had been enclosed in the case diary. It further discloses that the statement of the first informant was recorded before the inquest and preparation of the site plan as also the recovery of the blood stained and plain

earth on 27.12.1991. The case diary dated 27.12.1991 also disclose that the accused Munna Ram @ Baba was interrogated as his hut was located near the Nursery. His version there is that the accused Manoj & Rajpal used to come to his hut to have Charas in the evening and he used to borrow money from them to buy Gaanja. On 23.12.1991, the accused Rajpal and Manoj came to his hut and told him to provide Chillam. He had seen two Kulharis in the hands of Rajpal and Manoj which were blood stained and when he asked they confessed that they had killed Vijay Pal, their enemy and also told him not to tell anyone about that. The appellant Munna Ram @ Baba also stated that he did not disclose that fact to anyone as he had fear that Rajpal would kill him. The Kulharis/axe were also taken by the assailants with them. It is then recorded in the case diary of that date that the police had searched for the accused persons but could not find them. The statement of Vishwa Nath Singh (PW-3) under Section 161 Cr.P.C. was recorded on 03.01.1992 in the case diary, whereas statement of Laakhan Singh was recorded on 09.01.1992 and lastly on 14.01.1992, the statements of Chatrapal, Pradeep Dubey, Rakesh Awasthi and other witnesses of inquest were recorded before completion of the investigation and submission of the charge sheet on 26.01.1992. The facts noted above will be analyzed with the statements of the prosecution witnesses at the appropriate stage of this judgment.

33. It is vehemently argued by Ms. Neelam Giri learned counsel for the appellants Manoj and Rajpal that they had been falsely implicated. The allegations of enmity was only against Rajpal for the reason of mortgaged land, the deed of which was filed as Exhibit Ka-2. Different motives had been assigned to two appellants Rajpal and Manoj and the motive, in any case,

are very weak. As per the statement of PW-1, one village boy Mahesh had informed PW-1 that he heard screams of “Bachao Bachao” near the Nursery and on getting alert by the said information they went to the Nursery to search for the deceased. Whereas in his deposition before the Court, PW-1 stated that when he returned to the place of the incident after lodging the report, two persons namely Pradeep and Rakesh Awasthi (PW-2) had intimated him that they had seen his deceased brother alongwith the appellants Manoj and Rajpal who were standing near the Nursery carrying Kulharis (axe) in their hands.

34. The contention is that this submission of PW-1 is an improvement based on the information given by those persons after recovery of the dead body. PW-2, the witness of last seen could not explain as to why prior to the recovery of the dead body, he did not inform the first informant (brother of the deceased) that the deceased was last seen with the assailants. As per own statement of PW-2, he knew the first informant Jeet Singh and deceased Vijay Pal Singh being resident of the same village. The deceased had gone missing on 23.12.1991 and his dead body was recovered from an open place by the first informant on 27.12.1991. PW-1, the first informant had stated that the entire village knew that the deceased had gone missing and that they kept on searching for him for about four days. No missing report however, had been lodged. In the above circumstances, after lodging of the first information report against unknown persons subsequent implication of the appellants Manoj and Rajpal assigning them different motives, is nothing but a result of afterthought that too on deliberations of the witnesses with the police. Moreover, the witness of last seen namely PW-2 is not a reliable witness, in as much as, he stated that he had seen the accused persons standing with the

deceased and talking to him while carrying murder weapons in their hands. PW-2 also admitted that the Tempo was crossing the Nursery on the road and it did not stop near the place of last seen. The statement of PW-2 that he had identified accused Manoj and Rajpal with the deceased in the light of Tempo while passing through the road is unbelievable.

35. It is contended that the witness of extra judicial confession brought forth by the prosecution namely PW-3 Vishwa Nath Singh cannot be trusted, in as much as, the prosecution could not prove that PW-3 had a relationship of trust with the accused persons. Moreover, PW-3 lived in front of the house of the deceased Vijay Pal Singh and there was no reason as to why he would not have disclosed the statements of the accused persons namely Manoj and Rajpal prior to the incident to warn Vijay Pal or his brother. It is vehemently argued that PW-3 is a got up witness in an effort of the prosecution to add one more circumstance in the irregular chain of circumstances. Further, the evidence of PW-4 is a hearsay evidence and is a result of his own imagination, it does not carry any weight as such.

36. It is vehemently argued that the prosecution had tried to connect many loose links in a zeal to complete the chain of circumstances so as to falsely implicate the appellants. The evidence collected by the prosecution, however, could not be proved to unerringly point towards the guilt of the accused persons namely Manoj and Rajpal. The alternative hypothesis of someone else coming on the scene of the occurrence and committing the crime cannot be ruled out in the circumstances brought forth by the prosecution.

37. Sri Kunwar Ajay Singh learned Amicus for the appellant Munna Ram @ Baba while adopting the arguments

of the learned counsel for appellants Manoj and Rajpal with regard to the flaws in the chain of circumstances, vehemently argued that there was absolutely no evidence against Munna Ram @ Baba of participation in the crime. The allegations of conspiracy hatched by Munna Ram @ Baba and providing Axe (Kulharis) (projected as Murder weapon) to the accused Manoj and Rajpal are based on the statement of P.W.-5, Laakhan Singh whose house was in front of the house of the first informant, the brother of the deceased. From the statement of PW-4, Chatrapal (another brother of the deceased) and P.W.-5, it is evident that they both solved the crime on their own by interrogating appellant Munna Ram @ Baba on 09.01.1992. As per own statement of P.W.-5, they threatened appellant Munna Ram @ Baba with dire consequence before making alleged recovery of bicycle and shoes allegedly belonging to the deceased Vijay Pal Singh on his pointing out. Though there is contradiction in the statement of P.W.4 and 5 as regards the manner in which alleged recovery memo of bicycle and shoes was prepared but it is evident from the record that the alleged recovery was made by these witnesses alongwith other villagers and appellant Munna Ram @ Baba was handed over to the Investigating Officer in the police station who put him behind the bar. The implication of appellant Munna Ram @ Baba is not proved by any other incriminating circumstance such as recovery of murder weapon etc. at his instance. The alleged recovery of bicycle and shoes at the instance of Munna Ram @ Baba was not proved by the prosecution by producing the recovered articles in the Court. The recovery memo exhibited as Exhibit Ka-4 had been proved by P.W.-5 who had signed it alongwith other prosecution witnesses namely P.W.4 Chatrapal. The genuineness of this document was not admitted by the

