COMPENDIUM OF CASE LAWS ON

APPRECIATION OF EVIDENCE



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BHOJPUR JUDGESHIP

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Absconding Accused Right To Appeal

1. This extract is taken from *Dhananjay Rai v. State of Bihar*, (2022) 14 SCC 95 : 2022 SCC OnLine SC 880 at page 97

ABHAY S. OKA, J.— The short issue involved in this appeal is whether an appeal against conviction filed by an accused under sub-section (2) of Section 374 of the Code of Criminal Procedure, 1973 (for short "CrPC") can be dismissed on the ground that the accused is absconding.

4. The Division Bench held that though the remedy of an appeal is a valuable right, the appellant forfeited his right to prefer an appeal the moment he escaped from the custody and flagrantly abused the process of law. The learned Judges held that such deliberate act on the part of the appellant amounts to defiance of the criminal administration of justice. The Division Bench referred to a decision of this Court in *Shyam Deo Pandey* v. *State of Bihar* [*Shyam Deo Pandey* v. *State of Bihar*, (1971) 1 SCC 855 : 1971 SCC (Cri) 353] . The Division Bench referred to another decision of this Court in *Surya Baksh Singh* v. *State of U.P.* [*Surya Baksh Singh* v. *State of U.P.*, (2014) 14 SCC 222 : (2015) 1 SCC (Cri) 313] as well as a decision of the same High Court in *Daya Shankar Singh* v. *State of Bihar* [*Daya Shankar Singh* v. *State of Bihar*, 2004 SCC OnLine Pat 1189] . After adverting to another decision of this Court in *K.S. Panduranga* v. *State of Karnataka* [*K.S. Panduranga* v. *State of Karnataka*, (2013) 3 SCC 721 : (2013) 2 SCC (Cri) 257 : (2013) 1 SCC (L&S) 791] , the Division Bench held that the circumstances of the case before it were exceptional and, therefore, the Court was required to deviate from the settled principle of law that once the appellate court has refused to dismiss the appeal summarily, the same must be heard on merits.

6. In the impugned judgment [*Dhananjay Rai* v. *State of Bihar*, 2015 SCC OnLine Pat 6996] , the Division Bench of the Patna High Court has itself recorded that it is deviating from the settled position of law. Such an approach cannot be countenanced. The well-settled law can be found in the decision of this Court of a Bench consisting of three Hon'ble Judges in *Bani Singh* v. *State of U.P.* [*Bani Singh* v. *State of U.P.*, (1996) 4 SCC 720 : 1996 SCC (Cri) 848] The issue before this Court in the said case was whether the High Court was justified in dismissing an appeal against conviction for non-prosecution. This Court noted the conflict in the views expressed by two coordinate Benches of this Court in *Shyam Deo* [*Shyam Deo Pandey* v. *State of Bihar*, (1971) 1 SCC 855 : 1971 SCC (Cri) 353] and *Ram Naresh Yadav* v. *State of Bihar* [*Ram Naresh Yadav* v. *State of Bihar*, (2014) 14 SCC 238 : (2015) 1 SCC (Cri) 327] .

Paras 13 to 15 of the said decision are relevant, which read thus : (*Bani Singh case* [*Bani Singh* v. *State of U.P.*, (1996) 4 SCC 720 : 1996 SCC (Cri) 848] , SCC pp. 725-27)

"*13*. What then is the area of conflict between the two decisions of this Court? In *Shyam Deo case* [*Shyam Deo Pandey* v. *State of Bihar*, (1971) 1 SCC 855 : 1971 SCC (Cri) 353] , this Court ruled that once the appellate court has admitted the appeal to be heard on merits, it cannot dismiss the appeal for non-prosecution for non-appearance of the appellant or his counsel, but must dispose of the appeal on merits after examining the record of the case. It next held that if the appellant or his counsel is absent, the appellate court is not bound to adjourn the appeal but it can dispose it of on merits after perusing the record. In *Ram Naresh Yadav case* [*Ram Naresh Yadav* v. *State of Bihar*, (2014) 14 SCC 238 : (2015) 1 SCC (Cri) 327] , the Court did not analyse the relevant provisions of the Code nor did it notice the view taken in *Shyam Deo case* [*Shyam Deo Pandey* v. *State of Bihar*, (1971) 1 SCC 855 : 1971 SCC (Cri) 353] but held that if the appellant's counsel is absent, the proper course would be to dismiss the appeal for non-prosecution but not on merits; it can be disposed of on merits only after hearing the appellant or his counsel or after appointing another counsel at State cost to argue the case on behalf of the accused.

14. We have carefully considered the view expressed in the said two decisions of this Court and, *we may state that the view taken inShyam Deo case* [*Shyam Deo Pandey* v. *State of Bihar*, (1971) 1 SCC 855 : 1971 SCC (Cri) 353] *appears to be sound except for a minor clarification which we consider necessary to mention*. The plain language of Section 385 makes it clear that if the appellate court does not consider the appeal fit for summary dismissal, it "must" call for the record and Section 386 mandates that after the record is received, the appellate court may dispose of the appeal after hearing the accused or his counsel. *Therefore, the plain language of Sections 385-386 does not contemplate dismissal of the appeal for non-prosecution* [**Ed.** : The word or matter between two asterisks has been emphasised in original.] *simpliciter* [**Ed.** : The word or matter between two asterisks has been emphasised in original.] . *On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record. The law clearly expects the appellate court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial court are consistent with the material on record. The law, therefore, does not*

envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record. Therefore, with respect, we find it difficult to agree with the suggestion inRam Naresh Yadav case [*Ram Naresh Yadav* v. *State of Bihar*, (2014) 14 SCC 238 : (2015) 1 SCC (Cri) 327] *that if the appellant or his pleader is not present, the proper course would be to dismiss an appeal for non-prosecution*.

15. Secondly, the law expects the appellate court to give a hearing to the appellant or his counsel, if he is present, and to the Public Prosecutor, if he is present, before disposal of the appeal on merits. Section 385 posits that if the appeal is not dismissed summarily, the appellate court shall cause notice of the time and place at which the appeal will be heard to be given to the appellant or his pleader. Section 386 then provides that the appellate court shall, after perusing the record, hear the appellant or his pleader, if he appears. It will be noticed that Section 385 provides for a notice of the time and place of hearing of the appeal to be given to either the appellant or his pleader and not to both presumably because notice to the pleader was also considered sufficient since he was representing the appellant. So also Section 386 provides for a hearing to be given to the appellant or his lawyer, if he is present, and both need not be heard. It is the duty of the appellant and his lawyer to remain present on the appointed day, time and place when the appeal is posted for hearing. This is the requirement of the Code on a plain reading of Sections 385-386 of the Code. The law does not enjoin that the court shall adjourn the case if both the appellant and his lawyer are absent. If the court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the record and the judgment of the trial court. We would, however, hasten to add that if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the accused/appellant if his lawyer is not present. If the lawyer is absent, and the court deems it appropriate to appoint a lawyer at State expense to assist it, there is nothing in the law to preclude it from doing so. We are, therefore, of the opinion and we say so with respect, that the Division Bench which decided *Ram Naresh Yadav case* [*Ram Naresh Yadav* v. *State of Bihar*, (2014) 14 SCC 238 : (2015) 1 SCC (Cri) 327] did not apply the provisions of Sections 385-386 of the Code correctly when it indicated that the appellate court was under an obligation to adjourn the case to another date if the appellant or his lawyer remained absent."

(emphasis supplied)

7. We may note here that the High Court relied upon its earlier decision in *Daya Shankar Singh* [*Daya Shankar Singh* v. *State of Bihar*, 2004 SCC OnLine Pat 1189] which was based on Rule 8 of Chapter XII of the Patna High Court Rules which predicates that no appeal against conviction shall be heard for admission unless the accused has surrendered to the order of the court below convicting him to a sentence of imprisonment except in a case where the appellant has been released on bail by the trial court after convicting him. In the case in hand, the appeal was already admitted on 29-10-2009. Therefore, the said rule, which applies to the pre-admission stage, was not applicable in this case.

8. The anguish expressed by the Division Bench about the brazen action of the appellant of absconding and defeating the administration of justice can be well understood. However, that is no ground to dismiss an appeal against conviction, which was already admitted for final hearing, for non-prosecution without adverting to merits. Therefore, the impugned judgment will have to be set aside and the appeal will have to be remanded to the High Court for consideration on merits.

Appeal Against Acquittal

2. This extract is taken from *Dhanapal v. State*, (2009) 10 SCC 401 : (2010) 1 SCC (Cri) 336 : 2009 SCC OnLine SC 1576 at page 406

22. The earliest case which dealt with the controversy in issue at length is of *Sheo Swarup* v. *King Emperor* [(1933-34) 61 IA 398 : AIR 1934 PC 227(2)] . In this case, the ambit, scope and the powers of the appellate court in dealing with an appeal against acquittal have been comprehensively dealt with by the Privy Council. Lord Russell writing the judgment has observed as under: (IA at p. 404):

> "… the High Court should and will always give proper weight and consideration to such matters as (*1*) the views of the trial Judge as to the credibility of the witnesses; (*2*) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (*3*) the right of the accused to the benefit of any doubt; and (*4*) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

The law succinctly crystallised in this case has been consistently followed in subsequent judgments by this Court.

23. This Court in *Surajpal Singh* v. *State* [1951 SCC 1207 : AIR 1952 SC 52] has spelt out the powers of the High Court. This Court has also reminded the High Courts to follow well-established norms while dealing with appeals from acquittal by the trial court. The Court observed as under: (AIR p. 54, para 7)

> "*7.* It is well established that in an appeal under Section 417 of the Criminal Procedure Code, the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well-settled that the presumption of innocence of the accused [was] further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

This Court reiterated the principles and observed that presumption of innocence of the accused is reinforced by an order of the acquittal. The appellate court could have interfered only for very substantial and compelling reasons.

24. In *Tulsiram Kanu* v. *State* [1951 SCC 92 : AIR 1954 SC 1] this Court explicated that the appellate court would be justified in reversing the acquittal only when a very substantial question and compelling reasons are present. In this case, the Court used a different phrase to describe the approach of an appellate court against an order of acquittal. There, the Sessions Court expressed that there was clearly reasonable doubt in respect of the guilt of the

accused on the evidence put before it. Kania, C.J., observed that it required good and sufficiently cogent reasons to overcome such reasonable doubt before the appellate court came to a different conclusion.

25. The same principle has been followed in *Atley* v. *State of U.P.* [AIR 1955 SC 807] wherein the Court said: (AIR p. 809, para 5)

> "*5.* ... It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.
>
> It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal."

26. In *Balbir Singh* v. *State of Punjab* [AIR 1957 SC 216] this Court again had an occasion to examine the same proposition of law. The Court (at p. 222) observed as under: (AIR para 12)

> "*12.* ... It is now well settled that though the High Court has full power to review the evidence upon which an order of acquittal is founded, it is equally well settled that the presumption of innocence of the accused person is further reinforced by his acquittal by the trial court and the views of the trial Judge as to the credibility of the witnesses must be given proper weight and consideration; and the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses must also be kept in mind, and there must be substantial and compelling reasons for the appellate court to come to a conclusion different from that of the trial Judge."

27. A Constitution Bench of this Court in *M.G. Agarwal* v. *State of Maharashtra* [AIR 1963 SC 200] observed as under: (AIR pp. 205-06, paras 16-17)

> "*16.* ... There is no doubt that the power conferred by clause (*a*) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (*b*) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with

criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial court and so, the fact that the accused person is entitled to the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate court the High Court is generally slow in disturbing the finding of fact recorded by the trial court, particularly when the said finding is based on an appreciation of oral evidence because the trial court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. …

17. … the test suggested by the expression 'substantial and compelling reasons' should not be construed as a formula which has to be rigidly applied in every case. … and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse. … the question which [the Supreme Court has to ask itself, in appeals against conviction by the High Court in such a case,] is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the prosecution case against the appellants had been proved beyond a reasonable doubt, and that the contrary view taken by the trial court was erroneous. In answering this question, [the Supreme Court would,] no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court."

28. In *Khedu Mohton* v. *State of Bihar* [(1970) 2 SCC 450 : 1970 SCC (Cri) 479] this Court gave the appellate court broad guidelines as to when it could properly disturb an acquittal. The Court observed as under: (SCC p. 452, para 3)

"*3*. It is true that the powers of the High Court in considering the evidence on record in appeals under Section 417 CrPC, are as extensive as

its powers in appeals against convictions but that court at the same time should bear in mind the presumption of innocence of accused persons which presumption is not weakened by their acquittal. It must also bear in mind the fact that the Appellate Judge had found them not guilty. Unless the conclusions reached by him are palpably wrong or based on erroneous view of the law or that his decision is likely to result in grave injustice, the High Court should be reluctant to interfere with his conclusion. *If two reasonable conclusions can be reached on the basis of the evidence on record then the view in support of the acquittal of the accused should be preferred. The fact that the High Court is inclined to take a different view of the evidence on record is not sufficient to interfere with the order of acquittal*."

(emphasis supplied)

29. In *Bishan Singh* v. *State of Punjab* [(1974) 3 SCC 288 : 1973 SCC (Cri) 914] , Khanna, J. speaking for the Court provided the legal position: (SCC p. 294, para 21)

"*21*. It is well settled that the High Court in appeal under Section 417 of the Criminal Procedure Code has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as: (*1*) the views of the trial Judge as to the credibility of the witnesses; (*2*) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (*3*) the right of the accused to the benefit of any doubt; and (*4*) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses...."

30. In *K. Gopal Reddy* v. *State of A.P.* [(1979) 1 SCC 355 : 1979 SCC (Cri) 305] the Court observed thus: (SCC p. 360, para 9)

"*9*. ... It stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. *If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt*. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused

must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable. 'A reasonable doubt', it has been remarked, 'does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other; it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reasons'. [Salmond, J. in his charge to the jury in *R.* v. *Fantle* [1959 Cri L Review 584] .]"

(emphasis supplied)

31. In *Tota Singh* v. *State of Punjab* [(1987) 2 SCC 529 : 1987 SCC (Cri) 381] the Court reiterated the same principle in the following words: (SCC p. 532, para 6)

"*6.* … This Court has repeatedly pointed out that the mere fact that the appellate court is inclined on a reappreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. *Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittaleven if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous*."

(emphasis supplied)

32. In *Sambasivan* v. *State of Kerala* [(1998) 5 SCC 412 : 1998 SCC (Cri) 1320] the Court observed thus: (SCC p. 415, para 7)

"*7.* The principles with regard to the scope of the powers of the appellate court in an appeal against acquittal, are well settled. The powers of the appellate court in an appeal against acquittal are no less than in an appeal

against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate court cannot substitute its view in the place of that of the trial court. It is only when the approach of the trial court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate court can interfere with the order of acquittal."

33. In *Bhagwan Singh* v. *State of M.P.* [(2002) 4 SCC 85 : 2002 SCC (Cri) 736] the Court repeated one of the fundamental principles of criminal jurisprudence that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The Court observed as under: (SCC p. 89, para 7)

"*7.* ... The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. Such is not a jurisdiction limitation on the appellate court but [a] Judge-made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided."

35. In *State of Rajasthan* v. *Raja Ram* [(2003) 8 SCC 180 : 2003 SCC (Cri) 1965] this Court observed as under: (SCC pp. 186-87, para 15)

"*15.* ... Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. ... The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference."

36. In *State of Goa* v. *Sanjay Thakran* [(2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] this Court observed as under: (SCC p. 768, para 16)

"*16.* ... while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterised as

perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the court below."

37. In *Chandrappa* v. *State of Karnataka* [(2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] this Court held: (SCC p. 432, para 42)

"(*1*) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(*2*) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(*3*) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(*4*) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(*5*) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

38. In *Ghurey Lal* v. *State of U.P.* [(2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60] a two-Judge Bench of this Court of which one of us (Bhandari, J.) was a member had an occasion to deal with most of the cases referred to in this judgment. The exercise of surveying relevant judgments has again been taken with the hope that the appellate courts would keep in view the settled legal position while dealing with the trial courts' judgments of acquittals.

39. The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the appellate court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused.

3. This extract is taken from *Jodhan v. State of M.P.*, (2015) 11 SCC 52 : (2015) 4 SCC (Cri) 275 : 2015 SCC OnLine SC 303 at page 59

17. In *Ganpat* v. *State of Haryana* [*Ganpat* v. *State of Haryana*, (2010) 12 SCC 59 : (2011) 1 SCC (Cri) 309] , after referring to earlier authorities certain principles have been culled out. They read as follows: (SCC p. 62, para 15)

"*15*. The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly, against an order of acquittal:

(*i*) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded and to come to its own conclusion.

(*ii*) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(*iii*) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons may set aside the judgment of acquittal.

(*iv*) An order of acquittal is to be interfered with only when there are 'compelling and substantial reasons' for doing so. If the order is 'clearly unreasonable', it is a compelling reason for interference.

(*v*) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed."

4. This extract is taken from *Mallappa v. State of Karnataka*, (2024) 3 SCC 544 : (2024) 2 SCC (Cri) 227 : 2024 SCC OnLine SC 130 at page 554

25. We may firstly discuss the position of law regarding the scope of intervention in a criminal appeal. For, that is the foundation of this challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused, unless proven guilty. The presumption continues at all stages of the trial and finally culminates into a fact when the case ends in acquittal. The presumption of innocence gets concretised when the case ends in acquittal. It is so because once the trial court, on appreciation of the evidence on record, finds that the accused was not guilty, the presumption gets strengthened and a higher threshold is expected to rebut the same in appeal.

26. No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on the High Court to reappreciate or re-visit the evidence on record. However, the power of the High Court to reappreciate the evidence is a qualified power, especially when the order under challenge is of acquittal. The first and foremost question to be asked is whether the trial court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the trial court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the trial court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

27. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The "*two-views theory*" has been judicially recognised by the courts and it comes into play when the appreciation of evidence results into two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the trial court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by

reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and liabilities in the eye of the law.

28. In *Selvaraj* v. *State of Karnataka* [*Selvaraj* v. *State of Karnataka*, (2015) 10 SCC 230 : (2016) 1 SCC (Cri) 19] : (SCC pp. 236-37, para 13)

"*13.* Considering the reasons given by the trial court and on appraisal of the evidence, in our considered view, the view taken by the trial court was a possible one. Thus, the High Court should not have interfered with the judgment of acquittal. This Court in *Jagan M. Seshadri* v. *State of T.N.* [*Jagan M. Seshadri* v. *State of T.N.*, (2002) 9 SCC 639 : 2003 SCC (L&S) 1494] has laid down that as the appreciation of evidence made by the trial court while recording the acquittal is a reasonable view, it is not permissible to interfere in appeal. The duty of the High Court while reversing the acquittal has been dealt with by this Court, thus : (SCC p. 643, para 9)

'*9.* … We are constrained to observe that the High Court was dealing with an appeal against acquittal. It was required to deal with various grounds on which acquittal had been based and to dispel those grounds. It has not done so. Salutary principles while dealing with appeal against acquittal have been overlooked by the High Court. If the appreciation of evidence by the trial court did not suffer from any flaw, as indeed none has been pointed out in the impugned judgment, the order of acquittal could not have been set aside. The view taken by the learned trial court was a reasonable view and even if by any stretch of imagination, it could be said that another view was possible, that was not a ground sound enough to set aside an order of acquittal.' "

29. In *Sanjeev* v. *State of H.P.* [*Sanjeev* v. *State of H.P.*, (2022) 6 SCC 294 : (2022) 2 SCC (Cri) 522] , the Hon'ble Supreme Court analysed the relevant decisions and summarised the approach of the appellate court while deciding an appeal from the order of acquittal. It observed thus : (SCC p. 297, para 7)

"*7.* It is well settled that:

7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be dealt with, in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be upturned (see *Vijay Mohan Singh* v. *State of Karnataka* [*Vijay Mohan Singh* v. *State of Karnataka*, (2019) 5 SCC 436 : (2019) 2 SCC (Cri) 586] and *Anwar Ali* v. *State of H.P.* [*Anwar Ali* v. *State of H.P.*, (2020) 10 SCC 166 : (2021) 1 SCC (Cri) 395]).

7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see *Atley* v. *State of U.P.* [*Atley* v. *State of U.P.*, 1955 SCC OnLine SC 51 : AIR 1955 SC 807]).

7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see *Sambasivan* v. *State of Kerala* [*Sambasivan* v. *State of Kerala*, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320])."

41. A word of caution in this regard was sounded by this Court in *Sanwat Singh* v. *State of Rajasthan* [*Sanwat Singh* v. *State of Rajasthan*, 1960 SCC OnLine SC 40 : AIR 1961 SC 715] , wherein it was observed thus : (AIR pp. 719-20, para 9)

"*9.* The foregoing discussion yields the following results : (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in *Sheo Swarup case* [*Sheo Swarup* v. *King Emperor*, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398] afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (*i*) "substantial and compelling reasons", (*ii*) "good and sufficiently cogent reasons", and (*iii*) "strong reasons", are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; *but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.*"

(emphasis supplied)

42. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarised as:

(*i*) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive — inclusive of all evidence, oral or documentary;

(*ii*) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(*iii*) If the court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(*iv*) If the view of the trial court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(*v*) If the appellate court is inclined to reverse the acquittal in appeal on a reappreciation of evidence, it must specifically address all the reasons given by the trial court for acquittal and must cover all the facts;

(*vi*) In a case of reversal from acquittal to conviction, the appellate court must demonstrate an illegality, perversity or error of law or fact in the decision of the trial court.

Ratio In Appeal Against Conviction

5. This extract is taken from *Majjal v. State of Haryana*, (2013) 6 SCC 798 : (2014) SCC (Cri) 472 : 2013 SCC OnLine SC 544 at page 799

6. In this case what strikes us is the cryptic nature of the High Court's observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the trial court's observations and findings are set out in a long paragraph. Then there is a reference to the arguments advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court's cryptic reasoning is contained in two short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 IPC where the accused is sentenced to life imprisonment unsatisfactory.

7. It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's concurrence with the trial court's view would be acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order.

6. JOGI v. State of M.P.

7. The genesis of the appeal arises from an incident which took place on 27 April 2004. The case of the prosecution is that between 6 and 7 pm, a Ganesh Visarjan procession was crossing in front of the house of one Hangry Lohar. His daughter proceeded to the Police Station Amla to register a complaint against accused Jagdish, Ramdas, Ganga, Jagga, Hirdelal, Jogi and Laxman on the ground that nuisance was allegedly caused. After the immersion had taken place, it is alleged that the appellants barged into the house of Hangry Lohar and Sitaram, Bharosa and Rama set it on fire. As a consequence, three persons, who were in the house of Hangry Lohar, were burnt alive. Thereafter, the accused are alleged to have burnt the house of Taapi Bai, the daughter of Hangry Lohar, resulting in injuries to three persons, namely, Radhika Bai, Sandeep and Taapi Bai. The Marg report (Exhibit P-47) was prepared, on the basis of which, an FIR (Exhibit P-46) was registered. The police, after investigation, submitted a final report under Section 173 of the Code of Criminal Procedure 1973 against forty six persons, out of which one was tried by the Juvenile Court. The trial of another accused was delinked, as a consequence of which, forty four accused were put to trial. The trial court convicted all the forty four accused. The High Court convicted thirty five appellants under the provisions of Sections 148, 149, 323/149, 436/149 (five counts) and 302/149 (three counts) of the Indian Penal Code 1860. The High Court acquitted seven accused. As regards the appellants who were convicted by the High Court, the observation of the High Court bearing on their culpability is extracted below: "...So far as the other appellants are concerned, from perusal of the record, it is apparent that the statement of eye-witnesses being unshakable and of sterling quality, has rightly been relied upon by the trial Court to record a finding of guilt against these appellants."

8 . Apart from the above observation, the High Court held that the evidence of the eye-witnesses could not be discarded only on the ground that they were interested witnesses, particularly, when there was no inconsistency between the ocular and medical evidence, and that the place of occurrence and the presence of accused is not doubtful. As regards, the seven accused to whom benefit of doubt was granted, the High Court held that they had not been named by the eye-witnesses.

9. The High Court was dealing with a substantive appeal under the provisions of Section 374 of the Code of Criminal Procedure 19731. In the exercise of its appellate jurisdiction, the High Court was required to evaluate the evidence on the record independently and to arrive at its own findings as regards the

culpability or otherwise of the accused on the basis of the evidentiary material. As the judgment of the High Court indicates, save and except for one sentence, "CrPC" which has been extracted above, there has been virtually no independent evaluation of the evidence on the record. While considering the criminal appeal under Section 374(2) of CrPC, the High Court was duty bound to consider the entirety of the evidence.

The nature of the jurisdiction has been dealt with in a judgment of this Court **in Majjal v State of Haryaya** , (2013) 6 SCC 798 where the Court held:

"6. In this case what strikes us is the cryptic nature of the High Court's observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the trial court's observations and f indings are set out in a long paragraph. Then there is a reference to the arguments advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court's cryptic reasoning is contained in two short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 of the IPC where the accused is sentenced to life imprisonment unsatisfactory.

7.It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's concurrence with the trial court's view would be acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order."

10. Since there has been no independent application of mind by the High Court to the facts insofar as they pertain to the appellants, we are of the view that an order of remand would be necessary. However, we

clarify that the order of remand would be confined to only those of the appellants in respect of which the present appeal survives. Consequent upon the earlier orders dated 14 October 2019 and 3 February 2020, the appeal has been dismissed as against Accused Nos 19, 24, 38 and 44 and Accused No 21, respectively.

7. This extract is taken from *Bindeshwari Prasad Singh v. State of Bihar*, (2002) 6 SCC 650 : 2002 SCC (Cri) 1448 : 2002 SCC OnLine SC 740 at page 654

11. A mere perusal of the judgment of the High Court would disclose that the High Court reappreciated the evidence on record and came to the conclusion that the learned Sessions Judge was not justified in recording the order of acquittal. The evidence of eyewitnesses was consistent and so far as the informant is concerned, no doubt in the first information report he had attributed the fatal injury to Appellant 1 but he later changed his version and deposed that the injury was caused by Appellant 2. The High Court was impressed by the argument that the first information report not being a substantive piece of evidence, at best the evidence of the informant was not corroborated by the first information report. The High Court further found that the presence of eyewitnesses was natural and the mere fact that they were related was no ground to discard their testimony. Rejecting the argument urged on behalf of the appellants that there was no mention in the first information report about the presence of the wife and the daughter of the informant as eyewitnesses who witnessed the occurrence from the balcony, the learned Judge observed that it was not expected that every detail would be mentioned in the first information report. On such reasoning, the High Court set aside the order of acquittal and ordered retrial of the appellants.

12. We have carefully considered the material on record and we are satisfied that the High Court was not justified in reappreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a retrial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely

because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. (See *D. Stephens* v. *Nosibolla* [1951 SCC 184 : AIR 1951 SC 196 : 1951 Cri LJ 510] , *K. Chinnaswamy Reddy* v. *State of A.P.* [AIR 1962 SC 1788 : (1963) 1 Cri LJ 8] , *Akalu Ahir* v. *Ramdeo Ram* [(1973) 2 SCC 583 : 1973 SCC (Cri) 903] , *Pakalapati Narayana Gajapathi Raju* v. *Bonapalli Peda Appadu* [(1975) 4 SCC 477 : 1975 SCC (Cri) 543 : AIR 1975 SC 1854] and *Mahendra Pratap Singh* v. *Sarju Singh* [AIR 1968 SC 707 : 1968 Cri LJ 665] .)

13. The instant case is not one where any such illegality was committed by the trial court. In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It has repeatedly been held that the High Court should not reappreciate the evidence to reach a finding different from the trial court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted.

14. We are, therefore, satisfied **that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction at the instance of the informant. It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial court. But that by itself is no justification for exercise of revisional jurisdiction under Section 401 of the Code of Criminal Procedure against a judgment of acquitta**l. We cannot say that the judgment of the trial court in the instant case was perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself. At best the High Court thought that the prosecution witnesses were reliable while the trial court took the opposite view. This Court has repeatedly observed that in exercise of revisional jurisdiction against an order of acquittal at the instance of a private party, the court exercises only limited jurisdiction and should not constitute itself into an appellate court which has a much wider jurisdiction to go into questions of facts and law, and to convert an order of acquittal into one of conviction. It cannot be lost sight of that when a retrial is ordered, the dice is heavily loaded against the accused, and that itself must caution the court exercising

revisional jurisdiction. We, therefore, find no justification for the impugned order of the High Court ordering retrial of the appellants.

15. The High Court has noticed the fact that the State had preferred an appeal against the acquittal of the appellants. That appeal was dismissed by the High Court on the ground of limitation. In principle that makes no difference, because the dismissal of the appeal even on the ground of limitation is a dismissal for all purposes. As observed earlier, the jurisdiction of the High Court in dealing with an appeal against acquittal preferred under Section 374 of the Code of Criminal Procedure is much wider than the jurisdiction of the revisional court exercising jurisdiction under Section 401 of the Code of Criminal Procedure against an order of acquittal at the instance of a private party. All grounds that may be urged in support of the revision petition may be urged in the appeal, but not vice versa. The dismissal of an appeal preferred by the State against the order of acquittal puts a seal of finality on the judgment of the trial court. In such a case it may not be a proper exercise of discretion to exercise revisional jurisdiction under Section 401 of the Code of Criminal Procedure against the order of acquittal at the instance of a private party. Exercise of revisional jurisdiction in such a case may give rise to an incongruous situation where an accused tried and acquitted of an offence, and the order of acquittal upheld in appeal by its dismissal, may have to face a second trial for the same offence of which he was acquitted.

8. This extract is taken from *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.*, (2007) 6 SCC 528 : (2007) 3 SCC (Cri) 209 : (2007) 137 Comp Cas 1 : 2007 SCC OnLine SC 489 at page 538

12. An appeal is indisputably a statutory right and an offender who has been convicted is entitled to avail the right of appeal which is provided for under Section 374 of the Code. Right of appeal from a judgment of conviction affecting the liberty of a person keeping in view the expansive definition of Article 21 is also a fundamental right. Right of appeal, thus, can neither be interfered with or impaired, nor can it be subjected to any condition.

55. Unfortunately, the legislature has not made any express provision in this behalf. In absence of any express provision, the question must be considered having regard to the overall object of a statute. We have noticed hereinbefore that Article 21 of the Constitution of India read with Section 374 CrPC confers a right of appeal. Such a right is an absolute one. In a case where a judgment of conviction has been awarded, the court can release a person on bail having regard to the nature of offence but as also the other relevant factors including its effect on society. A person upon arrest may have to remain in jail as an undertrial prisoner. So would a person upon conviction. A person may also have to remain in jail, in the event he defaults in payment of fine, if he is so directed. But when a direction is issued for payment of compensation, having regard to sub-section (2) of Section 357 of the Code, the application thereof should ordinarily be directed to be stayed. It will, therefore, be for the court to stay the operation of that part of the judgment whereby and whereunder compensation has been directed to be paid, which would necessarily mean that some conditions therefor may also be imposed. A fortiori a part of the amount of compensation may be directed to be deposited, but the same must be a reasonable amount.

66. The right to appeal from a judgment of conviction vis-à-vis the provisions of Section 357 of the Code of Criminal Procedure and other provisions thereof, as mentioned hereinbefore, must be considered having regard to the fundamental right of an accused enshrined under Article 21 of the Constitution of India as also the international covenants operating in the field.

9. This extract is taken from *Upendra Pradhan v. State of Orissa*, (2015) 11 SCC 124 : (2015) 4 SCC (Cri) 309 : 2015 SCC OnLine SC 397 at page 128

14. Taking the *first* question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognised as a human right by this Court. In *Narendra Singh* v. *State of M.P.* [*Narendra Singh* v. *State of M.P.*, (2004) 10 SCC 699 : 2004 SCC (Cri) 1893] , this Court has recognised presumption of innocence as a human right and has gone on to say that: (SCC pp. 708 & 709, paras 30-31 & 33)

> "*30.* It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between 'may be' and 'must be'.
>
> *31.* It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a higher court (see *Dhanna* v. *State of M.P.* [*Dhanna* v. *State of M.P.*, (1996) 10 SCC 79 : 1996 SCC (Cri) 1192] , *Mahabir Singh* v. *State of Haryana* [*Mahabir Singh* v. *State of Haryana*, (2001) 7 SCC 148 : 2001 SCC (Cri) 1262] and *Shailendra Pratap* v. *State of U.P.* [*Shailendra Pratap* v. *State of U.P.*, (2003) 1 SCC 761 : 2003 SCC (Cri) 432]), which had not been adhered to by the High Court.
>
> ***
>
> *33.* We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimlabai although is shrouded in mystery *but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld.*"
>
> (emphasis supplied)

15. The decision taken by this Court in the aforementioned case, has been further reiterated in *State of Rajasthan* v. *Raja Ram* [*State of Rajasthan* v. *Raja Ram*, (2003) 8 SCC 180 : 2003 SCC (Cri) 1965] , wherein this Court observed thus: (SCC pp. 186-87, para 7)

> "*7.* … Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further

strengthened by acquittal. *The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.* In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. (See *Bhagwan Singh* v. *State of M.P.* [*Bhagwan Singh* v. *State of M.P.*, (2002) 4 SCC 85 : 2002 SCC (Cri) 736]) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference."

(emphasis supplied)

16. Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of the appellant-accused stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The view which favours the appellant-accused has to be considered and we discard the opposite view which indicates his guilt.

17. We are also of the view that the High Court should not have interfered with the decision taken by the Additional Sessions Judge, as the judgment passed was not manifestly illegal, perverse, and did not cause miscarriage of justice. On the scope of the High Court's revisional jurisdiction, this Court has held in *Bindeshwari Prasad Singh* v. *State of Bihar* [*Bindeshwari Prasad Singh* v. *State of Bihar*, (2002) 6 SCC 650 : 2002 SCC (Cri) 1448] that: (SCC p. 650)

"… In absence of any manifest illegality, perversity and miscarriage of justice, the High Court would not be justified in interfering with the concurrent finding of acquittal of the accused merely because on reappreciation of evidence it found the testimony of the PWs to be reliable whereas the trial court had taken an opposite view."

This happens to be the situation in the matter before us and we are of the view that the High Court was wrong in interfering with the order of acquittal of Upendra Pradhan passed by the Additional Sessions Judge.

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Appreciation Of Ocular Evidence In A Criminal Case

10. This extract is taken from *Shahaja v. State of Maharashtra*, (2023) 12 SCC 558 : 2022 SCC OnLine SC 883 at page 569

29. The appreciation of ocular evidence is a hard task. There is no fixed or straitjacket 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:

29.1. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

29.2. 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.

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

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

29.5. 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.

29.6. 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.

29.7. 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.

29.8. 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.

29.9. 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.

29.10. 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.

29.11. 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.

29.12. 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.

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

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

30. 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.

32. In the aforesaid context, we may refer to a decision of this Court in *State of U.P.* v. *Anil Singh* [*State of U.P.* v. *Anil Singh*, 1988 Supp SCC 686 : 1989 SCC (Cri) 48 : AIR 1988 SC 1998] , wherein in para 17, it is observed thus : (SCC p. 692)

> "*17.* It is also our experience that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the

duty of the court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform."

