

Court No. - 47

Case :- CRIMINAL APPEAL No. - 3832 of 2014

Appellant :- Angad Rai @ Jhullan Rai @ Fhulak And Another
Respondent :- State of U.P.

Counsel for Appellant :- Dileep Kumar,Ajay Srivastava,Mohd. Farooq,Raja Ullah Khan,Rajrshi Gupta,Shashi Bhushan Kunwar,Sheshadri Trivedi

Counsel for Respondent :- Govt.Advocate,A.K.Rai,D.K.Singh

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Vinod Diwakar,J.

1. Heard Sri Kamal Krishna, learned Senior Advocate assisted by Sri Shashi Bhushan Kunwar and Sri Pradeep Kumar Rai, Advocates for the appellant Angad Rai @ Jhullan Rai @ Fhulak; Sri Dileep Kumar, learned Senior Advocate assisted by Ms. Shambhawi Shukla, Advocate for the appellant Umesh Rai @ Gora Rai; Sri Arunendra Kumar Singh, learned AGA for the State; Sri Durgesh Kumar Singh, learned counsel for the informant and perused the materials placed on record including the lower court records.

2. This appeal is by the accused Angad Rai @ Jhullan Rai @ Fhulak and Umesh Rai @ Gora Rai challenging their conviction and sentence vide judgment and order dated 26.09.2014, passed by the Additional Sessions Judge, Court No.01, Ghazipur in Sessions Trial No. 140 of 2006, arising out of Case Crime No. 493 of 2005, under Sections 302, 506 IPC, Police Station Muhammadabad, District Ghazipur; whereby they have been sentenced to life imprisonment alongwith fine of Rs. 10000/- coupled with a default sentence of one year imprisonment, under Section 302 r/w 34 IPC and under Section 506 IPC, five years imprisonment alongwith fine of Rs. 5000/- coupled with a default sentence of six months, each. All the sentences are directed to run concurrently.

3. Accused appellants have been convicted and sentenced for the murder of Rajendra Rai (hereinafter referred to as the 'deceased') in the morning hours on 27.6.2005. A written report was made in

respect of the incident by the father of the deceased namely Kapil Dev Rai. This written report was scribed by Rakesh Kumar Rai, who happens to be the son of the deceased. The written report states that the informant's son Rajendra Rai is an active member of political party (we deem it appropriate to avoid referring the name of party as it has no relevance for the matter in issue) and as the Zila Panchayat and Kshettra Panchayat Elections were nearby, as such, Afzal Ansari (Member of Parliament Ghazipur) and his younger brother Mukhtar Ansari (MLA) were attempting to get the deceased in their party. About fifteen days prior to the incident the deceased was stopped at Muhammadabad and was told that since he is the husband of the Ex-Block Pramukh of Block Bhawarkol if he leaves the company of Krishnanand Rai and joins their party, then he would be benefited and it would secure his life and property. Again on 26/27.6.2005, the aforesaid persons sent message through the accused Umesh Rai @ Gora Rai alongwith three others, who came to informant's house at village Vachchhalpur and threatened that since the deceased is not joining the political party of the aforesaid two persons and is also not dissociating himself with Krishnanand Rai, as such, his life is at risk. The informant's son got frightened and divulged the receiving of threat, to the informant. In order to report such threat to the police, the informant alongwith the deceased were going to police station in the next morning at about 6.30 am, when at village Mathiya, under a planned conspiracy of Mukhtar Ansari and Afzal Ansari, the accused Umesh Rai @ Gora Rai alongwith three unknown persons exhorted that as the deceased is not joining the party of Afzal Ansari and Mukhtar Ansari, as such, he would face the consequences. The informant's son ran in order to save himself but the accused chased him inside the house of Shiv Kumar Yadav and shot him dead. The informant's son accordingly has died and at the place of occurrence Chandra Shekhar Rai and various other persons have arrived, who have seen the incident, but due to fear of the accused they could do nothing. A request was thus made to lodge the report and take action against the guilty persons. Based on such written report, first information report (Exhibit Ka-7) came to be

registered as Case Crime No. 493 of 2005, under Sections 302/506/120B IPC at 7.40 a.m. at Police Station Muhammadabad, District Ghazipur. The distance between the police station and village Mathiya is stated to be about two and half kilometer. In the FIR three named accused were shown as Afzal Ansari, Umesh Rai @ Gora Rai, Mukhtar Ansari and the other three were unknown persons.

4. Investigation commenced pursuant to FIR and bloodstained and plain plaster was recovered from the place of incident (roof of the house of Shiv Kumar Yadav) and kept in separate boxes. A recovery memo in that regard has been prepared, which is duly exhibited as Ext.Ka-2. Four empties alongwith two pellets were also recovered from the place of occurrence, in respect of which also the memo of recovery is prepared and exhibited as Ext.Ka.3.

5. Inquest proceedings were then conducted at the place of occurrence and the inquest report has been duly exhibited as Ext.Ka.9. As per the inquest report, the information of crime was received at the police station at 7.40 a.m. on the date of incident i.e. 27.6.2005 and the inquest began at 8.15. Information in respect of incident was received from Kapil Dev Rai (first informant). The inquest concluded at 10.05 am. The five witnesses to the inquest are Rambachan Rai, Vijay Bahadur Rai, Tarkeshwar Rai, Ravikant Rai and Ramashankar Rai.

6. The condition of body has been specified in the inquest as lying on the roof of the house of Shiv Kumar Yadav. The inquest witnesses found gunshot injury on the head and thighs of the deceased. There were other injuries on the body of deceased. The inquest witnesses thus opined that in order to ascertain the cause of death the postmortem be got conducted on the dead body of deceased. The body was accordingly sealed and sent to the mortuary.