defence and in this circumstance, the examination of the Investigating Officer became relevant. The manner in which the appellant Munna Ram @ Baba had been arrested by the Investigating Officer could not be explained by the prosecution for non-examination of the Investigating Officer. All the above documents such as Exhibit Ka-3, Exhibit Ka-4 & Exhibit Ka-5 namely the report submitted by P.W.-4 Chatrapal and P.W.-5 Laakhan Singh and the recovery memo; could not have been relied upon to implicate the appellants, in as much as, genuineness of these documents were not admitted. The proof of these documents is only by the prosecution witness of facts who deposed that they gave those documents/reports to the Investigating Officer. In the event of Non-examination of the Investigating Officer, he could not be confronted on the statements of the witnesses of fact to point out inconsistencies, to cull out truth, with regard to the mode and manner in which alleged recovery was made at the instance of the appellant Munna Ram @ Baba and the contents of the reports. In absence of cogent evidence, conviction of the appellant Munna Ram @ Baba for the offence under Section 302 with the aid of Section 34 and Section 120-B IPC cannot be sustained. The conviction of appellant Munna Ram @ Baba for the offence under Section 201 IPC for destruction of evidence suffers from patent illegality. There is no evidence, much less cogent evidence that the accused Munna Ram @ Baba was involved in the crime of murder and concealment of the dead body at the place of its recovery. It is vehemently argued by the learned counsel for the appellant that the appellant Munna Ram @ Baba had been implicated only on the suspicion of the prosecution witnesses for the reason that his hut was located near the place of recovery of the dead body and the entire prosecution story is

concocted.

38. It is lastly argued by the learned counsels for the appellants that there is no recovery of murder weapon; the motive assigned to the accused namely Manoj is very weak and no motive at all could be assigned to appellant Munna Ram @ Baba. It was a case of circumstantial evidence and hence examination of the Investigating Officer was necessary so as to bring before the Court as to how investigation had proceeded and in what manner evidence was collected by him. The date and place of arrest of the accused persons namely Rajpal and Manoj also becomes relevant in the facts of the present case, which was not brought before the Court. The appellant Munna Ram @ Baba was admittedly nabbed by the prosecution witness themselves and handed over to the police on 09.01.1992. Three different time of giving report by PW-4 Chatrapal (Exhibit Ka-3) to the police, about the evidence of last seen could be found in the statement of three witnesses. PW-1 stated that Chatrapal had reached the place of recovery on 27.12.1991 at about 03.00 PM and at that point of time, the dead body was being sealed to send it for the postmortem. The report Exhibit Ka-3 of the incident was given by PW-4 Chatrapal in the police station after the dead body was sealed whereas the written report was lodged at about 09.00-10.00 AM. PW-4 Chatrapal, to the contrary, stated that he prepared the written the report at about 09.00-09.30 AM and the body was sent for the postmortem at about 10.00-10.30 AM in his presence. He says that he got the information of the incident in Kanpur at about 05.00 AM and when he reached the spot, police was making enquiries. As per the statement of PW-3, the dead body was sealed at about 4.00 AM and he was present near the dead body throughout the night. There is, thus, material

contradictions in the testimony of these witnesses who had introduced the witnesses of last seen and conspiracy. This contradiction coupled with other material inconsistencies in the testimony of the prosecution witnesses is proof of the fact that these witnesses were lying in the Court. This is a case of absolutely no evidence at all and three appellants deserve acquittal.

39. In rebuttal, learned A.G.A. vehemently argued that non-examination of the Investigating Officer has no bearing on the case, in as much as, once the genuineness of the documents were not disputed by the defence, the formal proof of the documents prepared during the course of investigation was not necessary and all such documents can be read in evidence in the trial without proof and the signatures of the persons to whom it purports to be signed, in view of the categorical provisions of Section 294 (3) of the Code of Criminal Procedure. The trial court, therefore, cannot be said to have erred in reading the documents admitted in evidence, genuineness of which had been admitted by the defence, against the accused/appellants.

40. On the merits of the case, it is submitted by the learned AGA that the evidence of last seen of the accused persons with the deceased alive is categorical and PW-2, the witness of the last seen had entered in the witness box to prove that the deceased was lastly seen with the accused Munna Ram @ Baba. The first informant, the brother of the deceased had assigned the motive of enmity to the accused Rajpal. Appellant Manoj had also grudges against the deceased which has been proved by the defence by the evidence of PW-1, brother of the deceased. With the statement of PW-3 Vishwa Nath, it was proved by the prosecution that the accused Manoj and Rajpal had conspired to kill the deceased Vijay Pal Singh on account

of the grudges carried by them. As regards appellant Munna Ram @ Baba evidence of PW-5, according to the learned AGA, is sufficient to convict him. It is argued by the learned AGA that since it is a case of circumstantial evidence, it was not possible for the prosecution to collect any direct evidence and the only requirement was to complete the chain of circumstances leading to the guilt of the accused persons.

41. In the instant case, according to the prosecution, the chain of circumstances had begun with the evidence of the last seen and concluded with the evidence of PW-5 who had proved the recovery of bicycle and shoes of the deceased Vijay Pal Singh on the pointing out of appellant Munna Ram @ Baba. The witnesses are natural witnesses who were living in the vicinity of the house of the deceased. Their testimonies cannot be discarded as unreliable. Minor contradictions in the statement of the witnesses are not such which would break the chain or create a dent in the prosecution story.

42. Having heard learned counsel for the parties and perused the record, we may note that this is a case of circumstantial evidence. In a case which rests on circumstantial evidence, the law postulates two fold requirements; Firstly, that every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond all reasonable doubt; Secondly, that all the circumstances must be consistent only with the guilt of the accused and totally inconsistent with his innocence. The principles as summarized by the Apex Court in a recent decision in **Nizam @ another Vs. State of Rajasthan**¹ taking note of its previous decisions, be noted as under:-

“16. In the light of the above, it is to be seen whether in

1.2016 (1) SCC 550

the facts and circumstances of this case, whether the courts below were right in invoking the “last seen theory.” From the evidence discussed above, deceased-Manoj allegedly left in the truck DL-1GA-5943 on 23.01.2001. The body of deceased-Manoj was recovered on 26.01.2001. The prosecution has contended the accused persons were last seen with the deceased but the accused have not offered any plausible, cogent explanation as to what has happened to Manoj. Be it noted, that only if the prosecution has succeeded in proving the facts by definite evidence that the deceased was last seen alive in the company of the accused, a reasonable inference could be drawn against the accused and then only onus can be shifted on the accused under [Section 106](#) of the Evidence Act.”

9. 9 There are no eye-witnesses to the crime. In a case which rests on circumstantial evidence, the law postulates a two-fold requirement. First, every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt. Second, all the circumstances must be consistent only with the guilt of the accused. The principle has been consistently formulated thus :

“The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within

all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence”.