How To Appreciate Evidence Under Section 27 Of Evidence Act

11. This extract is taken from *Shahaja v. State of Maharashtra*, (2023) 12 SCC 558 : 2022 SCC OnLine SC 883 at page 572

Discovery panchnama drawn under Section 27 of the evidence act

36. Having taken the view that there is no good reason for us to disbelieve the two eyewitnesses referred to above, we could have stopped and closed the matter. However, we have noticed something very important so far as the law on Section 27 of the Act is concerned as discussed by the two courts below. To put it otherwise, we have noticed a serious infirmity in the reasonings assigned by the trial court as affirmed by the High Court so far as the position of law as regards the discovery of weapon of offence under Section 27 of the Act is concerned. If we overlook or ignore the same then probably the trial courts may keep committing the same mistake and in such circumstances, we would like to explain the correct position of law and **how to appreciate the evidence of discovery in accordance with the provisions of the Section 27 of the Act**.

1. the panch witnesses to prove the discovery panchnama

37. The prosecution examined PW 4 Amsu Hussain Sayyad (Ext. 21) as **one of** (Ext. 23).

38. We must first look into the examination-in-chief of PW 4 in this regard. PW 4 in his examination-in-chief stated as under:

> "The police officers told me that I have to act as a panch witness. In my presence the person who is police custody narrated that, he concealed a weapon adjacent the shoe shop at parla. Accordingly in my presence his statement recorded by the police. Police obtained my signature on the memorandum-cum-statement of the accused. The memorandum-cum-statement now shown to me bears my signature. Its contents are true and correct. The said memorandum is exhibited at Ext. 22. Thereafter, I myself, another person, two to three police officers and accused went in Vile Parle East, outside the railway station of Vile Parle East. There was a wooden bench near the shoe shop. The accused in our presence withdrew an iron hammer from the wooden bench and handed over the same to the police. Police recorded the panchnama of said hammer in my presence and took its possession. **The panchnama** now shown to me is the same. It bears my signature. It contents are true and correct. It is at Ext. 23."

39. We may not refer to the cross-examination of PW 4 at the instance of the defence as it is not relevant.

40. We may now look into the evidence of PW 10, the investigating officer. In his examination-in-chief, he has deposed as regards the discovery as under:

> "On 16-12-2006 the accused made a disclosure statement in presence of panch witnesses that he was ready and willing to point out the place where he had concealed the hammer in Vile Parle area. Accordingly, I drew the memorandum panchnama of the disclosure of statement of the accused in presence of panch witnesses. The memorandum panchanama at Ext. 22 now shown to me is the same. It bears my signature and signature of panch witnesses. Its contents are true and correct. Thereafter, I myself, panch witnesses and accused on the basis of information given by the accused went at the shop Jaibhawani footwear in Vile Parle on Vallabhai Patel road. Thereafter, accused went in open place between railway compound wall and wooden bench. He picked the hammer from the said open place and handed over to us. Accordingly, I seized the said hammer by preparation of recovery panchanama. The hammer was having a wooden handle and iron case. I saw bloodstained hairs sticked to the said hammer. The recovery panchanama at Ext. 23 now shown to me bears my signature and signature of panch witnesses. Its contents are true and correct."

41. From the aforesaid it is evident that the learned Public Prosecutor who conducted the prosecution before the trial court did not take pains to bring on record the substantive evidence of the aforesaid two witnesses i.e. PW 4 and PW 10, respectively, the fact of the accused having made a statement that he had concealed the hammer and he was inclined to show that spot, even though it has been recorded in the panchnama (Ext. 22) that the accused made such a statement. The learned Public Prosecutor does not appear to have realised that there should be substantive evidence on record in this regard and **that the panchnama can be used only to corroborate the evidence of the panch and not as a substantive piece of evidence. It appears that the panchnamas (Exts. 22 and 23, respectively) were shown to the panch (PW 4) and he admitted his signature and, therefore, it was exhibited at Exts. 22 and 23, respectively**. **The examination-in-chief of PW 4 does not show that he was read over the panchnama before it was exhibited.**

42. This Court has time and again impressed upon the necessity of reading over the panchnama which can be used as a piece of corroborative

evidence. In spite of this, it is regrettable that the learned trial Judge did not take pains to see that the panchnama was read over to the panch before it was exhibited. A panchnama which can be used only to corroborate the panch has to be read over to the panch and only thereafter it can be exhibited. If the panch has omitted to state something which is found in the panchnama, then after reading over the panchnama the panch has to be asked whether that portion of the panchnama is correct or not and whatever reply he gives has to be recorded. If he replies in the affirmative, then only that portion of the panchnama can be read into evidence to corroborate the substantive evidence of the panch. If he replies in the negative, then that part of the panchnama cannot be read in evidence for want of substantive evidence on record. It is, therefore, necessary that care is taken by the Public Prosecutor who conducts the trial that such a procedure is followed while examining the panch at the trial. It is also necessary that the learned trial Judge also sees that the panchnama is read over the panch and thereafter the panchnama is exhibited after following the procedure as indicated above.

43. In the aforesaid context, we may refer to and rely upon the decision of this Court in *Murli* v. *State of Rajasthan* [*Murli* v. *State of Rajasthan*, (2009) 9 SCC 417 : (2010) 1 SCC (Cri) 12] . We got the relevant observations : (SCC p. 425, para 34)

> "*34.* [**Ed.** : Para 34 corrected vide Official Corrigendum No. F.3/Ed.B.J./141/2009 dated 14-9-2009.] The contents of the panchnama are not the substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the panchas or the person concerned in the witness box."

2.the authorship of concealment by the person who is said to have discovered the weapon.

44. One another serious infirmity which has surfaced is as regards the authorship of concealment by the person who is said to have discovered the weapon.

45. The conditions necessary for the applicability of Section 27 of the Act are broadly as under:

(1) Discovery of fact in consequence of an information received from accused;

(2) Discovery of such fact to be deposed to;

(3) The accused must be in police custody when he gave informations and

(4) So much of information as relates distinctly to the fact thereby discovered is admissible — *Mohd. Inayatullah* v. *State of Maharashtra* [*Mohd. Inayatullah* v. *State of Maharashtra*, (1976) 1 SCC 828 : 1976 SCC (Cri) 199 : AIR 1976 SC 483]

Two conditions for application—

(1) information must be such as has caused discovery of the fact; and

(2) information must relate distinctly to the fact discovered — *Earabhadrappa* v. *State of Karnataka* [*Earabhadrappa* v. *State of Karnataka*, (1983) 2 SCC 330 : 1983 SCC (Cri) 447 : AIR 1983 SC 446] .

46. We may refer to and rely upon a Constitution Bench decision of this Court in *State of U.P.* v. *Deoman Upadhyaya* [*State of U.P.* v. *Deoman Upadhyaya*, 1960 SCC OnLine SC 8 : AIR 1960 SC 1125] , wherein, the Supreme Court in para 71 has explained the position of law as regards Section 27 of the Act as under : (SCC OnLine SC para 65)

"*65.* The law has thus made a classification of accused persons into two : (1) those who have the danger brought home to them by detention on a charge; and (2) those who are yet free. In the former category are also those persons who surrender to the custody by words or action. The protection given to these two classes is different. In the case of persons belonging to the first category the law has ruled that their statements are not admissible, and in the case of the second category, only that portion of the statement is admissible as is guaranteed by the discovery of a relevant fact unknown before the statement to the investigating authority. That statement may even be confessional in nature, as when the person in custody says:'I pushed him down such and such mineshaft', and the body of the victim is found as a result, and it can be proved that his death was due to injuries received by a fall down the mineshaft."

47. The scope and ambit of Section 27 of the Act were illuminatingly stated in *Pulukuri Kotayya* v. *R.* [*Pulukuri Kotayya* v. *R.*, 1946 SCC OnLine PC 47 : (1946-47) 74 IA 65 : AIR 1947 PC 67] , which have become locus classicus, in the following words : (SCC OnLine PC)

" … it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. … Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed *A*" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

48. What emerges from the evidence of PW 4 and PW 10, respectively is that the appellant stated before the panch witnesses to the effect that "I will show you the weapon concealed adjacent the shoe shop at Parle". This statement does not suggest that the appellant indicated anything about his involvement in the concealment of the weapon. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source also. He might have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered the weapon, he was the person who had concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the substantive evidence as regards the discovery of weapon is that the appellant disclosed that he would show the weapon used in the commission of offence.

49. In *Dudh Nath Pandey* v. *State of U.P.* [*Dudh Nath Pandey* v. *State of U.P.*, (1981) 2 SCC 166 : 1981 SCC (Cri) 379 : AIR 1981 SC 911] , this Court took into consideration a very similar fact situation and observed in para 15 that, if the case is dependent on circumstantial evidence, different considerations would have prevailed because the balance of evidence after excluding the testimony of the two eyewitnesses was not of the standard required in cases dependent wholly on circumstantial evidence (as is the case here). This Court observed that the evidence of discovery of pistol at the instance of the appellant cannot, by itself, prove that he who pointed out the weapon wielded it in the offence. The statement accompanying the discovery was found to be vague to

identify the authorship of concealment and it was held that pointing out the weapon may, at the best, prove the appellant's knowledge as to where the weapon was kept.

50. Thus, in the absence of exact words, attributed to an accused person, as statement made by him being deposed by the investigating officer in his evidence, and also without proving the contents of the panchnamas, the trial court was not justified in placing reliance upon the circumstance of discovery of weapon.

Mere Acquittal Of Some Of The Accused On The Same Evidence By Itself Does Not Lead To A Conclusion That All Deserve To Be Acquitted

12. This extract is taken from *Amrita v. State of M.P.*, (2004) 12 SCC 224 : 2004 SCC OnLine SC 174 at page 227

8. It has also to be borne in mind that in India the maxim "*falsus in uno, falsus in omnibus*" has no application. It is not the law that if the witness has spoken some falsehood, his entire testimony has to be discarded. Testimony of such a witness requires care and caution at the time of its analysis. The tendency of the closely related witnesses to involve all family members in the commission of offence, when there is severe enmity between the deceased and the accused does not mean that the entire testimony shall be rejected and, thus, acquitting even those who committed the crime. The extent to which the evidence is worthy of acceptance depends upon facts of each case. In such cases, it is the duty of the courts to separate the grain from the chaff where it is so possible and to convict the accused if called for on the basis of evidence despite the fact that the same witness also falsely implicated others. Mere acquittal of some of the accused on the same evidence by itself does not lead to a conclusion that all deserve to be acquitted in case appropriate reasons have been given on appreciation of evidence both in regard to acquittal and conviction of the accused. In the present case, the courts below have given appropriate reasons.

Section 8 Conduct Of Accused

13. This extract is taken from *Shahaja v. State of Maharashtra*, (2023) 12 SCC 558 : 2022 SCC OnLine SC 883 at page 576

51. Even while discarding the evidence in the form of discovery panchnama the conduct of the appellant herein would be relevant under Section 8 of the Act. The evidence of discovery would be admissible as conduct under Section 8 of the Act quite apart from the admissibility of the disclosure statement under Section 27, as this Court observed in *A.N. Venkatesh* v. *State of Karnataka* [*A.N. Venkatesh* v. *State of Karnataka*, (2005) 7 SCC 714 : 2005 SCC (Cri) 1938] : (SCC p. 721, para 9)

> "*9.* By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in *Prakash Chand* v. *State (UT of Delhi)* [*Prakash Chand* v. *State (UT of Delhi)*, (1979) 3 SCC 90 : 1979 SCC (Cri) 656] . Even if we hold that the disclosure statement made by the accused-appellants (Exts. P-15 and P-16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8."

52. In the *State (NCT of Delhi)* v. *Navjot Sandhu* [*State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] , the two provisions i.e. Section 8 and Section 27 of the Act were elucidated in detail with reference to the case law on the subject and apropos to Section 8 of the Act, wherein it was held : (SCC pp. 741-42, paras 205-206)

> "*205.* Before proceeding further, we may advert to Section 8 of the Evidence Act. Section 8 insofar as it is relevant for our purpose makes the conduct of an accused person relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. It could be either previous or subsequent conduct. There are two Explanations to the Section, which explain the ambit of the word "conduct". They are:
>
> > '*Explanation 1*.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.'

The conduct, in order to be admissible, must be such that it has close nexus with a fact in issue or relevant fact. Explanation 1 makes it clear that the mere statements as distinguished from acts do not constitute "conduct" unless those statements "accompany and explain acts other than statements". Such statements accompanying the acts are considered to be evidence of res gestae. Two illustrations appended to Section 8 deserve special mention.

'(*f*) The question is, whether *A* robbed *B*.

The facts that, after *B* was robbed, *C* said in *A*'s presence—'the police are coming to look for the man who robbed *B*', and that immediately afterwards *A* ran away, are relevant.

***

(*i*) *A* is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.'

206. We have already noticed the distinction highlighted in *Prakash Chand case* [*Prakash Chand* v. *State (UT of Delhi)*, (1979) 3 SCC 90 : 1979 SCC (Cri) 656] between the conduct of an accused which is admissible under Section 8 and the statement made to a police officer in the course of an investigation which is hit by Section 162CrPC. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where stolen articles or weapons used in the commission of the offence were hidden, would be admissible as "conduct" under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27, as pointed out in *Prakash Chand case* [*Prakash Chand* v. *State (UT of Delhi)*, (1979) 3 SCC 90 : 1979 SCC (Cri) 656] . In *Om Prakash case* [*State (UT of H.P.)* v. *Om Prakash*, (1972) 1 SCC 249 : 1972 SCC (Cri) 88] this Court held : (SCC p. 262, para 14)

'*14.* ... even apart from the admissibility of the information under Section 27, the evidence of the investigating officer and the Panchas that the accused had taken them to PW 11 (from whom he purchased the weapon) and pointed him out and as corroborated by PW 11 himself

would be admissible under Section 8 of the Evidence Act as conduct of the accused.' "

53. Further, in the aforesaid context, we would like to sound a note of caution. Although the conduct of an accused may be a relevant fact under Section 8 of the Act, yet the same, by itself, cannot be a ground to convict him or hold him guilty and that too, for a serious offence like murder. Like any other piece of evidence, the conduct of an accused is also one of the circumstances which the court may take into consideration along with the other evidence on record, direct or indirect. What we are trying to convey is that the conduct of the accused alone, though may be relevant under Section 8 of the Act, cannot form the basis of conviction.

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Alteration Of Charge

14. This extract is taken from *Mala Singh v. State of Haryana*, (2019) 5 SCC 127 : (2019) 2 SCC (Cri) 452 : 2019 SCC OnLine SC 175 at page 134

32. Four questions arise for consideration in this appeal:

32.1. First, whether the High Court was justified in convicting the appellants under Section 302 read with Section 34 IPC when, in fact, the initial trial was on the basis of a charge under Section 302 read with Section 149 IPC?

32.2. Second, whether the High Court was justified in altering the charge under Section 149 to one under Section 34 in relation to three accused (the appellants herein) after acquitting eight co-accused from the charges of Sections 302/149 IPC and then convicting the three accused (the appellants herein) on the altered charges under Sections 302/34 IPC?

32.3. Third, whether there is any evidence to sustain the charge under Section 34 IPC against the three accused (the appellants herein) so as to convict them for an offence under Section 302 IPC?

32.4. And fourth, in case the charge under Section 34 IPC is held not made out for want of evidence and further when the charge under Section 149 is already held not made out by the High Court, whether any case against the three accused persons (the appellants herein) is made out for their conviction and, if so, for which offence?

15. This extract is taken from *Mala Singh v. State of Haryana*, (2019) 5 SCC 127 : (2019) 2 SCC (Cri) 452 : 2019 SCC OnLine SC 175 at page 135

34. Section 216 CrPC deals with powers of the court to alter the charge. Section 386 CrPC deals with powers of the appellate court and Section 464 CrPC deals with the effect of omission to frame, or absence of, or error in framing the charge. These sections are quoted below:

"**216. *Court may alter charge*.**—(1) Any court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the court, to prejudice the accused in his defence or the Prosecutor in the conduct of the case, the court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the court, to prejudice the accused or the prosecutor as aforesaid, the court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

***

386. *Powers of the appellate court*.—After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under Section 377 or Section 378, the accused, if he appears, the appellate court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(*b*) in an appeal from a conviction—

(*i*) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a court of competent jurisdiction subordinate to such appellate court or committed for trial, or

(*ii*) alter the finding, maintaining the sentence, or

(*iii*) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(*c*) in an appeal for enhancement of sentence—

(*i*) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a court competent to try the offence, or

(*ii*) alter the finding maintaining the sentence, or

(*iii*) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(*d*) in an appeal from any other order, alter or reverse such order;

(*e*) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the appellate court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the court passing the order or sentence under appeal.

***

464. ***Effect of omission to frame, or absence of, or error in, charge***.—(1) No finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may—

(*a*) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge;

(*b*) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction."

35. A combined reading of Sections 216, 386 and 464 CrPC would reveal that an alteration of charge where no prejudice is caused to the accused or the prosecution is well within the powers and the jurisdiction of the court including the appellate court.

36. In other words, it is only when any omission to frame the charge initially or till culmination of the proceedings or at the appellate stage results in failure of justice or causes prejudice, the same may result in vitiating the trial in appropriate case.

37. The Constitution Bench of this Court examined this issue, for the first time, in the context of old Criminal Procedure Code in a case in *Willie (William) Slaney* v. *State of M.P.* [*Willie (William) Slaney* v. *State of M.P.*, AIR 1956 SC 116 : 1956 Cri LJ 291]

38. The learned Judge Vivian Bose, J. speaking for the Bench in his inimitable style of writing, held: (*Willie Slaney case* [*Willie (William) Slaney* v. *State of M.P.*, AIR 1956 SC 116 : 1956 Cri LJ 291] , AIR p. 124, para 23)

"*23*. … Therefore, when there is a charge and there is either error or omission in it or both, and whatever its nature, it is not to be regarded as material unless two conditions are fulfilled both of which are matters of fact: (*1*) the accused has "in fact" been misled by it "and" (*2*) it has occasioned a failure of justice. That, in our opinion, is reasonably plain language."

39. In *Kantilal Chandulal Mehta* v. *State of Maharashtra* [*Kantilal Chandulal Mehta* v. *State of Maharashtra*, (1969) 3 SCC 166 : 1970 SCC (Cri) 19] , this Court again examined this very issue arising under the present Code of Criminal Procedure with which we are concerned in the present case. Justice

P. Jaganmohan Reddy, speaking for the Bench after examining the scheme of the Code held inter alia: (SCC p. 171, para 4)

> "In our view *the Criminal Procedure Code* gives ample power to the courts to alter or amend a charge whether by the trial court or by the appellate court provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about that charge or in not giving a full opportunity of meeting it and putting forward any defence open to him, on the charge finally preferred against him."

40. Now coming to the question regarding altering of the charge from Section 149 to Section 34 IPC read with Section 302 IPC, this question was considered by this Court for the first time in *Lachhman Singh* v. *State* [*Lachhman Singh* v. *State*, (1952) 1 SCC 362 : AIR 1952 SC 167 : 1952 Cri LJ 863] where Fazl Ali, J. speaking for the Bench held as under: (AIR p. 170, para 13)

> "*13*. It was also contended that there being no charge under Section 302 read with Section 34, Penal Code, the conviction of the appellants under Section 302 read with Section 149 could not have been altered by the High Court to one under Section 302 read with Section 34, upon the acquittal of the remaining accused persons. The facts of the case are however such that the accused could have been charged alternatively, either under Section 302 read with Section 149 or under Section 302 read with Section 34. The point has therefore no force."

41. This question was again examined by this Court in *Karnail Singh* v. *State of Punjab* [*Karnail Singh* v. *State of Punjab*, AIR 1954 SC 204 : 1954 Cri LJ 580] wherein the learned Judge Venkatarama Ayyar, J. elaborating the law on the subject, held as under: (AIR p. 207, para 7)

> "*7*. Then the next question is whether the conviction of the appellant under Section 302 read with Section 34, when they had been charged only under Section 302 read with Section 149 was illegal. The contention of the appellants is that the scope of Section 149 is different from that of Section 34, that while what Section 149 requires is proof of a common object, it would be necessary under Section 34 to establish a common intention and that therefore when the charge against the accused is under Section 149, it cannot be converted in appeal into one under Section 34. The following observations of this Court in *Dalip Singh* v. *State of Punjab* [*Dalip Singh* v. *State of Punjab*, (1953) 2 SCC 36 : AIR 1953 SC 364 : 1953 Cri LJ 1465] were relied on in support of this position: (AIR p. 366, para 24)

'*24*. Nor is it possible in this case to have recourse to Section 34 because the appellants have not been charged with that even in the alternative and the common intention required by Section 34 and the common object required by Section 149 are far from being the same thing.'

It is true that there is substantial difference between the two sections but as observed by Lord Sumner in *Barendra Kumar Ghosh* v. *King Emperor* [*Barendra Kumar Ghosh* v. *King Emperor*, 1924 SCC OnLine PC 49 : (1924-25) 52 IA 40 : AIR 1925 PC 1] , they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. If the common object which is the subject-matter of the charge under Section 149 does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not therefore to be permitted. But if the facts to be proved and the evidence to be adduced with reference to the charge under Section 149 would be the same if the charge were under Section 34, then the failure to charge the accused under Section 34 could not result in any prejudice and in such cases the substitution of Section 34 for Section 149 must be held to be a formal matter.

We do not read the observations in *Dalip Singh* v. *State of Punjab* [*Dalip Singh* v. *State of Punjab*, (1953) 2 SCC 36 : AIR 1953 SC 364 : 1953 Cri LJ 1465] as an authority for the broad proposition that in law there could be no recourse to Section 34 when the charge is only under Section 149. Whether such recourse can be had or not must depend on the facts of each case. This is in accord with the view taken by this Court in *Lachhman Singh* v. *State* [*Lachhman Singh* v. *State*, (1952) 1 SCC 362 : AIR 1952 SC 167 : 1952 Cri LJ 863] , where the substitution of Section 34 for Section 149 was upheld on the ground that the facts were such

'that the accused could have been charged alternatively either under Section 302 read with Section 149, or under Section 302 read with Section 34' (AIR p. 170, para 13)."

42. The law laid down in *Lachhman Singh* [*Lachhman Singh* v. *State*, (1952) 1 SCC 362 : AIR 1952 SC 167 : 1952 Cri LJ 863] and *Karnail Singh* [*Karnail Singh* v. *State of Punjab*, AIR 1954 SC 204 : 1954 Cri LJ 580] was reiterated in *Willie (William) Slaney* [*Willie (William) Slaney* v. *State of M.P.*, AIR 1956 SC 116 : 1956 Cri LJ 291] wherein Vivian Bose, J. speaking for the Bench while referring to these two decisions, held as under: [*Willie (William) Slaney*

case [*Willie (William) Slaney* v. *State of M.P.*, AIR 1956 SC 116 : 1956 Cri LJ 291] , AIR p. 129, para 49]

"*49*. The following cases afford no difficulty because they directly accord with the view we have set out at length above. In *Lachhman Singh* v. *State* [*Lachhman Singh* v. *State*, (1952) 1 SCC 362 : AIR 1952 SC 167 : 1952 Cri LJ 863] , it was held that when there is a charge under Section 302 of the Penal Code read with Section 149 and the charge under Section 149 disappears because of the acquittal of some of the accused, a conviction under Section 302 of the Penal Code read with Section 34 is good even though there is no separate charge under Section 302 read with Section 34, provided the accused could have been so charged on the facts of the case.

The decision in *Karnail Singh* v. *State of Punjab* [*Karnail Singh* v. *State of Punjab*, AIR 1954 SC 204 : 1954 Cri LJ 580] is to the same effect and the question about prejudice was also considered."

43. This principle of law was then reiterated after referring to law laid down in *Willie (William) Slaney* [*Willie (William) Slaney* v. *State of M.P.*, AIR 1956 SC 116 : 1956 Cri LJ 291] in *Chittarmal* v. *State of Rajasthan* [*Chittarmal* v. *State of Rajasthan*, (2003) 2 SCC 266 : 2003 SCC (Cri) 514] in the following words: (*Chittarmal case* [*Chittarmal* v. *State of Rajasthan*, (2003) 2 SCC 266 : 2003 SCC (Cri) 514] , SCC p. 273, para 14)

"*14*. It is well settled by a catena of decisions that Section 34 as well as Section 149 deal with liability for constructive criminality i.e. vicarious liability of a person for acts of others. Both the sections deal with combinations of persons who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent overlap. But a clear distinction is made out between common intention and common object in that common intention denotes action in concert and necessarily postulates the existence of a pre-arranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or preconcert. Though there is substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. Thus, if several persons numbering five or more, do an act and intend to do it, both Section 34 and Section 149 may apply. If the common object does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not,

therefore, to be permitted. But if it does involve a common intention then the substitution of Section 34 for Section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case. The non-applicability of Section 149 is, therefore, no bar in convicting the appellants under Section 302 read with Section 34 IPC, if the evidence discloses commission of an offence in furtherance of the common intention of them all. (See *Barendra Kumar Ghosh* v. *King Emperor* [*Barendra Kumar Ghosh* v. *King Emperor*, 1924 SCC OnLine PC 49 : (1924-25) 52 IA 40 : AIR 1925 PC 1] ; *Mannam Venkatadari* v. *State of A.P.* [*Mannam Venkatadari* v. *State of A.P.*, (1971) 3 SCC 254 : 1971 SCC (Cri) 479] ; *Nethala Pothuraju* v. *State of A.P.* [*Nethala Pothuraju* v. *State of A.P.*, (1992) 1 SCC 49 : 1992 SCC (Cri) 20] and *Ram Tahal* v. *State of U.P.* [*Ram Tahal* v. *State of U.P.*, (1972) 1 SCC 136 : 1972 SCC (Cri) 80])"

16. This extract is taken from *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715 : 2005 SCC OnLine SC 1132 at page 661

Charges whether defective or not ? And its consequences

24. We now turn to the next contention of the charges being defective. According to Shri Ram Jethmalani, the first charge which is a charge under Section 120-B IPC is utterly confusing. It is pointed out that a conspiracy to wage war and to commit a terrorist act is punishable under Section 121-A IPC and Section 3(3) of POTA respectively. Therefore, according to the learned counsel, the charge under Section 120-B is misplaced. It is also contended that the charge does not set out in clear terms, the exact period during which the conspiracy was allegedly hatched. The learned counsel further submits that the alleged confessional statements on which the prosecution relied would clearly show that the conspiracy started only in the first week of December 2001, yet the period of offence was stated to be "on or before 13-12-2001".

25. It is settled law that a "fundamental defect" should be found in the charges if the court has to quash them. Whether the accused was misled and whether there was reasonable possibility of prejudice being caused to the accused on account of defective charges are relevant considerations in judging the effect of wrong or deficient charges. Section 215 CrPC makes it clear that no error or omission in stating either the offence or the particulars required to be stated shall be regarded as material unless the accused was in fact misled by such error or omission and it has occasioned a failure of justice. The test of prejudice or reasonable possibility of prejudice was applied by this Court in *William Slaney case* [*Willie (William) Slaney* v. *State of M.P.*, (1955) 2 SCR 1140 : AIR 1956 SC 116 : 1956 Cri LJ 291] in testing the argument based on the omission, error or irregularity in framing the charges. The same test was also applied in *State of A.P.* v. *Cheemalapati Ganeswara Rao* [(1964) 3 SCR 297 : (1963) 2 Cri LJ 671] . It has not been demonstrated in the instant case as to how the accused or any of them were misled or any prejudice was caused to them on account of the alleged defects in the framing of charges. No such objection was even taken before the trial court. As pointed out in *William Slaney case* [*Willie (William) Slaney* v. *State of M.P.*, (1955) 2 SCR 1140 : AIR 1956 SC 116 : 1956 Cri LJ 291] (para 45 of AIR) it will always be material to consider whether the objection to the nature of charge was taken at an early stage. To the same effect are the observations in *Ganeswara Rao case* [(1964) 3 SCR 297 : (1963) 2 Cri LJ 671] . It is difficult to spell out with exactitude the

details relating to the starting point of conspiracy. As pointed out in *Esher Singh* v. *State of A.P.* [(2004) 11 SCC 585 : 2004 SCC (Cri) Supp 113] (SCC p. 607, para 39) it is not always possible "to give affirmative evidence about the date of the formation of the criminal conspiracy". We do not think that if instead of mentioning "the first week of December 2001" the wording "before December 2001" is employed, the prosecution should fail merely for that reason. The accused cannot be said to have been misled or prejudiced on that account. On the other hand, it is more than clear that the accused did understand the case they were called upon to meet. The question whether Section 120-B applies to the POTA offences or Section 3(3) alone applies is not a matter on which a definite conclusion could be reached ahead of the trial. It is not uncommon that the offence alleged might seemingly fall under more than one provision and sometimes it may not be easy to form a definite opinion as to the section in which the offence appropriately falls. Hence, charges are often framed by way of abundant caution. Assuming that an inapplicable provision has been mentioned, it is no ground to set aside the charges and invalidate the trial.

17. This extract is taken from *Willie (William) Slaney v. State of M.P.*, 1955 SCC OnLine SC 34 : (1955) 2 SCR 1140 : AIR 1956 SC 116 : 1956 CRI LJ 291

5. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice. If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is *substantial* compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.

6. Now here, as in all procedural laws, certain things are regarded as vital. Disregard of a provision of that nature is fatal to the trial and at once invalidates the conviction. Others are not vital and whatever the irregularity they can be cured; and in that event the conviction must stand unless the Court is satisfied that there was prejudice. Some of these matters are dealt with by the Code and wherever that is the case full effect must be given to its provisions. The question here is, does the Code deal with the absence of a charge and irregularities in it, and if so, into which of the two categories does it place them? But before looking into the Code, we deem it desirable to refer to certain decisions of the Privy Council because much of the judicial thinking in this country has been moulded by their observations. In our opinion, the general effect of those decisions can be summarised as follows.

7. First comes a class of case in which the Code deals with the matter expressly. In that event, full effect must be given to the plain meaning of the words used.

"The language of that Code is *conclusive*, and must be construed according to ordinary principles, so as to give effect to

8. Next comes a class of case for which there is no express provision in the Code, or where there is ambiguity. In that event, the question is whether the

trial has been conducted in *substantial* compliance with the Code or in a manner *substantially* different from that prescribed.

> "When a trial is conducted in a manner different from that prescribed by the Code (as in *N.A. Subramania Iyer case* [(1901) LR 28 IA 257, 263] , the trial is bad and no question of curing an irregularity arises; but if the trial is conducted *substantially* in the manner prescribed by the Code, but some irregularity occurs in the course of such conduct, the irregularity can be cured under Section 537, and nonetheless so because the irregularity involves, as must nearly always be the case, a breach of one or more of the very comprehensive provisions of the Code". *Pulukuri Kotayya* v. *King-Emperor* [(1947) LR 74 IA 65, 75] .
>
> the plain meaning of the language used. No doubt, in the case of an ambiguity, that meaning must be preferred which is more in accord with justice and convenience, but in general the words used read in their context must prevail". *Babulal Choukhani* v. *The King-Emperor* [(1938) 65 AIR 158, 175] .

And at P-177:

> "But, even so, that can be no ground why the Court should misconstrue the section".
>
> and at P-178:
>
> > "Their Lordships decide the question on what they regard as the *plain meaning of the language used*."

9. Now it is obvious that the question of curing an irregularity can only arise when one or more of the express provisions of the Code is violated. The question in such cases is whether the departure is so violent as to strike at the root of the trial and make it no trial at all or is of a less vital character. It is impossible to lay down any hard and fast rule but taken by and large the question usually narrows down to one of prejudice. In any case, the courts must be guided by the plain provisions of the Code without straining at its language wherever there is an express provision.

10. For a time it was thought that all provisions of the Code about the mode of trial were so vital as to make any departure therefrom an illegality that could not be cured. That was due to the language of the Judicial Committee in *N.A. Subramania Iyer* v. *King-Emperor* [(1938) 65 AIR 158, 175] .

11. Later, this was construed to mean that that only applies when there is an express prohibition and there is prejudice. In *Subramania Iyer case* [(1901) LR 28 IA 257, 263] the Privy Council said:

> "The remedying of mere irregularities is familiar in most systems of jurisprudence, but it would be an extraordinary extension of such a branch of administering the criminal law to say that when the Code positively enacts that such a trial as that which has taken place here *shall not be permitted* that this contravention of the Code comes within the description of error, omission or irregularity."

This was examined and explained in *Abdul Rahman* v. *King-Emperor* [(1926) LR 54 IA 96, 109] as follows:

> "The procedure adopted was one which the Code positively prohibited, and it was possible that *it might have worked actual injustice to the accused*."

12. In our opinion, the key to the problem lies in the words underlined. Except where there is something so vital as to cut at the root of jurisdiction or so abhorrent to what one might term natural justice, the matter resolves itself to a question of prejudice. Some violations of the Code will be so obvious that they will speak for themselves as, for example, a refusal to give the accused a hearing, a refusal to allow him to defend himself, a refusal to explain the nature of the charge to him and so forth. These go to the foundations of natural justice and would be struck down as illegal forthwith. It hardly matters whether this is because prejudice is then patent or because it is so abhorrent to well-established notions of natural justice that a trial of that kind is only a mockery of a trial and not of the kind envisaged by the laws of our land, because either way they would be struck down at once. Other violations will not be so obvious and it may be possible to show that having regard to all that occurred no prejudice was occasioned or that there was no reasonable probability of prejudice. In still another class of case, the matter may be so near the border line that very slight evidence of a reasonable possibility of prejudice would swing the balance in favour of the accused.

13. This, in our opinion, has been the trend of the more recent decisions of the Privy Council and indeed of latter-day criminal jurisprudence in England as well as in India. The swing of the pendulum has been away from technicality and a greater endeavour has been made to regard the substance rather than the shadow and to administer justice fairly and impartially as it should be administered; fair to the accused, fair to the State and fair to the vast mass of the people for whose protection penal laws are made and administered.

14. The more recent attitude of the Judicial Committee is summed up by Sir John Beaumont in *Pulukuri Kotayya* v. *King-Emperor* [(1947) LR 74 IA 65, 75] where he says that:

> "The distinction drawn in many of the cases in India between an illegality and an irregularity is one of *degree* rather than of *kind*".

and by Viscount Sumner in *Atta Mohammad* v. *King-Emperor* [(1929) LR 57 IA 71, 76]

> "In the complete absence of any substantial injustice, in the complete absence of anything that outrages what is due to natural justice in criminal cases, their Lordships find it impossible to advise His Majesty to interfere."

15. We prefer this way of stating the law, for the distinction that was once sought to be drawn between an express prohibition and an equally express provision positively stated strikes us as unreal. The real question is not whether a matter is expressed positively or is stated in negative terms but whether disregard of a particular provision amounts to *substantial* denial of a trial as contemplated by the Code and understood by the comprehensive expression "natural justice". It will be observed that disregard of an express prohibition was regarded as curable in *Zahiruddin* v. *King-Emperor* [(1947) LR 74 IA 80] so the question whether a particular provision is stated in positive or in negative terms is not the true criterion.