7. The postmortem on the deceased has been conducted at 4.45 pm on the date of incident, wherein the deceased was found to be 55 years old with a heavy body and the time of death was reported to

be about half day. In the opinion of autopsy surgeon the deceased suffered instant death as a result of ante-mortem head injury from a firearm. The postmortem has been proved by the autopsy surgeon (PW-3). As per postmortem, following ante-mortem injuries have been found on the deceased:-

- "1. Firearm wound of entry 1.2 cm x 1.0 cm inverted margin with ring abrasion, situated at left occipital region head 7.0 cm behind left ear.
2. Firearm wound of exit 1.6 cm x 1.2 cm everted irregular margin on right parietal scalp, 6.0 cm above right eyebrow. On careful dissection and probing both wounds (1 & 2) were found inter-communicating with fracture of occipital and right parietal bone and laceration of meninges and brain matter.
3. Contusion of left frontal scalp and eyelid 7.0 cm x 3.0 cm.
4. Firearm wound of entry 1.1 cm x 1.0 cm inverted margin at upper most part of right back thigh just below gluteal region.
5. Firearm wound of exit 1.4 cm x 1.1 cm everted margin on the upper part of right thigh 28 cm about patella right knee joint. On careful dissection and probing both the wounds (4 & 5) were found inter-communicating with laceration into soft tissue and muscle.
6. Abrasion 36 cm x 8 cm involving right thigh and upper leg medially.
7. Abraded contusion 12 cm x 8 cm on left back"

The postmortem report also shows existence of semi-digested food in the stomach as well as gases and fecal matter in the large and small intestine.

8. The Investigating Officer proceeded to record statement of various eye-witnesses, whereafter charge-sheet under Sections 302/506 IPC came to be submitted on 22.11.2005 against the two accused, which has been duly exhibited as Ext.Ka.5. The site plan has also been prepared by the Investigating Officer on the basis of information furnished by the first informant, which has been exhibited as Ext.Ka.6, during trial.

9. The Magistrate took cognizance on the charge-sheet and committed the case to the Court of Sessions wherein charges were

framed against the accused appellants under Sections 302/34 and 506 IPC. The accused appellants were explained the charges levelled against them on 10.1.2007, which they denied and demanded trial. The trial accordingly commenced in which prosecution has adduced following documentary evidence:-

"1. FIR dated 27.06.2005	Ex.Ka.7
2. Written Report dated 27.06.2005	Ex.Ka.4
3. Report of Blood Stained & Plain Plaster	Ex.Ka.2
4. Recovery memo of empties and pellets	Ex.Ka.3
5. P.M. Report dated 27.06.2005	Ex.Ka.1
6. Report of Vidhi Vigyan Prayogshala dated 19.01.2006	
7. Panchayatnama dated 27.06.2005	Ex.Ka.9
8. Charge Sheet (Mool) dated 22.11.2005	Ex.Ka.5"

10. In addition to documentary evidence the prosecution has also produced Vijay Bahadur Rai (PW-1), who is a witness to the inquest. Ravi Kant Rai is produced as PW-2, who too is a witness of inquest. Dr. Nishar Ahmad, Autopsy Surgeon has been produced as PW-3. Chandra Shekhar Rai, who allegedly has seen the incident and whose presence is mentioned in the FIR, has been produced as PW-4. Dinesh Kumar Pandey is the nephew (Bhanja) of the deceased, who has been produced as PW-5. Rakesh Kumar Rai is produced as PW-6, who is the scribe of the written report and is the son of the deceased. Tara Yadav has been produced as PW-7, who had come to her maternal house on the date of incident, situated next to the house of Shiv Kumar Yadav, where the deceased has been done to death. Yogendra Yadav @ Jogi Yadav has been produced as PW-8, who is resident of village Mathiya and had allegedly seen the incident. Similarly, Ashok Singh Yadav (PW-9) and Triveni Yadav (PW-10) are the resident of village Mathiya and had allegedly seen the incident. Constable Rampreet Chauhan has been produced as PW-11, who was associated in preparation of inquest and has taken the dead body to the mortuary. Kamlesh Yadav has been produced as PW-12, who too is resident of village Mathiya and had allegedly seen the incident. Mahendra Yadav has been produced as PW-13,

who too is a resident of village Mathiya and had allegedly seen the incident. Jagdish Kumar Yadav has been produced as PW-14, who was the second Investigating Officer in the present case. PW-15 Harish Chandra Mishra is the first Investigating Officer in the present case. Ram Awadh Adarsh has been produced as PW-16 to prove the FIR and GD of the FIR. Mangla Yadav has been produced as PW-17, who had conducted the inquest.

11. On the basis of evidence led in the matter by the prosecution, the incriminating material produced during trial was confronted to the two accused, for recording their statement under Section 313 Cr.P.C. It is thereafter that the prosecution has adduced the testimony of Smt. Brijbala Rai as PW-18, who happens to be the wife of the deceased. The accused were thereafter confronted with the incriminating material that had appeared against them in the testimony of PW-18, and their supplementary statement was recorded under Section 313 Cr.P.C. The defence, however, has not produced any witness on its behalf. Trial court has examined the testimony of witnesses as also the documentary evidence and found that all other eye-witnesses, except PW-4 Chandra Shekhar Rai, have turned hostile.

12. Trial court found the testimony of PW-4 to be trustworthy and reliable and his presence at the place of occurrence was also found free of any doubt. Relying upon the postmortem report as also other evidence brought on record the trial court has come to the conclusion that the prosecution has succeeded in establishing the guilt of the accused appellants beyond reasonable doubt and consequently convicted them for the offence under Sections 302/34 and 506 IPC and sentenced them to life and other punishments as per above.

13. Aggrieved by the judgment of conviction and sentence, the two accused appellants have filed the present appeal. It is urged on behalf of the appellants that the testimony of eye-witness PW-4 is not reliable and his presence at the place of occurrence is also

doubtful. Submissions have been made at length in order to submit that the prosecution had included reference of PW-4 in the written report, primarily as as he was closely related to the informant and would have supported the prosecution case, blindly, to implicate the accused appellants. It is also urged that the evidence led by the prosecution in no way connects the accused appellants with the commission of the offence, inasmuch as, neither the motive for committing the offence has been established against the accused appellants nor their association with Ansari brothers are established and, therefore, their conviction and sentence is wholly without any basis. It is urged that the accused appellants have been falsely implicated for political reasons, particularly, as the brother of the accused Angad Rai namely Ram Narayan Rai @ Pahalwan Rai had been done to death in which the then local MLA Krishnanand Rai was named as accused and it was at his instance that the accused appellants have been falsely implicated. It is also urged that the other accused namely Gora Rai is the cousin of Angad Rai (Mausera Bhai). Further arguments have been made on behalf of the appellants to contend that they are wholly innocent and have been falsely implicated and that the trial court has erred in convicting and sentencing them.