43. The last seen theory i.e. evidence that the deceased was last seen alive in the company of the accused is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. As noted in **Nizam & others (supra)**, the “last seen theory” holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. The principle is based on the provisions of Section 106 of the Evidence Act which lay down that when any fact is established within the knowledge of the person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him.

44. However, Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It is well-settled that it is not prudent to base the conviction solely on the “last seen theory”. “Last seen theory” should be applied taking into consideration the case of the prosecution in

its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen. The principle is that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain. Thus, in any case, the burden to prove the guilt of the accused is always on the prosecution. If the prosecution has succeeded in proving the fact by definite evidence that the deceased was last seen alive in the company of the accused, a reasonable inference could be drawn against the accused and then only onus can be shifted on the accused under Section 106 of the Evidence Act.

45. It is noted in **Ganpat Singh Vs. State of Madhya Pradesh**² after taking note of the decisions of the Apex Court that the last seen evidence assumes significance when the lapse of time between the point when the accused and the deceased were seen together and when the deceased is found dead is so minimal as to exclude the possibility of a supervening event involving the death at the hands of another. The law as summarized therein noticing the decision of the Apex Court in **Bodhraj @ Bodha v. State of Jammu and Kashmir**,³ and various other decisions, in paragraph No.10 of the report, is as under:-

“10 Evidence that the accused was last seen in the company of the deceased assumes significance when the lapse of time between the point when the accused and the deceased were seen together and when the deceased is found dead is so minimal as to exclude the possibility of a

2. 2017 (16) SCC 353

3. 2002 (8) SCC 45

supervening event involving the death at the hands of another. The settled formulation of law is as follows :

“The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.”

46. Keeping in mind the above principles, we have to first see as to whether the prosecution has succeeded in establishing by definite evidence that the deceased was seen alive in the company of the accused in such close proximity of time so as to exclude the possibility of a third person entering in the scene of crime in all reasonableness, and, thus, enabling the Court to draw a reasonable inference against the accused to shift onus on the accused to explain the circumstance in accordance with the provisions of Section 106 of the Evidence Act.

47. In this process, analyzing the oral testimony of the witnesses, we find that PW-1 had proved the first information report and the motive of the crime. The first information report was written by him in his own handwriting and after signature it was lodged in the police Station Rasoolabad at about 10.30 AM. As per the version of the first informant (PW-1), the deceased Vijay Pal Singh had gone missing since the evening of 23.12.1991 when he did not return home from his workplace.

The version is that during search, PW-1 came to know that the deceased had consumed liquor with some people near Usri Nursery on 23.12.1991 and, thereafter, he was never seen. In the examination-in-chief, PW-1 stated that when he returned to the place of incident after lodging of the first information report, Pradeep and Rakesh Awasthi met him there and told that on 23.12.1991 at about 07.30 to 08.00 PM they had seen the deceased Vijay Pal Singh in the company of Rajpal and Manoj when they were talking and they had also seen sharp edged weapons in their hands, which was like Kulhari.

48. The report of the last seen of the deceased in the company of accused Rajpal and Manoj was allegedly lodged by Chatrapal Singh, another brother of the deceased on 27.12.1991 under the signatures of Pradeep Kumar Dubey and Rakesh Awasthi, the witnesses of last seen. It was stated by PW-2 in his examination-in-chief that the report dated 27.12.1991 shown to him in the Court was dictated by Chatrapal to Pradeep who scribed the same and the said report was signed by him. PW-2 had identified his signatures on the report which was exhibitd as Exhibit Ka-3. In this regard, it may be noted that the signatures of Chatrapal on the said report had not been proved by him in his deposition as PW-4. In cross for Manoj and Rajpal, PW-4 Chatrapal stated that the report which he gave to the Investigating Officer on 27.12.1991 was written by him at about 09.00-09.30 AM and that report was not available on the record. By the statement of PW-2, only his signatures on the document was proved as Exhibit Ka-3.

49. The said report on which PW-2 proved his signature was not shown to PW-4 during his cross examination. There is apparent contradictions in the statements of PW-2 and PW-4 as to the manner in which the said report was prepared. As the

Investigating Officer of the case had not entered in the witness box, the report allegedly given by PW-4 could not be put to him. The prosecution, however, has not been able to prove that the said report on which signature of PW-2 was exhibited as Exhibit Ka-3, was the same application which was given to the Investigating Officer by PW-4, Chatrapal and was entered in the case diary.

50. Apart from this, there are contradictions in the statements of PW-1 and PW-4 about the time when the written report was given by PW-4 Chatrapal to the Investigating Officer. PW-1 stated that the first information report was given by him on 27.12.1991 at about 09.00-10.00 AM in the police station and his brother Chatrapal (PW-4) who was living at Kanpur reached to the place of the incident at about 03.00 PM. At that time, the body was sealed and was being sent for postmortem. PW-1 then stated that the report was given by Chatrapal on his own in the police station after the body was sealed. Whereas PW-4 Chatrapal stated that the report written by him was given in the morning on 27.12.1991 at about 09.00-09.30 AM before the dead body was sealed and sent for postmortem. As per the statement of PW-1 and PW-4, the intimation regarding the incident was given to Chatrapal only on 27.12.1991 and then he came from Kanpur.

51. PW-2, the witness of last seen also stated that he did not inform anyone prior to 27.12.1991; i.e. before the dead body was recovered that he had seen the deceased alive in the company of the accused persons. The reason given by him was that he came to know about the murder of Vijay Pal Singh only on 27.12.1991 when his dead body was found near the Nursery. He alongwith another witness Pradeep then went to the house of the deceased Vijay Pal Singh and from there they went to the

place of recovery of the body. PW-2 had denied the suggestion that there was talk in the village of missing of deceased Vijay Pal Singh and stated that he did not know the fact of missing of Vijay Pal Singh till his body was found. This witness is resident of the same village and he deposed to have seen the deceased on 23.12.1991 at about 07.00 PM in the company of accused while traveling in a tempo crossing a road besides the Nursery near the place of recovery of the body.

52. Further, in cross, PW-2 had admitted that the tempo wherein he was traveling from Rasoolabad to the village was crossing the road and that when he had seen the deceased alive with the accused Manoj and Rajpal in the light of tempo, there were Kulharis (Axes) in the hands of accused Rajpal and Manoj; and further that there was one more person with them who could be identified by him if he came before him; and that the deceased Vijay Pal Singh was carrying bicycle while talking to the accused persons.