16. It is possible (though we need not so decide in this case) that the recent amendment to Section 537 in the Code of Criminal Procedure (Amendment) Act 26 of 1955, where misjoinder of charges has been placed in the curable category, will set at rest the controversy that has raged around the true meaning of *N.A. Subramania Iyer* v. *King-Emperor* [(1901) LR 28 IA 257] . In any case, our opinion is that the real object of the Code is to leave these matters to the discretion and vigilance of the courts. Slightly to alter the language of the Privy Council in *Babulal Choukhani* v. *King-Emperor* [(1938) LR 65 IA 158, 177] we would say:

> "It must be hoped, and indeed assumed, that Magistrates and Judges will exercise their jurisdiction fairly and honestly. Such is the implied condition of the exercise of judicial power. If they do not, or if they go wrong in fact or in law, the accused has prima facie a right of recourse to the superior courts by way of appeal or revision; and the cases show how vigilant and resolute the High Courts are in seeing that the accused is not prejudiced or embarrassed by unsubstantial departures from the Code and how closely and jealously the Supreme Court guards the position of the accused. These safeguards may well have appeared to the Legislature to be

sufficient when they enacted the remedial provisions of the Code and have now left them substantially unaltered in the new Code recently introduced."

17. This, we feel, is the true intent and purpose of Section 537(*a*) which covers *every* proceeding taken *with jurisdiction* in the general phrase "or other proceedings under this Code". It is for the Court in all these cases to determine whether there has been prejudice to the accused; and in doing so to bear in mind that some violations are so obviously opposed to natural justice and the true intendment of the Code that on the face of them and without anything else they must be struck down, while in other cases a closer examination of all the circumstances will be called for in order to discover whether the accused has been prejudiced.

18. We now proceed to examine the relevant sections of the Code, Chapter XLV deals generally with irregular proceedings. There are certain irregularities which do not vitiate the proceedings. They are set out in Section 529. No question of prejudice arises in this class of case because the section states categorically that they shall not vitiate the proceedings. Certain other irregularities are treated as vital and there the proceedings are void irrespective of prejudice. These are set out in Section 530. A third class is dealt with in Sections 531, 532, 533, 535, 536(2) and 537. There, broadly speaking, the question is whether the error has caused prejudice to the accused or, as some of the sections put it, has occasioned a failure of justice. The examples we have given are illustrative and not exhaustive. What we are seeking to demonstrate is that the Code has carefully classified certain kinds of error and expressly indicates how they are to be dealt with. In every such case the Court is bound to give effect to the express commands of the legislature : there is no scope for further speculation. The only class of case in which the Courts are free to reach a decision is that for which no express provision is made.

20. Now there is no doubt that a charge forms the foundation of a sessions trial and is a most important step in it. The accused must know and understand what he is being tried for and must be told in clear and unambiguous terms : Section 271(1). There can be no shirking that or slurring over it, and this must appear on the face of the record. It cannot be established by evidence taken after the trial. But there is, in our opinion, equally no doubt that the Code expressly deals with this and expressly provides that no error, omission or irregularity in the charge, or even total absence of a charge, shall vitiate a trial unless prejudice to the accused is shown. This is repeatedly reiterated in a number of sections. The whole question therefore is whether the "charge" must be formally reduced to writing and expressed as a ritualistic formula in order to save the trial from the fundamental defect of an incurable

illegality or whether the information that is the substance of the matter can be conveyed in other ways. The question is whether we are to grasp at the substance or play hide and seek among the shadows of procedure.

21. First of all, Sections 221 to 223 of the Code, which undoubtedly envisage a formal written charge, set out what a charge must contain. A perusal of them reveals the reasons why a charge is required. It must set out the offence with which the accused is charged and if the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated "as to give the accused *notice of the matter with which he is charged*". The charge must also contain such particulars of date, time, place and person "as are *reasonably* sufficient to give the accused notice of the matter with which he is charged"; and Section 223 says:

> "When the nature of the case is such that the particulars mentioned in Sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed *as will be sufficient for that purpose*."

22. It is clear to us that the object of the charge is not to introduce a provision that goes to the root of jurisdiction as, for example, the requirement of previous sanction under Section 197, but to enable the accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. But there are other ways of conveying this information. For example, in summons cases no formal charge is required : all that is necessary is to tell the accused the substance of the accusation made against him (Section 242). The whole question is whether, in warrant cases and in sessions trials, the necessary information must be conveyed in one way and one way only, namely in a formal charge in order that the entire trial may not be ipso facto vitiated because of an incurable illegality, or whether that can be done in other and less formal ways, provided always that it is in fact conveyed in a clear and unambiguous manner and in circumstances that the court will regard as fair and in substantial, as opposed to purely technical, compliance with the requirements of the Code. The law could have provided one way as easily as another, but what it has chosen to do is set out in the following sections.

23. The marginal note to Section 225 is headed "Effect of errors" and the section states that:

> "*No* error in stating either the offence or the particulars required to be stated in the charge, and *no* omission to state the offence or those particulars, shall be regarded *at any stage* of the case as material, unless

the accused was *in fact* misled by such error or omission, *and* it has occasioned a failure of justice."

Therefore, when there is a charge and there is either error or omission in it or both, and whatever its nature, it is not to be regarded as material unless two conditions are fulfilled both of which are matters of fact : (*1*) the accused has *in fact* been misled by it *and* (*2*) it has occasioned a failure of justice. That, in our opinion, is reasonably plain language.

24. Next, Sections 226 and 227 show that errors in a charge, *and even the total absence of a charge*, do not vitiate a trial from the start so as to render it no trial at all as would the absence of sanction under Section 197. This is evident because these errors and omissions can be remedied at any time during the course of the trial in the Sessions Court (Section 226) or even at the very end of the trial (Section 227), and when this is done the trial need not proceed de novo but can go on from the stage at which the alteration was made provided neither side is prejudiced (Section 228). That is conclusive to show that no error or omission in the charge, and not even a total absence of a charge, cuts at the root of the trial. The proceedings up to the stage of the alteration, which, as we have seen, can be at the very end of the trial, are not vitiated unless there is prejudice; they are good despite these imperfections. That is impossible when the error is so vital as to cut at the root of the trial. It follows that errors in the charge, and even a total absence of a charge, are not placed in the non-curable class.

25. Next, we have a case in which the error is not observed and corrected during the trial and the accused is convicted. In such a case, the High Court is empowered to direct a retrial *only* if, in its opinion, the accused was "misled in his defence" (Section 232). It is to be observed that this is so whether there was a total absence of a charge or merely an error in it. It is evident that a conviction cannot stand if the defect cuts at the root of the trial, therefore, defects even of this nature are not regarded as fatal.

26. From there we proceed to Section 535. The marginal note is "Effect of omission to prepare charge", and the section says:

> "No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the court of appeal or revision, a failure of justice has in fact been occasioned thereby."

Here again, the language is clear and wide and emphatic. The section summarises what was already indicated in Sections 226, 227, 228 and 232. Next, there is Section 537:

"Subject to etc. … no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account—

(*a*) of any error, omission or irregularity in the … charge

… or other proceedings before or during trial…

***

unless such error, omission, irregularity……has in fact occasioned a failure of justice."

The Explanation is also important:

"In determining whether any error, omission or irregularity in *any proceeding* under this Code has occasioned a failure of justice, the Court, shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

This repeats what was set out in greater detail in Section 225 and is all the more impressive because even when a death sentence is under review in confirmation proceedings under Chapter XXVII, the Court is expressly directed not to regard *any* error, omission or irregularity in the charge as fatal unless it has *in fact* occasioned a failure of justice. Reading these provisions as a whole, there is, in our opinion, no room left for doubt about what was intended.

Effect Of Failure To Frame Proper Charges

18. This extract is taken from *Abdul Sayeed v. State of M.P.*, (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262 : 2010 SCC OnLine SC 1027 at page 274

Effect of failure to frame proper charges

41. It has been canvassed on behalf of the appellants that there was no charge framed under Section 34 IPC by the trial court and the appellants and other co-accused have been charged under Sections 147/148 IPC. All of them have been acquitted for the said charges. Thus, it was not permissible for the High Court to convict the appellants with the aid of Section 34 IPC. Non-framing of charge is fatal to the prosecution. Thus, the appellants are entitled for acquittal on this ground alone.

19. This extract is taken from *Abdul Sayeed v. State of M.P.*, (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262 : 2010 SCC OnLine SC 1027 at page 274

42. In *State of A.P.* v. *Thakkidiram Reddy* [(1998) 6 SCC 554 : 1998 SCC (Cri) 1488] this Court considered the issue of failure to frame the proper charges observing as under : (SCC p. 558, para 10)

> "*10.* Sub-section (1) of Section 464 of the Code of Criminal Procedure, 1973 ('the Code', for short) expressly provides that no finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless in the opinion of the court of appeal, confirmation or revision, a failure of justice has *in fact* been occasioned thereby. Sub-section (2) of the said section lays down the procedure that the court of appeal, confirmation or revision has to follow in case it is of the opinion that a failure of justice has in fact been occasioned. The other section relevant for our purposes is Section 465 of the Code; and it lays down that no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal, confirmation or revision on account of any error, omission or irregularity in the proceedings, unless in the opinion of that court, a failure of justice has in fact been occasioned. It further provides, inter alia, that in determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."
>
> (emphasis in original)

The Court further held that in judging a question of prejudice, as of guilt, the court must look to the substance of the matter and not to technicalities, and its main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. In the said case this Court ultimately came to the conclusion that despite the defect in the framing of charges, as no prejudice had been caused to the accused, no interference was required.

20. This extract is taken from *Abdul Sayeed v. State of M.P.*, (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262 : 2010 SCC OnLine SC 1027 at page 275

43. A Constitution Bench of this Court in *Willie (William) Slaney* v. *State of M.P.* [AIR 1956 SC 116 : 1956 Cri LJ 291] considered the issue of failure to frame charges properly and the conviction of an accused for the offences for which he has not been charged and reached the conclusion as under : (AIR p. 137, paras 86-87)

> "*86*. … In such a situation, the absence of a charge under one or other of the various heads of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for the substantive offence, without a charge, can be set aside, prejudice will have to be made out. …
>
> *87*. … If it is so grave that prejudice will necessarily be implied or imported, it may be described as an illegality. If the seriousness of the omission is of a lesser degree, it will be an irregularity and prejudice by way of failure of justice will have to be established."

21. This extract is taken from *Abdul Sayeed v. State of M.P.*, (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262 : 2010 SCC OnLine SC 1027 at page 275

44. This Court in *Gurpreet Singh* v. *State of Punjab* [(2005) 12 SCC 615 : (2006) 1 SCC (Cri) 191] referred to and relied upon its earlier judgments in *Willie (William) Slaney* [AIR 1956 SC 116 : 1956 Cri LJ 291] and *Thakkidiram Reddy* [(1998) 6 SCC 554 : 1998 SCC (Cri) 1488] , and held that unless there is a failure of justice and thereby the cause of the accused has been prejudiced, no interference is required if the conviction can be upheld on the evidence led against the accused. The court should not interfere unless it is established that the accused was in any way prejudiced due to the errors and omissions in framing the charges against him. A similar view has been reiterated by this Court in *Ramji Singh* v. *State of Bihar* [(2001) 9 SCC 528 : 2002 SCC (Cri) 760] and *Sanichar Sahni* v. *State of Bihar* [(2009) 7 SCC 198 : (2009) 3 SCC (Cri) 347] .

22. This extract is taken from *Abdul Sayeed v. State of M.P.*, (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262 : 2010 SCC OnLine SC 1027 at page 276

45. There is no bar in law on conviction of the accused with the aid of Section 34 IPC in place of Section 149 IPC if there is evidence on record to show that such accused shared a common intention to commit the crime and no apparent injustice or prejudice is shown to have been caused by application of Section 34 IPC in place of Section 149 IPC. The absence of a charge under one or the other or the various heads of criminal liability for the offence cannot be said to be by itself prejudicial to the accused, and before a conviction for the substantive offence without a charge can be set aside, prejudice will have to be made out. Such a legal position is bound to be held good in view of the provisions of Sections 215, 216, 218, 221 and 464 of the Code of Criminal Procedure, 1973. (Vide *Dalip Singh* v. *State of Punjab* [(1953) 2 SCC 36 : AIR 1953 SC 364 : 1953 Cri LJ 1465] , *Malhu Yadav* v. *State of Bihar* [(2002) 5 SCC 724 : 2002 SCC (Cri) 1190] , *Dhaneswar Mahakud* v. *State of Orissa* [(2006) 9 SCC 307 : (2006) 2 SCC (Cri) 505] and *Annareddy Sambasiva Reddy* v. *State of A.P.* [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630])

23. This extract is taken from *Abdul Sayeed v. State of M.P.*, (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262 : 2010 SCC OnLine SC 1027 at page 276

46. Thus, the law on the issue can be summarised to the effect that unless the accused is able to establish that the defect(s) in framing the charge(s) has caused real prejudice to him; that he was not informed as to what was the real case against him; or that he could not defend himself properly, no interference is required on mere technicalities.

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Section 106 Evidence Act

24. This extract is taken from *State of Rajasthan v. Kashi Ram*, (2006) 12 SCC 254 : (2007) 1 SCC (Cri) 688 : 2006 SCC OnLine SC 1163 at page 263

19. Before adverting to the decisions relied upon by the counsel for the State, we may observe that whether an inference ought to be drawn under Section 106 Evidence Act is a question which must be determined by reference to proved. It is ultimately a matter of appreciation of evidence and, therefore, each case must rest on its own facts.

20. In *Joseph* v. *State of Kerala* [(2000) 5 SCC 197 : 2000 SCC (Cri) 926] the facts were that the deceased was an employee of a school. The appellant representing himself to be the husband of one of the sisters of Gracy, the deceased, went to St. Mary's Convent where she was employed and on a false pretext that her mother was ill and had been admitted to a hospital took her away with the permission of the sister in charge of the Convent, PW 5. The case of the prosecution was that later the appellant not only raped her and robbed her of her ornaments, but also laid her on the rail track to be run over by a passing train. It was also found as a fact that the deceased was last seen alive only in his company, and that on information furnished by the appellant in the course of investigation, the jewels of the deceased, which were sold to PW 11 by the appellant, were seized. There was clear evidence to prove that those jewels were worn by the deceased at the time when she left the Convent with the appellant. When questioned under Section 313 CrPC, the appellant did not even attempt to explain or clarify the incriminating circumstances inculpating and connecting him with the crime by his adamant attitude of total denial of everything. In the background of such facts, the Court held: (SCC p. 205, para 14)

> "Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed (see *State of Maharashtra* v. *Suresh* [(2000) 1 SCC 471 : 2000 SCC (Cri) 263]). That missing link to connect the accused-appellant, we find in this case provided by the blunt and outright denial of every one and all the incriminating circumstances pointed out which, in our view, with sufficient and reasonable certainty on the facts proved, connect the accused with the death and the cause for the death of Gracy."

21. In *Ram Gulam Chaudhary* v. *State of Bihar* [(2001) 8 SCC 311 : 2001 SCC (Cri) 1546] the facts proved at the trial were that the deceased boy was brutally assaulted by the appellants. When one of them declared that the boy was still alive and he should be killed, a chhura-blow was inflicted on his chest. Thereafter, the appellants carried away the boy who was not seen alive thereafter. The appellants gave no explanation as to what they did after they took away the boy. The question arose whether in such facts Section 106 of the Evidence Act applied. This Court held: (SCC p. 320, para 24)

> "In the absence of an explanation, and considering the fact that the appellants were suspecting the boy to have kidnapped and killed the child of the family of the appellants, it was for the appellants to have explained what they did with him after they took him away. When the abductors withheld that information from the court, there is every justification for drawing the inference that they had murdered the boy. Even though **Section 106 of the Evidence Act** may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference."

22. In *Sahadevan* v. *State* [(2003) 1 SCC 534 : 2003 SCC (Cri) 382] the prosecution established the fact that the deceased was seen in the company of the appellants from the morning of 5-3-1985 till at least 5 p.m. on that day when he was brought to his house, and thereafter his dead body was found in the morning of 6-3-1985. In the background of such facts the Court observed: (SCC p. 543, para 19)

> "Therefore, it has become obligatory on the appellants to satisfy the court as to how, where and in what manner Vadivelu parted company with them. This is on the principle that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which they parted company. In the instant case the appellants have failed to discharge this onus. In their statement under Section 313 CrPC they have not taken any specific stand whatsoever."

23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a 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. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule 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. The principle has been succinctly stated in *Naina Mohd., Re.* [AIR 1960 Mad 218 : 1960 Cri LJ 620]

Section 27 Disclosure Statement

25. This extract is taken from *Mohd. Inayatullah v. State of Maharashtra*, (1976) 1 SCC 828 : 1976 SCC (Cri) 199 : 1975 SCC OnLine SC 323 at page 831

11. Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete cases is not always free from difficulty. It will therefore be worthwhile at the outset, to have a short and swift glance at the section and be reminded of its requirements. The section says:

> "Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved."

12. The expression "provided that" together with the phrase "whether it amounts to a confession or not" show that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the *first* condition necessary for bringing this section into operation is the *discovery of a fact*, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The *second* is that the discovery of such fact must be deposed to. The *third* is that at the time of the receipt of the information the accused must be in police custody. The *last* but the most important condition is that only "so much of the information" as relates *distinctly* to the fact *thereby* discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly relates to the fact thereby discovered" is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the *direct* and *immediate* cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

13. At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact (see *Sukhan* v. *Crown* [AIR 1929 Lah 344 : ILR 10 Lah 283 (FB)] ; *Rex* v. *Ganee* [AIR 1932 Bom 286 : ILR 56 Bom 172 : 33 Cri LJ 396]). Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see *Palukuri Kotayya* v. *Emperor* [AIR 1947 PC 67 : 74 IA 65 : 48 Cri LJ 533] ; *Udai Bhan* v. *State of Uttar Pradesh* [AIR 1962 SC 1116 : 1962 Supp (2) SCR 830 : (1962) 2 Cri LJ 251]).

26. This extract is taken from *Earabhadrappa v. State of Karnataka*, (1983) 2 SCC 330 : 1983 SCC (Cri) 447 : 1983 SCC OnLine SC 78 at page 337

7. There is no controversy that the statement made by the appellant Ex. P-35 is admissible under Section 27 of the Evidence Act. Under Section 27 only so much of the information as distinctly relates to the facts really thereby discovered is admissible. The word "fact" means some concrete or material fact to which the information directly relates. As explained by Sir John Beaumont in *Pulukuri Kotayya* v. *King-Emperor* [(1947) 74 IA 65 : AIR 1947 PC 67 : 230 IC 135] :

> "... it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact."

8. For the applicability of Section 27 therefore two conditions are prerequisite, namely (*1*) the information must be such as has caused discovery of the fact; and (*2*) the information must "relate distinctly" to the fact discovered. In the present case, there was a suggestion during the trial that PW 26 had prior knowledge from other sources that the incriminating articles were concealed at certain places and that the statement Ex. P-35 was prepared after the recoveries had been made and therefore there was no "fact discovered" within the meaning of Section 27 of the Evidence Act. We need not dilate on the question because there was no suggestion made to PW 26 during his cross-examination that he had known the places where the incriminating articles were kept. That being so, the statement made by the appellant Ex. P-35 is clearly admissible in evidence.

9. In *Jaffer Hussein Dastgir* v. *State of Maharashtra* [(1969) 2 SCC 872 : AIR 1970 SC 1934 : (1970) 2 SCR 332 : 1970 Cri LJ 1659] the portion of the statement with reference to which this question arose read as follows: (SCC p. 874, para 2)

> "I will point out one Gaddi alias Ramsingh of Delhi at Bombay Central Railway Station at III Class Waiting Hall to whom I have given a packet containing diamonds of different sizes more than 200 in number."

The only question for decision in that case before the court was whether the aforesaid statement made by the accused was admissible in evidence by virtue of Section 27 of the Evidence Act, the diamonds having been found with the

person named. In the facts of that case the Court came to the conclusion that the police had already known that the diamonds were with the person named by the accused with the result that there was no fact discovered by the police as a result of the statement made by the accused. However, it was held clearly that, but for such knowledge of the police, the aforesaid statement of the accused would have been admissible in evidence.

27. This extract is taken from *Sanjay v. State (NCT of Delhi)*, (2001) 3 SCC 190 : 2001 SCC (Cri) 449 : 2001 SCC OnLine SC 366 at page 198

16. The most important circumstance for the prosecution in the case is the disclosure statements of the accused persons and recoveries of the stolen property, bloodstained shirt and weapon of offence consequent upon such statements. The admissibility of the statements made by the accused persons to the police is challenged on twin grounds, i.e., (*i*) factually no such statement was made, and (*ii*) the statement made was inadmissible in evidence.

17. Section 25 mandates that no confession made to a police officer shall be proved as against a person accused of an offence. Similarly Section 26 provides that confession by the accused person while in custody of police cannot be proved against him. However, to the aforesaid rule of Sections 25 and 26 of the Evidence Act, there is an exception carved out by Section 27 providing that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 27 is a proviso to Sections 25 and 26. Such statements are generally termed as disclosure statements leading to the discovery of facts which are presumably in the exclusive knowledge of the maker. Section 27 appears to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly it can be safely allowed to be given in evidence.

18. As the section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27.

19. The position of law in relation to Section 27 of the Act was elaborately made clear by Sir John Beaumont in *Pulukuri Kottaya* v. *Emperor* [AIR 1947 PC 67 : 48 Cri LJ 533] wherein it was held:

"Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of a police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr Megaw, for the Crown, has argued that in such a case the 'fact discovered' is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to Section 26, added by Section 27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which

it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed *A*' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

20. In *State of U.P.* v. *Deoman Upadhyaya* [AIR 1960 SC 1125] this Court held that Sections 25 and 26 were manifestly intended to hit an evil, viz., to guard against the danger of receiving in evidence testimony from tainted sources about statements made by persons accused of offences. These sections form part of a statute which codifies the law relating to the relevancy of evidence and proof of facts in judicial proceedings. The State is as much concerned with punishing offenders who may be proved guilty of committing of offences as it is concerned with protecting persons who may be compelled to give confessional statements. Section 27 renders information admissible on the ground that the discovery of a fact pursuant to a statement made by a person in custody is a guarantee of truth of the statement made by him and the legislature has chosen to make on that ground an exception to the rule prohibiting proof of such statement. The principle of admitting evidence of statements made by a person giving information leading to the discovery of facts which may be used in evidence against him is manifestly reasonable. In that case the High Court had acquitted the accused on the ground that his statement which led to the recovery of gandasa, the weapon of offence, was inadmissible. The accused Deoman had made a statement to hand over the gandasa which he had stated to have thrown into a tank and got it recovered. The trial court convicted the accused for the offence of murder. The Full Bench of the High Court held that Section 27 of the Evidence Act which allegedly created an unjustifiable discrimination between persons in custody and persons out of custody offending Article 14 of the Constitution, was unenforceable. After the opinion of the Full Bench a Division Bench of the Court excluded from consideration the statement made by the accused in the presence of the police officer and held that the story of the accused having borrowed a gandasa on the day of occurrence was unreliable. The accused was acquitted but at the instance of the State of U.P., the High Court granted a certificate to file the appeal in this Court. This Court did not agree with the

position of law settled by the High Court and decided to proceed to review the evidence in the light of that statement, insofar as it distinctly related to the fact thereby discovery being admissible. Dealing with the conclusions arrived at by the High Court and on the facts of the case, this Court observed:

> "The High Court was of the view that the mere fetching of the gandasa from its hiding place did not establish that Deoman himself had put it in the tank, and an inference could legitimately be raised that somebody else had placed it in the tank, or that Deoman had seen someone placing that gandasa in the tank or that someone had told him about the gandasa lying in the tank. But for reasons already set out the information given by Deoman is provable insofar as it distinctly relates to the fact thereby discovered: and his statement that he had thrown the gandasa in the tank is information which distinctly relates to the discovery of the gandasa. Discovery from its place of hiding, at the instance of Deoman of the gandasa stained with human blood in the light of the admission by him that he had thrown it in the tank in which it was found therefore acquires significance, and destroys the theories suggested by the High Court."

21. In *Mohd. Inayatullah* v. *State of Maharashtra* [(1976) 1 SCC 828 : 1976 SCC (Cri) 199 : AIR 1976 SC 483] it was held that expression "fact discovered" includes not only the physical object produced but also place from which it is produced and the knowledge of the accused as to that. Interpreting the words of the section "so much of the information" as relates distinctly to the fact thereby discovered, the Court held that the word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of provable information. The phrase "distinctly" relates "to the fact thereby discovered". The phrase refers to that part of information supplied by the accused which is the direct cause of discovery of a fact. The rest of the information has to be excluded.

22. In *Earabhadrappa* v. *State of Karnataka* [(1983) 2 SCC 330 : 1983 SCC (Cri) 447 : (1983) 2 SCR 552] it was held that for the applicability of Section 27 of the Evidence Act two conditions are prerequisite, viz., (*i*) information must be such as has caused discovery of the fact, and (*ii*) the information must "relate distinctly" to the fact discovered. Under Section 27 only so much of the information as distinctly relates to the fact really thereby discovered, is admissible. While deciding the applicability of Section 27 of the Evidence Act, the court has also to keep in mind the nature of presumption under Illustrations (*a*) to (*s*) of Section 114 of the Evidence Act. The Court can,

therefore, presume the existence of a fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relations to the facts of the particular case. In that case one of the circumstance relied upon by the prosecution against the accused was that on being arrested after a year of the incident, the accused made a statement before the police leading to the recovery of some of the gold ornaments of the deceased and her six silk sarees, from different places which were identified by the witness as belonging to the deceased. In that context the Court observed: (SCC p. 337, para 7)

> "7. There is no controversy that the statement made by the appellant Ex. P-35 is admissible under Section 27 of the Evidence Act. Under Section 27 only so much of the information as distinctly relates to the facts really thereby discovered is admissible. The word 'fact' means some concrete or material fact to which the information directly relates."

28. This extract is taken from *Sanjay v. State (NCT of Delhi)*, (2001) 3 SCC 190 : 2001 SCC (Cri) 449 : 2001 SCC OnLine SC 366 at page 203

24. In this case after the arrest of Sanjay, appellant, the extrajudicial confession made by him to PW 5 and recording the statement of PW 5 the investigating officer apprehended the other accused persons. In his interrogation Vinod, appellant made a confessional statement, a major portion of which is inadmissible in evidence being hit by Sections 24 to 26 of the Evidence Act. However, the relevant portion which was used for recovery of the stolen property is as under:

> "I got gold jewellery and watches which are lying at my house at Shakarpur. I can point out the same and get them recovered. Both shirts are lying at my house, one pant at the residence of my friend at Madipur, and I am wearing the pant which I washed (after commission of the offence). I can get recovered the dagger and katta from my house at Shakarpur and also the abovementioned things."

25. In his disclosure statement the accused Mohabat Ali had stated:

> "I got gold jewellery, watches, cameras and clothes which are lying at my home. The revolver and kirpan used in the commission of the offence are also lying in my house. I can get recovered the (looted) property and the weapon of offence from my house at Mangolpuri. I can also get arrested Ramkishan, the seller of the revolver."

26. The relevant portion of statement of the accused Nawabuddin is as under:

> "I took jewellery and watches of my and Sanjay's share to my residence. Sanjay dropped me on a scooter. I can get recovered the (looted) property from my residence."

27. Raising objections to the words "after commission of the offence" appearing in the disclosure statement of Vinod and "looted property" in the statement of Nawabuddin, the learned counsel for the appellants submitted that the whole of the statement was hit by Sections 24 to 26 of the Evidence Act and Section 162 of the Code of Criminal Procedure. We are not inclined to accept such a general statement. Even if the objectionable words (bracketed above) are deleted, the appellants cannot be conferred with any benefit which would entitle them to acquittal. It is not disputed that consequent upon the disclosure statements made, the articles mentioned therein were actually recovered at their instance from the place where such articles had been hidden by them. The mere use of the words "looted property" in relation to the articles seized which were found to have been taken away after the commission of the

crime of murder and robbery would not change the nature of the statement. The words do not implicate the accused with the commission of the crime but refer only to the nature of the property hidden by them which were ultimately recovered consequent upon their disclosure statements. Hypertechnical approach, as projected by the defence counsel, would defeat the ends of justice and have disastrous effect. The property recovered consequent upon the making of the disclosure statements has been proved to be the property of the deceased, stolen after the commission of the offence of robbery and murder.

28. Besides Section 27, the courts can draw presumptions under Section 114, Illustration (*a*) and Section 106 of the Evidence Act. In *Gulab Chand* v. *State of M.P.* [(1995) 3 SCC 574 : 1995 SCC (Cri) 552] where ornaments of the deceased were recovered from the possession of the accused immediately after the occurrence, this Court held: (SCC pp. 577-78, para 4)

> "It is true that simply on the recovery of stolen articles, no inference can be drawn that a person in possession of the stolen articles is guilty of the offence of murder and robbery. But culpability for the aforesaid offences will depend on the facts and circumstances of the case and the nature of evidence adduced. It has been indicated by this Court in *Sanwat Khan* v. *State of Rajasthan* [(1952) 2 SCC 641 : AIR 1956 SC 54 : 1956 Cri LJ 150] that no hard and fast rule can be laid down as to what inference should be drawn from certain circumstances. It has also been indicated that where only evidence against the accused is recovery of stolen properties, then although the circumstances may indicate that the theft and murder might have been committed at the same time, it is not safe to draw an inference that the person in possession of the stolen property had committed the murder. A note of caution has been given by this Court by indicating that suspicion should not take the place of proof. It appears that the High Court in passing the impugned judgment has taken note of the said decision of this Court. But as rightly indicated by the High Court, the said decision is not applicable in the facts and circumstances of the present case. The High Court has placed reliance on the other decision of this Court rendered in *Tulsiram Kanu* v. *State* [1951 SCC 92 : AIR 1954 SC 1 : 1954 Cri LJ 225] . In the said decision, this Court has indicated that the presumption permitted to be drawn under Section 114 Illustration (*a*) of the Evidence Act has to be read along with the 'important time factor'. If the ornaments in possession of the deceased are found in possession of a person soon after the murder, a presumption of guilt may be permitted. But if several months had expired in the interval, the presumption cannot be permitted to be drawn having regard to the circumstances of the case. In the

instant case, it has been established that immediately on the next day of the murder, the accused Gulab Chand had sold some of the ornaments belonging to the deceased and within 3-4 days, the recovery of the said stolen articles was made from his house at the instance of the accused. Such close proximity of the recovery, which has been indicated by this Court as an 'important time factor', should not be lost sight of in deciding the present case. It may be indicated here that in a later decision of this Court in *Earabhadrappa* v. *State of Karnataka* [(1983) 2 SCC 330 : 1983 SCC (Cri) 447 : (1983) 2 SCR 552] this Court has held that the nature of the presumption and Illustration (*a*) under Section 114 of the Evidence Act must depend upon the nature of evidence adduced. No fixed time-limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article is or is not, calculated to pass readily from hand to hand. If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particularly when the appellant had been absconding during that period. In our view, it has been rightly held by the High Court that the accused was not affluent enough to possess the said ornaments and from the nature of the evidence adduced in this case and from the recovery of the said articles from his possession and his dealing with the ornaments of the deceased immediately after the murder and robbery a reasonable inference of the commission of the said offence can be drawn against the appellant. Excepting an assertion that the ornaments belonged to the family of the accused which claim has been rightly discarded, no plausible explanation for lawful possession of the said ornaments immediately after the murder has been given by the accused. In the facts of this case, it appears to us that murder and robbery have been proved to have been integral parts of the same transaction and therefore the presumption arising under Illustration (*a*) of Section 114 Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her ornaments."

29. In the instant case also, the disclosure statements were made by the accused persons on the next day of the commission of the offence and the property of the deceased was recovered at their instance from the places where they had kept such properties, on the same day. To the same effect are the judgments in *Mukund* v. *State of M.P.* [(1997) 10 SCC 130 : 1997 SCC (Cri) 799]

and *Ronny* v. *State of Maharashtra* [(1998) 3 SCC 625 : 1998 SCC (Cri) 859] . In the latter case the Court held: (SCC p. 646, para 30)

> "Apropos the recovery of articles belonging to the Ohol family from the possession of the appellants soon after the robbery and the murder of the deceased (Mr Mohan Ohol, Mrs Ruhi Ohol and Mr Rohan Ohol) which possession has remained unexplained by the appellants, the presumption under Illustration (*a*) of Section 114 of the Evidence Act will be attracted. It needs no discussion to conclude that the murder and the robbery of the articles were found to be part of the same transaction. The irresistible conclusion would, therefore, be that the appellants and no one else had committed the three murders and the robbery."

30. The disclosure statements by the accused persons stand established by the testimony of Satish Khanna (PW 22) and the investigating officer. The trial court was, therefore, justified in relying upon the circumstances of the disclosure statements of the accused persons and consequent recovery of stolen property, bloodstained shirt of Vinod, appellant, besides the weapon of offence. We find no substance in the submission of the learned defence counsel that as no independent witnesses were associated with the recoveries, a doubt is created in the prosecution version. Satish Khanna (PW 22) is the natural witness being the brother of the deceased to be present during the investigation when the accused are stated to have made the statements within the meaning of Section 27 of the Evidence Act. Otherwise also there is no reason to disbelieve the testimony of the IO Harbans Singh (PW 25).

32. Learned counsel appearing for the appellants Sanjay and Nawabuddin then submitted that even if the disclosure statements and the recoveries are admitted, their clients can at the most be convicted for the commission of offence under Section 411 IPC. We do not agree with this submission as well in view of the fact that the murder and robbery in the instant case were part of the same transaction and the accused from whom the recoveries were made, consequent upon their disclosure statements, did not offer any explanation regarding their possession of the stolen properties. Drawing a presumption under Section 114 of the Evidence Act it can safely be held that the aforesaid two accused persons were at least guilty of the offence of robbery punishable under Section 392 IPC on the assumption that they were not armed with any deadly weapon and not aware of Vinod, appellant being armed with dagger. The trial court was, therefore, justified in holding that

"the circumstances enumerated above together complete the chain of circumstances to prove the guilt of the accused persons insofar as the offence of robbery is concerned. In fact, the disclosure statements of the accused persons and huge recoveries from them at their instance on the very next day of the incident by itself is a sufficient circumstance which clearly goes to show that the accused persons had joined hands to commit the offence of robbery".

The Court also rightly held that:

"Recent and unexplained possession of stolen properties will be taken to be presumptive evidence of the charge of murder as well. (See *Baiju* v. *State of M.P.* [(1978) 1 SCC 588 : 1978 SCC (Cri) 142 : AIR 1978 SC 522]) Also see *Earabhadrappa case* [(1983) 2 SCC 330 : 1983 SCC (Cri) 447 : (1983) 2 SCR 552] . In the case of *Gulab Chand* v. *State of M.P.* [(1995) 3 SCC 574 : 1995 SCC (Cri) 552] this Court quoted its earlier decision in *Tulsiram case* [1951 SCC 92 : AIR 1954 SC 1 : 1954 Cri LJ 225] with approval that the presumption permitted to be drawn under Illustration 114(*a*) of the Evidence Act has to be read along with 'important time factor'. If the ornaments in possession of the deceased are found in possession of the person soon after the murder, a presumption of killing may be permitted. In the said case before the Supreme Court ornaments belonging to the deceased had been sold by the accused Gulab Chand of that case and within 3-4 days the recovery of the stolen articles was made from his house at the instance of the accused. The Court held that such close proximity of the recovery which has been indicated by the Court as 'important time factor' should not be lost sight of."