14. The appeal is strongly opposed by Sri Arunendra Kumar Singh, learned AGA and Sri Durgesh Kumar Singh, who has appeared for the informant, who states that the deceased was done to death in a brutal manner in broad day light by the two accused at the instance of Ansari Brothers, who exercised enormous political clout in the area. It is submitted that on account of political influence exercised by the accused appellants all other eye-witnesses have turned hostile and the investigation deliberately left out such materials, as would have implicated the accused appellants in the matter.

15. On behalf of the informant it is urged that as per the then law the informant had no right to actively participate in the proceedings and since the prosecution acted in wholly unfair manner, on account

of political influence exercised by powerful persons, as such, the facts of the case needs to be carefully examined by the Court so that justice is done in the case and the faith of the common man in the system is strengthen. Informant also alleges that the investigation was wholly botched up and due to political influence all other eye-witnesses were produced on the same day, and declared hostile, which shows that the whole system was acting in a partisan manner so as to deny justice in the facts of the case.

16. It is in the above backdrop that this Court is required to consider as to whether the prosecution has succeeded in proving its case against the accused appellants, beyond reasonable doubt, on the basis of evidence led in the matter and also whether the conviction and sentence awarded to the two accused appellants is just and proper or not?

17. In order to effectively appreciate the contentions urged on behalf of rival parties, it would be appropriate to refer to the evidence led in the matter at some length.

18. Vijay Bahadur Rai has been produced as PW-1, who is witness of inquest. He has proved the inquest report in his examination-in-chief. In the cross-examination, he has stated that place of occurrence is actually a ward of Muhammadabad town, which is also a town area. He has stated that he heard about the murder of deceased at about 6.00 in morning and arrived at village Mathiya alongwith large number of other villagers at about 7.00 am. He has stated that prior to his arrival at the place of occurrence, large number of persons as well as police had already arrived and gathered there. The SHO of Muhammadabad had come to the place of occurrence at about 12.00 noon by when the dead body of deceased was still lying there. He has stated that the SHO took the dead body alongwith other villagers, including PW-1, to the police station where the inquest was conducted. He has stated that the inquest was completed at about 2.00 in the afternoon. It was thereafter that the dead body was taken by the police for

postmortem to Ghazipur. The defence relies upon this testimony of PW-1 to submit that police papers are fudged and not reliable.

19. PW-2 Ravi Kant is also a witness of inquest. He too has proved the inquest report. Contrary to what has been stated by PW-1, PW-2 has stated that the inquest was conducted at the place of occurrence. He has further stated that the Investigating Officer has not interrogated him.

20. PW-3 is Dr. Nishar Ahmad, who has proved the postmortem report and has specified the injuries found on the deceased. As per him, the deceased met an instant death on account of gunshot injury sustained on his head. As per the doctor the deceased had eaten something about 3-3½ hours prior to the incident since undigested food was found in his stomach. He also found existence of gases and fecal matter in his intestine and opined that either deceased was suffering from constipation or had not eased himself. He has explained that Injury No. 1 & 4 are firearm wounds of entry whereas Injury No. 2 & 5 are firearm wound of exit. The witness has stated that the deceased would have died at about 6.00 in the morning and that variation of 2-4 hours in the estimated time of death is possible. He has opined that it was possible that the deceased died at about 2.00 or 3.00 in the night.

21. PW-4 is the sole eye-witness, who has supported the prosecution case and, therefore, his statement needs a careful examination. This witness is the cousin of the first informant and has stated that on the date of incident he was on way to the Yusufpur market to purchase paddy seeds. He sat below a tree to take rest in a grove. He saw firing on the motorcycle on which the deceased was sitting with the informant. The two accused were also on a motorcycle. Angad Rai was driving it while the other accused Gora Rai had pistols in both his hands from which he fired on the deceased. The gunshot, however, missed. The motorcycle of deceased fell and he rushed towards Mathiya basti to save himself. The accused followed the deceased on the motorcycle and got down

after about 15 paces and rushed in the lane. After the witness reached a well, he heard 4-5 gunshots and saw the two accused coming out of the house of Shiv Kumar Yadav. He went inside the house of Shiv Kumar Yadav and saw that the deceased had fallen on the roof of Shiv Kumar Yadav.

22. In the cross-examination, PW-4 has stated that for work he used to go to Muhammadabad on foot which took about an hour's time. PW-4 has disclosed that he has two sons in the age group of 25-35 years, who look after the agricultural work and that the witness also supports them. This witness retired as a Constable from West Bengal Police. He has admitted that in 1977 Shiv Sagar Rai had been killed wherein the deceased was an accused. He has also been confronted with the criminal antecedent of the deceased. He has been confronted with his previous statement made under Section 161 Cr.P.C. where he had not disclosed the Investigating Officer about his purpose of going to the market i.e. to buy seeds. He has also stated that because of his advance age he cannot walk fast and often suffers from pain in his legs. In his further cross-examination, PW-4 has admitted that market is held in Yusufpur on Tuesday and Saturday and that on other days no market is held. However, the shops remain open. He has disclosed that soon after the incident he returned to the village to inform about the murder of Rajendra, but he did not inform this fact to his son, when he crossed him on the way. He has also stated that after the incident he fell sick and his statement was recorded later on. The witness has further explained that informant slammed his head on seeing the dead body of his son. Clothes worn by informant were soaked with blood as he tried to hold the deceased. The witness further claims that on entering the house of Shiv Kumar Yadav he saw only a girl aged 18-20 years cooking food and that none else was present. He claims to have seen the incident from a distance of 100 paces. The witness has admitted that he has weak eye-sight and that only by wearing specs he can read or write.