53. Analysing the statement of P.W.-1, it is evident that he was told by someone that the deceased was seen with some persons on the date of his missing, having liquor near the Nursery where his dead body was found. There is no disclosure as to who told that fact to P.W.-1 the first informant, who gave report of missing of his brother on the fourth days, after recovery of the dead body. P.W.-3 stated that he started search for his brother from 23.12.1991 and kept on searching for three days. Everyone in the village knew about the fact of missing of his brother but before recovery of the dead body between 23.12.1991 and 27.12.1991 no-one told him that he had seen his brother alive with the accused.

54. Another witness of last seen Pradeep had not entered in the witness box. The statement of the witness of last seen

P.W.-2 does not inspire confidence of the Court for two reasons; firstly, that he had disclosed the deceased having been seen in the company of the accused Manoj and Rajpal only after recovery of the dead body on 27.12.1991 when he had reached at the place of recovery though he was resident of the same village. P.W.-1, the first informant was also present on the spot after lodging of the first information report, but no supplementary report was given by him naming the two accused persons on 27.12.1991. The written report allegedly given by P.W.-4 Chatrapal, brother of P.W.-1 had not been proved by him. The Exhibit-3 proved by P.W.-2 cannot be treated as proof of the supplementary report given by Chatrapal as P.W.-2 could not have proved that it was the same report which was given to the Investigating Officer by P.W.-4. The PW-4, to the contrary, stated that the report scribed by him and given to the Investigating Officer was not on record.

55. The second reason for discarding the evidence of last seen of P.W.-2 is the manner in which he described having seen the deceased alive in the company of the appellants Manoj and Rajpal. The statement of P.W.-2 that he had seen three persons talking with the deceased Vijay Pal Singh and two of them were Rajpal and Manoj who were carrying Kulharis (axes) seems unbelievable. It could not be explained as to why the accused persons would carry murder weapon in their hands while talking to the deceased on the road side when they already had plans to kill him. Further the prosecution is completely silent about the third person who was seen by P.W.-2 alongwith two accused Manoj and Rajpal and deceased Vijay Pal Singh. For the additional fact stated by P.W.-2 that he had seen above mentioned four persons standing on the road side while traveling in the tempo, his statement of last seen of the

deceased in the company of the accused is not found clinching as it cannot be said that the deceased was exclusively in the company of the accused persons.

56. Further, the lapse of time between the point when the accused and the deceased were seen together with an unknown person and when the deceased was found dead is not so minimal as to exclude the possibility of any supervening event involving the death at the hands of another. The identity of the third man who was seen with the accused persons while they were talking with the deceased had not been fixed by the prosecution.

57. From the statement of P.W.1, the deceased Vijay Pal Singh was seen lastly in the company of some people consuming liquor near the Nursery on the day he had gone missing. Neither the identity of those persons in whose company the deceased was seen consuming liquor nor the person who gave the said information to the first informant P.W.-1 had been established by the prosecution. A statement has come up in the site plan that it was told that the deceased was seen consuming liquor in the hut shown at the eastern side of the Nursery. In the index, as per observation of the Investigating Officer, at the time of preparation of the site plan, at the place marked as (C) at the eastern side, the hut of the Nursery existed wherein Ramesh Kachi Maali was residing. It is the same hut which has been mentioned as the place of consumption of liquor by the deceased. In the cross-examination of P.W.-2, it has come up that in the Nursery a caretaker in the name of Ramesh Kushwaha was residing as also that one more person Lala Ram Srivastava was also deputed as caretaker of the Nursery at the time of the incident. As per the site plan, the dead body was found at place (A) on

the Chak road towards the South, diagonally in the South-West direction, from the place shown as (C) distance of which has been indicated as about one furlong. The place (B) as indicated in the index of the site plan, on the pakka road, has been shown as the place where the deceased was allegedly seen with accused Rajpal and Manoj having Kulhari in their hands by the witnesses. The distance of place (B) and (C) has not been shown in the site plan whereas distance of place (A) and (B) is mentioned at 93 paces. There is nothing on the record which indicates that the occupant of the hut where the deceased was seen having liquor namely Ramesh Kushwaha or Ramesh Kachi Maali (as shown in the site plan) had been interrogated by the Investigating Officer. From the above circumstances also, the possibility of any person other than the accused appellants being the author of the crime cannot be ruled out.

58. It is also not believable that P.W.-2 being the resident of the same village was not aware for about 3 to 4 days that deceased Vijay Pal Singh had gone missing, when P.W.-1 deposed that the entire village knew about the missing of Vijay Pal Singh. Another witness of last seen who was allegedly traveling with P.W.-2 had not been produced in the witness box. Moreover, the testimony of P.W.-2 is found untrustworthy and it also could not be corroborated by the surrounding circumstances. It is a case where the prosecution has not been able to prove the fact of last seen of the deceased alive in the company of the accused in close proximity of time, leaving all possibilities of any supervening event so as to draw a reasonable inference against the accused Rajpal & Manoj to shift onus upon under Section 106 of the Evidence Act. Both the accused persons namely Rajpal and Manoj in their examination under Section 313 Cr.P.C. in reply to the question

No.5 relating to the circumstance of last seen had refuted the statement of the witnesses Pradeep and Rakesh Awasthi being “false”.

59. Moreover, the 'last seen theory' is only a link in the chain of circumstances though an important link but even if it is established the mere circumstance that the deceased was last seen alive in the company of the accused is an unsafe hypothesis to convict on a charge of murder. In a case like this where the prosecution found it difficult to positively establish that the deceased was last seen with the accused as there was a long gap and possibility of other persons coming in between exists, without any other positive evidence to corroborate by mere concluding that the accused and the deceased were last seen together, it would be hazardous to come to the conclusion of guilt. The corroboration of the circumstance of last seen with other evidence on record so as to form chain will be necessary in such a case.

60. In the instant case, the other circumstances which the prosecution brought in support of its theory of last seen in order to form a chain are:-

(i) The statement of PW-3 Vishwa Nath Singh that he met accused Manoj and Rajpal on 23.12.1991 at about 05.00 PM at the Medh of the field of deceased Vijay Pal and they themselves told him that Vijay Pal Singh would be killed from their hands in case he met them and would not be spared on that day. In the examination-in-chief, PW-3 stated that prior to the fateful day, Rajpal did not tell anything to him nor they met. He then stated that when Rajpal and Manoj met him they were carrying Kulhari (Axe) in their hands. PW-3 states that after talking to the accused, he went to Malkhanpur and in the evening when he came back, he came to know that Vijay Pal

Singh did not return home. The dead body was found near the Nursery at a distance of one furlong concealed in the Payar of Paddy.