On the basis of the evidence led in the case and keeping in view the whole conspectus of the case the trial court rightly concluded that the accused Vinod in the process of committing robbery used a deadly weapon, namely, dagger and killed Smt Sheela while the other three accused persons have participated in the commission of crime of robbery and actually removed huge articles including jewellery from the house of the deceased.

Recovery Search And Seizure

29. This extract is taken from *State, Govt. of NCT of Delhi v. Sunil*, (2001) 1 SCC 652 : 2001 SCC (Cri) 248 : 2000 SCC OnLine SC 1667 at page 660

18. Recovery of the knicker is evidenced by the seizure memo Ext. PW 10/G. It was signed by PW 10 Sharda besides its author PW 17 Investigating Officer. The Division Bench of the High Court declined to place any weight on the said circumstance purely on the ground that no other independent witness had signed the memo but it was signed only by "highly interested persons". The observation of the Division Bench in that regard is extracted below:

> "It need hardly be said that in order to lend assurance that the investigation has been proceeding in a fair and honest manner, it would be necessary for the investigating officer to take independent witnesses to the discovery under Section 27 of the Indian Evidence Act; and without taking independent witnesses and taking highly interested persons and the police officers as the witnesses to the discovery would render the discovery, at least, not free from doubt."

19. In this context we may point out that there is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. Section 100(5) of the Code requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person "and signed by such witnesses". It must be remembered that a search is made to find out a thing or document about which the searching officer has no prior idea as to where the thing or document is kept. He prowls for it either on reasonable suspicion or on some guesswork that it could possibly be ferreted out in such prowling. It is a stark reality that during searches the team which conducts the search would have to meddle with lots of other articles and documents also and in such process many such articles or documents are likely to be displaced or even strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour

envisaged in Chapter VII of the Code. This Court has indicated the difference between the two processes in the *Transport Commr., A.P., Hyderabad* v. *S. Sardar Ali* [(1983) 4 SCC 245 : 1983 SCC (Cri) 827 : AIR 1983 SC 1225] . Following observations of Chinnappa Reddy, J. can be used to support the said legal proposition: (SCC p. 254, para 8)

> "Section 100 of the Criminal Procedure Code to which reference was made by the counsel deals with searches and not seizures. In the very nature of things when property is seized and not recovered during a search, it is not possible to comply with the provisions of sub-sections (4) and (5) of Section 100 of the Criminal Procedure Code. In the case of a seizure under the Motor Vehicles Act, there is no provision for preparing a list of the things seized in the course of the seizure for the obvious reason that all those things are seized not separately but as part of the vehicle itself."

20. Hence it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the investigating officer contemporaneous with such recovery must necessarily be attested by the independent witnesses. Of course, if any such statement leads to recovery of any article it is open to the investigating officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.

21. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to

show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.

Ratio On Motive

30. Chetan V . State of Karnatka :-

" 10.11.3 The law is now well-settled that **while proof of motive certainly strengthens the prosecution case based on circumstantial evidence, failure to prove the same cannot be fatal.** In this regard, one may refer to **G. Parshwanath vs. State of Karnataka 2010 (8) SCC 593** in which it was held as follows: "45. The argument that in absence of motive on the part of the appellant to kill the deceased benefit of reasonable doubt should be given, cannot be accepted. First of all every suspicion is not a doubt. Only reasonable doubt gives benefitto the accused and not the doubt of a vacillating judge. Very often a motive is alleged to indicate the high degree of probability that the offence was committed by the person who was prompted by the motive. In a case when the motive alleged against accused is fully established, it provides foundational material to connect the chain of circumstances. It afforts a key on a pointer to scan the evidence in the case in that perspective and as a satisfactory circumstance of corroboration. However, in a case based on circumstantial evidence where proved circumstances complete the chain of evidence, it cannot be said that in absence of motive, the other proved circumstances are of no consequence. The absence of motive, however, puts the court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof. There is no absolute legal proposition of law that in the absence of any motive an accused cannot be convicted under Section 302 IPC. Effect of absence of motive would depend on the facts of each case. Therefore, this Court proposes to examine the question of motive which prompted the appellant to commit the crime in question."

31. This extract is taken from *Shankar v. State of Maharashtra*, (2023) 19 SCC 553 : 2023 SCC OnLine SC 268 at page 564

20. There can be no doubt with respect to the fact that in a case where the conviction is based on circumstantial evidence, motive assumes great significance. A three-Judge Bench of this Court in *Nandu Singh* v. *State of M.P.* [*Nandu Singh* v. *State of M.P.*, (2022) 19 SCC 301] by its judgment dated 25-2-2022, after observing thus, held as under : (SCC p. 304, para 9)

> "*9.* … It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused."

We may add here that just like complete absence of motive failure to establish motive after attributing one, should also give a different complexion in a case based on circumstantial evidence and it will certainly enfeeble the case of prosecution.

21. In the decision in *Nandu Singh case* [*Nandu Singh* v. *State of M.P.*, (2022) 19 SCC 301] an earlier decision of this Court in *Anwar Ali* v. *State of H.P.* [*Anwar Ali* v. *State of H.P.*, (2020) 10 SCC 166 : (2021) 1 SCC (Cri) 395] , was quoted with agreement, thus : (*Anwar Ali case* [*Anwar Ali* v. *State of H.P.*, (2020) 10 SCC 166 : (2021) 1 SCC (Cri) 395] , SCC p. 190, para 24)

> "*24.* Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by this Court in *Suresh Chandra Bahri* v. *State of Bihar* [*Suresh Chandra Bahri* v. *State of Bihar*, 1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60] that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in *Babu* [*Babu* v. *State of Kerala*, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In paras 25 and 26, it is observed and held as under : (*Babu case*, SCC pp. 200-201).
>
> '*25.* In *State of U.P.* v. *Kishanpal* [*State of U.P.* v. *Kishanpal*, (2008) 16 SCC 73 : (2010) 4 SCC (Cri) 182] , this Court examined the importance of

motive in cases of circumstantial evidence and observed : (SCC pp. 87-88, paras 38-39)

"*38*. … the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.

39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."

26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide *Pannayar* v. *State of T.N.* [*Pannayar* v. *State of T.N.*, (2009) 9 SCC 152 : (2009) 3 SCC (Civ) 638 : (2010) 2 SCC (Cri) 1480])' "

22. In the decision in *Shivaji Chintappa Patil* v. *State of Maharashtra* [*Shivaji Chintappa Patil* v. *State of Maharashtra*, (2021) 5 SCC 626 : (2021) 2 SCC (Cri) 679] , after referring to the decision in *Anwar Ali case* [*Anwar Ali* v. *State of H.P.*, (2020) 10 SCC 166 : (2021) 1 SCC (Cri) 395] , this Court observed thus : (*Shivaji Chintappa Patil case* [*Shivaji Chintappa Patil* v. *State of Maharashtra*, (2021) 5 SCC 626 : (2021) 2 SCC (Cri) 679] , SCC p. 635, para 27)

"*27*. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances."

23. In the case on hand, the prosecution alleged a motive. According to the prosecution on 29-9-2001, the deceased along with his friend Parag Sukhdeve assaulted the brother of the appellant in the latter appeal (the first accused in the Sessions trial). It is also the case of the prosecution that after the accused persons entered the house of PW 8, Chintaman Giddu Gatey the first accused-the appellant in the latter appeal hurled abuses on the deceased and asked him why he along with his friend Parag Sukhdeve assaulted his brother. It is also the case of the prosecution that though the deceased denied any such occurrence, the said appellant continued to say that the deceased had done dishonesty and assaulted his brother. After alleging motive as above,

prosecution had failed to establish the same. In this context, it is to be noted that the trial court made a positive finding that the prosecution had miserably failed to establish the alleged motive. Despite the said finding of the trial court and despite that issue was pointedly raised before the High Court, obviously the High Court in the impugned judgment [*Anil Daggi* v. *State of Maharashtra*, 2009 SCC OnLine Bom 1191] did not consider the said aspect at all. This failure on the part of the High Court is a ground specifically taken in this appeal. In the light of the decision in *Anwar Ali case* [*Anwar Ali* v. *State of H.P.*, (2020) 10 SCC 166 : (2021) 1 SCC (Cri) 395] and *Shivaji Chintappa Patil case* [*Shivaji Chintappa Patil* v. *State of Maharashtra*, (2021) 5 SCC 626 : (2021) 2 SCC (Cri) 679] , and also based on what we held in respect of the impact of failure to establish the alleged motive in a case based on circumstantial evidence it can only be held that the said failure had weakened the case of the prosecution. This aspect should have been given proper weight by the courts below.

Ratio On Circumstantial Evidence

32. This extract is taken from *Shankar v. State of Maharashtra*, (2023) 19 SCC 553 : 2023 SCC OnLine SC 268 at page 558

3. The prosecution case, in nutshell, is as follows : On 12-12-2001 at about 5.00 p.m., the deceased along with a friend went to Indira Gandhi Ward at Bandhara where the house of Chintaman Giddu Gatey (PW 8) situates. After parking his Luna Moped the deceased went inside of the house of Chintaman Giddu Gatey (PW 8), leaving his friend near the vehicle. Deceased and Chintaman Giddu Gatey (PW 8) smoked ganja and while so the deceased Accused 4 (Raju Pande), Hiralal, the first appellant in the former appeal who is no more and Accused 1 and 3, who are the surviving convicts (hereinafter referred to as "the appellants"), came there on two motorcycles and they too, went inside the house of Chintaman Giddu Gatey (PW 8). All of them smoked ganja. While so, the appellant in the latter appeal viz. Accused 1 questioned the deceased as to why he along with his friend Parag Sukhdeve assaulted his brother. It is worthy to note at this juncture that according to the prosecution, on 29-9-2001, the deceased along with his friend Parag Sukhdeve assaulted the brother of the appellant in the latter appeal. Though, the deceased denied assault on his brother, the appellant in the latter appeal (the first accused) continued to say that the deceased did dishonesty and assaulted his brother. Though, the friend of the deceased who was waiting outside came inside and asked him to come out the deceased remained there and thereupon his friend left the place. Later, the first accused invited the deceased for drinks and all of them, including the deceased, left the house of Chintaman Giddu Gatey (PW 8) on two motorcycles by about 6 p.m. After about an hour, the dead body of the deceased was found by one Manoj Goswami, a resident of Paladi. The case is that upon being informed by the villagers, Manoj Goswami (PW 1) went to the spot and on finding the dead body he went to Bhandara Police Station and lodged a report. As per the prosecution, the deceased was taken by the accused on one of the motorcycles through National Highway No. 6 towards Lakhani town. To the north of the said National Highway and at a distance of about 10 km from Bhandara there was another road leading to Village Paladi and on the side of the said Bhandara-Paladi road, at about by one kilometre from National Highway No. 6, they stopped their motorcycles and started assaulting the deceased using sharp weapons. The deceased sustained 22 ante-mortem injuries, all over his body and met with instantaneous death.

5. The appellants in the captioned appeals challenge the findings of conviction and consequential imposition of sentence raising various grounds. But, before considering the contentions against the concurrent findings raised

by the appellants, we find it only appropriate to refer to the following decisions on the law relating circumstantial evidence.

6. In the decision in *Sarbir Singh* v. *State of Punjab* [*Sarbir Singh* v. *State of Punjab*, 1993 Supp (3) SCC 41 : 1993 SCC (Cri) 860] , this Court observed and held thus : (SCC p. 44, paras 5-6)

> "*5.* ... But in a case based on circumstantial evidence neither the accused nor the manner of occurrence is known to the persons connected with the victim. The first information report is lodged only disclosing the offence, leaving to the investigating agency to find out the offender.
>
> *6.* It is said that men lie but circumstances do not. Under the circumstances prevailing in the society today, it is not true in many cases. Sometimes the circumstances which are sought to be proved against the accused for purpose of establishing the charge are planted by the elements hostile to the accused who find out witnesses to fill up the gaps in the chain of circumstances. In countries having sophisticated modes of investigation, every trace left behind by the culprit can be followed and pursued immediately. Unfortunately, it is not available in many parts of this country. That is why courts have insisted (*i*) the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established; (*ii*) all the facts so established should be consistent only with the hypothesis of the guilty of the accused and should be such as to exclude every hypothesis but the one sought to be proved; (*iii*) the circumstances should be of a conclusive nature; and (*iv*) the chain of evidence should not have any reasonable ground for a conclusion consistent with the innocence of the accused."

7. Further it was held therein as under : (*Sarbir Singh case* [*Sarbir Singh* v. *State of Punjab*, 1993 Supp (3) SCC 41 : 1993 SCC (Cri) 860] , SCC p. 45, para 7)

> "*7.* ... It has been impressed that suspicion and conjecture should not take the place of legal proof. It is true that the chain of events proved by the prosecution must show that within all human probability the offence has been committed by the accused, but the court is expected to consider the total cumulative effect of all the proved facts along with the motive suggested by the prosecution which induced the accused to follow a particular path. The existence of a motive is often an enlightening factor in a process of presumptive reasoning in cases depending on circumstantial evidence."

8. In *Brijlala Pd. Sinha* v. *State of Bihar* [*Brijlala Pd. Sinha* v. *State of Bihar*, (1998) 5 SCC 699 : 1998 SCC (Cri) 1382] , this Court held thus : (SCC pp. 710-11, para 9)

> "*9.* … In a case of circumstantial evidence the prosecution is bound to establish the circumstances from which the conclusion is drawn must be fully proved; the circumstances should be conclusive in nature; all the circumstances so established should be consistent only with the hypothesis of guilt and inconsistent with the innocence; and lastly the circumstances should to a great certainty exclude the possibility of guilt of any person other than the accused. [*State of U.P.* v. *Ravindra Prakash Mittal*, (1992) 3 SCC 300 : 1992 SCC (Cri) 642] The law relating to circumstantial evidence no longer remains res integra and it has been held by a catena of decisions of this Court that the circumstances proved should lead to no other inference except that of the guilt of the accused so that, the accused can be convicted of the offences charged. It may be stated as a rule of caution that before the court records conviction on the basis of circumstantial evidence, it must satisfy itself that the circumstances from which inference of guilt could be drawn have been established by unimpeachable evidence and the circumstances unerringly point to the guilt of the accused and further, all the circumstances taken together are incapable of any explanation on any reasonable hypothesis save the guilt of the accused."

9. In the decision in *Prakash* v. *State of Rajasthan* [*Prakash* v. *State of Rajasthan*, (2013) 4 SCC 668 : (2013) 2 SCC (Cri) 870] , this Court took note of the following principles laid down regarding the law relating circumstantial evidence in *Sharad Birdhichand Sarda* v. *State of Maharashtra* [*Sharad Birdhichand Sarda* v. *State of Maharashtra*, (1984) 4 SCC 116 : 1984 SCC (Cri) 487] : (SCC p. 185, paras 153-54)

> "*153.* A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra* [*Shivaji Sahabrao Bobade* v. *State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] where the following observations were made : (SCC p. 807, para 19)

'*19*. … Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.'

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

10. After noting the above five golden principles, it was held in *Prakash case* [*Prakash* v. *State of Rajasthan*, (2013) 4 SCC 668 : (2013) 2 SCC (Cri) 870] , that they would constitute the Panchsheel of the proof of a case based on circumstantial evidence and conviction could be sustained on the basis of last seen, motive and recovery of incriminating articles in pursuance of the information given by the accused if those five golden principles of the proof of a case based on circumstantial evidence are satisfied.

11. Virtually, the law laid down relating circumstantial evidence in those decisions are unfailingly followed by this Court while dealing with the cases where conviction is rested on circumstantial evidence.

33. This extract is taken from *G. Parshwanath v. State of Karnataka*, (2010) 8 SCC 593 : (2010) 3 SCC (Cri) 1027 : 2010 SCC OnLine SC 905 at page 602

22. The evidence tendered in a court of law is either direct or circumstantial. Evidence is said to be direct if it consists of an eyewitness account of the facts in issue in a criminal case. On the other hand, circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the existence of facts in issue or factum probandum. In dealing with circumstantial evidence there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof. However, it is not derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual incident, but the circumstances cannot fail. Therefore, many a times it is aptly said that "men may tell lies, but circumstances do not".

23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in

establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court.

45 [Ed.: Para 45 corrected vide Official Corrigendum No. F.3/Ed.B.J./139/2010 dated 6-12-2010.] . The argument that in **absence of motive** on the part of the appellant to kill the deceased benefit of reasonable doubt should be given, cannot be accepted. First of all every suspicion is not a doubt. Only reasonable doubt gives benefit to the accused and not the doubt of a vacillating Judge. Very often a motive is alleged to indicate the high degree of probability that the offence was committed by the person who was prompted by the motive. In a case where the motive alleged against accused is fully established, it provides foundational material to connect the chain of circumstances. It *affords* a key on a pointer to scan the evidence in the case in that perspective and as a satisfactory circumstance of corroboration. **However, in a case based on circumstantial evidence where proved circumstances complete the chain of evidence, it cannot be said that in absence of motive, the other proved circumstances are of no consequence. The absence of motive, however, puts the court on its guard to scrutinise the circumstances more carefully to** ensure that suspicion and conjecture do not take place of legal proof. There is no absolute legal proposition of law that in the absence of any motive an accused cannot be convicted under Section 302 IPC. Effect of absence of motive would depend on the facts of each case. Therefore, this Court proposes to examine the question of motive which prompted the appellant to commit the crime in question.

34. This extract is taken from *Bhagat Ram v. State of Punjab*, (1954) 1 SCC 138 : 1954 SCC OnLine SC 70 at page 144

7. The learned Judge of the High Court has also substantially agreed with this opinion. The question, therefore, that arises in this case is whether the circumstances brought out are so clear as to show that the defence is false or improbable. In a case like this depending on the conclusions drawn from circumstances, it is well settled that the cumulative effect of the circumstances must be such as to negative the innocence of the accused and to bring the offences home to him beyond any reasonable doubt. This Court has affirmed the proposition in *Hanumant* v. *State of M.P.* [*Hanumant* v. *State of M.P.*, (1952) 2 SCC 71 at pp. 76-77, para 12 : 1952 SCR 1091 at pp. 1097-98] in the following terms at SCR pp. 1097-98 : (SCC pp. 76-77, para 12)

> "*12*. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

35. This extract is taken from *Hukam Singh v. State of Rajasthan*, (1977) 2 SCC 99 : 1977 SCC (Cri) 250 : 1977 SCC OnLine SC 72 at page 102

7. It is now settled law that in case of circumstantial evidence, all the incriminating facts and circumstances should be fully established by cogent and reliable evidence and the facts so established must be consistent with the guilt of the accused and should not be capable of being explained away on any other reasonable hypothesis than that of his guilt. In short, the circumstantial evidence should unmistakably point to one and one conclusion only that the accused person and none other perpetrated the alleged crime. If the circumstances proved in a particular case are not inconsistent with the innocence of the accused and if they are susceptible of any rational explanation, no conviction can lie. Judged from this standpoint, it is not possible to affirm the conviction of the appellant for the offence of murder of any one or more of Bhanwar Singh, Roop Singh, Lad Kanwar and Inder Kanwar. The three circumstances relied upon by the prosecution are not incompatible with the innocence of the appellant insofar as the murders of these four persons are concerned. They are capable of being explained away on a hypothesis other than that of guilt of the appellant. We may point out that in any event the view taken by the Sessions Court that the circumstances were not sufficient to found the conviction of the appellant was a reasonable view and the High Court was not justified in reversing it.

36. This extract is taken from *Eradu v. State of Hyderabad*, 1955 SCC OnLine SC 98 : AIR 1956 SC 316 : 1956 CRI LJ 559

10. The conviction for the offence under Section 243 APC, however, could not be sustained on the evidence as it stands on the record. It is a fundamental principle of criminal jurisprudence that circumstantial evidence should point inevitably to the conclusion that it was the accused and the accused only who were the perpetrators of the offence and such evidence should be incompatible with the innocence of the accused. Both the courts below considered that the fact of the Accused 1 to 4 enticing away the deceased on that evening and the further fact of the deceased having been found hanging in the doddi or the backyard of his house were by themselves enough to lead inevitably to the conclusion that it was the accused and the accused only who were responsible for the crime. We cannot agree with this conclusion reached by the courts below. In our opinion, these circumstances, by themselves, are not enough without anything more to connect the accused with the crime and the accused are entitled to be acquitted of the offences with which they have been charged.

37. This extract is taken from *Earabhadrappa v. State of Karnataka*, (1983) 2 SCC 330 : 1983 SCC (Cri) 447 : 1983 SCC OnLine SC 78 at page 338

9. In *Jaffer Hussein Dastgir* v. *State of Maharashtra* [(1969) 2 SCC 872 : AIR 1970 SC 1934 : (1970) 2 SCR 332 : 1970 Cri LJ 1659] the portion of the statement with reference to which this question arose read as follows: (SCC p. 874, para 2)

> "I will point out one Gaddi alias Ramsingh of Delhi at Bombay Central Railway Station at III Class Waiting Hall to whom I have given a packet containing diamonds of different sizes more than 200 in number."

The only question for decision in that case before the court was whether the aforesaid statement made by the accused was admissible in evidence by virtue of Section 27 of the Evidence Act, the diamonds having been found with the person named. In the facts of that case the Court came to the conclusion that the police had already known that the diamonds were with the person named by the accused with the result that there was no fact discovered by the police as a result of the statement made by the accused. However, it was held clearly that, but for such knowledge of the police, the aforesaid statement of the accused would have been admissible in evidence.

38. This extract is taken from *Balwinder Singh v. State of Punjab*, (1987) 1 SCC 1 : 1987 SCC (Cri) 27 : 1986 SCC OnLine SC 245 at page 3

6. In cases in which the evidence is purely of a circumstantial nature, the facts and circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt, and the facts and circumstances should not only be consistent with the guilt of the accused, but they must be such in their effect as to be entirely incompatible with the innocence of the accused and must exclude every reasonable hypothesis, consistent with his innocence. In the light of these well-settled principles, the learned Sessions Judge as well as the High Court, during the course of their carefully written judgment, have ably marshalled the evidence and come to the conclusion that the circumstances alleged have been fully proved, and they are consistent only with the hypothesis of the guilt of the appellant. There was no reason for the learned Sessions Judge and the High Court not to have relied upon the testimony of Kashmira Singh, PW 3, brother of the deceased. This witness was closely cross-examined but nothing has been brought out to impeach his credibility as a truthful witness. Both he and his brother Santokh Singh owned a taxi and both used to ply their taxis from the taxi-stand Kot Atma Singh in Amritsar. It appears from his evidence that the appellant Balwinder Singh alias Billa was known to him from before as he used to come to the taxi-stand to hire a taxi. His version is that on that evening the appellant Balwinder Singh along with his three companions came and hired the taxi of his brother Santokh Singh for going to Batala and that they all got into the taxi and left towards Batala. He states that when his brother Santokh Singh did not return that night, on the next morning i.e. on the 26th, he left for Batala in search of him but could find no trace. On the next day i.e. on the 27th, he lodged the first information report. The testimony of this witness is corroborated by the first information report, the testimony of the taxi-driver Fauza Singh, PW 4 and other attendant circumstances.

39. This extract is taken from *Ashok Kumar Chatterjee v. State of M.P.*, 1989 Supp (1) SCC 560 : 1989 SCC (Cri) 566 at page 569

30. This appeal arises against the concurrent findings of facts except for the modification of the sentence made by the High Court. There is no direct evidence to prove this case and the conviction is founded solely on circumstantial evidence. This Court in a line of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

"(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) 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 none else, and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence: (See *Gambhir* v. *State of Maharashtra* [(1982) 2 SCC 351 : 1982 SCC (Cri) 431] .)"

40. This extract is taken from *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180 : 2003 SCC (Cri) 1965 : 2003 SCC OnLine SC 852 at page 187

8. Before analysing the factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

9. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See *Hukam Singh* v. *State of Rajasthan* [(1977) 2 SCC 99 : 1977 SCC (Cri) 250 : AIR 1977 SC 1063] , *Eradu* v. *State of Hyderabad* [AIR 1956 SC 316 : 1956 Cri LJ 559] , *Earabhadrappa* v. *State of Karnataka* [(1983) 2 SCC 330 : 1983 SCC (Cri) 447 : AIR 1983 SC 446] , *State of U.P.* v. *Sukhbasi* [1985 Supp SCC 79 : 1985 SCC (Cri) 387 : AIR 1985 SC 1224] , *Balwinder Singh* v. *State of Punjab* [(1987) 1 SCC 1 : 1987 SCC (Cri) 27 : AIR 1987 SC 350] and *Ashok Kumar Chatterjee*v. *State of M.P.* [1989 Supp (1) SCC 560 : 1989 SCC (Cri) 566 : AIR 1989 SC 1890]) The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram* v. *State of Punjab* [AIR 1954 SC 621 : 1954 Cri LJ 1645] it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

10. We may also make a reference to a decision of this Court in *C. Chenga Reddy* v. *State of A.P.* [(1996) 10 SCC 193 : 1996 SCC (Cri) 1205] wherein it has been observed thus : (SCC pp. 206-07, para 21)

"*21.* In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

11. In *Padala Veera Reddy* v. *State of A.P.* [1989 Supp (2) SCC 706 : 1991 SCC (Cri) 407 : AIR 1990 SC 79] it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests : (SCC pp. 710-11, para 10)

"(*1*) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(*2*) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(*3*) 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 none else; and

(*4*) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

12. In *State of U.P.* v. *Ashok Kumar Srivastava* [(1992) 2 SCC 86 : 1992 SCC (Cri) 241 : 1992 Cri LJ 1104] it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

13. Sir Alfred Wills in his admirable book *Wills' Circumstantial Evidence* (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence:

"(*1*) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (*2*) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (*3*) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (*4*) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and (*5*) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted."

15. In *Hanumant Govind Nargundkar* v. *State of M.P.* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1953 Cri LJ 129] it was observed thus : (AIR pp. 345-46, para 10)

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

16. A reference may be made to a later decision in *Sharad Birdhichand Sarda* v. *State of Maharashtra* [(1984) 4 SCC 116 : 1984 SCC (Cri) 487 : AIR 1984 SC 1622] . Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are : (SCC p. 185, para 153)

(*1*) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(*2*) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(*3*) the circumstances should be of a conclusive nature and tendency;

(*4*) they should exclude every possible hypothesis except the one to be proved; and

(*5*) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

18. Confessions may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a Magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or court. Extra-judicial confessions are generally those that are made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164 of the Code or a Magistrate so empowered but receiving the confession at a stage when Section 164 does not apply. As to extra-judicial confessions, two questions arise : (*i*) were they made voluntarily? and (*ii*) are they true? As the section enacts, a confession made by an accused person is irrelevant in criminal proceedings, if the making of the confession appears to the court to have been caused by any inducement, threat or promise, (*1*) having reference to the charge against the accused person, (*2*) proceeding from a person in authority, and (*3*) sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (*a*) does not have reference to the charge against the accused person; or (*b*) it does not proceed from a person in authority; or (*c*) it is not sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24. The law is clear that a

confession cannot be used against an accused person unless the court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the court has to be satisfied with is, whether when the accused made the confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the court is satisfied that in its opinion the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt. (See *R.* v. *Warickshall* [(1783) 1 Leach 263 : 168 ER 234] .) It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it. So where the statement is made as a result of harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of a threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See *Woodroffe's Evidence*, 9th Edn., p. 284.) A promise is always attached to the confession alternative while a threat is always attached to the silence alternative; thus, in one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such

as is calculated to lead to an untrue confession. On the aforesaid analysis the court is to determine the absence or presence of an inducement, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession. The words “appear to him” in the last part of the section refer to the mentality of the accused.

41. This extract is taken from *R. Damodaran v. State*, (2021) 15 SCC 258 : 2021 SCC OnLine SC 134 at page 261

10. It was the appellant himself who took her to the hospital and made a false statement that she suffered a cardiac arrest but after the autopsy was conducted on the body of the deceased, it was opined that she died out of shock and haemorrhage due to thoracic injuries. In addition to other circumstances, the prosecution was able to establish that it was none other than the appellant who had committed the crime and he wanted to show his innocence by taking the deceased to the hospital and made a false statement that she suffered a cardiac arrest which on receipt of the post-mortem certificate, was found to be false where it was established that the death was caused by homicidal violence.

13. In a case based on circumstantial evidence, the settled principles of law are that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and such circumstances should be conclusive in nature and moreover the circumstances should be complete and there should be no gap left in the chain of events. However, the circumstances must be consistent only with the hypothesis of the guilt of the accused and inconsistent with the innocence. The principle which has to be kept in mind in a case of circumstantial evidence has been laid down by a three-Judge Bench of this Court in the judgment reported in *Sharad Birdhichand Sarda* v. *State of Maharashtra* **[*Sharad Birdhichand Sarda* v. *State of Maharashtra*, (1984) 4 SCC 116** : 1984 SCC (Cri) 487] which reads as under : (SCC p. 185, para 153)

> "*153.* A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> (*1*) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra* **[*Shivaji Sahabrao Bobade* v. *State of Maharashtra*, (1973) 2 SCC 793** : 1973 SCC (Cri) 1033] where the observations were made : (SCC p. 807, para 19)
>
> '*19.* ... Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance

between "may be" and "must be" is long and divides vague conjectures from sure conclusions.'

(*2*) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(*3*) the circumstances should be of a conclusive nature and tendency,

(*4*) they should exclude every possible hypothesis except the one to be proved, and

(*5*) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

(emphasis in original)

14. It was further followed by a three-Judge Bench in *Padala Veera Reddy* v. *State of A.P.* [***Padala Veera Reddy* v. *State of A.P.*, 1989 Supp (2) SCC 706** : 1991 SCC (Cri) 407] wherein this Court held as under : (SCC pp. 710-11, para 10)

"*10.* Before adverting to the arguments advanced by the learned counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

'(*1*) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(*2*) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(*3*) 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 none else; and

(*4*) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See *Gambhir* v. *State of Maharashtra* [*Gambhir* v. *State of Maharashtra*, (1982) 2 SCC 351 : 1982 SCC (Cri) 431] .)'"

15. Taking note of the principles which has been laid down by this Court and the circumstances which the prosecution has established in a chain of

events leave no matter of doubt that it is none other than the appellant who had committed the crime of murdering his own wife who was at the advanced stage of pregnancy, and taken the dead body to the hospital and made a false statement that she had got a cardiac arrest. Initially, the FIR was registered on suspicion but after the autopsy on the body of the deceased was conducted, taking note of the post-mortem report, a case under Section 302IPC was registered. Such incriminating links of facts could, if at all, have been explained by the appellant and nobody else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed.

Motive In Circumstantial Evidence

Firstly, we proceed to consider the theory of motive. It is trite law that proof of motive is not sine qua non in a case of murder. However, in a case based purely on circumstantial evidence, motive if properly established, assumes great significance and would 21 definitely provide an important corroborative link in the chain of incriminating circumstances and strengthen the case of prosecution. The reliance in this regard may be placed on the case of Nandu Singh v. State of Chhattisgarh.

Last Seen Case Law

42. This extract is taken from *Surajdeo Mahto v. State of Bihar*, (2022) 11 SCC 800 : 2021 SCC OnLine SC 542 at page 805

Facts

2. The prosecution case, in brief, is that on 5-4-1987, Arun (deceased) and Sunder Prasad (PW 17) were putting up in Arun's house at Manawan Village when Surajdeo Mahto (Appellant 1) and Raj Kumar approached Arun and asked him to accompany them to the cinema at Nawada Village. While Arun was reluctant initially to accompany them, he eventually agreed when Appellant 1 volunteered to bear the expenses. Upon Arun's request, Sunder Prasad (PW 17) also agreed to go along with them to the cinema. After the show, Raj Kumar and Sunder Prasad returned to Manawan Village on 6-4-1987 whereas Arun and Surajdeo Mahto did not come back with them. As Arun did not return, Ramji Mahto (father of Arun; PW 16) enquired from Raj Kumar who told him that Arun and Surajdeo Mahto had gone to Arun's in-laws' place in Amwa Village.

3. A few more days passed and Arun had not yet returned home, Arun's worried family, therefore, sent Raj Kumar to bring him back. Ramji Mahto also requested his fellow villager Kailash Mahto (PW 1) to join him in looking for Arun. They found out that Surajdeo Mahto and Arun had visited the latter's in-laws' place on 6-4-1987 and stayed there till 8-4-1987. It was further discovered that the duo had then proceeded to Dopta Village wherein Appellant 1's sister was married. Thereafter, Appellant 1 returned to his Village Manawan on 10-4-1987, but whereabouts of Arun were still unknown. When asked, Appellant 1 did not provide any credible information about Arun, instead, he too disappeared and was not seen for the next few days. Pursuant to Ramji's request, PW 1 visited Dopta on 10-4-1987 but he too was unable to track down Arun. Since Arun was still untraceable, Ramji Mahto, through his nephew Ishwari Mahto (PW 3-A), sent information to the police, which culminated in the lodging of Sanha Entry No. 227, dated 11-4-1987.

4. In the meantime, Ram Brikch Paswan (PW 8), Chowkidar, Circle No. 7, heard rumours of a dead body in Ram Sagar Ahar (Reservoir) near Kakolat. On 11-4-1987, he proceeded to the spot and discovered the dead body. He also found an iron dagger and two lungis near the body. The statement of Ram Brikch Paswan was subsequently recorded by the police and treated as a fardbeyan. Thereafter, Ramchandra Singh (PW 18), Officer-in-charge, Govindpur Police Station reached the spot and prepared the inquest report in the presence of the witnesses. Upon inspecting the place of occurrence, additional material such as one pair of slippers, one handkerchief, a knife and

a jerrycan made of plastic were also discovered and seized. A seizure list was prepared in the presence of the witnesses. The dead body was then sent for post-mortem examination.

5. On 12-4-1987, Ramji Mahto (PW 16) received information that a dead body of a male person was brought in by Govindpur Police Station. Subsequently, Ramji Mahto along with some co-villagers went to the police station and identified that the dead body was that of his son Arun.

Contentions of appellant

19. We have heard the **learned counsel for the appellants** at considerable length. The principal contention is that the entire case rested on circumstantial evidence and there was no eyewitness to the alleged incident. The learned counsel submitted that no independent witnesses had been examined by the prosecution and all the witnesses were either relatives or close friends of the complainant party. The counsel further pressed that the courts below have completely erred in relying upon the testimony of PW 10 to PW 14. As far as Appellant 2 is concerned, it was submitted that only evidence against him was that of Sheodani Mahto (PW 3) and Baleshwar Prasad Yadav (PW 12). The counsel asserted that PW 3 had seen the deceased in the company of Appellant 2 two days prior to the recovery of the dead body, and hence the evidence of PW 3 did not support the prosecution case. Casting doubts on the credibility of the evidence of PW 12, it was claimed to be highly improbable that PW 12 was able to see the face of Appellant 2 only through the light of a lantern on a pitch-dark night. The learned counsel further contended that the failure on the part of the investigating agency not to send the knife recovered at the spot of occurrence for forensic examination was fatal to the prosecution case. Hence, it was urged that the courts below fell in grave error in convicting the appellants merely on the basis of "last seen theory".