23. PW-5 Dinesh Kumar Pandey is the son of informant's daughter and has supported the prosecution case, particularly with regard to receiving of threat by deceased about 10-15 days prior to the incident. He claimed that deceased and other family members had their meal around 2.30 the previous night. This witness in the cross-examination has been confronted with his previous statement made under Section 161 Cr.P.C. where he had not disclosed the fact of deceased having food at about 2.30 in the previous night. PW-5 has denied the suggestion that the statement about having food at 2.30 in the night has been cooked up in order to explain the medical evidence.

24. PW-6 Rakesh Kumar Rai is the son of the deceased who feigned ignorance that his mother had won election of Block Pramukh in the year 1995, 1996 but later lost the election. He asserted that only his grandfather was present when scribed the written report. He claims that he had not gone to the police station to lodge the report.

25. PW-7 Tara Yadav has stated that she was at her maternal house on the date of incident at Mathiya. She heard that somebody had died in her house and did not return till evening. She denied seeing anyone running away with a firearm. In the cross-examination, she has stated that she left while it was still dark to ease herself and by the time she returned before the sunrise she found that crowd had gathered at her house. This witness also carried her three year old daughter with her. She has denied that there was any girl aged 17-18 years in the house. She has not identified the two accused. She did not notice as to when the family members of the deceased arrived. She claims that by the time she returned, she found police personnel present but none of the family member of the deceased was weeping.

26. PW-8 Yogendra Yadav, PW-9 Ashok Singh Yadav and PW-10 Triveni Yadav incidentally have been produced on the same day before the court below by the prosecution. These three witnesses

have not supported the prosecution case either in the examination-in-chief, or in the cross-examination. Much emphasis is laid to contend that there was a strong undercurrent and extraneous influence at work due to which witnesses turned hostile and even the conduct of prosecution officer was questionable. This aspect of the matter shall be dealt with, later.

27. PW-11 Rampreet Chauhan is the Constable, who was present at the time of inquest and has taken the body of deceased to the mortuary. PW-12 Kamlesh Yadav and PW-13 Mahendra Yadav are also resident of village Mathiya, who have been produced on the same day i.e. 5.12.2007 and they too have turned hostile.

28. PW-14 Jagdish Kumar Yadav is the second Investigating Officer. He has stated that during investigation no evidence was found against the accused Mukhtar Ansari and Afzal Ansari and, therefore, their names were excluded from further investigation. He claims to have tried to locate PW-4 – Chandra Shekhar Rai, but he was not available and, therefore, his statement was recorded at the police station only on 9.7.2005. This witness has stated that PW-4 had not disclosed him that he was going to purchase seed from Yusufpur. He has also stated that PW-4 did not inform him during investigation that he had reached 20 minutes prior to the incident, nor had he informed him that after a couple of minutes he left for the village to inform about the murder of the deceased. The witness also found no trace of any motorcycle, nor such a motorcycle was made available to the Investigating Officer and even details of such motorcycle was not furnished. During investigation it could not be ascertained as to by which route the deceased reached the place of incident. This witness has also stated that it was not possible from point 'B' shown in the site plan to see point 'D' as there were bamboo plants in between. He claimed that no firearm was recovered on the pointing out of the accused. He has further stated that the deceased was a history-sheeter and his wife was a Block Pramukh. In case crime no.411 of 2004, under Section 302 IPC the

brother of accused Angad Rai was killed and Krishnanand Rai was accused therein as a conspirator. He claimed that Sri Rai had telephoned him to know about the progress of the case.

29. PW-15 Harish Chandra Rai is the first Investigating Officer and has proved the recoveries made from the place of occurrence. He has stated that PW-5 never informed him that the deceased was frightened or that any threat was received by him from Ansari brothers about 15 days back. This witness has also been confronted with various improvements made in the statement of PW-5 and he has stated that such disclosure was not made to him by the witness during investigation. When he arrived at the place of occurrence, he found the dead body of deceased on the roof of Shiv Kumar Yadav and not on the stairs. He also asserted that no motorcycle was traced, nor its detail was furnished; he tried to locate Chandra Shekhar Rai and had also visited his house but was informed that he had gone to Ghazipur and on 30th he was not well. This witness has stated that till investigation was carried out by him no eye witness from village Mathiya had given statement in support of the prosecution case. No eye witness had come forward to implicate accused Angad Rai.

30. PW-16 S.I. Ram Awadh Adarsh in his statement has stated that Rakesh Kumar Rai had come alongwith the informant to lodge the FIR. However, the signatures of the informant or his companion were not obtained on the FIR.

31. PW-17 is Mangla Yadav, who has proved the police papers and had conducted the inquest. He has stated that after the inquest was conducted at 10.05 in the morning, he delivered the dead body to the Constables, who took it by a Jeep.

32. PW-18 Smt. Brijbala Rai has supported the prosecution case with regard to receiving of threats by the deceased, to leave the company of Krishnanand Rai, and join Ansari Brothers. She has supported the prosecution case that four persons arrived on two

motorcycles at 8.00 pm the day prior to the incident and extended threats to her husband. Her husband allegedly told such persons that he would not leave Krishnanand Rai. Later, the deceased informed PW-18 that he had received threats from Umesh Rai @ Gora Rai. She has stated that the informant came thereafter and various family members also arrived at the house. The witness offered food at about 11.00, but as they were troubled, they kept discussing the affairs and it was only around 2.30 that they had food. She also stated that her husband left by motorcycle to lodge the report alongwith informant. In the cross-examination, this witness has admitted that she has engaged two private counsels; all applications etc., were moved by the private counsels with her consent; her son had earlier moved an application for her discharge during trial as Investigating Officer had not correctly recorded her statement; no application was made through the counsel for not appearing as a witness but that she could not depose as she was ill; her statement was incorrectly recorded by the Investigating Officer. This witness has further showed her ignorance about criminal antecedent of her husband. The witness has also been confronted with her previous statement made under Section 161 Cr.P.C. where she had not deposed about the family members having food at about 2.30 in the night.