In cross, this witness has admitted that his house was located in front of the house of the deceased Vijay Pal Singh and he and deceased belong to the same family. The purpose of visiting Malkhanpur which was a distance of about 03 Km from the village was not disclosed by PW-3 saying that it was a private work which could not be disclosed. On a suggestion PW-3 denied that he did not enter inside the Nursery and, therefore, could not tell as to whether two employees of the Nursery were residing there. He then stated that he reached Malkhanpur within five minutes by bicycle and stayed there for 15-20 minutes and his work was finished by then. When he returned from Malkhanpur, sun was set and that accused Rajpal and Manoj did not meet him at the field of Vijay Pal Singh after he returned from Malkhanpur. In the cross, PW-3 further stated that he got to know, at about 10.00 PM in the night on the same day, i.e. 23.12.1991, that Vijay Pal Singh did not return home from Rasoolabad, but gave an explanation that he could not tell as the brother of the deceased namely Jeet Singh was not met. He further denied the suggestion that search for Vijay Pal was being made in the village and the nearby places. PW-3 further goes on to tell that on the next day, he left at about 06.00 AM for Hardoi to meet his daughter and before he left, he could not talk to Jeet Singh about Vijay Pal Singh. He returned to his village from Hardoi on 27.12.1991 in the evening and when he came back, police was not in the village. He then came to know that the body of Vijay Pal was found concealed in the Payar. After hearing the said news he straightway went to the place where the dead body was discovered and reached there at about

09.00 PM. PW-3 further stated that he stayed besides the dead body for the whole night and the Investigating Officer (Daroga Ji) also reached there. The dead body was sealed and taken away from the place of recovery in the morning at about 04.00 AM. He also went to the police station alongwith the sealed body and after it was sent to Kanpur in the morning, he came back to the village. PW-3 categorically stated that he did not give any statement to the Investigating Officer at the spot where he reached at the night and further stated that he was not interrogated. For the first time, he passed on the relevant information to Jeet Singh, the first informant. This witness has lastly stated that his statement was recorded by the Investigating Officer after 10 to 12 days in the village and he did not tell the officer about him going to Hardoi. He, thus, has stated that he did not tell about the meeting with the accused Rajpal and Manoj in the field of Vijay Pal in the evening of 23.12.1991 or before 27.12.1991.

Analyzing testimony of this witness, first and foremost point noticeable is that this witness has admitted being the member of the same family of the deceased Vijay Pal Singh and that his house was located in front of the house of Vijay Pal Singh though he did not disclosed his relationship with the deceased Vijay Pal Singh. The accused Manoj and Rajpal were also resident of the same village. For the reason of PW-3 being a relative, member of the family of the deceased, it is unbelievable that the accused Rajpal and Manoj would make any confession before him that too while carrying Kulharis (Axes) in their hands so as to alert him that they would kill Vijay Pal Singh on that very day if he met them. The reason for going to the field of Vijay Pal Singh in the evening at about 05.00 PM given by this witness is that he was going on a

bicycle for his private work from Usri to Malkhanpur. There is no explanation as to why this witness would go to the field of Vijay Pal Singh which was located besides the Pakka road on the northern side opposite the Nursery (as shown in the site plan). The distance of Malkhanpur from the village Usri is disclosed as 03 km by PW-3, how he had reached there within 5 minutes from bicycle also remains explained. The purpose of visit to Malkhanpur had not been disclosed by PW-3. This witness admittedly did not disclose the factum of meeting the accused persons till the time of the inquest as according to him he met Jeet Singh, the first informant, after coming back from Hardoi on 27.12.1991 when he reached at the place of recovery of the body at about 09.00 PM. The statement of PW-3 that he reached at the place of discovery of the dead body on 27.12.1991 at about 09.00 AM and the body was sealed and sent from the spot at about 04.00 AM where he remained for the whole night is in clear contradiction to the documents on record. The inquest report and the site plan clearly indicate that the inquest commenced on 27.12.1991 at about 11.15 hrs (after the first information was lodged at about 10.30 hrs) and was completed by 12.20 hrs on 27.12.1991 and the body was sent for the postmortem which was conducted on 28.12.1991 at about 01.00 PM. Other witnesses proved that after inquest body was sealed and sent for postmortem. Further this witness had admitted that he did not make any statement to the Investigating Officer about going to Hardoi. The explanation given by this witness for keeping quiet for four days till the dead body was discovered is not convincing. His statement is full of contradictions, inconsistencies and embellishment on material particulars. Even otherwise, he was not in a relationship of trust with the accused persons and being a relative of the deceased

living opposite his house, it seems highly improbable that the accused would make this kind of confession to him so as to alert the deceased to save himself from their clutches.

Moreover, it is settled that extra judicial confession is a weak piece of evidence. There must be some very good reason for making the disclosure by the accused to the witnesses for the Court to place reliance on such an evidence. Reference be made to **Pakkirisamy Vs. State of T.N.** 1997 (8) SCC 158; **Sahadevan & another Vs. State of Tamil Nadu** 2012 (6) SCC 403. In the instant case, we do not find any reason to accept the evidence of PW-3 as a reliable and trustworthy one.

(ii). The next link in the chain is the statement of PW-5 who had been introduced as a witness of conspiracy hatched by the appellants Munna Ram @ Baba, Manoj and Rajpal. PW-5 Laakhan Singh, a resident of the same village, admitted that his house was in front of the house of the first informant Jeet Singh who also belong to his community. As per the version of this witness, on 23.12.1991 the fateful day, at about 10.00 AM, while he was going to Rasoolabad, on the way, he reached at the hut of Munna Ram @ Baba. At that time, 2-3-4 persons were having Charas in the hut of Munna Ram @ Baba and amongst them Manoj and Rajpal were present alongwith one more person whose name was not known to him. PW-5 had also identified the accused persons namely Manoj, Rajpal and Munna Ram @ Baba present in the Court during his deposition. He then narrated that he evesdropped these persons hatching the conspiracy to kill Vijay Pal Singh and Munna Ram @ Baba agreed to provide Kulhari (murder weapon) to commit the murder. PW-5 then stated that he went to Rasoolabad by bicycle and then had gone to Kanpur and after 5-6 days when

he returned back to the village on 27.12.1991 in the evening he came to know that Vijay Pal was killed.