22. The learned State Counsel further canvassed that all the material witnesses, PW 1 to PW 14, have corroborated each other's versions. Drawing force from the decisions in *Sukhar* v. *State of U.P.* [*Sukhar* v. *State of U.P.*, (1999) 9 SCC 507, paras 5 to 10 : 2000 SCC (Cri) 419] and *Badruddin Rukonddim Karpude* v. *State of Maharashtra* [*Badruddin Rukonddim Karpude* v. *State of Maharashtra*, 1981 Supp SCC 1, para 16 : 1981 SCC (Cri) 610] , it was submitted that the principles of res gestae are applicable to the facts and circumstances of this case, and the statements made by one witness to another are admissible in evidence. He also urged that the absence of TIP in

the present case would not be fatal to the case of the prosecution [*Malkhansingh* v. *State of M.P.*, (2003) 5 SCC 746, paras 7, 8 to 16 : 2003 SCC (Cri) 1247] .

29. It appears to us that the following circumstances need to be considered to arrive at the guilt of the appellants : **(*i*) last seen theory; (*ii*) motive, and (*iii*) false information provided and subsequent conduct of the appellants.**

(*i*) *Last seen theory*

30. The case of the prosecution in the present case heavily banks upon the principle of "last seen theory". Briefly put, **the last seen theory is applied where the time interval between the point of when the accused and the deceased were last seen together, and when the victim is found dead, is so small that the possibility of any other person other than the accused being the perpetrator of crime becomes impossible. Elaborating on the principle of "last seen alive", a three-Judge Bench of this Court in *Satpal* v. *State of Haryana* [*Satpal* v. *State of Haryana*, (2018) 6 SCC 610, para 6]** has, however, cautioned that unless the fact of last seen is corroborated by some other evidence, the fact that the deceased was last seen in the vicinity of the accused, would by itself, only be a weak kind of evidence. The Court further held : (SCC pp. 612-13, para 6)

> "*6.* … Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under **Section 106 of the Evidence** Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."

31. We may hasten to clarify that the fact of **last seen should not be weighed in isolation or be segregated from the other evidence led by the**

prosecution. The last seen theory should rather be applied taking into account the case of the prosecution in its entirety. Hence, the courts have to not only consider the factum of last seen, but also have to keep in mind the circumstances that preceded and followed from the point of the deceased being so last seen in the presence of the accused.

35. The counsel for the appellants further assailed the last seen theory and submitted that even if the deposition of PW 3 was considered true, he had seen Arun in the company of the appellants on 9-4-1987, which was two days before the discovery of the dead body. It was, thus, argued that the intervening time period between the two events could not rule out the possibility of intervention by a third party and as such there was not a continuous chain of circumstances. While this argument seems attractive at the first instance, but, when considered in the light of testimonies made by the independent witnesses PW 6 and PW 8, it stands completely belied. The prosecution case is that both the appellants committed the murder on the night of 9-4-1987. PW 8, who discovered the body of Arun on 11-4-1987, deposed that he had heard rumours about the dead body the previous night itself, however, on account of it being dark and a forested area, he was only able to proceed to the spot the next day. Given that the body was lying on the spot at least since 10-4-1987, the instant crime could have been committed on or before 10-4-1987. The medical evidence in the present case further braces the prosecution story. PW 6, the doctor, examined the body of the deceased on 12-4-1987. In his opinion, the time elapsed since the death of Arun was 36 to 72 hours. Thus, the medical evidence fully corroborates the prosecution story of the murder having being taken place on 9-4-1987. We also note that the courts below have dealt with this issue elaborately and have held that the murder of the deceased indeed took place on 9-4-1987. We see no reason to take a contrary view.

36. The counsel for the State appears to be right in relying upon the decision of this Court in *Kashi Ram* [***State of Rajasthan* v. *Kashi Ram*, (2006) 12 SCC 254,** paras 19-24 : (2007) 1 SCC (Cri) 688] to assert that once the fact of last seen is established, the accused must offer some explanation as to the circumstances in which he departed the company of the deceased. This position of law, as covered under Section 106 of the IEA, was duly considered in *Satpal* [***Satpal* v. *State of Haryana*, (2018) 6 SCC 610**, para 6] , wherein, this Court clarified that if the accused fails to offer any plausible explanation, an adverse inference can be drawn against the accused. In the instant case also, Appellant 1 has been unable to offer any explanation as to circumstances in which he departed from the company of the deceased.

(*ii*) *Motive*

39. If motive in a case is attributed to an accused(s) and thereafter proved, the probability of the crime being committed by the said accused is intensified. It is for this reason, that in cases of overwhelming circumstantial evidence, proof of motive will be an important piece of corroborative evidence, as well as, form a vital link in the chain of evidence.

40. The motive attributed to the appellants in this case is that they murdered the deceased because he was allegedly having an illicit affair with Rita, sister of Appellant 1. While none of the witnesses have specifically deposed about the deceased having an affair with Rita, the motive, as alleged, does find some corroboration in the depositions of PW 1, PW 3-A and PW 16. It is revealed from the testimony of PW 3-A that initially there were cordial and friendly relations between the first appellant and the deceased's family but the same became sour after the month of February. PW 1 who is a fellow villager has corroborated the testimonies of PW 3-A. PW 16 has categorically deposed that a Panchayat had been called in regard to the illicit relationship of the deceased with Rita.

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Confession

43. This extract is taken from *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715 : 2005 SCC OnLine SC 1132 at page 662

Law regarding confessions

27. We start with the confessions. Under the general law of the land as reflected in the Evidence Act, no confession made to a police officer can be proved against an accused. "Confessions" which is a terminology used in criminal law is a species of "admissions" as defined in Section 17 of the Evidence Act. An admission is a statement, oral or documentary which enables the court to draw an inference as to any fact in issue or relevant fact. It is trite to say that every confession must necessarily be an admission, but, every admission does not necessarily amount to a confession. While Sections 17 to 23 deal with admissions, the law as to confessions is embodied in Sections 24 to 30 of the Evidence Act. Section 25 bars proof of a confession made to a police officer. Section 26 goes a step further and prohibits proof of confession made by any person while he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate. Section 24 lays down the obvious rule that a confession made under any inducement, threat or promise becomes irrelevant in a criminal proceeding. Such inducement, threat or promise need not be proved to the hilt. If it *appears* to the court that the making of the confession was caused by any inducement, threat or promise proceeding from a person in authority, the confession is liable to be excluded from evidence. The expression "appears" connotes that the court need not go to the extent of holding that the threat, etc. has in fact been proved. If the facts and circumstances emerging from the evidence adduced make it reasonably probable that the confession could be the result of threat, inducement or pressure, the court will refrain from acting on such confession, even if it be a confession made to a Magistrate or a person other than a police officer. Confessions leading to discovery of a fact which is dealt with under Section 27 is an exception to the rule of exclusion of confession made by an accused in the custody of a police officer. Consideration of a proved confession affecting the person making it as well as the co-accused is provided for by Section 30. Briefly and broadly, this is the scheme of the law of evidence vis-à-vis confessions. The allied provision which needs to be noticed at this juncture is Section 162 CrPC. It prohibits the use of any statement made by any person to a police officer in the course of investigation for any purpose at any enquiry or trial in respect of any offence under investigation. However, it can be used to a limited extent to contradict a witness as provided for by Section 145 of the

Evidence Act. Sub-section (2) of Section 162 makes it explicit that the embargo laid down in the section shall not be deemed to apply to any statement falling within clause (1) of Section 32 or to affect the provisions of Section 27 of the Evidence Act.

28. In the Privy Council decision of *Pakala Narayana Swami* v. *Emperor* [AIR 1939 PC 47 : 40 Cri LJ 364] Lord Atkin elucidated the meaning and purport of the expression "confession" in the following words: (AIR p. 52)

> "[A] confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession…."

29. Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth. "Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law." (Vide *Taylor's Treatise on the Law of Evidence*, Vol. I.) However, before acting upon a confession the court must be satisfied that it was freely and voluntarily made. A confession by hope or promise of advantage, reward or immunity or by force or by fear induced by violence or threats of violence cannot constitute evidence against the maker of the confession. The confession should have been made with full knowledge of the nature and consequences of the confession. If any reasonable doubt is entertained by the court that these ingredients are not satisfied, the court should eschew the confession from consideration. So also the authority recording the confession, be it a Magistrate or some other statutory functionary at the pre-trial stage, must address himself to the issue whether the accused has come forward to make the confession in an atmosphere free from fear, duress or hope of some advantage or reward induced by the persons in authority. Recognising the stark reality of the accused being enveloped in a state of fear and panic, anxiety and despair while in police custody, the Evidence Act has excluded the admissibility of a confession made to the police officer.

30. Section 164 CrPC is a salutary provision which lays down certain precautionary rules to be followed by the Magistrate recording a confession so as to ensure the voluntariness of the confession and the accused being placed in a situation free from threat or influence of the police.

31. Before we turn our attention to the more specific aspects of confessions under POTA, we should have a conspectus of the law on the **evidentiary value**

of confessions which are retracted, which is a general feature in our country and elsewhere.

32. As to what should be the legal approach of the court called upon to convict a person primarily in the light of the **confession or a retracted confession** has been succinctly summarised in ***Bharat* v. *State of U.P.*** **[(1971) 3 SCC 950** : 1972 SCC (Cri) 198] Hidayatullah, C.J., speaking for a three-Judge Bench observed thus: (SCC p. 953, para 7)

> "Confessions can be acted upon if the court is satisfied that they are voluntary and that they are true. The voluntary nature of the confession depends upon whether there was any threat, inducement or promise and its truth is judged in the context of the entire prosecution case. The confession must fit into the proved facts and not run counter to them. When the voluntary character of the confession and its truth are accepted, it is safe to rely on it. Indeed a confession, if it is voluntary and true and not made under any inducement or threat or promise, is the most patent piece of evidence against the maker. Retracted confession, however, stands on a slightly different footing. As the Privy Council once stated, in India it is the rule to find a confession and to find it retracted later. A court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the court is satisfied that it was retracted because of an afterthought or advice, the retraction may not weigh with the court if the general facts proved in the case and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its user. All the same, the courts do not act upon the retracted confession without finding assurance from some other sources as to the guilt of the accused. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires the general assurance that the retraction was an afterthought and that the earlier statement was true. This was laid down by this Court in an earlier case reported in *Subramania Goundan* v. *State of Madras* [1958 SCR 428 : 1958 Cri LJ 238] ."

33. The same learned Judge observed in *Haroon Haji Abdulla* v. *State of Maharashtra* [(1968) 2 SCR 641 : 1968 Cri LJ 1017] that a "retracted confession must be looked upon with greater concern unless the reasons given for having made it in the first instance are on the face of them false". There was a further observation in the same paragraph that retracted confession is a weak link against the maker and more so against a co-accused. With great

respect to the eminent Judge, the comment that the retracted confession is a "weak link against the maker" goes counter to a series of decisions. The observation must be viewed in the context of the fact that the court was concentrating on the confession of the co-accused rather than the evidentiary value of the retracted confession against the maker.

34. Dealing with retracted confession, a four-Judge Bench of this Court speaking through Subba Rao, J., in *Pyare Lal Bhargava* v. *State of Rajasthan* [1963 Supp (1) SCR 689 : AIR 1963 SC 1094 : (1963) 2 Cri LJ 178] clarified the legal position thus: (SCR pp. 695-96)

> "A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made. But it has been held that a court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances can such a conviction be made without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars."

35. As to the extent of corroboration required, it was observed in *Subramania Goundan case* [1958 SCR 428 : 1958 Cri LJ 238] that each and every circumstance mentioned in the retracted confession regarding the complicity of the maker need not be separately and independently corroborated. The learned Judges observed: (SCR pp. 440-41)

> "It would be sufficient, in our opinion, that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession."

36. Then we have the case of *Shankaria* v. *State of Rajasthan* [(1978) 3 SCC 435 : 1978 SCC (Cri) 439] decided by a three-Judge Bench. Sarkaria, J., noted the twin tests to be applied to evaluate a confession: (*1*) whether the confession was perfectly voluntary, and (*2*) if so, whether it is true and trustworthy. The learned Judge pointed out that if the first test is not satisfied the question of applying the second test does not arise. Then the Court indicated one broad method by which a confession can be evaluated. It was said: (SCC p. 443, para 23)

> "The Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and

probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test."

37. In *Parmananda Pegu* v. *State of Assam* [(2004) 7 SCC 779 : 2004 SCC (Cri) 2081] this Court while adverting to the expression "corroboration of material particulars" used in *Pyare Lal Bhargava case* [1963 Supp (1) SCR 689 : AIR 1963 SC 1094 : (1963) 2 Cri LJ 178] clarified the position thus: (SCC p. 790, para 20)

"By the use of the expression 'corroboration of material particulars', the Court has not laid down any proposition contrary to what has been clarified in *Subramania Goundan case* [1958 SCR 428 : 1958 Cri LJ 238] as regards the extent of corroboration required. The above expression does not imply that there should be meticulous examination of the entire material particulars. It is enough that there is broad corroboration in conformity with the general trend of the confession, as pointed out in *Subramania Goundan case* [1958 SCR 428 : 1958 Cri LJ 238] ."

The analysis of the legal position in paras 18 and 19 is also worth noting: (SCC p. 788)

"*18*. Having thus reached a finding as to the voluntary nature of a confession, the truth of the confession should then be tested by the court. The fact that the confession has been made voluntarily, free from threat and inducement, can be regarded as presumptive evidence of its truth. Still, there may be circumstances to indicate that the confession cannot be true wholly or partly in which case it loses much of its evidentiary value.

19. In order to be assured of the truth of confession, this Court, in a series of decisions, has evolved a rule of prudence that the court should look to corroboration from other evidence. However, there need not be corroboration in respect of each and every material particular. Broadly, there should be corroboration so that the confession taken as a whole fits into the facts proved by other evidence. In substance, the court should have assurance from all angles that the retracted confession was, in fact, voluntary and it must have been true."

38. The use of retracted confession *against the co-accused* however stands on a different footing from the use of such confession against the maker. To come to grips with the law on the subject, we do no more than quoting the apt observations of Vivian Bose, J., speaking for a three-Judge Bench in *Kashmira Singh* v. *State of M.P.* [(1952) 1 SCC 275 : 1952 SCR 526 : AIR 1952 SC 159 : 1952 Cri LJ 839] Before clarifying the law, the learned

Judge noted with approval the observations of Sir Lawrence Jenkins that a confession can only be used to "lend assurance to other evidence against a co-accused". The legal position was then stated thus: (SCR p. 530)

> "Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, *if it is believed*, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, *if believed*, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."
>
> (emphasis in original)

39. The crucial expression used in Section 30 is "*the Court may take into consideration* such confession" (emphasis supplied). These words imply that the confession of a co-accused cannot be elevated to the status of substantive evidence which can form the basis of conviction of the co-accused. The import of this expression was succinctly explained by the Privy Council in *Bhuboni Sahu* v. *R.* [AIR 1949 PC 257 : 50 Cri LJ 872 : 76 IA 147] in the following words: (AIR p. 260)

> "[T]he court may take the confession into consideration and thereby, no doubt, makes its evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; *it can be put into the scale and weighed with the other evidence*."
>
> (emphasis supplied)

40. After referring to these decisions, a Constitution Bench of this Court in *Hari Charan Kurmi* v. *State of Bihar* [(1964) 6 SCR 623 : (1964) 2 Cri LJ 344] further clarified the legal position thus: (SCR pp. 632-33)

> "[I]n dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order *to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence*."

(emphasis supplied)

Ratio On Confession

44. This extract is taken from *C. Muniappan v. State of T.N.*, (2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402 : 2010 SCC OnLine SC 946 at page 595

78. In *Aloke Nath Dutta* v. *State of W.B.* [(2007) 12 SCC 230 : (2008) 2 SCC (Cri) 264] this Court disapproved the exhibiting and reading of confessional statement of the accused before the police as a whole before the court, as it had not been brought on record in a manner contemplated by law. The Court held as under : (SCC p. 257, para 53)

> "*53.* … Law does not envisage taking on record the entire confession by marking it as an exhibit incorporating both the admissible and inadmissible part thereof together. We intend to point out that only that part of confession is admissible, which would be leading to the recovery of dead body and/or recovery of articles …; the purported confession proceeded to state even the mode and manner in which Biswanath was allegedly killed. It should not have been done. It may influence the mind of the court."

While deciding the said case, this Court placed reliance on the judgments in *Pulukuri Kotayya* v. *King-Emperor* [(1946-47) 74 IA 65 : AIR 1947 PC 67] , *State of Maharashtra* v. *Damu* [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088] and *Anter Singh* v. *State of Rajasthan* [(2004) 10 SCC 657 : 2005 SCC (Cri) 597] .

79. Thus, it is evident from the above that only the admissible part of extra-judicial confessional statement can be exhibited. The statement as a whole, if exhibited and relied upon by the prosecution, leads to the possibility of the court getting prejudiced against the accused. Thus, it has to be avoided.

Extract Of Case Law On Extra Judicial Confession

45. This extract is taken from *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180 : 2003 SCC (Cri) 1965 : 2003 SCC OnLine SC 852 at page 186

4. The circumstances highlighted to fasten the guilt on the accused are as follows:

(*1*) Extra-judicial confession of the offence made by the accused before the witnesses.

(*2*) Immediately after the incident the accused was seen coming from the side of the *dhani* of the deceased Maniram.

(*3*) The conduct of the accused immediately after the incident.

(*4*) Human blood being found on the clothes of the accused.

(*5*) Recovery of pistol being got made by the accused.

18. Confessions may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a Magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or court. Extra-judicial confessions are generally those that are made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164 of the Code or a Magistrate so empowered but receiving the confession at a stage when Section 164 does not apply. As to extra-judicial confessions, two questions arise : (*i*) were they made voluntarily? and (*ii*) are they true? As the section enacts, a confession made by an accused person is irrelevant in criminal proceedings, if the making of the confession appears to the court to have been caused by any inducement, threat or promise, (*1*) having reference to the charge against the accused person, (*2*) proceeding from a person in authority, and (*3*) sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (*a*) does not have reference to the charge against the accused person; or (*b*) it does not proceed from a person in authority; or (*c*) it is not sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of

a temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24. The law is clear that a confession cannot be used against an accused person unless the court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the court has to be satisfied with is, whether when the accused made the confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the court is satisfied that in its opinion the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt. (See *R.* v. *Warickshall* [(1783) 1 Leach 263 : 168 ER 234] .) It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it. So where the statement is made as a result of harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of a threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See *Woodroffe's Evidence*, 9th Edn., p. 284.) A promise is always attached to the confession alternative while a threat is always attached to the silence alternative; thus, in one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne

in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the court is to determine the absence or presence of an inducement, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession. The words "appear to him" in the last part of the section refer to the mentality of the accused.

19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

20. If the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration as rightly submitted by the learned counsel for the respondent-accused, is a matter of prudence and not an invariable rule of law. It is improbable, as rightly held by the High Court that the accused would repose confidence in a person who is

inimically disposed towards him, and confess his guilt. Similarly, PW 3 is a close relative of PW 4 and as records reveal, a person of doubtful antecedents being a history-sheeter. Though that alone cannot be a ground to discard his evidence, the totality of circumstances cast an indelible shadow of doubt on his evidence. It is to be noted that the accused examined himself as DW 1. Though it was the prosecution version that there was also extra-judicial confession before informant Sahi Ram (PW 6), that was disbelieved by both the trial court and the High Court in view of the fact that he stated differently from what was allegedly stated by him during investigation. He disowned that the accused made any confessional statement before him. Though the prosecution during cross-examination of the accused (DW 1) suggested that he had made an extra-judicial confession before PW 6, significantly, not even such a suggestion was given in respect of PWs 3 and 4.

21. Coming to the bloodstains on the clothes which were allegedly seized, on being pointed out by the accused, the forensic laboratory report indicated that there were blots of human blood on the shirts and trousers of the accused. There was no effort to find out the blood group. In fact, the High Court noted this position and observed that presence of PW 4 at the time of recovery is doubtful as he has been found to be an unreliable witness. It was observed that even if it is accepted that there was existence of blood, this circumstance is not such from which it can be found that the accused was the perpetrator of the crime. In the aforesaid report (Ext. 61) it was clearly stated that the blood group of blood found on the clothes could not be determined. Neither the blood group of the deceased nor that of the accused was determined. In that background, the High Court held that the possibility of the blood being that of the accused cannot be ruled out. In view of the findings recorded by the High Court about the non-acceptability of evidence relating to the alleged extra-judicial confession, the conclusions of the High Court cannot be said to be one which are unsupportable. We decline to interfere in the appeals, and the same are dismissed.

Ratio On Extra Judicial Confession

46. This extract is taken from *Sanjay v. State (NCT of Delhi)*, (2001) 3 SCC 190 : 2001 SCC (Cri) 449 : 2001 SCC OnLine SC 366 at page 203

24. In this case after the arrest of Sanjay, appellant, the extrajudicial confession made by him to PW 5 and recording the statement of PW 5 the investigating officer apprehended the other accused persons. In his interrogation Vinod, appellant made a confessional statement, a major portion of which is inadmissible in evidence being hit by Sections 24 to 26 of the Evidence Act. However, the relevant portion which was used for recovery of the stolen property is as under:

> "I got gold jewellery and watches which are lying at my house at Shakarpur. I can point out the same and get them recovered. Both shirts are lying at my house, one pant at the residence of my friend at Madipur, and I am wearing the pant which I washed (after commission of the offence). I can get recovered the dagger and katta from my house at Shakarpur and also the abovementioned things."

25. In his disclosure statement the accused Mohabat Ali had stated:

> "I got gold jewellery, watches, cameras and clothes which are lying at my home. The revolver and kirpan used in the commission of the offence are also lying in my house. I can get recovered the (looted) property and the weapon of offence from my house at Mangolpuri. I can also get arrested Ramkishan, the seller of the revolver."

26. The relevant portion of statement of the accused Nawabuddin is as under:

> "I took jewellery and watches of my and Sanjay's share to my residence. Sanjay dropped me on a scooter. I can get recovered the (looted) property from my residence."

27. Raising objections to the words "after commission of the offence" appearing in the disclosure statement of Vinod and "looted property" in the statement of Nawabuddin, the learned counsel for the appellants submitted that the whole of the statement was hit by Sections 24 to 26 of the Evidence Act and Section 162 of the Code of Criminal Procedure. We are not inclined to accept such a general statement. Even if the objectionable words (bracketed above) are deleted, the appellants cannot be conferred with any benefit which would entitle them to acquittal. It is not disputed that consequent upon the disclosure statements made, the articles mentioned therein were actually recovered at their instance from the place where such articles had been hidden by them. The mere use of the words "looted property" in relation to the articles seized which were found to have been taken away after the commission of the

crime of murder and robbery would not change the nature of the statement. The words do not implicate the accused with the commission of the crime but refer only to the nature of the property hidden by them which were ultimately recovered consequent upon their disclosure statements. Hypertechnical approach, as projected by the defence counsel, would defeat the ends of justice and have disastrous effect. The property recovered consequent upon the making of the disclosure statements has been proved to be the property of the deceased, stolen after the commission of the offence of robbery and murder.

28. Besides Section 27, the courts can draw presumptions under Section 114, Illustration (*a*) and Section 106 of the Evidence Act. In *Gulab Chand* v. *State of M.P.* [(1995) 3 SCC 574 : 1995 SCC (Cri) 552] where ornaments of the deceased were recovered from the possession of the accused immediately after the occurrence, this Court held: (SCC pp. 577-78, para 4)

> "It is true that simply on the recovery of stolen articles, no inference can be drawn that a person in possession of the stolen articles is guilty of the offence of murder and robbery. But culpability for the aforesaid offences will depend on the facts and circumstances of the case and the nature of evidence adduced. It has been indicated by this Court in *Sanwat Khan* v. *State of Rajasthan* [(1952) 2 SCC 641 : AIR 1956 SC 54 : 1956 Cri LJ 150] that no hard and fast rule can be laid down as to what inference should be drawn from certain circumstances. It has also been indicated that where only evidence against the accused is recovery of stolen properties, then although the circumstances may indicate that the theft and murder might have been committed at the same time, it is not safe to draw an inference that the person in possession of the stolen property had committed the murder. A note of caution has been given by this Court by indicating that suspicion should not take the place of proof. It appears that the High Court in passing the impugned judgment has taken note of the said decision of this Court. But as rightly indicated by the High Court, the said decision is not applicable in the facts and circumstances of the present case. The High Court has placed reliance on the other decision of this Court rendered in *Tulsiram Kanu* v. *State* [1951 SCC 92 : AIR 1954 SC 1 : 1954 Cri LJ 225] . In the said decision, this Court has indicated that the presumption permitted to be drawn under Section 114 Illustration (*a*) of the Evidence Act has to be read along with the 'important time factor'. If the ornaments in possession of the deceased are found in possession of a person soon after the murder, a presumption of guilt may be permitted. But if several months had expired in the interval, the presumption cannot be permitted to be drawn having regard to the circumstances of the case. In the

instant case, it has been established that immediately on the next day of the murder, the accused Gulab Chand had sold some of the ornaments belonging to the deceased and within 3-4 days, the recovery of the said stolen articles was made from his house at the instance of the accused. Such close proximity of the recovery, which has been indicated by this Court as an 'important time factor', should not be lost sight of in deciding the present case. It may be indicated here that in a later decision of this Court in *Earabhadrappa* v. *State of Karnataka* [(1983) 2 SCC 330 : 1983 SCC (Cri) 447 : (1983) 2 SCR 552] this Court has held that the nature of the presumption and Illustration (*a*) under Section 114 of the Evidence Act must depend upon the nature of evidence adduced. No fixed time-limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article is or is not, calculated to pass readily from hand to hand. If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particularly when the appellant had been absconding during that period. In our view, it has been rightly held by the High Court that the accused was not affluent enough to possess the said ornaments and from the nature of the evidence adduced in this case and from the recovery of the said articles from his possession and his dealing with the ornaments of the deceased immediately after the murder and robbery a reasonable inference of the commission of the said offence can be drawn against the appellant. Excepting an assertion that the ornaments belonged to the family of the accused which claim has been rightly discarded, no plausible explanation for lawful possession of the said ornaments immediately after the murder has been given by the accused. In the facts of this case, it appears to us that murder and robbery have been proved to have been integral parts of the same transaction and therefore the presumption arising under Illustration (*a*) of Section 114 Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her ornaments."

29. In the instant case also, the disclosure statements were made by the accused persons on the next day of the commission of the offence and the property of the deceased was recovered at their instance from the places where they had kept such properties, on the same day. To the same effect are the judgments in *Mukund* v. *State of M.P.* [(1997) 10 SCC 130 : 1997 SCC (Cri) 799]

and *Ronny* v. *State of Maharashtra* [(1998) 3 SCC 625 : 1998 SCC (Cri) 859] . In the latter case the Court held: (SCC p. 646, para 30)

> "Apropos the recovery of articles belonging to the Ohol family from the possession of the appellants soon after the robbery and the murder of the deceased (Mr Mohan Ohol, Mrs Ruhi Ohol and Mr Rohan Ohol) which possession has remained unexplained by the appellants, the presumption under Illustration (*a*) of Section 114 of the Evidence Act will be attracted. It needs no discussion to conclude that the murder and the robbery of the articles were found to be part of the same transaction. The irresistible conclusion would, therefore, be that the appellants and no one else had committed the three murders and the robbery."

30. The disclosure statements by the accused persons stand established by the testimony of Satish Khanna (PW 22) and the investigating officer. The trial court was, therefore, justified in relying upon the circumstances of the disclosure statements of the accused persons and consequent recovery of stolen property, bloodstained shirt of Vinod, appellant, besides the weapon of offence. We find no substance in the submission of the learned defence counsel that as no independent witnesses were associated with the recoveries, a doubt is created in the prosecution version. Satish Khanna (PW 22) is the natural witness being the brother of the deceased to be present during the investigation when the accused are stated to have made the statements within the meaning of Section 27 of the Evidence Act. Otherwise also there is no reason to disbelieve the testimony of the IO Harbans Singh (PW 25).

47. This extract is taken from *Sanjay v. State (NCT of Delhi)*, (2001) 3 SCC 190 : 2001 SCC (Cri) 449 : 2001 SCC OnLine SC 366 at page 206

32. Learned counsel appearing for the appellants Sanjay and Nawabuddin then submitted that even if the disclosure statements and the recoveries are admitted, their clients can at the most be convicted for the commission of offence under Section 411 IPC. We do not agree with this submission as well in view of the fact that the murder and robbery in the instant case were part of the same transaction and the accused from whom the recoveries were made, consequent upon their disclosure statements, did not offer any explanation regarding their possession of the stolen properties. Drawing a presumption under Section 114 of the Evidence Act it can safely be held that the aforesaid two accused persons were at least guilty of the offence of robbery punishable under Section 392 IPC on the assumption that they were not armed with any deadly weapon and not aware of Vinod, appellant being armed with dagger. The trial court was, therefore, justified in holding that

> "the circumstances enumerated above together complete the chain of circumstances to prove the guilt of the accused persons insofar as the offence of robbery is concerned. In fact, the disclosure statements of the accused persons and huge recoveries from them at their instance on the very next day of the incident by itself is a sufficient circumstance which clearly goes to show that the accused persons had joined hands to commit the offence of robbery".

The Court also rightly held that:

> "Recent and unexplained possession of stolen properties will be taken to be presumptive evidence of the charge of murder as well. (See *Baiju* v. *State of M.P.* [(1978) 1 SCC 588 : 1978 SCC (Cri) 142 : AIR 1978 SC 522]) Also see *Earabhadrappa case* [(1983) 2 SCC 330 : 1983 SCC (Cri) 447 : (1983) 2 SCR 552] . In the case of *Gulab Chand* v. *State of M.P.* [(1995) 3 SCC 574 : 1995 SCC (Cri) 552] this Court quoted its earlier decision in *Tulsiram case* [1951 SCC 92 : AIR 1954 SC 1 : 1954 Cri LJ 225] with approval that the presumption permitted to be drawn under Illustration 114(*a*) of the Evidence Act has to be read along with 'important time factor'. If the ornaments in possession of the deceased are found in possession of the person soon after the murder, a presumption of killing may be permitted. In the said case before the Supreme Court ornaments belonging to the deceased had been sold by the accused Gulab Chand of that case and within 3-4 days the recovery of the stolen articles was made from his house

at the instance of the accused. The Court held that such close proximity of the recovery which has been indicated by the Court as 'important time factor' should not be lost sight of."

On the basis of the evidence led in the case and keeping in view the whole conspectus of the case the trial court rightly concluded that the accused Vinod in the process of committing robbery used a deadly weapon, namely, dagger and killed Smt Sheela while the other three accused persons have participated in the commission of crime of robbery and actually removed huge articles including jewellery from the house of the deceased.

48. This extract is taken from *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180 : 2003 SCC (Cri) 1965 : 2003 SCC OnLine SC 852 at page 190

18. Confessions may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a Magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or court. Extra-judicial confessions are generally those that are made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164 of the Code or a Magistrate so empowered but receiving the confession at a stage when Section 164 does not apply. As to extra-judicial confessions, two questions arise : (*i*) were they made voluntarily? and (*ii*) are they true? As the section enacts, a confession made by an accused person is irrelevant in criminal proceedings, if the making of the confession appears to the court to have been caused by any inducement, threat or promise, (*1*) having reference to the charge against the accused person, (*2*) proceeding from a person in authority, and (*3*) sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (*a*) does not have reference to the charge against the accused person; or (*b*) it does not proceed from a person in authority; or (*c*) it is not sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24. The law is clear that a confession cannot be used against an accused person unless the court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the court

has to be satisfied with is, whether when the accused made the confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the court is satisfied that in its opinion the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt. (See *R.* v. *Warickshall* [(1783) 1 Leach 263 : 168 ER 234] .) It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it. So where the statement is made as a result of harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of a threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See *Woodroffe's Evidence*, 9th Edn., p. 284.) A promise is always attached to the confession alternative while a threat is always attached to the silence alternative; thus, in one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the court is to determine the absence or presence of an inducement, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or

avoid any evil, it is enough to exclude the confession. The words "appear to him" in the last part of the section refer to the mentality of the accused.

19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

20. If the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration as rightly submitted by the learned counsel for the respondent-accused, is a matter of prudence and not an invariable rule of law. It is improbable, as rightly held by the High Court that the accused would repose confidence in a person who is inimically disposed towards him, and confess his guilt. Similarly, PW 3 is a close relative of PW 4 and as records reveal, a person of doubtful antecedents being a history-sheeter. Though that alone cannot be a ground to discard his evidence, the totality of circumstances cast an indelible shadow of doubt on his evidence. It is to be noted that the accused examined himself as DW 1. Though it was the prosecution version that there was also extra-judicial confession before informant Sahi Ram (PW 6), that was disbelieved by both the trial court and the High Court in view of the fact that he stated differently from what was allegedly stated by him during investigation. He disowned that the accused

made any confessional statement before him. Though the prosecution during cross-examination of the accused (DW 1) suggested that he had made an extra-judicial confession before PW 6, significantly, not even such a suggestion was given in respect of PWs 3 and 4.

21. Coming to the bloodstains on the clothes which were allegedly seized, on being pointed out by the accused, the forensic laboratory report indicated that there were blots of human blood on the shirts and trousers of the accused. There was no effort to find out the blood group. In fact, the High Court noted this position and observed that presence of PW 4 at the time of recovery is doubtful as he has been found to be an unreliable witness. It was observed that even if it is accepted that there was existence of blood, this circumstance is not such from which it can be found that the accused was the perpetrator of the crime. In the aforesaid report (Ext. 61) it was clearly stated that the blood group of blood found on the clothes could not be determined. Neither the blood group of the deceased nor that of the accused was determined. In that background, the High Court held that the possibility of the blood being that of the accused cannot be ruled out. In view of the findings recorded by the High Court about the non-acceptability of evidence relating to the alleged extra-judicial confession, the conclusions of the High Court cannot be said to be one which are unsupportable. We decline to interfere in the appeals, and the same are dismissed.

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Retracted Confession

31. Before we turn our attention to the more specific aspects of confessions under POTA, we should have a conspectus of the law on the **evidentiary value of confessions which are retracted**, which is a general feature in our country and elsewhere.

32. As to what should be the legal approach of the court called upon to convict a person primarily in the light of the **confession or a retracted confession** has been succinctly summarised in ***Bharat* v. *State of U.P.* [(1971) 3 SCC 950** : 1972 SCC (Cri) 198] Hidayatullah, C.J., speaking for a three-Judge Bench observed thus: (SCC p. 953, para 7)

> "Confessions can be acted upon if the court is satisfied that they are voluntary and that they are true. The voluntary nature of the confession depends upon whether there was any threat, inducement or promise and its truth is judged in the context of the entire prosecution case. The confession must fit into the proved facts and not run counter to them. When the voluntary character of the confession and its truth are accepted, it is safe to rely on it. Indeed a confession, if it is voluntary and true and not made under any inducement or threat or promise, is the most patent piece of evidence against the maker. Retracted confession, however, stands on a slightly different footing. As the Privy Council once stated, in India it is the rule to find a confession and to find it retracted later. A court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the court is satisfied that it was retracted because of an afterthought or advice, the retraction may not weigh with the court if the general facts proved in the case and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its user. All the same, the courts do not act upon the retracted confession without finding assurance from some other sources as to the guilt of the accused. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires the general assurance that the retraction was an afterthought and that the earlier statement was true. This was laid down by this Court in an earlier case reported in *Subramania Goundan* v. *State of Madras* [1958 SCR 428 : 1958 Cri LJ 238] ."