33. Before proceeding any further it would be worth noticing that the first informant Kapil Dev Rai died few months after the incident and he could thus not be produced in evidence. His statement has been recorded under Section 161 Cr.P.C., which is required to be examined, as the prosecution and the informant submits that his statement made under Section 161 Cr.P.C. be read in evidence in the facts of the present case. We have examined the statement of informant made under Section 161 Cr.P.C. The informant has supported the prosecution case about threats being extended to the deceased by Ansari Brothers to join their party and to leave the company of Krishnanand Rai.

34. There are two statements of the informant. One immediately after the incident and the other after the second Investigating Officer took over investigation on 9.7.2005. He has stated in his first statement that the deceased informed him about threats extended to him in the night preceding the day of incident and then decided that in the morning itself the police be informed. The informant further stated that on account of conspiracy hatched by the Ansari Brothers, the accused Umesh Rai alongwith three unknown persons extended threats to the deceased and chased him with an intent to fire on him. As per the informant his son was driving motorcycle, while he was the pillion rider. The motorcycle fell and his son rushed towards locality where he was chased by the accused and shot dead. In the second statement of the informant recorded on 9.7.2005, name of the other accused Angad Rai was also introduced for the first time. It is also stated that two other persons were also waiting on a motorcycle but their names are not known.

35. The prosecution case essentially proceeds on the premise that the deceased was being pressurized by Ansari Brothers to join their party and dissociate himself with Krishnanand Rai. Though some of the prosecution witnesses have supported this version of the prosecution, but it remains admitted that no charge-sheet was filed against Afzal Ansari and Mukhtar Ansari in the matter. The Investigating Officer has specifically stated that no material was collected during the course of investigation against these two persons and, therefore, during course of investigation itself their names were excluded from the case. During the course of trial also no application was moved under Section 319 Cr.P.C. to summon the Ansari Brothers. Except the version of informant and the statement of close relatives of deceased about receiving of threats from Ansari Brothers no other material apparently was collected against them during the course of investigation.

36. Although it is alleged that Ansari Brothers asked the deceased to leave the company of Krishnanand and join their party and that

this would be in the interest of his life and property but no specific time or place of such threat apparently has been disclosed. The other part of the prosecution story is with regard to threats received from the two accused on the date preceding the incident by Gora Rai and three other unknown persons. No challenge has been laid by anyone to this part of the investigation nor this aspect has been pressed even at the stage of trial. Though we find that allegations were made against Ansari brothers of extending threats to the deceased for joining their party but it remains a fact that neither they were charge-sheeted nor summoned during trial under section 319 Cr.P.C. No date, time or place is otherwise disclosed when such threat was extended by these two persons, directly. No overt act is attributed to these two persons and they are not a party to these proceedings. We are thus not inclined to invoke our jurisdiction under section 391 Cr.P.C. by directing further probe in the matter after expiry of 18 years, though we are not impressed by the manner in which investigation was suddenly dropped against them.

37. We are constrained to make some observations on the manner in which the investigation has been carried out in this case. We have examined the facts of the case and we find that the incident occurred in the house of Shiv Kumar Yadav, however, Shiv Kumar Yadav has not been produced in evidence by the prosecution. None of the other neighbours of the house have been produced either. The allegation made by the first informant with regard to threats extended by the political persons named in the police report has also not been investigated thoroughly and properly. No material has been referred to by the Investigating Officer on the basis of which an opinion could be formed that the plea of threats extended to the deceased by the political persons named in the report was baseless. We do not find the subjective satisfaction of the Investigating Officer on the role of the political persons for extending threats to be well founded. We, however, refrain ourselves from saying anything further as those persons are neither before the Court nor any charge-sheet has been filed while investigation. We, therefore, confine the scope of this

appeal to the evidence on record against the two convicted accused. The impassioned prayer made by Sri D. K. Singh, in this regard, is thus reluctantly declined.

38. With regard to the incident of 27.6.2005, it is the prosecution case that the deceased had left alongwith the informant to lodge the report early in the morning. The prosecution case further is that while they were going towards the police station they were intercepted by two accused at village Mathiya and thereafter the deceased was shot dead. This part of the prosecution version is based upon the testimony of eye-witnesses and also the documentary evidence, referred to above.

39. The postmortem report in this case has been proved by the doctor, as per which, the deceased had sustained two firearm injuries which resulted in his death. In the opinion of the doctor the death of the deceased was a result of ante-mortem head injury from the firearm. It is, therefore, proved beyond doubt that the deceased died a homicidal death. The question is as to whether the two accused appellants on the basis of evidence led in the matter can be held responsible for the offence or not?

40. So far as the version of first informant is concerned, admittedly he died and he could not depose before the court below. His statement made under Section 161 Cr.P.C. has limited appeal as it neither contains his signatures nor the accused appellants have any opportunity to cross-examine such version.

41. The prosecution case essentially relies upon the testimony of PW-4. PW-4 is the cousin of the first informant and is the uncle of the deceased. He is thus a related witness. This witness has stated that he was going to Yusufpur market to buy seeds. As per the witness, he had left at about 5.00 in the morning and as he got tired he sat in a grove to take rest. It is at this juncture that he saw the incident.

42. The presence of the witness at the place of occurrence is seriously questioned on behalf of the defence. So far as the purpose of going to Yusufpur market early in the morning for buying paddy seeds is concerned, we find that the specific purpose of visit to market has not been disclosed by the witness in his statement under Section 161 Cr.P.C. What has been stated by the witness in his statement under Section 161 Cr.P.C. is that he was going to the market. The witness has admitted in his cross-examination that Yusufpur market is held twice in a week i.e. Tuesday and Saturday. As the day of incident was Monday, therefore, there was no market on the date of incident. The presence of PW-4 near the place of occurrence is thus a matter of chance. In his statement made before the court PW-4 disclosed that he had reached Mathiya about 20 minutes before the incident which is a clear improvement from his previous statement under section 161 Cr.P.C. as per which he had just arrived when the incident occurred. PW-4 is thus a related and chance witness whose testimony will have to be minutely scrutinized. The statement under Section 161 Cr.P.C. about going to the market is questioned on the ground that such a market is not held on Monday and the specific purpose of buying paddy seed is an improvement made at the stage of trial. In view of the fact that PW-4 is a related witness and his presence otherwise is a matter of chance, therefore, his testimony will have to be carefully analyzed by the Court.