On getting information, he went to the house of Vijay Pal but no one other than female family members were present therein and Chatrapal was not met. He also stated that he intimated them raising a suspicion that Munna Ram @ Baba might be having information of the murder of Vijay Pal, he alongwith the family members of deceased Vijay Pal, then, went to the hut of Baba who was not found there. They made a private enquiry and on 09.01.1992, they could catch hold of Munna Ram @ Baba in his hut. They threatened him that he would also be killed and then Munna Ram @ Baba disclosed that the bicycle and shoes of Vijay Pal Singh were concealed in a Payar in the field of Jairam on the southern side of the road. The recovery of bicycle and shoes of Vijay Pal was then made at the instance of Munna Ram @ Baba and PW-5 alongwith Chatrapal (PW-4), Puttan Singh, Vijay Bahadur and other villagers, took Munna Ram @ Baba to the police station after the recovery. A report of the enquiry (Exhibit Ka-4) had also been written by PW-5 Laakhan Singh, at the crossing of Rasoolabad, in his handwriting and submitted the said report in the police station after getting signature and thumb impression of the witnesses. According to him, the recovered articles bicycle and shoes were also deposited in the police station by them and Munna Ram @ Baba was handed over to the police. The memo of recovery of bicycle and shoes was prepared at the police station and read over to him which is Exhibit ka-4.

At this juncture, it is relevant to note that Exhibit Ka-4, the recovery memo of bicycle and shoes of the deceased Vijay Pal Singh was exhibited at the instance of PW-4 who had identified his signature on the said document. The contradiction

in the statement of PW-4 & 5 on the recovery memo Exhibit Ka-4 would also be noted at the appropriate place of this judgment.

Noticing further, we may note that PW-5, in cross, had stated that the hut of Munna Ram @ Baba was at a distance of 25 to 30 paces from the Nursery. The location of the hut of Munna Ram @ Baba has not been shown in the site plan. On a suggestion given to PW-5, he had denied that he went to the hut of Munna Ram @ Baba to have Charas but said that he used to go there to have Darshan of Munna Ram @ Baba. For non disclosure of conspiracy before 09.01.1992 an explanation has been given by PW-5 that he did not give much weight to the conversation of Rajpal, Manoj and Munna Ram @ Baba as he thought that they were in the state of intoxication and did not think that they would really commit murder. This witness admittedly returned to the village on 27.12.1991 at about 03.00-04.00 PM after the body of Vijay Pal Singh was discovered but he denied that the body was discovered on 27.12.1991 and stated that he went to the house of the deceased Vijay Pal Singh in the evening at about 05.00 PM and then about 07.00 PM but neither he could meet Jeet Singh (first informant) nor Chatra Pal (PW-4). He denied having knowledge of the report of the murder having been lodged in the police station and the names of the person against whom the said report was lodged. He then stated that when the report of conspiracy of Munna Ram @ Baba Exhibit Ka-5 was given by him, the Investigating Officer had recorded his statement but he did not know at that time that the police had earlier interrogated Munna Ram @ Baba. On the suggestion as to why he had mentioned the said fact in his report, this witness gave a vague answer.

From the analysis of the statement of this witnesses,

the story set up by him is not found convincing for the contradictions in his statement with regard to the time of reaching the village and passing of the information to the family members of the deceased about the conspiracy of three accused. This witness being a resident of a house located in front of the house of the deceased seems to be a got up witness set up by PW-4 Chatrapal Singh, brother of the deceased Vijay Pal Singh. The manner in which enquiry was done by this witness on his own and the statement given by him to the Investigating Officer on 09.01.1992 after the alleged recovery of bicycle and shoes of the deceased at the instance of Munna Ram @ Baba indicated that this witness acted more as a detective taking all credits to solve the crime. He is not found to be an independent witness, an impartial person. PW-5 has very conveniently excluded the presence of the first informant Jeet Singh from the scene to buy time to create evidence about the whole conspiracy chapter against the accused persons.

(iii). The last witness PW-4 brought in the chain of circumstance is Chatrapal Singh, brother of the deceased Vijay Pal Singh. He has stated that he came to know about the death of his brother about 05.00 AM and reached at the place of discovery of the body straightway where the police was making the necessary investigation. An application was given by him, at about 09.00.-09.30 AM in his own handwriting, to the Investigating Officer before the dead body was sealed and sent for postmortem but that report is not on record. He did not remember as to the time when he wrote the report. The body was sent for the postmortem at about 10.00-10.30 AM in his presence and, thereafter, he went to his house. This witness then stated that he stayed in the village for about 15 to 20 days and before 09.01.1992 PW-5 Laakhan Singh did not disclose

anything to him about the incident. For the first time on 09.01.1992, he had a talk with Laakhan Singh (PW-5) at about 05.00-06.00 AM in the village. Thereafter, they alongwith other villagers accompanied with the Investigating Officer had reached at the hut of Munna Ram @ Baba within 20 minutes. He then stated that the Investigating Officer had reached at the hut of Munna Ram @ Baba at about 06.30 AM and then they all went to the place wherefrom bicycle and shoes were recovered. The place of recovery was about 150 to 250 meter from the Pakka road at the southern side of the road. On a question put to PW-4, he admitted that the memo of recovery of bicycle and shoes was prepared at the police station but his statement was recorded by the Investigating Officer on 09.01.1992 at the spot. They all went to the place of recovery of bicycle and shoes alongwith the Investigating Officer and the report was written by Laakhan Singh (PW-5) and then signed by him.

Analyzing the testimony of this witness, he is not found to be trustworthy because of the material contradictions in his statement about the recovery of bicycle and shoes of the deceased from near the place of the incident at the instance of the appellant Munna Ram @ Baba. From the memo of recovery, Exhibit Ka-4 proved by this witness, it is evident that it was noted therein that one bicycle and one pair of shoes were brought to the police station by Laakhan Singh (PW-5) and the memo of the same was prepared at the police station in the presence of PW-4 Chatrapal. Another important feature of his testimony is when he states that Laakhan Singh conveyed the information about conspiracy to him only in the morning of 09.01.1992.

From the statement of this witness and that of

Laakhan Singh (PW-5), it is evident that PW-5 opened up only on 09.01.1992 when he gave a report in writing as 'Exhibit Ka-5' after nabbing the third appellant Munna Ram @ Baba from his hut. PW-5 though stated in his deposition that he did not meet Chatrapal (PW-4) on 27.12.1991 at about 07.00 PM when he went to the house of the deceased after discovery of the dead body but he remained silent about the date and time when he had disclosed his information of the incident to Chatrapal (PW-4).

From the analysis of the above evidence, it is proved that the prosecution had concocted a story for implicating Manoj and Rajpal at the instance of Chatrapal (PW-4), the brother of the deceased, who himself was not a resident of the village, after he reached the village on 27.12.1991. The accused persons namely Rajpal and Manoj were introduced in the scene of crime after the discovery of the body when a report allegedly was given by PW-4 Chatrapal naming them as the suspected accused. The alleged report given in the handwriting of Chatrapal (PW-4) had not been proved by him. The report namely Exhibit Ka-3, as is available on the record, had been exhibited by PW-2 Rakesh Awasthi, the witness who could have simply proved his signature on the same. The scribe of the said report who had entered in the witness box as PW-4 did not prove the same, rather stated that the report given by him to the police was not available on the record. No reliance as such can be placed upon the document namely Exhibit Ka-3 so as to treat it as a supplementary report of the crime.