33. The same learned Judge observed in *Haroon Haji Abdulla* v. *State of Maharashtra* [(1968) 2 SCR 641 : 1968 Cri LJ 1017] that a "retracted confession must be looked upon with greater concern unless the reasons given for having made it in the first instance are on the face of them false". There was

a further observation in the same paragraph that retracted confession is a weak link against the maker and more so against a co-accused. With great respect to the eminent Judge, the comment that the retracted confession is a "weak link against the maker" goes counter to a series of decisions. The observation must be viewed in the context of the fact that the court was concentrating on the confession of the co-accused rather than the evidentiary value of the retracted confession against the maker.

34. Dealing with retracted confession, a four-Judge Bench of this Court speaking through Subba Rao, J., in *Pyare Lal Bhargava* v. *State of Rajasthan* [1963 Supp (1) SCR 689 : AIR 1963 SC 1094 : (1963) 2 Cri LJ 178] clarified the legal position thus: (SCR pp. 695-96)

> "A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made. But it has been held that a court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances can such a conviction be made without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars."

35. As to the extent of corroboration required, it was observed in *Subramania Goundan case* [1958 SCR 428 : 1958 Cri LJ 238] that each and every circumstance mentioned in the retracted confession regarding the complicity of the maker need not be separately and independently corroborated. The learned Judges observed: (SCR pp. 440-41)

> "It would be sufficient, in our opinion, that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession."

36. Then we have the case of *Shankaria* v. *State of Rajasthan* [(1978) 3 SCC 435 : 1978 SCC (Cri) 439] decided by a three-Judge Bench. Sarkaria, J., noted the twin tests to be applied to evaluate a confession: (*1*) whether the confession was perfectly voluntary, and (*2*) if so, whether it is true and trustworthy. The learned Judge pointed out that if the first test is not satisfied the question of applying the second test does not arise. Then the Court indicated one broad method by which a confession can be evaluated. It was said: (SCC p. 443, para 23)

"The Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test."

37. In *Parmananda Pegu* v. *State of Assam* [(2004) 7 SCC 779 : 2004 SCC (Cri) 2081] this Court while adverting to the expression "corroboration of material particulars" used in *Pyare Lal Bhargava case* [1963 Supp (1) SCR 689 : AIR 1963 SC 1094 : (1963) 2 Cri LJ 178] clarified the position thus: (SCC p. 790, para 20)

"By the use of the expression 'corroboration of material particulars', the Court has not laid down any proposition contrary to what has been clarified in *Subramania Goundan case* [1958 SCR 428 : 1958 Cri LJ 238] as regards the extent of corroboration required. The above expression does not imply that there should be meticulous examination of the entire material particulars. It is enough that there is broad corroboration in conformity with the general trend of the confession, as pointed out in *Subramania Goundan case* [1958 SCR 428 : 1958 Cri LJ 238] ."

The analysis of the legal position in paras 18 and 19 is also worth noting: (SCC p. 788)

"*18*. Having thus reached a finding as to the voluntary nature of a confession, the truth of the confession should then be tested by the court. The fact that the confession has been made voluntarily, free from threat and inducement, can be regarded as presumptive evidence of its truth. Still, there may be circumstances to indicate that the confession cannot be true wholly or partly in which case it loses much of its evidentiary value.

19. In order to be assured of the truth of confession, this Court, in a series of decisions, has evolved a rule of prudence that the court should look to corroboration from other evidence. However, there need not be corroboration in respect of each and every material particular. Broadly, there should be corroboration so that the confession taken as a whole fits into the facts proved by other evidence. In substance, the court should have assurance from all angles that the retracted confession was, in fact, voluntary and it must have been true."

38. The use of retracted confession *against the co-accused* however stands on a different footing from the use of such confession against the maker. To come to grips with the law on the subject, we do no more than quoting the apt observations of Vivian Bose, J., speaking for a three-Judge

Bench in *Kashmira Singh* v. *State of M.P.* [(1952) 1 SCC 275 : 1952 SCR 526 : AIR 1952 SC 159 : 1952 Cri LJ 839] Before clarifying the law, the learned Judge noted with approval the observations of Sir Lawrence Jenkins that a confession can only be used to "lend assurance to other evidence against a co-accused". The legal position was then stated thus: (SCR p. 530)

> "Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, *if it is believed*, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, *if believed*, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."
>
> (emphasis in original)

39. The crucial expression used in Section 30 is "*the Court may take into consideration* such confession" (emphasis supplied). These words imply that the confession of a co-accused cannot be elevated to the status of substantive evidence which can form the basis of conviction of the co-accused. The import of this expression was succinctly explained by the Privy Council in *Bhuboni Sahu* v. *R.* [AIR 1949 PC 257 : 50 Cri LJ 872 : 76 IA 147] in the following words: (AIR p. 260)

> "[T]he court may take the confession into consideration and thereby, no doubt, makes its evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; *it can be put into the scale and weighed with the other evidence*."
>
> (emphasis supplied)

40. After referring to these decisions, a Constitution Bench of this Court in *Hari Charan Kurmi* v. *State of Bihar* [(1964) 6 SCR 623 : (1964) 2 Cri LJ 344] further clarified the legal position thus: (SCR pp. 632-33)

> "[I]n dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order *to receive assurance to the*

conclusion of guilt which the judicial mind is about to reach on the said other evidence."

(emphasis supplied)

Ratio Retracted Confession

Medical

v

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49. This extract is taken from *Gangabhavani v. Rayapati Venkat Reddy*, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182 : 2013 SCC OnLine SC 799 at page 305

Contradictions in medical evidence and ocular evidence

11. It is a settled legal proposition that where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistics expert, it amounts to a fundamental defect in the prosecution case and unless it is reasonably explained may discredit the entire case of the prosecution. However, the opinion given by a medical witness need not be the last word on the subject. Such an opinion is required to be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all an opinion is what is formed in the mind of a person regarding a particular fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts, it is open to the Judge to adopt the view which is more objective or probable. Similarly, if the opinion given by one doctor is not consistent or probable, the court has no liability to go by that opinion merely because it is given by the doctor.

> "*34.* ... 'it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant" '.
>
> *35.* Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities cannot be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility."

(Vide *Ram Narain Singh* v. *State of Punjab* [(1975) 4 SCC 497 : 1975 SCC (Cri) 571] , *State of Haryana* v. *Bhagirath* [(1999) 5 SCC 96 : 1999 SCC (Cri) 658] , *Abdul Sayeed* v. *State of M.P.* [(2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] , SCC p. 273, paras 34-35 and *Rakesh* v. *State of M.P.* [(2011) 9 SCC 698 : (2011) 3 SCC (Cri) 803])

50. This extract is taken from *Yogesh Singh v. Mahabeer Singh*, (2017) 11 SCC 195 : (2017) 4 SCC (Cri) 257 : 2016 SCC OnLine SC 1163 at page 217

43. The learned counsel appearing for the respondents has then tried to create a dent in the prosecution story by pointing out inconsistencies between the ocular evidence and the medical evidence. However, we are not persuaded with this submission since both the courts below have categorically ruled that the medical evidence was consistent with the ocular evidence and we can safely say that to that extent, it corroborated the direct evidence proffered by the eyewitnesses. We hold that there is no material discrepancy in the medical and ocular evidence and there is no reason to interfere with the judgments of the courts below on this ground. In any event, it has been consistently held by this Court that the evidentiary value of medical evidence is only corroborative and not conclusive and, hence, in case of a conflict between oral evidence and medical evidence, the former is to be preferred unless the medical evidence completely rules out the oral evidence. [See *Solanki Chimanbhai Ukabhai* v. *State of Gujarat* [*Solanki Chimanbhai Ukabhai* v. *State of Gujarat*, (1983) 2 SCC 174 : 1983 SCC (Cri) 379] , *Mani Ram* v. *State of Rajasthan* [*Mani Ram* v. *State of Rajasthan*, 1993 Supp (3) SCC 18 : 1993 SCC (Cri) 853] , *State of U.P.* v. *Krishna Gopal* [*State of U.P.* v. *Krishna Gopal*, (1988) 4 SCC 302 : 1988 SCC (Cri) 928] , *State of Haryana* v. *Bhagirath* [*State of Haryana* v. *Bhagirath*, (1999) 5 SCC 96 : 1999 SCC (Cri) 658] , *Dhirajbhai Gorakhbhai Nayak* v. *State of Gujarat* [*Dhirajbhai Gorakhbhai Nayak* v. *State of Gujarat*, (2003) 9 SCC 322 : 2003 SCC (Cri) 1809] , *Thaman Kumar* v. *State (UT of Chandigarh)* [*Thaman Kumar* v. *State (UT of Chandigarh)*, (2003) 6 SCC 380 : 2003 SCC (Cri) 1362] , *Krishnan* v. *State* [*Krishnan* v. *State*, (2003) 7 SCC 56 : 2003 SCC (Cri) 1577] , *Khambam Raja Reddy* v. *Public Prosecutor* [*Khambam Raja Reddy* v. *Public Prosecutor*, (2006) 11 SCC 239 : (2007) 1 SCC (Cri) 431] , *State of U.P.* v. *Dinesh* [*State of U.P.* v. *Dinesh*, (2009) 11 SCC 566 : (2009) 3 SCC (Cri) 1484] , *State of U.P.* v. *Hari Chand* [*State of U.P.* v. *Hari Chand*, (2009) 13 SCC 542 : (2010) 1 SCC (Cri) 1112] , *Abdul Sayeed* v. *State of M.P.* [*Abdul Sayeed* v. *State of M.P.*, (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] and *Bhajan Singh* v. *State of Haryana* [*Bhajan Singh* v. *State of Haryana*, (2011) 7 SCC 421 : (2011) 3 SCC (Cri) 241] .]

51. This extract is taken from *Ram Narain Singh v. State of Punjab*, (1975) 4 SCC 497 : 1975 SCC (Cri) 571 : 1975 SCC OnLine SC 205 at page 507

14. Where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistic expert, this is a most fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit the entire case. In *Mohinder Singh* v. *State* [1950 SCC 673 : AIR 1953 SC 415 : 1950 SCR 821] this Court observed in similar circumstances as follows:

> "In a case where death is due to injuries or wounds caused by a lethal weapon, it has always been considered to be the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. It is elementary that where the prosecution has a definite or positive case, it is doubtful whether the injuries which are attributed to the appellant were caused by a gun or by a rifle."

It is obvious that where the direct evidence is not supported by the expert evidence, then the evidence is wanting in the most material part of the prosecution case and it would be difficult to convict the accused on the basis of such evidence. While appreciating the evidence of the witnesses, the High Court does not appear to have considered this important aspect, but readily accepted the prosecution case without noticing that the evidence of the eyewitnesses in the Court was a belated attempt to improve their testimony and bring the same in line with the doctor's evidence with a view to support an incorrect case.

52. This extract is taken from *Solanki Chimanbhai Ukabhai v. State of Gujarat*, (1983) 2 SCC 174 : 1983 SCC (Cri) 379 : 1983 SCC OnLine SC 69 at page 179

11. The High Court appraising the evidence of the doctor observed as follows:

> "It is the positive evidence of Dr Desai in examination-in-chief that both the aforesaid injuries were possible by a sharp cutting instrument such as the spear before the Court. Under cross-examination all that has been elicited from the doctor is that two different weapons might have been used for causing the aforesaid injuries, since one of the injuries was an incised wound and the other was a stab wound. Be it noted, however, that it has not been elicited in cross-examination that one weapon such as a spear could not have caused both the injuries. To say that two different weapons might have been used for causing two different injuries is not equivalent to saying that one weapon could not have caused both the injuries. In fact, even according to what the doctor has stated at the conclusion of his, cross-examination, both the injuries were possible by a blow given by a dagger if the assailant inflicted the blows while sitting on the person of the deceased. It is difficult to conclude, therefore, on the testimony of Dr Desai, that both the injuries could not possibly have been caused by the same weapon to the deceased or that a spear could not have caused the first injury."

The Court also observed that the possibility cannot be ruled out that Injury (1) could have been caused to the deceased if the blade of the spear had landed sidewise on his person. In the absence of any specific cross-examination of the medical witness with a view to establish that Injury (1) could never have been caused by a spear, one would be entering into the realm of conjecture in holding that Injury (1) was not possible by a spear.

12. In the opinion of the High Court it would not be proper to discard the testimony of eye-witnesses, if it was otherwise satisfactory, on the simple ground that the medical testimony was in conflict with the testimony of the witnesses, insofar as they depose to the injuries on the deceased having been caused by a spear.

13. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged

and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.

53. This extract is taken from *State of Haryana v. Bhagirath*, (1999) 5 SCC 96 : 1999 SCC (Cri) 658 : 1999 SCC OnLine SC 577 at page 101

15. The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject.

54. This extract is taken from *Abdul Sayeed v. State of M.P.*, (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262 : 2010 SCC OnLine SC 1027 at page 273

35. Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities cannot be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility.

> "*21.* ... The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the 'credit' of the witnesses; their performance in the witness box; their power of observation, etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

[Vide *Thaman Kumar* v. *State* (*UT of Chandigarh*) [(2003) 6 SCC 380 : 2003 SCC (Cri) 1362] and *Krishnan* v. *State* [(2003) 7 SCC 56 : 2003 SCC (Cri) 1577] at SCC pp. 62-63, para 21.]

36. In *Solanki Chimanbhai Ukabhai* v. *State of Gujarat* [(1983) 2 SCC 174 : 1983 SCC (Cri) 379 : AIR 1983 SC 484] this Court observed : (SCC p. 180, para 13)

> "*13.* Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eyewitnesses. *Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eyewitnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence*."
>
> (emphasis added)

39. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely

rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.

40. In the instant case as referred to hereinabove, a very large number of assailants attacked one person, thus the witnesses cannot be able to state as how many injuries and in what manner the same had been caused by the accused. In such a fact situation, discrepancy in medical evidence and ocular evidence is bound to occur. However, it cannot tilt the balance in favour of the appellants.

55. This extract is taken from *Rakesh v. State of M.P.*, (2011) 9 SCC 698 : (2011) 3 SCC (Cri) 803 : 2011 SCC OnLine SC 1282 at page 703

13. It is a settled legal proposition that the ocular evidence would have primacy unless it is established that oral evidence is totally irreconcilable with the medical evidence. More so, the ocular testimony of a witness has a greater evidentiary value vis-à-vis medical evidence; when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence if proved, the ocular evidence may be disbelieved. (Vide *State of U.P.* v. *Hari Chand* [(2009) 13 SCC 542 : (2010) 1 SCC (Cri) 1112] , *Abdul Sayeed* v. *State of M.P.* [(2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] and *Bhajan Singh* v. *State of Haryana* [(2011) 7 SCC 421 : (2011) 3 SCC (Cri) 241] .)

56. This extract is taken from *Radhakrishna Nagesh v. State of A.P.*, (2013) 11 SCC 688 : (2012) 4 SCC (Cri) 90 : 2012 SCC OnLine SC 1048 at page 701

23. In any case, to establish a conflict between the medical and the ocular evidence, the law is no more res integra and stands squarely answered by the recent judgment of this Court in *Dayal Singh* v. *State of Uttaranchal* [(2012) 8 SCC 263 : (2012) 4 SCC (Civ) 424 : (2012) 3 SCC (Cri) 838 : (2012) 2 SCC (L&S) 583 : (2012) 7 Scale 165] : (SCC p. 283, paras 35-36)

> "*35.* This brings us to an ancillary issue as to how the Court would appreciate the evidence in such cases. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour of the accused. Of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. In *Kamaljit Singh* v. *State of Punjab* [(2003) 12 SCC 155 : 2004 SCC (Cri) Supp 343 : 2004 Cri LJ 28] , the Court, while dealing with the discrepancies between ocular and medical evidence, held: (SCC p. 159, para 8)
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> > '*8.* It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out.'
>
> *36.* Where the eyewitness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive.
>
> > '*34.* ... The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by [examining] the terms of science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion, because once the expert's opinion is

accepted, it is not the opinion of the medical officer but [that] of the court.'

(See *Madan Gopal Kakkad* v. *Naval Dubey* [(1992) 3 SCC 204 : 1992 SCC (Cri) 598 : (1992) 2 SCR 921] , SCC pp. 221-22, para 34.)"

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The Basic Purpose Of Holding An Inquest Is To Report Regarding The Apparent Cause Of Death, Namely Whether It Is Suicidal, Homicidal, Accidental Or By Some Machinery, etc.

The provision for holding of an inquest and preparing an inquest report is contained in Section 174 Cr.P.C. The heading of the Section is "Police to enquire and report on suicide, etc." Sub-section (1) of this Section provides that when the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give information to the nearest Executive Magistrate and shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death describing such wounds, fractures, bruises, and other marks of injury as may be found on the body and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted. The requirement of the section is that the police officer shall record the apparent cause of death describing the wounds as may be found on the body and also the weapon or instrument by which they appear to have been inflicted and this has to be done in the presence of two or more respectable inhabitants of the neighbourhood. The Section does not contemplate that the manner in which the incident took place or the names of the accused should be mentioned in the inquest report. The basic purpose of holding an inquest is to report regarding the apparent cause of death, namely whether it is suicidal, homicidal, accidental or by some machinery, etc. The scope and purpose of Section 174 Cr.P.C. was explained by this Court in Podda Narayana & Ors. v. State of Andhra Pradesh AIR 1975 SC 1252 and it will be useful to reproduce the same.

"The proceedings under Section 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174. Neither in practice nor in law was it necessary for the police to mention those details in the inquest report.

It is therefore not necessary to enter all the details of the overt acts in the inquest report. Their omission is not sufficient to put the prosecution out of Court."

In Khujji alias Surendra Tiwari v. State of Madhya Pradesh AIR 1991 SC 1853 (para 8), this Court, after placing reliance upon the above quoted decision, rejected the contention raised on behalf of the accused that the evidence of eye-witnesses could not be relied upon as their names did not figure in the inquest report prepared at the earliest point of time. In Shakila Khadar v. Nausher Gama & Anr. AIR 1975 SC 1324 (para 5), it was held that an inquest under Section 174 Cr.P.C. is concerned with establishing the cause of the death only.

Fair Trial Section 311 Witnesses

As has been noticed earlier in the earlier case (reported in 2004 (4) SCC 158), the role to be played by Courts, witnesses, investigating officers, public prosecutors has to be focused, more particularly when eyebrows are raised about their roles.

In this context, reference may be made to Section 311 of the Code which reads as follows:
"311. Power to summon material witness, or examine person present.
Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness or examine any person in attendance, though not summoned as a witness or recall and re- examine any person already examined, and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

The section is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequences, the first part gives purely discretionary authority to a Criminal Court and enables it at any stage of an enquiry, trial or proceeding under the Code (a) to summon any one as a witness, or (b) to examine any person present in Court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the Court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the Court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the Court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.

The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to

the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.

As indicated above, the Section is wholly discretionary. The second part of it imposes upon the Magistrate an obligation: it is, that the Court shall summon and examine all persons whose evidence appears to be essential to the just decision of the case. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court. Sections 60, 64 and 91 of the Indian Evidence Act, 1872 (in short, 'Evidence Act') are based on this rule. The Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the Court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The Court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the Court has to act under the second part of the section. Sometimes the examination of witnesses as directed by the Court may result in what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge.

The object of the Section 311 is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of the orderly society. If a witness called by Court gives evidence against the complainant he should be allowed an opportunity to cross- examine. The right to cross-examine a witness who is called by a Court arises not under the provision of Section 311, but under the Evidence Act which gives a party the right to cross- examine a witness who is not his own witness. Since a witness

summoned by the Court could not be termed a witness of any particular party, the Court should give the right of cross- examination to the complainant. These aspects were highlighted in Jagat Rai v. State of Maharashtra, (AIR 1968 SC

178).

Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial, the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences. In 1846, in a judgment which Lord Chancellor Selborne would later describe as "one of the ablest judgments of one of the ablest judges who ever sat in this court," Vice-Chancellor Knight Bruce said :
"The discovery and vindication and establishment of truth are main purposes certainly of the existence of Courts of Justice; still, for the obtaining of these objects, which, however, valuable and important, cannot be usefully pursued without moderation, cannot be either usefully or creditably pursued unfairly or gained by unfair means, not every channel is or ought to be open to them. The practical inefficacy of torture is not, I suppose, the most weighty objection to that mode of examination. Truth, like all other good things, may be loved unwisely
- may be pursued too keenly - may cost too much."

The Vice-Chancellor went on to refer to paying "too great a price .... for truth". This is a formulation which has subsequently been frequently invoked, including by Sir Gerard Brennan. On another occasion, in a joint judgment of the High Court, a more expansive formulation of the proposition was advanced in the following terms: "The evidence has been obtained at a price which is unacceptable having regard to the prevailing community standards."

Restraints on the processes for determining the truth are multi-faceted. They have emerged in numerous different ways, at different times and affect different areas of the conduct of legal proceedings. By the traditional common law method of induction there has emerged in our jurisprudence the principle of a fair trial. Oliver Wendell Holmes described the process :

"It is the merit of the common law that it decides the case first and determines the principles afterwards ..... It is only after a series of determination on the same subject- matter, that it becomes necessary to "reconcile the cases", as it is called, that is, by a true induction to state the principle which has until then been obscurely felt. And this statement is often modified more than once by new decisions before the abstracted general rule takes its final shape. A well settled legal doctrine embodies the work of many minds, and has been tested in form as well as substance by trained critics whose practical interest is to resist it any every step."

The principle of fair trial now informs and energizes many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adapted to new and changing circumstances, and exigencies of the situation - peculiar at times and related to the nature of crime, persons involved - directly or operating behind, social impart and societal needs and even so many powerful balancing factors which may come in the way of administration of criminal justice system. As will presently appear, the principle of a fair trial manifests itself in virtually every aspect of our practice and procedure, including the law of evidence. There is, however, an overriding and, perhaps, unifying principle. As Deane, J. put it:
"It is desirable that the requirement of fairness be separately identified since it transcends the context of more particularized legal rules and principles and provides the ultimate rationale and touchstone of the rules and practices which the common law requires to be observed in the administration of the substantive criminal law."

This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society is not to be treated completely with disdain and as persona non grata. Courts have always been considered to have an over-riding duty to maintain public confidence in the administration of justice - often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a Court of law in the future as in the case before it. If a criminal Court is to be an effective instrument in dispensing

justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.

Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty stage-managed, tailored and partisan trial. The fair trial for a criminal offence consists not only in technical observance of the frame, and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.

"Witnesses" as Bentham said: are the eyes and ears of justice. Hence, the importance and primary of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface rendering truth and justice, to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the Court and justice triumphs and that the trial is not reduced to a mockery. Doubts are raised about the roles of investigating agencies. Consequences of defective investigation have been elaborated in Dhanraj Singh @ Shera and Ors. v. State of Punjab (JT 2004(3) SC 380). It was observed as follows:

"5. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused

person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See Karnel Singh v. State of M.P. (1995 (5) SCC 518).
6. In Paras Yadav and Ors. v. State of Bihar (1999 (2) SCC 126) it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand on the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.
7. As was observed in Ram Bihari Yadav v. State of Bihar and Ors. (1998 (4) SCC 517) if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the Law enforcing agency but also in the administration of justice. The view was again re-iterated in Amar Singh v. Balwinder Singh and Ors. (2003 (2) SCC 518)".

Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance if not more, as the interest of the Individual accused. In this courts have a vital role to play.

Delay In Recording Statement Of Witnesses

57. This extract is taken from *Yogesh Singh v. Mahabeer Singh*, (2017) 11 SCC 195 : (2017) 4 SCC (Cri) 257 : 2016 SCC OnLine SC 1163 at page 214

34. The learned counsel for the respondents has further sought to attack the testimony of this prosecution witness (PW 5) on the ground of delay in recording of her statement by the investigating officer. In support of this submission, the learned counsel has relied upon the judgments of this Court in *State of U.P.* v. *Ashok Dixit* [*State of U.P.* v. *Ashok Dixit*, (2000) 3 SCC 70 : 2000 SCC (Cri) 579] , *Vijaybhai Bhanabhai Patel* v. *Navnitbhai Nathubhai Patel* [*Vijaybhai Bhanabhai Patel* v. *Navnitbhai Nathubhai Patel*, (2004) 10 SCC 583 : 2004 SCC (Cri) 2032] and *Jagjit Singh* v. *State of Punjab* [*Jagjit Singh* v. *State of Punjab*, (2005) 3 SCC 689 : 2005 SCC (Cri) 893] . However, we find that none of these cases help the case of the respondents since *Vijaybhai Bhanabhai Patel* v. *Navnitbhai Nathubhai Patel* [*Vijaybhai Bhanabhai Patel* v. *Navnitbhai Nathubhai Patel*, (2004) 10 SCC 583 : 2004 SCC (Cri) 2032] , does not pertain to the case of a child witness and in *State of U.P.* v. *Ashok Dixit* [*State of U.P.* v. *Ashok Dixit*, (2000) 3 SCC 70 : 2000 SCC (Cri) 579] and *Jagjit Singh* v. *State of Punjab* [*Jagjit Singh* v. *State of Punjab*, (2005) 3 SCC 689 : 2005 SCC (Cri) 893] , delay in recording of evidence was not per se held to be fatal to the prosecution case but the testimony of the child witness in each case was found to be incredible on account of material contradictions and lack of independent corroboration. We find that this is not the case here. In this context, we may note that the trial court has observed that PW 5 was cross-examined on practically every detail of the prosecution story and her statement corroborated every part thereof. Moreover, the delay in recording of the statement of PW 5 was not unexplained. It was rightly observed by the learned trial Judge that the delay was on account of the fact that the investigating officer wanted to assure himself of the veracity of her statement and hence, she was examined after she had time to recover from the shock of the incident and compose herself. Under these circumstances, any delay in examining this witness under Section 161 CrPC will not prejudice the prosecution.

Delay In Forwarding FIR To JM Section 157

58. This extract is taken from *Yogesh Singh v. Mahabeer Singh*, (2017) 11 SCC 195 : (2017) 4 SCC (Cri) 257 : 2016 SCC OnLine SC 1163 at page 216

40. It has been consistently held by this Court through a catena of judicial decisions that although in terms of Section 157 CrPC, the police officer concerned is required to forward a copy of the FIR to the Magistrate empowered to take cognizance of such offence promptly and without undue delay, it cannot be laid down as a rule of universal application that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable and the trial stands vitiated. When there is positive evidence to the fact that the FIR was recorded without unreasonable delay and investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the Court, then in the absence of any prejudice to the accused, it cannot be concluded that the investigation was tainted and the prosecution story rendered unsupportable. (See *Pala Singh* v. *State of Punjab* [*Pala Singh* v. *State of Punjab*, (1972) 2 SCC 640 : 1973 SCC (Cri) 55] , *Sarwan Singh* v. *State of Punjab* [*Sarwan Singh* v. *State of Punjab*, (1976) 4 SCC 369 : 1976 SCC (Cri) 646] , *Anil Rai* v. *State of Bihar* [*Anil Rai* v. *State of Bihar*, (2001) 7 SCC 318 : 2001 SCC (Cri) 1009] , *Munshi Prasad* v. *State of Bihar* [*Munshi Prasad* v. *State of Bihar*, (2002) 1 SCC 351 : 2002 SCC (Cri) 175] , *Aqeel Ahmad* v. *State of U.P.* [*Aqeel Ahmad* v. *State of U.P.*, (2008) 16 SCC 372 : (2010) 4 SCC (Cri) 11] , *Dharamveer* v. *State of U.P.* [*Dharamveer* v. *State of U.P.*, (2010) 4 SCC 469 : (2010) 2 SCC (Cri) 872] and *Sandeep* v. *State of U.P.* [*Sandeep* v. *State of U.P.*, (2012) 6 SCC 107 : (2012) 3 SCC (Cri) 18])

42. In the present case, it is not the case of the accused that they have been prejudiced by the alleged delay in dispatch of the FIR to the nearest Magistrate competent to take cognizance of such offence. Moreover, in our opinion, the non-recording of certain relevant entries in the inquest report do not constitute a material defect so grave to throw out the prosecution story and the otherwise reliable testimonies of the prosecution witnesses that have mostly remained uncontroverted.

DEFECTS

IN

INVESTIGATION

Justice U L Bhatt

Sections 215 and 464 of the Criminal Procedure Code, 1973 indicate what trial courts and higher courts are required to consider in case of errors in charge framed by trial courts. Sections 460 and 461 of the code deal with the effect of irregularities committed by trial –magistrates. Sections 462 and 463 deal with certain irregularities committed by criminal courts. However the Code under which investigation of offences is conducted does not contain any provision to deal with irregularities committed by investigation officers (I.O) in the course of investigation. This omission is perhaps due to belief that defects in investigation have a role to play in appreciation of evidence by courts. Of course, in appropriate circumstances, writ jurisdiction of the High Courts could be invoked

As a general principle, it can be stated that error, illegality or defect in investigation cannot have any impact unless miscarriage of justice is brought about or serious prejudice is caused to the accused. (Union of India vs. Prakash P. Hinduja AIR 2003 SC 2612). If the prosecution case is established by the evidence adduced, any failure or omission on the part of the I.O cannot render the case of the prosecution doubtful. (Amar Singh vs. Balwinder Singh, AIR 2003 SC 1164, Sambu Das vs. State of Assam AIR 2010 SC 3300). If direct evidence is credible, failure, defect or negligence in investigation cannot adversely affect the prosecution case, though the court should be circumspect in evaluating the evidence (Ram Bihari Yadav vs. State of Bihar AIR 1998 SC 1850, Paras Yadav vs. State of Bihar AIR 1999 SC 644, Dhanraj Singh vs. State of Punjab AIR 2004 SC 1920, Ram Bali vs. State of U.P. AIR 2004 SC 2329).

(2) If investigation is illegal or suspicious, the rest of the evidence must be scrutinized independent of the impact of the faulty investigation; otherwise criminal trial will descend to the I.O ruling the roost. Yet if the court is convinced that the evidence of eyewitnesses is true, it is free to act upon such evidence though the role of the I.O in the case is suspicious. (Abu Thakir, AIR 2010 SC 2119). An accused cannot be acquitted on the sole ground of defective investigation; to do so would be playing into the hands of the I.O whose investigation was defective by design. (Dhanaj Singh vs. State of Punjab AIR 2004 SC 1920). Mere defective investigation cannot vitiate the trial. (Paramjit Singh vs. State of Punjab AIR 2008 SC 441).

(3) That the I.O took the eyewitnesses to the police station cannot be a reason for disbelieving them. (Dhananjaya Reddy vs. State of Karnataka AIR 2001 SC 1512). The delay on the part of the I.O in questioning witnesses does not necessarily make the prosecution version suspect. If the I.O is not questioned on this aspect, disbelieving a prosecution witness on that score is improper. If the I.O furnishes an explanation which is unsatisfactory, Court

can consider it to be one of the factors which affects the credibility of the witness who was questioned belatedly. (State of U.P. vs. Satish AIR 2005 SC 1000). It requires courage in the face of adversity for a simple man to come forward and proclaim the truth unmindful of the consequences. Delay in questioning a young boy who saw a ghastly murder being committed has to be taken into account and the court must be reasonable and should see whether the boy could have been questioned at the dead of night. In the absence of any possibility of delay affecting his statement or of any apprehension of the witness being influenced by any other person or police, his evidence could not be thrown out, more particularly, if he had faced cross examination in an efficient manner. The usual apathy to record statements quickly can also be another factor. (Mallappa Siddappa Alakanur vs. State of Karnataka, AIR 2009 SC 2959).

Delay in questioning important witnesses may not necessarily lead to create doubt regarding the veracity of the prosecution case. Unless the I.O was specifically cross-examined on this aspect, defence cannot derive any advantage. In the case of delay in questioning, it is not a principle of universal application that the prosecution version becomes suspect. It would depend on several factors. If during cross-examination, the I.O had offered an explanation which is plausible, there would be no reason for any suspicion. (Abuthagir vs. State AIR 2009 SC 2797). Where there was delay in recording CD statements of three witnesses and the IO's explanation was that he was also in charge of maintaining law and order in the area that got vitiated after two murders in succession leading to a lot of commotion and communal strife, there would be no reason to reject the explanation as the delay was on account of reasons beyond the control of the I.O. (Ibid). It cannot be said evidence of a witness should be thrown out due to the delay in recording his statement by the I.O. The language of Section 162 Criminal Procedure Code shows that the law contemplated a situation where there might be witnesses who dispose in court whose previous statements were not recorded at all. (Siddhartha Vasisht alias Manu Sharma vs. State (NCT of Delhi) AIR 2010 SC 2352)

(4) The following decisions deal with certain other kinds of defects in investigation:- (a) That no independent witnesses were associated with recovery (discovery) under Section 27, Evidence Act is not sufficient to create doubt regarding truth of the prosecution version. (Sanjay alias Kaka vs. State (NCT of Delhi) AIR 2001 SC 979). (b) Rejection of the prosecution case on the basis of a site plan is illegal. (State of Rajasthan vs. Bhawani AIR 2003 SC 3346). (c) If ocular evidence is reliable, defect in investigation such as not forwarding the seized gun to FSL would not matter. (Amar Singh vs. Balwinder Singh AIR

2003 SC 1164). (d) Doubtful nature of recovery of the fatal gun cannot render the ocular evidence unreliable. (Munna vs. State of M.P. AIR 2003 SC 3346). (e) The fact that the IO didnot mention the street light in the site plan is not a ground to disbelieve the eyewitnesses where the injured eyewitnesses who were well acquainted with the assailants deposed that they could see them because there was light coming from a nearby street light. (Pritvi vs. Mam Raj AIR 2004 SC 2729). (f) There is a no legal requirement that pellets removed from the body of the deceased during autopsy should be sent to the Ballistie expert to determine whether the pellets were fired from the exhibited gun or not. On the contrary, such recovery clearly confirms the case that the deceased died of gunshot injuries. Failure to send the pellets to an expert does not render the prosecution case unacceptable. (State of H.P vs. Mast Ram AIR 2004 SC 5754). (g) Non-mention of the size of blood stains on the seized clothes in the seizure manager is of no consequence. (GuraSingh vs. State of Rajasthan AIR 2001 SC 330). (h) Cogent evidence of eyewitnesses cannot be rejected on account of the failure of the IO to send blood stained cloth (wrapped around the wound) for chemical examination. (Nirmal Singh vs. State of Bihar AIR 2005 SC 1265). (i) In a case of killing by shooting, where the IO failed to collect bloodstained soil and empty shells from the scene, since the eye-witnesses deposed to the firing of shots resulting in death, which was corroborated by medical evidence, the default of the IO did not cause prejudice to the accused. (Maqbool vs. State of A.P. , AIR 2011 SC 184). (j) Absence of recovery of pellets from the scene or from the body of the injured persons or of pistol or cartridge does not detract from the prosecution case. It does not in every case prejudice the accused or affect the credibility of the prosecution case. (State of Rajasthan vs. Arjun Singh, AIR 2011 SC 3380, Dandu Jaggaraju vs. State of A.P. , AIR 2011 SC 3387, Raj Kishore Jha vs. State of Bihar AIR 2003 SC 4664). (k) Where eyewitnesses who knew the accused persons prior to the occurrence deposed that they saw the accused from close quarters with the aid of a torch (though on a moonless night) and there was no reason to otherwise doubt the truth of their testimony, the fact that the torch light was not seized by the I.O would not mean that their evidence is not credible. (Hari Singh vs. State of U.P. AIR 2011 SC 360). (l) Failure to forward the allegedly bloodstained shirt worn by an eyewitness to FSL is a deficiency which, however, does not necessarily lead to the conclusion that the prosecution case is unworthy of credit. In such a case, the court is required to be more circumspect in evaluating the evidence. (Sheo Shankar Singh vs. State of Jharkhand AIR 2011 SC 1403) (m) In a case of murder, the injured while in hospital, made a statement on the basis of which FIR was recorded. After the death of the injured, her husband reported the fact

to the police and a second FIR for an offence under Section 302 IPC was registered. It was held that the SHO committed a mistake in recording a second FIR, but that would not weaken the prosecution case, especially since no prejudice had been caused to the accused by a registration of a second FIR. (Chinna Shivraj vs. State of A.P. AIR 2011 SC 604, T.T. Antony vs. State of Kerala AIR 2001 SC 2637). (n) Two witnesses who spoke about "Last seen with deceased" were strangers to the accused. Their statements were recorded under Section 164 Criminal Procedure Code four months after the incident and no "test identification parade" was conducted. Another witness, claiming to be an independent witness, identified the accused for the first time in court two and a half years after the incident, it was held that their testimonies did not inspire confidence. (Dandu Jaggaaraju vs. State of A.P. AIR 2011 SC 3387).