43. At this juncture, it may be worth observing that conviction of an accused is possible on the basis of solitary testimony of an eye-witness, but the court will have to be satisfied with regard to his truthfulness for such purpose. In the facts of the case, PW-4 is 80 year old. He has admitted in his deposition that he is suffering from old age disease since his organs are weak; he has pain in his legs and cannot move fast; his vision is limited and he can read or write only with the help of specs. Otherwise at the age of 80 years the faculties of a man would be somewhat restricted. To what extent such person can see the incident from a distance of 100 paces would

remain a fact to be carefully evaluated.

44. We have perused the site plan, as per which, PW-4 was sitting beneath a tree in the grove adjoining the main road. He claims that the deceased was at a distance of 100 paces when he saw the accused firing at him. The version of PW-4 is that the gunshots fired at the deceased while he was on the motorcycle hit none but the motorcycle fell. This part of the version of PW-4 is not supported by the statement of first informant in his statement under Section 161 Cr.P.C. nor is it contained in the first information report. We also find that no motorcycle has otherwise been found on the spot. There is no recovery of the motorcycle, nor any of the prosecution witnesses have disclosed the details and description of the motorcycle. The fact that motorcycle was neither found on the spot, nor it contains any description in the FIR or the statement of informant under Section 161 Cr.P.C. creates a doubt in the prosecution case. PW-4 has stated that he did not venture towards the place of firing. This statement, therefore, conveys that PW-4 remained at the grove when the incident of firing took place on the road. PW-4 then states that he saw the deceased rushing towards the village abadi. The site plan shows that in front of the place where PW-4 was standing was the hutment of Ramkrit and Kamlakar Yadav. There are also bamboo plants behind hutment. PW-4 has also admitted that even in the lane in front of the place where he was standing there existed house on both sides. We, therefore, find it somewhat difficult to comprehend as to how at the age of 80 years with limited sight and weak legs the deceased could see at such distance and recognize the accused. The version of PW-4 further is that the deceased rushed towards the house of Tara Yadav and reached the roof top of Shiv Kumar Yadav by the stairs. The site plan shows spot 'D' from where this part of the incident is alleged to have been seen by PW-4. The locality has number of houses and a lane exists by which the witness claims to have travelled to the point 'D'. The witness then states that he entered the house and saw that the dead body of deceased was lying on the roof of Shiv Kumar Yadav. In his further statement, PW-4

claims that the first informant slammed his head on the stair case and he sustained injuries and his clothes got wet with blood. However, no bloodstained clothes of the informant are collected during investigation. No injury on the informant has otherwise been found. Such injuries otherwise would have been noticed when the informant reached the police station to lodge the report.

45. PW-4 further states that, he stayed at the place of occurrence for about a minute and immediately returned to the village to inform the family and others about the incident. In the cross-examination, PW-4, however, admits that he crossed the son of the deceased on the way, but did not inform him anything about the incident. This part of the testimony of PW-4 is difficult to believe, inasmuch as, in the event he was returning to village to inform about the incident there was no reason why he would not disclose about the incident to the son of the deceased. What is further amusing is that PW-4 neither came back to the place of incident, nor participated in the cremation and gave no statement to the police. The statement of PW-4 was recorded for the first time on 9.7.2005 which is after 13 days of the incident. PW-4 has also admitted that prior to his statement recorded under Section 161 Cr.P.C. on 9.7.2005, he did not disclose anyone about the incident in the entire village. We find this conduct of PW-4 to be somewhat unusual. Having seen such ghastly act the natural conduct of a person would be to immediately disclose it to the family members or to those who were close to him. His act of not disclosing the incident either to the son of the deceased or to anyone else in the family for more than 10 days is questionable.

46. Sri Durgesh Kumar Singh, learned counsel for the informant states that the first Investigating Officer acted in a partisan manner and only after the second Investigating Officer took over the investigation that the statement of PW-4 was recorded needs to be examined at this juncture. It is a matter of fact that only the second Investigating Officer had recorded the statement of PW-4. PW-4,

however, never stated that he informed anyone of the incident or offered to get his statement recorded or that his version was not noticed/recorded by the Investigating Officer. The Investigating Officer in his statement before the Court has stated that he tried to locate Chandra Shekhar Rai on the date of incident but he was not available. He came to the house of PW-4 on 28.6.2005 but he was informed that PW-4 had gone to Ghazipur. On 30.6.2005, PW-4 was not well enough for his statement to be recorded. Since PW-4 has not alleged in his testimony that he was available for his statement to be recorded or that his statement was actually not recorded, though he informed such fact, it would be difficult for this Court to accept the explanation of delay in recording of his statement on the premise that the first Investigating Officer did not act fairly. PW-4 in his testimony has also stated that when he entered the house of Shiv Kumar Yadav, he only found a girl aged 18-20 years, who was cooking food. This girl, however, has neither been interrogated, nor has been produced in evidence. PW-4 has not alleged that anyone else was present in the house at the time of occurrence.

47. We have carefully examined the testimony of PW-4 and on analyzing it on the touchstone of an interested chance witness we find it difficult to rely upon his testimony which otherwise leaves multiple inconsistencies and improvements unexplained. The other witnesses who have supported the prosecution case are PW-5, 6 and 18.

48. So far PW-5 is concerned, he admittedly is the grandson of the first informant, as such, he too is related to the deceased. PW-5 is a witness who has proved the recovery of bloodstained and plain earth, etc. He is the witness to the recovery of two pellets and two empties. Apart from it, he has stated that he saw the deceased troubled and on asking he was informed that someone had threatened him about 10-15 days back. In the cross-examination, however, this witness has been confronted with his previous statement under Section 161 Cr.P.C., wherein no such disclosure was

made to the Investigating Officer. The version of PW-5 about the deceased having received threats about 10-15 days prior to the incident is thus a clear improvement from what was stated by him earlier. His further testimony that three persons alongwith accused Gora Rai had extended threats is also not mentioned in his statement under Section 161 Cr.P.C. The statement of PW-5 that family members had taken food at about 2.30 in the night is also an improvement made in his statement during trial of which no reference is made earlier in his statement made under Section 161 Cr.P.C. The testimony of PW-5 is thus not of help to the prosecution case.