61. From the extract of the case diary, noted above, it could be seen that the first statement of PW-1, the first informant, was recorded on 27.12.1991 at the place of recovery of the body as soon as the police reached at the spot alongwith

him, after registration of the first information report. In Section 161 Cr.P.C. statement of PW-1, he had introduced Pradeep Dubey and Rakesh Awasthi as witnesses of last seen of the deceased alive with accused Manoj and Rajpal. He, thus, came to know on 27.12.1991 that Manoj and Rajpal were behind the crime. This witness (PW-1) has very conveniently stated that the Investigating Officer did not record his statement with regard to the incident at any point of time and the statement of his brother Chatrapal was recorded.

62. The above contradictions, inconsistencies in the statements of witnesses show that they were all made up or got up witnesses. Three witnesses namely PW-2 the witness of last seen; PW-3 the witness of extra judicial confession and PW-5 the witness of conspiracy came to know that accused Manoj and Rajpal were behind the crime when the deceased had gone missing on 23.12.1991. They all are either related to the deceased or were his neighbour, but everyone surprisingly, had left the village on the same day or the next day and, thus, explained why they did not pass on their information to the family members of the deceased/missing person between 23.12.1991 to 27.12.1991 when the search of the deceased was going on. All of them together entered in the scene (though at different times) after discovery of the body on 27.12.1991.

63. From the case diary, it may be noted that on the first date of discovery i.e. on 27.12.1991, the statement of PW-1, the first informant Jeet Singh and Munna Ram @ Baba was recorded by the Investigating Officer, before and after making the spot inspection of the site of the discovery of the body. The place where the deceased Vijay Pal Singh was seen in the company of the accused Manoj and Rajpal is also indicated in

the site plan as place (B). The witnesses of last seen Pradeep Dubey and Rakesh Awasthi were present on the spot of discovery as they are witnesses of inquest, but the Investigating Officer despite the information of last seen (an important one) received by him did not record the statement of these two material witnesses for the reasons best known to him. The statement of Vishwa Nath (PW-3) was recorded in the case diary on 03.01.1992 after accused Manoj was arrested by the Investigating Officer as is evident from the Parcha No.III of the case diary dated 03.01.1992. The statements of Lakhan Singh was recorded on 09.01.1992 after the appellant Munna Ram @ Baba was handed over to the police by the prosecution witnesses. The statement of Chatrapal (PW-4) as also Pradeep and Rakesh Awasthi (as both witnesses of last seen and inquest) were recorded on 14.01.1992 in the case diary at Parcha No.IV.

64. There is no recovery of the murder weapon. As per the statement of the witnesses, one Axe used in the murder was provided by the appellant Munna Ram @ Baba but from the statement of the witnesses (PW-2 & PW-3) it seems that both the accused persons were seen having Axe in their hands that means two Kulharis were introduced by the witnesses of last seen. There is no clarity about the second weapon.

65. On the implication of the third appellant Munna Ram @ Baba, there is no evidence of last seen of the deceased alive in his company. Only evidence against appellant Munna Ram @ Baba is the report dated 09.01.1992 submitted by Laakhan Singh (PW-5) which was based on a private enquiry made by the prosecution witnesses.

66. As analysed above, the entire story presented by PW-

5 is proved to be a concocted story for his unbelievable version of the events after 27.12.1991 and for the contradictions in the statement of PW-5 and PW-4, PW-5 is proved to be an unreliable/untrustworthy witness. Moreover, the alleged recovery of bicycle and shoes by PW-5 and PW-4 is proved to be planted one as it was not made by the Investigating Officer at the instance of the accused Munna Ram @ Baba.

67. With regard to the recovery memo, Exhibit Ka-4, it was prepared at the police station and not at the spot. A site plan of the place of recovery of these articles is also on the record which contains a signature bearing the date as 26.01.1992. In view of non-examination of the Investigating Officer, it could not be ascertained as to when and where the recovery was made and how the site plan of the place of recovery was prepared by the Investigating Officer on 26.01.1992. The PW-4 though tried to suggest that the Investigating Officer was accompanying them at the time of recovery but it is evident from the record that the appellant Munna Ram @ Baba was not arrested by the Investigating Officer prior to the recovery and he was handed over to the police by the prosecution witnesses namely PW-4 and PW-5 alongwith the alleged recovered articles namely the bicycle and shoes. The recovery memo namely Exhibit Ka-4 is, thus, liable to be rejected.

68. From the above discussion, it is evident that the prosecution witnesses who were either related to the deceased or his neighbours made lots of enquiries on their own to find out the culprit and in that process many different stories were concocted. The contradictions in the statement of the witnesses arose as they made improvements to prove them right.

The prosecution has tried to form the chain by connecting loose links from here and there. Three prosecution witnesses namely PW.2, PW.3 and PW-5 had seen or met the accused persons namely Rajpal and Manoj at different times on the very day when he had gone missing, i.e. 23.12.1991, but all of them had left the village for one or other reason and entered in the scene only on 27.12.1991 after the discovery of the dead body. The explanation offered by these three witnesses for their absence in the village between 23.12.1991 and 27.12.1991 is not convincing. These witness namely PW-2, PW-4 and PW-5 are unreliable and untrustworthy.

69. As far as the motive is concerned, though a mortgage deed was presented in the Court by PW-1 and the signature of his deceased brother on the same was proved as Exhibit Ka-2 but beyond that no other evidence was brought before the Court to prove the dispute of deceased with the accused Rajpal. Only PW-4, another brother of the deceased, in his examination-in-chief, had stated the motive being the mortgage of his field by the deceased Vijay Pal Singh. The 'Exhibit Ka-3' which has been placed on record as the report given by Chatrapal (PW-4) to the Investigating Officer, had not been proved by him, as noted above. The contents of the said report, therefore, cannot be seen.

70. With regard to another accused Manoj, the motive assigned by PW-1 is too weak. Moreover, both the accused had been assigned different motives and there is no evidence on record about meeting of mind of these persons to kill the deceased, except the testimony of PW-3 & PW-5 who have been found to be unreliable witnesses. No motive has been assigned to the third accused Munna Ram @ Baba who has

been convicted by the trial court under Section 302 read with Section 34 IPC.

71. All the above circumstances put together raised many questions about the manner in which the investigation was conducted and evidence was collected by the Investigating Officer to submit charge sheet against three accused persons namely Manoj, Rajpal and Munna Ram @ Baba, but it is one of those cases where the Investigating Officer had not entered in the witness box. All the questions, therefore, remain unanswered.