(5) If a Police Officer in charge of a police station, having reason to suspect the commission of a cognizable offence, (Section 157 Crl. Pr. Code) proceeds to the spot without preparing and sending a report to the magistrate concerned, that does not mean that his proceeding to the spot was not for investigation. It is not necessary that a formal registration of a case should have been made before proceeding to the spot, in order to bring inquest proceedings within the ambit of investigation. It is enough that he has some information to afford him reason to suspect the commission of a cognizable offence. Any step taken by him, pursuant to such information, towards detection of the said offence, would be part of such investigation, even though the formal registration of the FIR takes place only thereafter. Than an FIR loses its' authority if it is lodged after the inquest report is recorded is not a general proposition of universal application. The object of inquest is only to ascertain whether a person has died under unnatural circumstances and if so, what the cause of death is, (Sambu Das vs. State of Assam AIR 2010 SC 3300, State of U.P. vs. Bhagwant Kishore Joshi AIR 1964 SC 221, Maha Singh vs. State (Delhi Administration) AIR 1976 SC 449). While considering the delay in FIR reaching the jurisdictional Magistrate, Court has to bear in mind the credit worthiness of the ocular evidence adduced by the prosecution and see if such ocular evidence is worthy of acceptance; the element of delay in registering FIR or sending FIR to the magistrate by itself, would not in any manner weaken the prosecution case. (Balram Singh Vs. State of Punjab AIR 2003 SC 2213). Where the FIR contained only a brief statement of events, the delay in sending the FIR to court could not have been to concoct a false case against the accused. If the FIR had been cooked up after the inquest and autopsy were over, many more matters or details could have been incorporated in the FIR. The delay, in these circumstance, cannot, by itself, throw out the prosecution case in its' entirely;

such delay cannot be the sole reason for discarding the prosecution version as being fabricated, if reliable evidence has been produced against the accused. Delay in sending FIR to court may provide basis for suspicion that the FIR was recorded much later, to set up a distorted version. The purpose of Section 157 Crl. Pr. Code is to ensure fair trial without there being any occasion for falsification or introduction of facts belatedly. (Sahdeo Vs. State of UP AIR 2004 SC 3508, Sunilkumar Vs. State of Rajasthan AIR 2005 SC 1096, Sarwan Singh Vs. State of Punjab AIR 1976 SC 2304, Ishwar Singh Vs. State of UP AIR 1976 SC 2423, Rabindra Manto Vs. State of Jharkhand AIR 2006 SC 887). In a case where there was delay of four days in sending FIR to court, factors such as immediate holding of inquest, removal of deadbody to police premises, obtaining authorization by DMO to conduct autopsy during the same night etc were held to suggest spontaneity of FIR sufficient to reject plea of anti-timing of FIR. (Paramjit Singh Vs. State of Punjab AIR 2008 SC 441). Delay in sending the FIR to court would not dislodge the other evidence. (Sarvesh Narain Shukla Vs. Dasroga Singh AIR 2008 SC 320).

6) There are no rigid rules regarding appreciation of evidence. Effect of shortcomings on the part of the officer registering a case or the I.O. are part of the task of judge in appreciation of Evidence; it is the judges who has to appreciate the evidence, and while doing so, assess the effect of such defects. Such defects become marginal in case where the main testimony of eyewitnesses or witnesses proving circumstantial (or basic or primary) facts inspire confidence and appears truthful. If such evidence is of a shabby nature or doesnot inspire confidence, such assessment of evidence is strengthened by serious defects in FIR or investigation. An accused cannot be acquitted merely the ground of such defects; such defects do not the affect the decision adversely if the evidence in the main is credit worthy. Of course, serious defects which, in the assessment of the court, have lead to serious prejudice to the accused or to failure of justice stand on a different footing. This note refers to quite a number of decisions of the Supreme Court. To know the background in which various decisions were reached Judges would do well to study the facts of those cases since any principle laid down by a superior court has to be understood and appreciated in the light of the factual background of each case.

Defective Investigation

59. This extract is taken from *Krishna Mochi v. State of Bihar*, (2002) 6 SCC 81 : (2002) SCC (Cri) 1220 : 2002 SCC OnLine SC 453 at page 106

35. It has been further submitted that the informant, Satendra Kumar Sharma has not been examined as such, the first information report cannot be used as a substantive piece of evidence inasmuch as on this ground as well the appellants are entitled to an order of acquittal. The submission is totally misconceived. Even if the first information report is not proved, it would not be a ground for acquittal, but the case would depend upon the evidence led by the prosecution. Therefore, non-examination of the informant cannot in any manner affect the prosecution case.

36. It has been also contended that Inspector Ram Japit Kumar, who was one of the investigating officers, has not been examined. The alleged occurrence had taken place on 12-2-1992 and on the same night on the basis of fardbeyan of the informant recorded by PW 33, as stated above, Inspector of Police Ram Janam Singh drew the formal first information report. From the evidence of this witness, it would appear that the Superintendent of Police, Gaya directed Inspector Ram Japit Kumar to investigate this case and so long he did not take charge of the investigation, this witness was entrusted to commence the investigation under verbal orders of the Superintendent of Police, Gaya. PW 33, thereafter, inspected the place of occurrence and seized bloodstained earth, empties and reminiscence of bomb explosion. This witness further stated that as till 17-2-1992 Inspector Ram Japit Kumar did not make himself available for taking over investigation of the case, he requested the Superintendent of Police to give necessary direction, whereupon the investigation was entrusted to one Suresh Chander Sharma (PW 17) who, at that time, was posted as Inspector, Chandauti Police Station and PW 33 made over charge of the case to PW 17 on 19-2-1992, who, after completing investigation which was supervised by the Superintendent of Police himself, submitted the charge-sheet. From the above facts it would be plain that as Inspector Ram Japit Kumar had neither taken over charge of the investigation of the case at any point of time, much less investigated the same, no adverse inference can be drawn against the prosecution on account of his non-examination and non-furnishing of explanation for his not taking over charge of investigation. Thus, he having not conducted any investigation, the evidence of Inspector Ram Japit Kumar could not be of any avail either to the prosecution or the defence. That apart, it is well settled that non-examination of any witness would not affect the prosecution case, but in a given case non-examination of a material witness may affect the

same. Reference in this connection may be made to the decision of this Court in the case of *Masalti* [AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] . It is well settled that non-examination of the investigating officer is not fatal for the prosecution unless it is shown that the accused has been prejudiced thereby. In the case on hand, in any view of the matter, it could not be pointed out that the defence has been prejudiced in any manner by non-examination of Inspector Ram Japit Kumar.

37. It has been then submitted on behalf of the appellants that nothing incriminating could be recovered from them, which goes to show that they had no complicity with the crime. In my view, recovery of no incriminating material from the accused cannot alone be taken as a ground to exonerate them from the charges, more so when their participation in the crime is unfolded in ocular account of the occurrence given by the witnesses, whose evidence has been found by me to be unimpeachable.

60. This extract is taken from *Ram Bihari Yadav v. State of Bihar*, (1998) 4 SCC 517 : 1998 SCC (Cri) 1085 : 1998 SCC OnLine SC 314 at page 523

13. Before parting with this case we consider it appropriate to observe that though the prosecution has to prove the case against the accused in the manner stated by it and that any act or omission on the part of the prosecution giving rise to any reasonable doubt would go in favour of the accused, yet in a case like the present one where the record shows that investigating officers created a mess by bringing on record Exh. 5/4 and GD Entry 517 and **have exhibited remiss and/or deliberately omitted to do what they ought to have done to bail out the appellant who was a member of the police force or for any extraneous reason, the interest of justice demands that such acts or omissions of the officers of the prosecution should not be taken in favour of the accused, for that would amount to giving premium for the wrongs of the prosecution designedly committed to favour the appellant**. In such cases, the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice.

61. This extract is taken from *Paras Yadav v. State of Bihar*, (1999) 2 SCC 126 : 1999 SCC (Cri) 104 : 1999 SCC OnLine SC 23 at page 129

8. It has been contended by the learned counsel for the appellants that the investigating officer has not bothered to record the dying declaration of the deceased nor is the dying declaration recorded by the doctor. The doctor is also not examined to establish that the deceased was conscious and in a fit condition to make the statement. It is true that there is negligence on the part of the investigating officer. On occasions, such negligence or omission may give rise to reasonable doubt which would obviously go in favour of the accused. But in the present case, the evidence of the prosecution witnesses clearly establishes beyond reasonable doubt that the deceased was conscious and he was removed to hospital by bus. All the witnesses deposed that the deceased was in a fit state of health to make the statements on the date of the incident. He expired only after more than 24 hours. No justifiable reason is pointed out to disbelieve the evidence of the number of witnesses who rushed to the scene of offence at Ghogha Chowk. Their evidence does not suffer from any infirmity which would render the dying declarations as doubtful or unworthy of the evidence. In such a situation, the lapse on the part of the investigating officer should not be taken in favour of the accused. It may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. For this purpose, it would be worthwhile to quote the following observations of this Court from the case of *Ram Bihari Yadav* v. *State of Bihar* [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085 : JT (1998) 3 SC 290] (SCC pp. 523-24, para 13)

> "In such cases, the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice."

62. This extract is taken from *Amar Singh v. Balwinder Singh*, (2003) 2 SCC 518 : 2003 SCC (Cri) 641 : 2003 SCC OnLine SC 156 at page 530

15. Coming to the last point regarding certain omissions in DDR, it has come in evidence that on the basis of the statement of PW 4 Amar Singh, which was recorded by PW 14 Sardara Singh, SI in the hospital, a formal FIR was recorded at the police station at 9.20 p.m. In accordance with Section 155 CrPC the contents of the FIR were also entered in DDR, which contained the names of the witnesses, weapons of offence and place of occurrence and it was not very necessary to mention them separately all over again. It is not the case of the defence that the names of the accused were not mentioned in DDR. We fail to understand as to how it was necessary for the investigation officer to take in his possession the wire gauze of the window from where A-1 is alleged to have fired. The wire gauze had absolutely no bearing on the prosecution case and the investigating officer was not supposed to cut and take out the same from the window where it was fixed. It would have been certainly better if the investigating agency had sent the firearms and the empties to the Forensic Science Laboratory for comparison. However, the report of the ballistic expert would in any case be in the nature of an expert opinion and the same is not conclusive. The failure of the investigating officer in sending the firearms and the empties for comparison cannot completely throw out the prosecution case when the same is fully established from the testimony of eyewitnesses whose presence on the spot cannot be doubted as they all received gunshot injuries in the incident. In *Karnel Singh* v. *State of M.P.* [(1995) 5 SCC 518 : 1995 SCC (Cri) 977] it was held that in cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect and to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. In *Paras Yadav* v. *State of Bihar* [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] while commenting upon certain omissions of the investigating agency, it was held that it may be that such lapse is committed designedly or because of negligence and hence the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. Similar view was taken in *Ram Bihari Yadav* v. *State of Bihar* [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085] when this Court observed that in such cases the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials, otherwise, the mischief which was deliberately done would be perpetuated and

justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice. In our opinion the circumstances relied upon by the High Court in holding that the investigation was tainted are not of any substance on which such an inference could be drawn and in a case like the present one where the prosecution case is fully established by the direct testimony of the eyewitnesses, which is corroborated by the medical evidence, any failure or omission of the investigating officer cannot render the prosecution case doubtful or unworthy of belief.

63. This extract is taken from *Dhanaj Singh v. State of Punjab*, (2004) 3 SCC 654 : 2004 SCC (Cri) 851 : 2004 SCC OnLine SC 300 at page 657

5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See *Karnel Singh* v. *State of M.P.* [(1995) 5 SCC 518 : 1995 SCC (Cri) 977])

6. In *Paras Yadav* v. *State of Bihar* [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not, the contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

7. As was observed in *Ram Bihari Yadav* v. *State of Bihar* [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085] if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice. The view was again reiterated in *Amar Singh* v. *Balwinder Singh* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] . As noted in *Amar Singh case* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] it would have been certainly better if the firearms were sent to the Forensic Test Laboratory for comparison. But the report of the ballistic expert would be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eyewitnesses corroborated by the medical evidence fully establishes the prosecution version, failure or omission or negligence on the part of the IO cannot affect the credibility of the prosecution version.

8. The stand of the appellants relates essentially to acceptability of evidence. Even if the investigation is defective, in view of the legal principles set out above, that pales into insignificance when ocular testimony is found credible and cogent. Further effect of non-examination of weapons of assault or the pellets, etc. in the background of defective investigation has been considered in *Amar Singh case* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] . In the case at hand, no crack in the evidence of the vital witnesses can be noticed.

64. This extract is taken from *C. Muniappan v. State of T.N.*, (2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402 : 2010 SCC OnLine SC 946 at page 588

54. Serious issues have been raised by the learned Senior Counsel appearing for the appellants, submitting that inquest report was defective as there has been much irregularity in the inquest itself. Undoubtedly, three investigating officers, namely, T. Shanmugaiah, Police Inspector (PW 116); S. Palanimuthu (PW 121); and John Basha (PW 122) had conducted the investigation at the initial stage. The occurrence was so ugly and awful that the IOs had conducted the investigation under great anxiety and tension. The seizure memos were also prepared in the same state of affairs. Therefore, when the investigation had been conducted in such a charged atmosphere, some irregularities were bound to occur. There is ample evidence on record to show that after burning of the University bus, when the students came to know that three girls had been charred and large number of girl students had suffered burn injuries, they became so violent that they damaged the ambulance which had been brought to take bodies of the deceased girls for conducting autopsy. The State authorities, after keeping all these factors in mind and realising that the investigation had not been conducted in a proper manner, had taken a decision to transfer the investigation to CB CID. Therefore, the irregularities committed in the investigation by the earlier IOs have too little relevance on the merits of the case. The evidence collected by the said three IOs was not worth placing reliance on and has rightly been not relied upon by the subsequent investigating officer.

55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be

allowed to depend solely on the probity of investigation. (Vide *Chandrakant Luxman* v. *State of Maharashtra* [(1974) 3 SCC 626 : 1974 SCC (Cri) 116 : AIR 1974 SC 220] , *Karnel Singh* v. *State of M.P.* [(1995) 5 SCC 518 : 1995 SCC (Cri) 977] , *Ram Bihari Yadav* v. *State of Bihar* [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085 : AIR 1998 SC 1850] , *Paras Yadav* v. *State of Bihar* [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] , *State of Karnataka* v. *K. Yarappa Reddy* [(1999) 8 SCC 715 : 2000 SCC (Cri) 61 : AIR 2000 SC 185] , *Amar Singh* v. *Balwinder Singh* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] , *Allarakha K. Mansuri* v. *State of Gujarat* [(2002) 3 SCC 57 : 2002 SCC (Cri) 519] and *Ram Bali* v. *State of U.P.* [(2004) 10 SCC 598 : 2004 SCC (Cri) 2045])

65. This extract is taken from *Yogesh Singh v. Mahabeer Singh*, (2017) 11 SCC 195 : (2017) 4 SCC (Cri) 257 : 2016 SCC OnLine SC 1163 at page 213

Lapses in investigation

30. In *C. Muniappan* v. *State of T.N.* [*C. Muniappan* v. *State of T.N.*, (2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402] , this Court explained the law on this point in the following manner: (SCC p. 589, para 55)

> "*55.* There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation."

31. In the present case, the High Court found that the testimonies of the eyewitnesses were not reliable. In this connection, the High Court noted that the very claim of the witnesses that on the fateful day, the deceased and his daughter PW 5, Lajjawati were going to their house situated in the north of the village for any particular reason, did not carry any weight in view of the fact that the deceased used to reside in his self-contained shelter situated near the tubewell which was far removed from the village and where he used to retire each day before sunset. We are not inclined to endorse this finding of the High Court, particularly in light of the deposition of PW 1 and PW 5, who stated under oath that on the fateful day, the deceased and PW 5 were going to another village via their village house.

66. This extract is taken from *Edakkandi Dineshan v. State of Kerala*, (2025) 3 SCC 273 : 2025 SCC OnLine SC 28 at page 283

26. A cumulative reading of the entire evidence on record suggests that the investigation has not taken place in a proper and disciplined manner. There are various areas where a proper investigation could have strengthened its case. In *Paras Yadav* v. *State of Bihar* [*Paras Yadav* v. *State of Bihar*, (1999) 2 SCC 126 : 1999 SCC (Cri) 104] , the Supreme Court observed as under : (SCC p. 130, para 8)

> "*8.* ... the lapse on the part of the investigating officer should not be taken in favour of the accused. It may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. For this purpose, it would be worthwhile to quote the following observations of this Court from *Ram Bihari Yadav* v. *State of Bihar* [*Ram Bihari Yadav* v. *State of Bihar*, (1998) 4 SCC 517 : 1998 SCC (Cri) 1085] : (SCC pp. 523-24, para 13)
>
> > '*13.* ... In such cases, the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice.' "

27. Hence, the principle of law is crystal clear that on the account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report, etc. It has been a consistent stand of this Court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. As the version of eyewitnesses in specifically naming the appellants have been consistent throughout the trial, we find that there is enough corroboration to drive home the guilt of the accused persons. When the testimony of PW 1 Jitesh, PW 2 and PW 4 is seen cumulatively, their versions can be seen to be corroborating each other. All of them being eyewitnesses, what is material to be seen is their stand is consistent when they said that it was A-2 who was responsible for inflicting blows on both the deceased. It may not be out of place to mention that though the unfortunate incident took place at midnight around 1 a.m., it was a full moon night and as

such, it was not pitch dark. This has also not been vehemently disputed by the defence counsel. Hence, the version put forth by the prosecution witnesses inspires confidence of this Court. The specific role attributed by the prosecution witnesses cannot be challenged on extraneous grounds which have been raised by the defence. There is no contradiction when it comes to assigning specific role to the above accused. Admittedly, there was an enmity between the witnesses as they were from different political groups. Moreover, it can be seen from the record that the accused and the witnesses were well acquainted with each other as PW 1, PW 2 and PW 4 had defected from CPI and had joined RSS. The witnesses could have tried to implicate anyone had they wished to take advantage of their past acquaintance and recent rivalry.

Colourable Defective And Unfair Investigation

67. This extract is taken from *Arvind Kumar v. State of Rajasthan*, (2022) 16 SCC 732 : 2021 SCC OnLine SC 1099 at page 749

Discussion

Fair, Defective, Colourable Investigation

40. An investigating officer being a public servant is expected to conduct the investigation fairly. While doing so, he is expected to look for materials available for coming to a correct conclusion. He is concerned with the offence as against an offender. It is the offence that he investigates. Whenever a homicide happens, an investigating officer is expected to cover all the aspects and, in the process, shall always keep in mind as to whether the offence would come under Section 299IPC sans Section 300IPC. In other words, it is his primary duty to satisfy that a case would fall under culpable homicide not amounting to murder and then a murder. When there are adequate materials available, he shall not be overzealous in preparing a case for an offence punishable under Section 302IPC. We believe that a pliable change is required in the mind of the investigating officer. After all, such an officer is an officer of the court also and his duty is to find out the truth and help the court in coming to the correct conclusion. He does not know sides, either of the victim or the accused but shall only be guided by law and be an epitome of fairness in his investigation.

41. There is a subtle difference between a defective investigation, and one brought forth by a calculated and deliberate action or inaction. A defective investigation per se would not enure to the benefit of the accused, unless it goes into the root of the very case of the prosecution being fundamental in nature. While dealing with a defective investigation, a court of law is expected to sift the evidence available and find out the truth on the principle that every case involves a journey towards truth. There shall not be any pedantic approach either by the prosecution or by the court as a case involves an element of law rather than morality.

42. Our aforesaid observation is to point out the approach of the investigating officers and at times courts. There is a clear distinction in the Code on knowledge and intention. We do not wish to reiterate the settled position of law but meant only to state a sleeping mind.

43. An offence would involve an element of mental rebellion when the mind of a person creates an action not supported by the ethos and values of a social structure in the form of law. This deviant behaviour is the harbinger of an offence ultimately. A feeling of pain, sorrow or tragedy is mental. It is what we think and not what we suffer that constitutes an action in us. Such an action

might at times create a social deviance. It is this part which is expected to be seen both by the investigating officer and the court while dealing with a criminal case.

44. We would only reiterate the aforesaid principle qua a fair investigation through the following judgment of *Kumar* v. *State* [*Kumar* v. *State*, (2018) 7 SCC 536 : (2018) 3 SCC (Cri) 245] : (SCC p. 544, paras 27-28)

> "*27*. The action of investigating authority in pursuing the case in the manner in which they have done must be rebuked. The High Court on this aspect, correctly notices that the police authorities have botched up the arrest for reasons best known to them. Although we are aware of the ratio laid down in *Parbhu* v. *King Emperor* [*Parbhu* v. *King Emperor*, 1944 SCC OnLine PC 1 : AIR 1944 PC 73] , wherein the Court had ruled that irregularity and illegality of arrest would not affect the culpability of the offence if the same is proved by cogent evidence, yet in this case at hand, such irregularity should be shown deference as the investigating authorities are responsible for suppression of facts.
>
> *28*. The criminal justice must be above reproach. It is irrelevant whether the falsity lie in the statement of witnesses or the guilt of the accused. The investigative authority has a responsibility to investigate in a fair manner and elicit truth. At the cost of repetition, I must remind the authorities concerned to take up the investigation in a neutral manner, without having regard to the ultimate result. In this case at hand, we cannot close our eyes to what has happened; regardless of guilt or the asserted persuasiveness of the evidence, the aspect wherein the police has actively connived to suppress the facts, cannot be ignored or overlooked."

45. A fair investigation would become a colourable one when there involves a suppression. Suppressing the motive, injuries and other existing factors which will have the effect of modifying or altering the charge would amount to a perfunctory investigation and, therefore, become a false narrative. If the courts find that the foundation of the prosecution case is false and would not conform to the doctrine of fairness as against a conscious suppression, then the very case of the prosecution falls to the ground unless there is unimpeachable evidence to come to a conclusion for awarding a punishment on a different charge.

Any Delay In Lodging The FIR Would Automatically Render The Prosecution Case Doubtful

68. This extract is taken from *Amar Singh v. Balwinder Singh*, (2003) 2 SCC 518 : 2003 SCC (Cri) 641 : 2003 SCC OnLine SC 156 at page 527

10. The High Court has gone to the extent of observing that the delay of 26 hours in sending the special report by itself was enough to allow the appeal and to set aside the conviction of the accused. In our opinion, the period which elapsed in lodging the FIR of the incident has been fully explained from the evidence on record and no adverse inference can be drawn against the prosecution merely on the ground that the FIR was lodged at 9.20 p.m. on the next day. There is no hard-and-fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station etc. have to be taken into consideration. There is no mathematical formula by which an inference may be drawn either way merely on account of delay in lodging of the FIR. In this connection it will be useful to take note of the following observation made by this Court in *Tara Singh* v. *State of Punjab* [1991 Supp (1) SCC 536 : 1991 SCC (Cri) 710 : AIR 1991 SC 63] : (SCC p. 541, para 4)

> The delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are, one cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report. Of course, in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the courts should be cautious to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication,

the court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay. These are all matters for appreciation and much depends on the facts and circumstances of each case.

69. This extract is taken from *Amar Singh v. Balwinder Singh*, (2003) 2 SCC 518 : 2003 SCC (Cri) 641 : 2003 SCC OnLine SC 156 at page 528

11. In *Zahoor* v. *State of U.P.* [1991 Supp (1) SCC 372 : 1991 SCC (Cri) 678 : AIR 1991 SC 40] it was held that mere delay by itself is not enough to reject the prosecution case unless there are clear indications of fabrication. This was reiterated in *Jamna* v. *State of U.P.* [1994 Supp (1) SCC 185, 188 (para 4) : 1994 SCC (Cri) 348 : AIR 1994 SC 79] (AIR para 4) that delay by itself is not a circumstance to doubt the prosecution case. In the present case the High Court did not at all take into consideration the fact that the first informant Amar Singh and his three sons besides two others had received injuries and they had first gone to Sangrur from their village on a tractor-trolley and from there to CMC, Ludhiana which is about 60 kilometres on taxis and further, that all the six injured had been admitted in the hospital where one of them died next morning and another, namely, PW 7 Bhan Singh had sustained serious injuries which were dangerous to life and he had to be operated upon and in such circumstances he could not have left the hospital for going to PS Sangrur for lodging the FIR. The High Court also failed to take into consideration the fact that the FIR was lodged after PW 14 Sardara Singh, SI of Police Station Sangrur had come to the hospital and had recorded the statement of Amar Singh after seeking opinion of the doctor in writing and thereafter, the said statement was sent through Constable Joga Singh to Police Station Sangrur. We are, therefore, clearly of the opinion that in the facts and circumstances of the case, there was no delay in either lodging of the FIR or in sending the special report to the CJM and the view to the contrary taken by the High Court is absolutely incorrect.

There is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station, etc. have to be taken into consideration. There is no mathematical formula by which an inference may be drawn either way merely on account of delay in lodging of the FIR. In this connection it will be useful to take note of the following observation made by this Court in Tara Singh & Ors. v. State of Punjab, AIR 1991 SC 63 :

"The delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are, one cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go the police station for giving the report. Of course, in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the Courts should be cautious to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication, the Court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay. These are all matters for appreciation and much depends on the facts and circumstances of each case."

In Zahoor & Ors. v. State of U.P., AIR 1991 SC 40, it was held that mere delay by itself is not enough to reject the prosecution case unless there are clear indications of fabrication.

This was reiterated in Jamna & Ors. v. State of Uttar Pradesh, AIR 1994 SC 79 (para 4) that delay by itself is not a circumstance to doubt the prosecution case.

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Discrepancies In Evidence

70. This extract is taken from *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, (1983) 3 SCC 217 : 1983 SCC (Cri) 728 : 1983 SCC OnLine SC 152 at page 221

5. It appears that the parents of PW 1 as well as parents of PW 2 wanted to hush up the matter. Some unexpected developments however forced the issue. The residents of the locality somehow came to know about the incident. And an alert woman social worker, PW 5 Kundanben, President of the Mahila Mandal in Sector 17, Gandhinagar, took up the cause. She felt indignant at the way in which the appellant had misbehaved with two girls of the age of his own daughter, who also happened to be friends of his daughter, taking advantage of their helplessness, when no one else was present. Having ascertained from PW 1 and PW 2 as to what had transpired, she felt that the appellant should atone for his infamous conduct. She therefore called on the appellant at his house. It appears that about 500 women of the locality had also gathered near the house of the appellant. Kundanben requested the appellant to apologize publicly in the presence of the women who had assembled there. If the appellant had acceded to this request possibly the matter might have rested there and might not have come to the court. The appellant, however, made it a prestige issue and refused to apologize. Thereupon the police was contacted and a complaint was lodged by PW 1 on September 19, 1975. PW 1 was then sent to the Medical Officer for medical examination. The medical examination disclosed that there was evidence to show that an attempt to commit rape on her had been made a few days back. The Sessions Court as well as the High Court have accepted the evidence and concluded that the appellant was guilty of sexual misbehaviour with PW 1 and PW 2 in the manner alleged by the prosecution and established by the evidence of PW 1 and PW 2. Their evidence has been considered to be worthy of acceptance. It is a pure finding of fact recorded by the Sessions Court and affirmed by the High Court. Such a concurrent finding of fact cannot be reopened in an appeal by special leave unless it is established : (*1*) that the finding is based on no evidence or (*2*) that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value or (*3*) the finding is based and built on inadmissible evidence, which evidence, if excluded from vision, would negate the prosecution case or substantially discredit or impair it or (*4*) some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded, or wrongly discarded. The present is not a case of such a nature. The finding of guilt recorded by the Sessions Court as affirmed by the High Court has been challenged mainly on the basis of minor discrepancies in the

evidence. We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by learned Counsel for the appellant. **Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious :**

"(*1*) 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.

(*2*) 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 surprised. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(*3*) 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.

(*4*) 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.

(*5*) 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.

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

(*7*) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made 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 sub-conscious 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 — Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment."

6. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue

importance. More so when the all important “probabilities factor” echoes in favour of the version narrated by the witnesses.

71. This extract is taken from *Gangabhavani v. Rayapati Venkat Reddy*, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182 : 2013 SCC OnLine SC 799 at page 306

Contradictions in evidence

13. In *State of U.P.* v. *Naresh* [(2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216] , this Court after considering a large number of its earlier judgments held : (SCC p. 334, para 30)

> "*30.* In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.
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> > '*9.* Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.' [**Ed.** : As observed in *Bihari Nath Goswami* v. *Shiv Kumar Singh*, (2004) 9 SCC 186, p. 192, para 9 : 2004 SCC (Cri) 1435.]
>
> Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited."

A similar view has been reiterated by this Court in *Tahsildar Singh* v. *State of U.P.* [AIR 1959 SC 1012 : 1959 Cri LJ 1231] , *Pudhu Raja* v. *State* [(2012) 11 SCC 196 : (2013) 1 SCC (Cri) 430] and *Lal Bahadur* v. *State (NCT of Delhi)* [(2013) 4 SCC 557 : (2013) 2 SCC (Cri) 516] .

29. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the Court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission. (See Rammi @ Rameshwar Vs. State of M.P., (1999) 8 SCC 649; Leela Ram (dead) through Duli Chand Vs. State of Haryana and Another, (1999) 9 SCC 525; Bihari Nath Goswami Vs. Shiv Kumar Singh & Ors., (2004) 9 SCC 186; Vijay @ Chinee Vs. State of Madhya Pradesh, (2010) 8 SCC 191; Sampath Kumar Vs. Inspector of Police, Krishnagiri, (2012) 4 SCC 124; Shyamal Ghosh Vs. State of West Bengal, (2012) 7 SCC 646 and Mritunjoy Biswas Vs. Pranab @ Kuti Biswas and Anr., (2013) 12 SCC 796)

(iii) Discrepancies in the account of eye witnesses and it's effect on trial, rustic witnesses

Para 51. As we proceed to examine this crucial aspect, it may be apposite to keep in mind certain observations made by this Court relating to discrepancies in the account of eye witnesses. **In Leela Ram (Dead) through Duli Chand v. State of Haryana, (1999) 9 SCC 525** it was observed as follows: "9. Be it noted that the High Court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. In this context,

reference may be made to the decision of this Court in State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105]. In para 10 of the Report, this Court observed : (SCC pp. 514-15)

'10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. 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. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals.' 10. In a very recent decision in Rammi v. State of M.P. [(1999) 8 SCC 649 : 2000 SCC (Cri) 26] this Court observed : (SCC p. 656, para 24)

'24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. 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. But 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.' This Court further observed : (SCC pp. 656-57, paras 25-27)

'25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-

examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below: "155.Impeaching credit of witness.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him— (1)-(2) *** (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;"

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to "contradict" the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to "contradict" the witness.

27. To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness (vide Tahsildar Singh v. State of U.P. [AIR 1959 SC 1012 : 1959 Cri LJ 1231]).

'" 52. Further, this Court also cautioned about attaching too much importance on minor discrepancies of the evidence of the witnesses in Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217 as follows: "5. … We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by the learned counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious: (1) 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. (2) 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. (3) 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. (4) 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.

(5) 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.

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

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by the 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—perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment."

. To the same effect it was also observed in **Appabhai v. State of Gujarat (1988) Supp SCC 241** as follows:

"13. … The court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy. Jaganmohan Reddy, J. speaking

for this Court in Sohrab v. State of M.P. [(1972) 3 SCC 751 : 1972 SCC (Cri) 819] observed : [SCC p. 756, para 8 : SCC (Cri) p. 824, para 8] '8. … This Court has held that **falsus in uno, falsus in omnibus** is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered….'

" 54. We must also remember that the scene of the crime was in a rural area and the witness being rustic, their evidence has to be appreciated in the light of the behavioral pattern in the rural environment. In this regard, we may refer to the decision of this Court **in Shivaji Sahebrao Bobade v. State of Maharashtra**, (supra) wherein it was held that: "8. Now to the facts. The scene of murder is rural, the witnesses to the case are rustics and so their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered. The learned Sessions Judge has at some length dissected the evidence, spun out contradictions and unnatural conduct, and tested with precision the time and sequence of the events connected with the crime, all on the touchstone of the medical evidence and the post-mortem certificate. Certainly, the court which has seen the witnesses depose, has a great advantage over the appellate Judge who reads the recorded evidence in cold print, and regard must be had to this advantage enjoyed by the trial Judge of observing the demeanour and delivery, of reading the straightforwardness and doubtful candour, rustic naiveté and clever equivocation, manipulated conformity and ingenious inveracity of persons who swear to the facts before him. Nevertheless, where a Judge draws his conclusions not so much on the directness or dubiety of the witness while on oath but upon general probabilities and on expert evidence, the court of appeal is in as good a position to assess or arrive at legitimate conclusions as the

court of first instance. Nor can we make a fetish of the trial Judge's psychic insight.