49. PW-6 is the scribe of the FIR and though his statement that he had not gone to the police station to lodge the FIR is questioned with reference to the statement of the Investigating Officer, but we do not intent to dwelve deeper as we do not find it to be a matter of much significance. It remains undisputed that the written report was scribed by PW-6 and the same is duly proved. The testimony of PW-6 is limited to such extent.

50. The place of incident in the present case is the roof top of the house of Shiv Kumar Yadav. Shiv Kumar Yadav has not been produced in evidence during trial. His statement, however, has been recorded under Section 161 Cr.P.C., which states that Chandra Dev Yadav is his brother. Chandra Dev Yadav gave his house to his daughter Tara Yadav, but generally people treat her house to be that of Shiv Kumar Yadav. Tara Yadav has been produced as PW-7. She has clearly stated that she left at the day-break to attend natures call alongwith her daughter and returned prior to sunrise. She saw large number of persons at her house. She also learnt that a dead body was at roof top and was removed in the afternoon. She also stated that by the time she returned prior to sunrise police personnels had already reached the place of occurrence.

51. On behalf of the defence, an argument has been raised questioning the timing of incident disclosed by the prosecution.

Reliance is placed upon the statement of PW-7 to submit that the incident had occurred prior to the sunrise. We have been informed that on the date of incident the sunrise was at about 5.06 am. Strong reliance is placed upon the testimony of PW-7 as she is an independent person. Reliance is also placed upon the testimony of PW-3, who is the autopsy surgeon and has clearly deposed that the deceased had her food about 3.00 to 3.30 hours prior to the incident. Such opinion of the doctor is based upon the fact that semi-digested food was found in the stomach of the deceased. It is also urged that normally people have their meal at about 8.00-9.00 in the villages and, therefore, the fact that semi-digested food was found in the stomach of the deceased indicates that the incident occurred much prior to the time disclosed by the prosecution. As per the defence the incident may have occurred around 3.00-4.00 in the morning. The presence of PW-4 is also questioned on the strength of time of incident.

52. The prosecution in order to meet the medical evidence has come out with the testimony of witnesses as per which the entire family, including the deceased, had their meal at about 2.30 in the night. The statement of PW-5 in that regard, however, is questioned on the ground that such disclosure was not made earlier in his statement under Section 161 Cr.P.C. The other witness, who comes with such explanation is PW-18 Smt. Brijbala Rai, who happens to be the wife of the deceased. Her statement emerges in somewhat peculiar circumstances. PW-18 is shown as a witness in the charge-sheet. She was, however, not produced during trial. An application was moved on 03.04.2008 (Paper no. 101Ba) signed by the prosecution officer and also the private counsel engaged by PW-18 Girja Shankar Rai for discharge of PW-18 during trial. This application was allowed on 03.04.2008 itself. PW-18 was later was introduced in evidence after the statement of accused was recorded under Section 313 Cr.P.C. This witness has specifically alleged that the entire family and relatives sat in the night to discuss the threat received by deceased and it was only around 2.30 in the night that

they all had their meals. This statement, however, is a clear improvement over what was earlier disclosed by this witness during her interrogation under Section 161 Cr.P.C. No plausible explanation has been furnished by the prosecution for such improvement to have come into existence at such late stage of proceeding. PW-18 has also stated for the first time that her husband had gone on a motorcycle. This fact is also an improvement and was not disclosed in her statement under Section 161 Cr.P.C. We do not find the testimony of PW-18 to be convincing or reliable, particularly as her statement contains material improvements from what was disclosed by her earlier to the Investigation Officer. A serious doubt is raised upon the timing of the incident inasmuch as the existence of semi-digested food in the stomach of the deceased supports the defence version that time of incident was prior to 6.30 in the morning. This doubt in the timing of incident finds support from the testimony of PW-7. The desperate attempt on part of the prosecution to explain the medical evidence on the aspect of timing by improvements made in the testimony of PW-5 and PW-18 also generates doubt in the prosecution case.

53. We have examined the judgment of conviction and sentence passed by the court below wherein the trial court has noticed that the solitary evidence of prosecution in this case is PW-4, and his testimony has been relied upon primarily to convict and sentence the accused appellants. We have perused the judgment of the trial court which does not show that the testimony of PW-4 was carefully analyzed by the trial court. The fact that PW-4 was a related and chance witness whose testimony needed a closure scrutiny has completely escaped the attention of the court below. The limited faculties of PW-4 at the advance age of 80 years has also been overlooked. The questions raised with regard to timing of incident as per the prosecution has also been overlooked only on the ground that couple of hours variation can be expected in the assessment of time. Though as a matter of prudence such difference can be ignored but where the prosecution case is seriously challenged on

other parameters also the court will have to view the evidence in its entirety so as to determine whether the deposition of the witnesses contains a ring of truth around it. The delay occasioned in recording of the statement of PW-4 has also escaped the attention of the court below.

54. Sri D.K. Singh appearing for the informant has strenuously relied upon the judgment of Supreme Court in *Rajesh Yadav and another vs. State of U.P.*, (2022) 12 SCC 200 to submit that where material lapses occurred in the case of the investigation it becomes the duty of the court to step in for the aid of justice. Para 21 and 39 of the judgment have been relied upon, which are reproduced hereinafter:-

"21. The expression "hostile witness" does not find a place in the Evidence Act. It is coined to mean testimony of a witness turning to depose in favour of the opposite party. We must bear it in mind that a witness may depose in favour of a party in whose favour it is meant to be giving through his chief-examination, while later on change his view in favour of the opposite side. Similarly, there would be cases where a witness does not support the case of the party starting from chief-examination itself. This classification has to be borne in mind by the Court. With respect to the first category, the Court is not denuded of its power to make an appropriate assessment of the evidence rendered by such a witness. Even a chief-examination could be termed as evidence. Such evidence would become complete after the cross-examination. Once evidence is completed, the said testimony as a whole is meant for the court to assess and appreciate qua a fact. Therefore, not only the specific part in which a witness has turned hostile but the circumstances under which it happened can also be considered, particularly in a situation where the chief-examination was completed and there are circumstances indicating the reasons behind the subsequent statement, which could be deciphered by the court. It is well within the powers of the court to make an assessment, being a matter before it and come to the correct conclusion.