72. The next issue, thus, to be examined is as to whether the non-examination of the Investigating Officer caused prejudice to the accused appellants.

73. In this regard, it may be noted that though the defence had admitted the genuineness of papers of investigation such as Chik FIR, recovery memo, Exhibit Ka-16, postmortem report Exhibit Ka-18, the inquest report Exhibit Ka-10, the charge sheet Exhibit Ka-19 and Ka-20 as also the site plan Exhibit-8 & 9 but did not admit the papers prepared by the prosecution witnesses and given to the Investigating Officer. Though with the acceptance of the genuineness of the chik report, the written report Exhibit Ka-1 also stood admitted, but other reports such as Exhibit Ka-3, Exhibit Ka-5 and the recovery memo Exhibit ka-4 had not been admitted as genuine documents by the defence. For non-examination of the Investigating Officer, it could not be proved as to how and in what manner these papers were included during the investigation. In absence of the Investigating Officer, the defence has been deprived of the opportunity to cross examine him on the documents entered in

the case diary namely the recovery memo Exhibit Ka-4 and the reports Exhibit Ka-3 and Ka-5, allegedly given by PW-4 and PW-5.

74. The question as to how the site plan Exhibit Ka-8 was prepared on 26.01.1992, the date of submission of the charge sheet, remained unanswered. The delay in recording the statement of material witnesses of last seen (namely Pradeep Dubey and Rakesh Awasthi) by the Investigating Officer remained unexplained in his absence. The contradiction in the statement of the prosecution witness PW-4 with regard to giving of the report naming the witnesses of last seen could not be put to the Investigating Officer so as to get his version. The contradiction about the preparation of the recovery memo Exhibit Ka-4 in the statement of PW-4 and 5, the witnesses of the said recovery memo, could not be put to the Investigating Officer. The defence has, thus, been seriously prejudiced in the instant case for the non-examination of the Investigating Officer.

75. We may note that in the matter of non-examination of the Investigating Officer, the legal position is that there can be no universal straight jacket formula that the non-examination of the Investigating Officer per se vitiates the criminal trial. It would depend upon the facts of the particular case as to whether the non-examination of the Investigating Officer had caused prejudice to the accused. It has to be shown by the defence that the accused had been prejudiced and was deprived of the opportunity to bring out contradiction in the statement of the witnesses for the prosecution before the police. It is held in **State of Karnataka Vs. Bhaskar Kushali Kotharkar &**

others⁴ that as part of fair trial, the Investigating Officer should be examined in the trial cases, especially in a sessions trial. The reason being that if any of the prosecution witnesses give any evidence contrary to their previous statement recorded under Section 161 Cr. P.C. or there is any omission of certain material particulars, the previous statement of these witnesses could be proved only by examining the investigating officer who must have recorded the statement of these witnesses under Section 161 Cr. P.C.

76. In **Ram Dev & another Vs. State of U.P.**⁵ it was observed that it was desirable for the prosecution to produce the Investigating Officer at the trial notwithstanding the fact that various documents which were to be proved by the Investigating Officer were accepted by the defence as genuine documents and were not disputed.

77. Whether non-examination of the Investigating Officer in any way create any dent in the prosecution case or affect the credibility of the witnesses would depend upon the facts of the case. In any case, it has to be shown as to what prejudice has been caused to the appellants for such non-examination (reference **Bahadur Naik Vs. State of Bihar**⁶).

78. Keeping in mind the above discussion in light of the principles noted above we find that in the instant case, the accused appellants have been seriously prejudiced on account of non-examination of the Investigating Officer and this omission has created a deep dent in the prosecution case. The cumulative effect of the prosecution evidence, thus, is that the

4. 2004 (7) SCC 487

5. 1995 SUP (1) 547

6. AIR 2000 SC 1582

witnesses of the prosecution have not been found trustworthy; the contradictions in their testimony remained unexplained for non-examination of the Investigating Officer; the chain of circumstances put forth by the prosecution has many loose links which could not be connected to each other. The result is that the complete chain of the circumstances could not be formed by the prosecution to unerringly point towards the guilt of the accused persons excluding every possible hypothesis except one to be proved.

79. The prosecution has failed to establish every link in the chain of circumstance beyond all reasonable doubt to establish the guilt of the accused, leaving reasonable grounds for the conclusion consistent with the innocence of the accused. It could not be shown that in all human probabilities the act must have been done by the accused persons and no one else.

80. Further none of these documents, Exhibit Ka-3, Ka-4 and Ka-5 were put to the accused persons in their examination under Section 313 Cr.P.C. For the site plan, a general question was framed as question No.'19' but the site plan exhibited as Exhibit Ka-8 and Ka-9 were not put up to the accused persons.

81. The trial court had, thus, erred in relying upon these documents to draw inference against the appellants and to accept the submission of prosecution witnesses for conviction of the accused persons.

82. For the above discussion, we find that the trial court namely the IIIrd District & Sessions Judge, Kanpur Dehat has committed a manifest error of law in convicting three accused persons namely Rajpal, Manoj & Munna Ram @ Baba only on an untrustworthy last seen evidence.

83. Accordingly, the judgment and order dated 08.05.1997 passed by the IIIrd Additional District & Sessions Judge, Kanpur Dehat in S.T. No.104 of 1992 and S.T. No. 417 of 1992 arising out of Case Crime No.191 of 1991 under Section 302, 201, 120-B IPC, P.S. Rasoolabad, District Kanpur Dehat, is set aside.

84. The accused-appellants are entitled to be acquitted of all the offences of which they were charged. Their conviction is liable to be set aside.

85. The appeals are hereby **allowed**.

86. The appellant Rajpal and Munna Ram @ Baba are on bail. Their sureties shall stand discharged.

87. The appellant Manoj is in jail. He shall be released forthwith, in case he is not needed in any case.

88. Sri Kunwar Ajay Singh learned Amicus Curiae rendered valuable assistance to the Court. The Court quantifies Rs.15,000/- to be paid to Sri Kunwar Ajay Singh, Advocate towards fee for the able assistance provided by him in hearing of this Criminal Appeal. The said payment shall be made to Sri Kunwar Ajay Singh Advocate by the Registry of the Court within the shortest possible time.

89. The office is directed to send back the lower court record along with a certified copy of this judgment for information and necessary action.

90. The compliance report be submitted to this Court through the Registrar General, High Court, Allahabad.

(Subhash Chandra Sharma,J.) (Sunita Agarwal, J.)

Order Date :- 12.04.2022/Himanshu