39. Before we part with this case, we are constrained to record our anguish on the deliberate attempt to derail the quest for justice. Day in and day out, we are witnessing the sorry state of affairs in which the private witnesses turn hostile for obvious reasons. This Court has already expressed its views on the need for a legislative remedy to curtail such menace. Notwithstanding the abovestated directions issued by this Court in *Vinod Kumar [Vinod Kumar v. State of Punjab, (2015) 3 SCC 220 : (2015) 2 SCC (Cri) 226 : (2015) 1 SCC (L&S) 712]*, we take judicial note of the

factual scenario that the trial courts are adjourning the cross-examination of the private witnesses after the conclusion of the cross-examination without any rhyme or reason, at the drop of a hat. Long adjournments are being given after the completion of the chief-examination, which only helps the defence to win them over at times, with the passage of time. Thus, we deem it appropriate to reiterate that the trial courts shall endeavour to complete the examination of the private witnesses both chief and cross on the same day as far as possible. To further curtail this menace, we would expect the trial courts to take up the examination of the private witnesses first, before proceeding with that of the official witnesses. A copy of this judgment shall be circulated to all the trial courts, to be facilitated through the respective High Courts.”

55. In the abovenoted case before the Supreme Court the witness had initially supported the prosecution case in the examination-in-chief but turned hostile, later, at the stage of cross-examination. The Supreme Court has deprecated the adjournment of trial after the statement of witness is recorded in examination-in-chief as such time is utilized either to win over the witness or to extend threats etc. In the facts of the present case the witnesses who have turned hostile have not supported the prosecution case at the stage of examination-in-chief itself. The judgment of Supreme Court in *Rajesh Yadav*, therefore, though lays down important principle for guidance of the Court but is not shown to have relevance on the facts of this case.

56. Sri D.K. Singh has also placed reliance upon the judgment of the Supreme Court in *Shahaja @ Shahajan Ismail Mohd. Shaikh vs. State of Maharashtra*, 2022 SCC OnLine SC 883, wherein the Supreme Court has evolved thirteen principles for appreciation of ocular evidence. Para 27 and 28 of the judgment which contains these principles are reproduced hereinafter:-

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

I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for

the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

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

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

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

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

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

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

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

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

to be a human tape recorder.

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

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

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

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

[See *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, 1983 Cri LJ 1096 : (1983) 3 SCC 217 : AIR 1983 SC 753, *Leela Ram v. State of Haryana*, (1999) 9 SCC 525 : AIR 1999 SC 3717, and *Tahsildar Singh v. State of UP*, AIR 1959 SC 1012]

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

account while assessing the value of the prosecution evidence."

57. The first principle laid down by the Supreme Court for evaluation of ocular evidence is that the evidence of witness has to be read as a whole in order to ascertain that it has a ring of truth around it. We have carefully examined the testimony of the sole eye-witness on the touchstone of an interested chance witness and we find that his testimony is shaky and does not inspire confidence of the Court. In *Md. Jabbar Ali and others Vs. State of Assam*, reported in 2022 SCC OnLine SC 1440, the Supreme Court laid down parameters for examining the testimony of interested witness in paragraph nos.55 to 58 of the report, which are extracted hereinafter:-

"55. It is noted that great weight has been attached to the testimonies of the witnesses in the instant case. Having regard to the aforesaid fact that this Court has examined the credibility of the witnesses to rule out any tainted evidence given in the court of Law. It was contended by learned counsel for the appellant that the prosecution failed to examine any independent witnesses in the present case and that the witnesses were related to each other. This Court in a number of cases has had the opportunity to consider the said aspect of related/interested/partisan witnesses and the credibility of such witnesses. This Court is conscious of the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded, however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinized with greater care and circumspection. In the case of *Gangadhar Behera and Ors. v. State of Orissa* (2002) 8 SCC 381, this Court held that the testimony of such related witnesses should be analysed with caution for its credibility.

56. In *Raju alias Balachandran and Ors. v. State of Tamil Nadu* (2012) 12 SCC 701, this Court observed:

"29. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in *Dalip Singh* [AIR 1953 SC 364] and pithily reiterated in *Sarwan Singh* [(1976) 4 SCC 369] in the following words: (*Sarwan Singh* case [(1976) 4 SCC 369, p. 376, para 10])

"10. ... The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration."

57. Further delving on the same issue, it is noted that in the case of Ganapathi and Anr. v. State of Tamil Nadu (2018) 5 SCC 549, this Court held that in several cases when only family members are present at the time of the incident and the case of the prosecution is based only on their evidence, Courts have to be cautious and meticulously evaluate the evidence in the process of trial.

58. It is thus settled that the evidence of the related witnesses have to be considered by applying discerning scrutiny."

58. On the evaluation of evidence led by the prosecution in this case and on the basis of discussions held above, we find that it would not be safe to rely upon the testimony of sole eye-witness, namely PW-4, to convict the accused appellants under Section 302, 506 IPC. The finding returned by the court below with regard to guilt of the accused appellants is, therefore, liable to be reversed.

59. We have also factored in the fact that accused appellants have remained in incarceration for over sixteen years and once a doubt is raised with regard to their implication it would not be safe to hold them guilty.

60. Accordingly, this appeal succeeds and is allowed. The impugned judgment and order dated 26.09.2014 is hereby set aside and the appellants are acquitted of the charges levelled against them. Since the appellants have already been released on bail by the Supreme Court, as such, their sureties and bonds shall stand discharged and they shall be set free, unless they are wanted in any other case, subject to compliance of section 437A Cr.P.C.

Order Date:- 23.5.2023
Ranjeet Sahu/Ashok Kr./Anil

(Vinod Diwakar, J.)

(Ashwani Kumar Mishra, J.)