" 55. This Court also reminded that while dealing with the evidence of witnesses who are rustic, because of minor inconsistencies, the evidence should not be ignored. It was held in in **Prabhu Dayal v. State of Rajasthan, (2018) 8 SCC 127** wherein dealing with witnesses from rustic background it was observed as follows;

"18. It is a common phenomenon that the witnesses are rustic and can develop a tendency to exaggerate. This, however, does not mean that the entire testimony of such witnesses is falsehood. Minor contradictions in the testimony of the witnesses are not fatal to the case of the prosecution. This Court, in State of U.P. v. M.K. Anthony [State of U.P. v. M.K. Anthony, (1985) 1 SCC 505 : 1985 SCC (Cri) 105], held that inconsistencies and discrepancies alone do not merit the rejection of the evidence as a whole. It stated as follows : (SCC p. 514-15, para 10)

"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. 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. 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. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned counsel for the respondent and the reasons

assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible." (emphasis supplied) 19. .....

20. The Court can separate the truth from the false statements in the witnesses' testimony. **In Leela Ram v. State of Haryana [Leela Ram v. State of Haryana, (1999) 9 SCC 525 : 2000 SCC (Cri) 222]** , this Court held as follows : (SCC p. 534, para 12)

"12. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment — sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their overanxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same."

21. Moreover, it is not necessary that the entire testimony of a witness be disregarded because one portion of such testimony is false. This Court observed thus in Gangadhar Behera v. State of Orissa [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381 : 2003 SCC (Cri) 32] : (SCC p. 392, para 15) "15. To the same effect is the decision in State of Punjab v. Jagir Singh [State of Punjab v. Jagir Singh, (1974) 3 SCC 277 : 1973 SCC (Cri) 886 : AIR 1973 SC 2407] and Lehna v. State of Haryana [Lehna v. State of Haryana, (2002) 3 SCC 76 : 2002 SCC (Cri) 526] . Stress was laid by the appellant-accused on the non acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of falsus in uno, falsus in omnibus (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as

liars. The maxim falsus in uno, falsus in omnibus has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded."

72. This extract is taken from *Yogesh Singh v. Mahabeer Singh*, (2017) 11 SCC 195 : (2017) 4 SCC (Cri) 257 : 2016 SCC OnLine SC 1163 at page 212

Discrepancies in evidence

29. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission. (See *Rammi* v. *State of M.P.* [*Rammi* v. *State of M.P.*, (1999) 8 SCC 649 : 2000 SCC (Cri) 26] , *Leela Ram* v. *State of Haryana* [*Leela Ram* v. *State of Haryana*, (1999) 9 SCC 525 : 2000 SCC (Cri) 222] , *Bihari Nath Goswami* v. *Shiv Kumar Singh* [*Bihari Nath Goswami* v. *Shiv Kumar Singh*, (2004) 9 SCC 186 : 2004 SCC (Cri) 1435] , *Vijay* v. *State of M.P.* [*Vijay* v. *State of M.P.*, (2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639] , *Sampath Kumar* v. *Inspector of Police* [*Sampath Kumar* v. *Inspector of Police*, (2012) 4 SCC 124 : (2012) 2 SCC (Cri) 42] , *Shyamal Ghosh* v. *State of W.B.* [*Shyamal Ghosh* v. *State of W.B.*, (2012) 7 SCC 646 : (2012) 3 SCC (Cri) 685] and *Mritunjoy Biswas* v. *Pranab* [*Mritunjoy Biswas* v. *Pranab*, (2013) 12 SCC 796 : (2014) 4 SCC (Cri) 564] .)

73. This extract is taken from *Brahm Swaroop v. State of U.P.*, (2011) 6 SCC 288 : (2011) 2 SCC (Cri) 923 : 2010 SCC OnLine SC 1222 at page 303

32. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the court to reject the evidence in its entirety. "*Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions*." Difference in some minor details, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses. (See *State of U.P.* v. *M.K. Anthony* [(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48] , *State of Rajasthan* v. *Om Prakash* [(2007) 12 SCC 381 : (2008) 1 SCC (Cri) 411 : AIR 2007 SC 2257] , *State* v. *Saravanan* [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580 : AIR 2009 SC 152] and *Prithu* v. *State of H.P.* [(2009) 11 SCC 588 : (2009) 3 SCC (Cri) 1502])

74. This extract is taken from *C. Muniappan v. State of T.N.*, (2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402 : 2010 SCC OnLine SC 946 at page 596

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. (Vide *Sohrab* v. *State of M.P.* [(1972) 3 SCC 751 : 1972 SCC (Cri) 819 : AIR 1972 SC 2020] , *State of U.P.* v. *M.K. Anthony* [(1985) 1 SCC 505 : 1985 SCC (Cri) 105] , *Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat* [(1983) 3 SCC 217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753] , *State of Rajasthan* v. *Om Prakash* [(2007) 12 SCC 381 : (2008) 1 SCC (Cri) 411] , *Prithu* v. *State of H.P.* [(2009) 11 SCC 588 : (2009) 3 SCC (Cri) 1502] , *State of U.P.* v. *Santosh Kumar* [(2009) 9 SCC 626 : (2010) 1 SCC (Cri) 88] and *State* v. *Saravanan* [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580] .)

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Discrepancies In Evidence

75. This extract is taken from *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, (1983) 3 SCC 217 : 1983 SCC (Cri) 728 : 1983 SCC OnLine SC 152 at page 221

5. It appears that the parents of PW 1 as well as parents of PW 2 wanted to hush up the matter. Some unexpected developments however forced the issue. The residents of the locality somehow came to know about the incident. And an alert woman social worker, PW 5 Kundanben, President of the Mahila Mandal in Sector 17, Gandhinagar, took up the cause. She felt indignant at the way in which the appellant had misbehaved with two girls of the age of his own daughter, who also happened to be friends of his daughter, taking advantage of their helplessness, when no one else was present. Having ascertained from PW 1 and PW 2 as to what had transpired, she felt that the appellant should atone for his infamous conduct. She therefore called on the appellant at his house. It appears that about 500 women of the locality had also gathered near the house of the appellant. Kundanben requested the appellant to apologize publicly in the presence of the women who had assembled there. If the appellant had acceded to this request possibly the matter might have rested there and might not have come to the court. The appellant, however, made it a prestige issue and refused to apologize. Thereupon the police was contacted and a complaint was lodged by PW 1 on September 19, 1975. PW 1 was then sent to the Medical Officer for medical examination. The medical examination disclosed that there was evidence to show that an attempt to commit rape on her had been made a few days back. The Sessions Court as well as the High Court have accepted the evidence and concluded that the appellant was guilty of sexual misbehaviour with PW 1 and PW 2 in the manner alleged by the prosecution and established by the evidence of PW 1 and PW 2. Their evidence has been considered to be worthy of acceptance. It is a pure finding of fact recorded by the Sessions Court and affirmed by the High Court. Such a concurrent finding of fact cannot be reopened in an appeal by special leave unless it is established : (*1*) that the finding is based on no evidence or (*2*) that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value or (*3*) the finding is based and built on inadmissible evidence, which evidence, if excluded from vision, would negate the prosecution case or substantially discredit or impair it or (*4*) some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded, or wrongly discarded. The present is not a case of such a nature. The finding of guilt recorded by the Sessions Court as affirmed by the High Court has been challenged mainly on the basis of minor discrepancies in the

evidence. We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by learned Counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious :

"(*1*) 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.

(*2*) 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 surprised. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(*3*) 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.

(*4*) 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.

(*5*) 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.

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

(*7*) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made 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 sub-conscious 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 — Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment."

6. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue

importance. More so when the all important “probabilities factor” echoes in favour of the version narrated by the witnesses.

2. This extract is taken from *Gangabhavani v. Rayapati Venkat Reddy*, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182 : 2013 SCC OnLine SC 799 at page 306

Contradictions in evidence

13. In *State of U.P.* v. *Naresh* [(2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216] , this Court after considering a large number of its earlier judgments held : (SCC p. 334, para 30)

> "*30.* In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.
>
> > '*9.* Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.' [**Ed.** : As observed in *Bihari Nath Goswami* v. *Shiv Kumar Singh*, (2004) 9 SCC 186, p. 192, para 9 : 2004 SCC (Cri) 1435.]
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> Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited."

A similar view has been reiterated by this Court in *Tahsildar Singh* v. *State of U.P.* [AIR 1959 SC 1012 : 1959 Cri LJ 1231] , *Pudhu Raja* v. *State* [(2012) 11 SCC 196 : (2013) 1 SCC (Cri) 430] and *Lal Bahadur* v. *State (NCT of Delhi)* [(2013) 4 SCC 557 : (2013) 2 SCC (Cri) 516] .

29. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the Court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission. (See Rammi @ Rameshwar Vs. State of M.P., (1999) 8 SCC 649; Leela Ram (dead) through Duli Chand Vs. State of Haryana and Another, (1999) 9 SCC 525; Bihari Nath Goswami Vs. Shiv Kumar Singh & Ors., (2004) 9 SCC 186; Vijay @ Chinee Vs. State of Madhya Pradesh, (2010) 8 SCC 191; Sampath Kumar Vs. Inspector of Police, Krishnagiri, (2012) 4 SCC 124; Shyamal Ghosh Vs. State of West Bengal, (2012) 7 SCC 646 and Mritunjoy Biswas Vs. Pranab @ Kuti Biswas and Anr., (2013) 12 SCC 796)

(iii) Discrepancies in the account of eye witnesses and it's effect on trial, rustic witnesses

Para 51. As we proceed to examine this crucial aspect, it may be apposite to keep in mind certain observations made by this Court relating to discrepancies in the account of eye witnesses. **In Leela Ram (Dead) through Duli Chand v. State of Haryana, (1999) 9 SCC 525** it was observed as follows: "9. Be it noted that the High Court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases.

Minor embellishment, there may be, but variations by reason therefore should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. In this context, reference may be made to the decision of this Court in State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105]. In para 10 of the Report, this Court observed : (SCC pp. 514-15)

'10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. 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. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals.' 10. In a very recent decision in Rammi v. State of M.P. [(1999) 8 SCC 649 : 2000 SCC (Cri) 26] this Court observed : (SCC p. 656, para 24)

'24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. 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. But 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.' This Court further observed : (SCC pp. 656-57, paras 25-27)

'25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below: "155.Impeaching credit of witness.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him— (1)-(2) *** (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;"

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to "contradict" the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to "contradict" the witness.

27. To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness (vide Tahsildar Singh v. State of U.P. [AIR 1959 SC 1012 : 1959 Cri LJ 1231]).

'" 52. Further, this Court also cautioned about attaching too much importance on minor discrepancies of the evidence of the witnesses in Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217 as follows: "5. … We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by the learned counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious: (1) 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. (2) 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. (3) 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. (4) 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.

(5) 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.

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

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by the 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—perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment."

. To the same effect it was also observed in **Appabhai v. State of Gujarat (1988) Supp SCC 241** as follows:

"13. … The court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire

prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy. Jaganmohan Reddy, J. speaking for this Court in Sohrab v. State of M.P. [(1972) 3 SCC 751 : 1972 SCC (Cri) 819] observed : [SCC p. 756, para 8 : SCC (Cri) p. 824, para 8] '8. ... This Court has held that **falsus in uno, falsus in omnibus** is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered....'

" 54. We must also remember that the scene of the crime was in a rural area and the witness being rustic, their evidence has to be appreciated in the light of the behavioral pattern in the rural environment. In this regard, we may refer to the decision of this Court **in Shivaji Sahebrao Bobade v. State of Maharashtra**, (supra) wherein it was held that: "8. Now to the facts. The scene of murder is rural, the witnesses to the case are rustics and so their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered. The learned Sessions Judge has at some length dissected the evidence, spun out contradictions and unnatural conduct, and tested with precision the time and sequence of the events connected with the crime, all on the touchstone of the medical evidence and the post-mortem certificate. Certainly, the court which has seen the witnesses depose, has a great advantage over the appellate Judge who reads the recorded evidence in cold print, and regard must be had to this advantage enjoyed by the trial Judge of observing the demeanour and delivery, of reading the straightforwardness and doubtful candour, rustic naiveté and clever equivocation, manipulated conformity and ingenious inveracity of persons who swear to the facts before him. Nevertheless, where a Judge draws his

conclusions not so much on the directness or dubiety of the witness while on oath but upon general probabilities and on expert evidence, the court of appeal is in as good a position to assess or arrive at legitimate conclusions as the court of first instance. Nor can we make a fetish of the trial Judge's psychic insight.

" 55. This Court also reminded that while dealing with the evidence of witnesses who are rustic, because of minor inconsistencies, the evidence should not be ignored. It was held in in **Prabhu Dayal v. State of Rajasthan, (2018) 8 SCC 127** wherein dealing with witnesses from rustic background it was observed as follows;

"18. It is a common phenomenon that the witnesses are rustic and can develop a tendency to exaggerate. This, however, does not mean that the entire testimony of such witnesses is falsehood. Minor contradictions in the testimony of the witnesses are not fatal to the case of the prosecution. This Court, in State of U.P. v. M.K. Anthony [State of U.P. v. M.K. Anthony, (1985) 1 SCC 505 : 1985 SCC (Cri) 105], held that inconsistencies and discrepancies alone do not merit the rejection of the evidence as a whole. It stated as follows : (SCC p. 514-15, para 10)

"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. 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. 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. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel

between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible." (emphasis supplied) 19. .....

20. The Court can separate the truth from the false statements in the witnesses' testimony. **In Leela Ram v. State of Haryana [Leela Ram v. State of Haryana, (1999) 9 SCC 525 : 2000 SCC (Cri) 222]** , this Court held as follows : (SCC p. 534, para 12)

"12. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment — sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their overanxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same."

21. Moreover, it is not necessary that the entire testimony of a witness be disregarded because one portion of such testimony is false. This Court observed thus in Gangadhar Behera v. State of Orissa [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381 : 2003 SCC (Cri) 32] : (SCC p. 392, para 15) "15. To the same effect is the decision in State of Punjab v. Jagir Singh [State of Punjab v. Jagir Singh, (1974) 3 SCC 277 : 1973 SCC (Cri) 886 : AIR 1973 SC 2407] and Lehna v. State of Haryana [Lehna v. State of Haryana, (2002) 3 SCC 76 : 2002 SCC (Cri) 526] . Stress was laid by the appellant-accused on the non acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of falsus in uno, falsus in omnibus (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused

persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as liars. The maxim falsus in uno, falsus in omnibus has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded."

3. This extract is taken from *Yogesh Singh v. Mahabeer Singh*, (2017) 11 SCC 195 : (2017) 4 SCC (Cri) 257 : 2016 SCC OnLine SC 1163 at page 212

29. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission. (See *Rammi* v. *State of M.P.* [*Rammi* v. *State of M.P.*, (1999) 8 SCC 649 : 2000 SCC (Cri) 26] , *Leela Ram* v. *State of Haryana* [*Leela Ram* v. *State of Haryana*, (1999) 9 SCC 525 : 2000 SCC (Cri) 222] , *Bihari Nath Goswami* v. *Shiv Kumar Singh* [*Bihari Nath Goswami* v. *Shiv Kumar Singh*, (2004) 9 SCC 186 : 2004 SCC (Cri) 1435] , *Vijay* v. *State of M.P.* [*Vijay* v. *State of M.P.*, (2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639] , *Sampath Kumar* v. *Inspector of Police* [*Sampath Kumar* v. *Inspector of Police*, (2012) 4 SCC 124 : (2012) 2 SCC (Cri) 42] , *Shyamal Ghosh* v. *State of W.B.* [*Shyamal Ghosh* v. *State of W.B.*, (2012) 7 SCC 646 : (2012) 3 SCC (Cri) 685] and *Mritunjoy Biswas* v. *Pranab* [*Mritunjoy Biswas* v. *Pranab*, (2013) 12 SCC 796 : (2014) 4 SCC (Cri) 564] .)

4. This extract is taken from *Brahm Swaroop v. State of U.P.*, (2011) 6 SCC 288 : (2011) 2 SCC (Cri) 923 : 2010 SCC OnLine SC 1222 at page 303

32. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the court to reject the evidence in its entirety. "*Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions*." Difference in some minor details, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses. (See *State of U.P.* v. *M.K. Anthony* [(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48] , *State of Rajasthan* v. *Om Prakash* [(2007) 12 SCC 381 : (2008) 1 SCC (Cri) 411 : AIR 2007 SC 2257] , *State* v. *Saravanan* [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580 : AIR 2009 SC 152] and *Prithu* v. *State of H.P.* [(2009) 11 SCC 588 : (2009) 3 SCC (Cri) 1502])

5. This extract is taken from *C. Muniappan v. State of T.N.*, (2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402 : 2010 SCC OnLine SC 946 at page 596

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. (Vide *Sohrab* v. *State of M.P.* [(1972) 3 SCC 751 : 1972 SCC (Cri) 819 : AIR 1972 SC 2020] , *State of U.P.* v. *M.K. Anthony* [(1985) 1 SCC 505 : 1985 SCC (Cri) 105] , *Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat* [(1983) 3 SCC 217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753] , *State of Rajasthan* v. *Om Prakash* [(2007) 12 SCC 381 : (2008) 1 SCC (Cri) 411] , *Prithu* v. *State of H.P.* [(2009) 11 SCC 588 : (2009) 3 SCC (Cri) 1502] , *State of U.P.* v. *Santosh Kumar* [(2009) 9 SCC 626 : (2010) 1 SCC (Cri) 88] and *State* v. *Saravanan* [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580] .)

Dowry Death

6. This extract is taken from *Rajinder Singh v. State of Punjab*, (2015) 6 SCC 477 : (2015) 3 SCC (Cri) 225 : 2015 SCC OnLine SC 171 at page 482

R.F. NARIMAN, J.—

Historical perspective of Dowry Death Laws:

1.The facts of this case raises questions relating to one of the two great social evils practised against the women of this country for centuries. In the facts presented before us, a young woman consumes pesticide having been driven to do so by repeated demands being made on her for money by the family into which she is supposed to merge her identity. Sati and dowry deaths have plagued this nation for centuries. Sati—the practise of sending a widow to her husband's funeral pyre to burn in it—was first outlawed under British Rule in 1829 and 1830 under the Governor Generalship of Lord William Bentinck in the Bengal, Madras and Bombay Presidencies. General Sir Charles Napier, the Commander-in-Chief of the British Forces in India between 1859 and 1861, is supposed to have said to the Hindu priests who complained to him about the prohibition of Sati that "the burning of widows is your custom but in my country, when a man burns a woman alive, we hang them and confiscate all their property. Let us both, therefore, act in accordance with our national customs."

2. It took free India many years before the Commission of Sati (Prevention) Act, 1987 was passed by Parliament setting down various offences relating to the commission of Sati and the trial of such offences by special courts. In this appeal, however, we are confronted with the other major problem, namely, dowry deaths. Parliament responded much earlier so far as the prohibition of dowry is concerned by enacting the Dowry Prohibition Act, 1961 under which minimum sentences were prescribed as penalty for the giving or taking of dowry. The specific menace of dowry deaths, however, was tackled by the introduction of a new provision in 1986 — Section 304-B in the Penal Code together with another new provision Section 113-B of the Evidence Act. These two sections read as follows:

> "**304-B.*Dowry death***.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon

before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purpose of this sub-section, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

***

"**113-B.*Presumption as to dowry death*.**—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, 'dowry death' shall have the same meaning as in Section 304-B of the Penal Code, 1860."

FACTUAL MATRIX : -

3. Coming back to the facts of the present appeal, a young woman, namely, Salwinder Kaur was married to the appellant Rajinder Singh sometime in the year 1990. On 31-8-1993, within four years of the marriage, Salwinder Kaur consumed Aluminium Phosphide, which is a pesticide, as a result of which her young life was snuffed out. On the same day, an FIR was lodged against the husband, his older brother and the older brother's wife. The trial court after examining the evidence of the prosecution and the defence, acquitted the appellant's older brother and his wife but convicted the appellant under Section 304-B and sentenced him to undergo rigorous imprisonment for seven years, which is the minimum sentence that can be pronounced on a finding of guilt under the said section. This was done after examining in particular the evidence of PW 2, Karnail Singh, the father of the deceased woman, PW 3, Gulzar Singh, his elder brother and PW 4, Balwinder Singh, Sarpanch of the village. The High Court of Punjab and Haryana confirmed the conviction and the sentence vide the impugned judgment [*Rajinder Singh* v. *State of Punjab*, Criminal Appeal No. 84-SB of 1998, decided on 10-12-2008 (P&H)] .

4. For the purpose of this appeal it is sufficient to set out the dead woman's father's evidence which has been accepted by the two courts below:

> "I have three daughters and two sons, Paramjit Kaur, Manjit Kaur and Salwinder Kaur are my daughters. Salwinder Kaur, my daughter was married to Rajinder Singh r/o Bathwala. She was married to Rajinder Singh four years prior to her death. After one year of the marriage, my daughter came to me and told that her husband Rajinder Singh, the brother-in-law Davinder Singh and Gurmit Kaur, present in court, are demanding money for constructing a house. She also informed me that they were quarrelling with her for the said demand of money. At the time of marriage of my daughter, I had given sufficient dowry according to my status. I told my daughter that at that moment I am not in possession of money. However, I gave she-buffalo to my daughter for taking the same to her in-laws' house and asked her to pull on with the parents-in-law. After 7/8 months, when my daughter was again ill-treated by the accused, she came to me and again demanded money. The accused, present in court, were demanding and compelling my daughter to be back with a promise that I would visit her shortly and on the following day, I along with my brother Gulzar Singh, the then Sarpanch Balwinder Singh and Ex-Sarpanch Hazura Singh went to the house of the accused in Village Bathwala. On arrival at the house of the accused, the accused, present in court, along with father-in-law of my daughter were present at their house. Harjinder Singh, my son-in-law along with Gurmit Kaur and Davinder Singh were also present. I requested all of them not to quarrel with my daughter on account of demand of money. I also assured the accused that I would pay them the said amount at the time of harvesting the crop. The accused insisted about the demand of money. My daughter Salwinder Kaur visited my house 15 days prior to her death. I again pacified my daughter that I would definitely pay the amount after harvesting the crop. Salwinder Kaur was not happy for not getting the money from me. She was maltreated by the accused. After the death of Salwinder Kaur, member panchayat Harbhajan Singh of Village Bathwala and Davinder Singh, accused came to my house and informed that my daughter has died after consuming some poisonous substance and I was asked to accompany them for cremating the dead body."

5. We have heard the learned counsel for the parties. The counsel for the appellant relied upon the cross-examination of Karnail Singh which is set out hereinbelow:

> "I do not know if Davinder Singh had separate portion. My daughter had come to me for the first time 5/6 months after her marriage, but she did not

make any complaint to me regarding the conduct of the accused persons. She complained to me only after about a year and she had told me that they wanted to build a joint house and asked her to bring money for that purpose. I however did not give any money to her for this purpose. No written complaint was ever made to the panchayat. I never talked about it to Balwinder Singh. It is incorrect to suggest that no demand of money was ever made from my daughter or that I have deposed falsely."

Legal Aspect: -

7. The primary ingredient to attract the offence under Section 304-B IPC is that the death of a woman must be a "dowry death". "Dowry" is defined by Section 2 of the Dowry Prohibition Act, 1961, which reads as follows:

"**2.*Definition of 'dowry'***.—In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly—

(*a*) by one party to a marriage to the other party to the marriage; or

(*b*) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies.

Explanation I.—***

Explanation II.—The expression 'valuable security' has the same meaning as in Section 30 of the Penal Code, 1860."

7. This extract is taken from *Rajinder Singh v. State of Punjab*, (2015) 6 SCC 477 : (2015) 3 SCC (Cri) 225 : 2015 SCC OnLine SC 171 at page 485

8. A perusal of Section 2 shows that this definition can be broken into six distinct parts:

(1) Dowry must first consist of any property or valuable security— the word "any" is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever.

(2) Such property or security can be given or even agreed to be given. The actual giving of such property or security is, therefore, not necessary.

(3) Such property or security can be given or agreed to be given either directly or indirectly.

(4) Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other person to either party to the marriage or to any other person. It will be noticed that this clause again widens the reach of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned.

(5) Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnised.

(6) Such giving or receiving must be in connection with the marriage of the parties. Obviously, the expression "in connection with" would in the context of the social evil sought to be tackled by the Dowry Prohibition Act mean "in relation with" or "relating to".

9. The ingredients of the offence under Section 304-B IPC have been stated and restated in many judgments. There are four such ingredients and they are said to be:

(*a*) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

(*b*) such death must have occurred within seven years of her marriage;

(*c*) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(*d*) such cruelty or harassment must be in connection with the demand for dowry.

10. This has been the law stated in the following judgments : *Ashok Kumar* v. *State of Haryana* [(2010) 12 SCC 350 : (2011) 1 SCC (Cri) 266] , SCC

at pp. 360-61; *Bachni Devi* v. *State of Haryana* [(2011) 4 SCC 427 : (2011) 2 SCC (Cri) 280] , SCC at p. 431; *Pathan Hussain Basha* v. *State of A.P.* [(2012) 8 SCC 594 : (2012) 3 SCC (Cri) 989] , SCC at p. 599; *Kulwant Singh* v. *State of Punjab* [(2013) 4 SCC 177 : (2013) 2 SCC (Cri) 339] , SCC at pp. 184-85; *Surinder Singh* v. *State of Haryana* [(2014) 4 SCC 129 : (2014) 4 SCC (Cri) 769] , SCC at p. 137; *Raminder Singh* v. *State of Punjab* [(2014) 12 SCC 582 : (2014) 5 SCC (Cri) 116] , SCC at p. 583; *Suresh Kumar* v. *State of Haryana* [(2013) 16 SCC 353 : (2014) 6 SCC (Cri) 259] , SCC at p. 361 and *Sher Singh* v. *State of Haryana* [(2015) 3 SCC 724 : (2015) 2 SCC (Cri) 422 : (2015) 1 Scale 250] , Scale at p. 262.

11. This Court has spoken sometimes with divergent voices both on what would fall within "dowry" as defined and what is meant by the expression "soon before her death". In *Appasaheb* v. *State of Maharashtra* [*Appasaheb* v. *State of Maharashtra*, (2007) 9 SCC 721(2007) 9 SCC 721 : (2007) 3 SCC (Cri) 468] , this Court construed the definition of dowry strictly, as it forms part of Section 304-B which is part of a penal statute. The Court held that a demand for money for defraying the expenses of manure made to a young wife who in turn made the same demand to her father would be outside the definition of dowry. This Court said : (SCC p. 727, para 11)

> *11.* "... A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for 'dowry' as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure."

12. This judgment was distinguished in at least four other judgments (see *Bachni Devi* v. *State of Haryana* [(2011) 4 SCC 427 : (2011) 2 SCC (Cri) 280] , SCC at pp. 432-34; *Kulwant Singh* v. *State of Punjab* [(2013) 4 SCC 177 : (2013) 2 SCC (Cri) 339] , SCC at p. 185; *Surinder Singh* v. *State of Haryana* [(2014) 4 SCC 129 : (2014) 4 SCC (Cri) 769] , SCC at pp. 139-41 and *Raminder Singh* v. *State of Punjab* [(2014) 12 SCC 582 : (2014) 5 SCC (Cri) 116] , SCC at p. 586). The judgment was, however, followed in *Vipin Jaiswal* v. *State of A.P.* [*Vipin Jaiswal* v. *State of A.P.*, (2013) 3 SCC 684 : (2013) 2 SCC (Cri) 15] , SCC at pp. 687-88.

13. In order to arrive at the true construction of the definition of dowry and consequently the ingredients of the offence under Section 304-B, we first need to determine how a statute of this kind needs to be interpreted. It is obvious that Section 304-B is a stringent provision, meant to combat a social evil of alarming proportions. Can it be argued that it is a penal statute and, should, therefore, in case of ambiguity in its language, be construed strictly?

20 [Ed. : Para 20 corrected vide Official Corrigendum No. F.3/Ed.B.J./16/2015 dated 6-4-2015.] . Given that the statute with which we are dealing must be given a fair, pragmatic, and common sense interpretation so as to fulfil the object sought to be achieved by Parliament, we feel that the judgment in *Appasaheb case* [*Appasaheb* v. *State of Maharashtra*, (2007) 9 SCC 721(2007) 9 SCC 721 : (2007) 3 SCC (Cri) 468] followed by the judgment of *Vipin Jaiswal* [*Vipin Jaiswal* v. *State of A.P.*, (2013) 3 SCC 684 : (2013) 2 SCC (Cri) 15] do not state the law correctly. We, therefore, declare that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise.

21. Coming now to the other important ingredient of Section 304-B—what exactly is meant by "soon before her death"?

22. This Court in *Surinder Singh* v. *State of Haryana* [(2014) 4 SCC 129 : (2014) 4 SCC (Cri) 769] had this to say : (SCC pp. 137-39, paras 17-18)

> *17.* "Thus, the words **'soon before'** appear in Section 113-B of the Evidence Act, 1872 and also in Section 304-B IPC. For the presumptions contemplated under these sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words 'soon before' is, therefore, important. The question is how 'soon before'? This would obviously depend on the facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not

exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, 'soon before' is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death.

18. In this connection we may refer to the judgment of this Court in *Kans Raj* v. *State of Punjab* [(2000) 5 SCC 207 : 2000 SCC (Cri) 935] where this Court considered the term 'soon before'. The relevant observations are as under : (SCC pp. 222-23, para 15)

> '*15*. ... "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (*a*) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.'

Thus, there must be a nexus between the demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of

proximity will have to be applied. But, it is not a rigid test. It depends on the facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law."

23. In another recent judgment in *Sher Singh* v. *State of Haryana* [(2015) 3 SCC 724 : (2015) 2 SCC (Cri) 422 : (2015) 1 Scale 250] , this Court said : (SCC p. 739, para 16)

16. "... We are aware that the word 'soon' finds place in Section 304-B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304-B or the suicide under Section 306 IPC. Once the presence of these concomitants is established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt." (at Scale p. 262)

24. We endorse what has been said by these two decisions. Days or months are not what is to be seen. What must be borne in mind is that the word "soon" does not mean "immediate". A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of Section 304-B would make it clear that the expression is a relative expression. Time-lags may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under Section 304-B.

25. At this stage, it is important to notice a recent judgment of this Court in *Dinesh* v. *State of Haryana* [(2014) 12 SCC 532 : (2014) 6 SCC (Cri) 839 : (2014) 5 Scale 641] , in which the law was stated thus : (SCC p. 537, para 15)

15. "**The expression 'soon before' is a relative term as held by this Court, which is required to be considered under the specific circumstances of each case and no straitjacket formula can be laid down by fixing any time of allotment. It can be said that the term 'soon before' is synonymous with the term 'immediately before'. The determination of the period which can come within term 'soon before' is left to be determined by the courts depending upon the facts and circumstances of each case.**"

We hasten to add **that this is not a correct reflection of the law. "Soon before" is not synonymous with "immediately before".**

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76. Irfan@Nakka v State of U.P.

43. The juristic theory regarding the acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason, the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, should always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. [See : Laxman v. State of Maharashtra, (2002) 6 SCC 710]

44. The mode and manner, in which the dying declarations came to be recorded, is also something which creates a doubt, as regards its truthfulness and trustworthiness. Although, the Investigating Officer says that the recording of the dying declarations was video-graphed and the CD has been exhibited in evidence yet it is very important to determine the evidentiary value of the same.

45. We should also look into the genesis of the occurrence from a different angle. It is not in dispute that the three deceased died on account of severe burn injuries. It is also not in dispute that the room in which they were sleeping caught fire on account of which they suffered severe burn injuries. It is also not in dispute that inflammable substance like kerosene was found from the room which ignited the fire. However, the moot question is who set the room on fire? Could it be said that the prosecution has been able to prove beyond reasonable doubt that it was only and only the appellant-convict who set the room on fire by pouring the inflammable substance?

46. It appears to us that whoever did the act, the inflammable substance was not directly poured or sprinkled on the three deceased persons. Had it been so, they would have immediately woken up and by the time, the room is sat on fire, they would make good their escape or catch hold of the culprit. It appears that the inflammable substance might have been poured on the floor of the room and thereafter, the fire must have been ignited. Once, the room is on fire, the person responsible for setting the room on fire would immediately leave

that place. We find it very difficult to believe that the appellant-convict was still inside the room or even outside the room to be witnessed by the deceased persons as well as by the PW-2 and PW-4, locking the room from outside after setting the room on fire. The conduct of the accused may be unnatural because he was residing in the very same house, however, the conduct which may be a relevant fact under Section 8 of the Indian Evidence Act, 1872 (for short, 'the Act, 1872'), by itself may not be sufficient to hold a person guilty of the offence of murder.

47. On overall assessment of the materials on record, we have reached to the conclusion that neither the two dying declarations inspire any confidence nor the oral evidence of the PW-2 and PW-4 respectively inspire any confidence. Had the dying declarations stood corroborated by the oral evidence of the PW-2 and PW-4, then probably, it would have been altogether a different scenario. However, as noted above, the two dying declarations are not consistent or rather contradictory to the oral evidence on record.

48. The justification for the sanctity/presumption attached to a dying declaration, is two fold; (i) ethically and religiously it is presumed that a person while at the brink of death will not lie, whereas (ii) from a public policy perspective it is to tackle a situation where the only witness to the crime is not available.

49. One of the earliest judicial pronouncements where the rule as above can be traced is the King's Bench decision of the King v. William Woodcock, (1789) 1 Leach 500 : 168 ER 352, where a dying woman blamed her husband for her mortal injuries, wherein Judge Eyre held this declaration to be admissible by observing:— "…the general principle on which this species of evidence is admitted is, that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone : when every motive to falsehood is silent, and the mind is induced by the most powerful consideration to speak the truth; a situation so solemn, and so awful, is considered by the law as creating obligation equal to that which is imposed by a positive oath administered in a Court of Justice. (b) But a difficulty also arises with respect to these declarations; for it has not appeared and it seems impossible to find out, whether the deceased herself apprehended that she was in such a state of morality as would inevitably oblige her soon to answer before her Maker for the truth or falsehood of her assertions. …. Declarations so made are certainly entitled to credit; they ought therefore to be received in evidence : but the degree of credit to which they are entitled must always be a matter for the sober consideration of the Jury, under all the circumstances of the case." (Emphasis supplied)

50. Interestingly, the last observation of Judge Eyre showcases, even at the inception of this principle, that the Courts were wary of the inherent weakness of dying declarations and cautioned for great care to be adopted.

51. It is significant to note the observations made by Taylor that "Though these declarations, when deliberately made under a solemn sense of impending death, and concerning circumstances wherein the deceased is not likely to be mistaken, are entitled to great weight, if precisely identified, it should always be recollected that the accused has not the power of cross examination, a power quite as essential to the eliciting of the truth as the obligation of an oath can be, and that, where a witness has not a deep sense of accountability to his Maker, feelings of anger or revenge, or, in the case of mutual conflict, the natural desire of screening his own misconduct, may effect the accuracy of his statements and give a false colouring to the whole transaction. …". [See : Taylor on "Treatise on the Law of Evidence", 1931, 12th Edition Pg. 462]

52. It is observed in Corpus Juris Secundum Vol XL, Page 1283 that: "In weighing dying declarations, the jury may consider the circumstances under which they were made, as, whether they were due to outside influence or were made in a spirit of revenge, or when declarant was unable or unwilling to state the facts, the inconsistent or contradictory character of the declarations, and the fact that deceased has not appeared and accused has been deprived of the opportunity to cross-examine him, and may give to them the credit and weight to which they believe, under all the circumstances, they are fairly and reasonably entitled."

53. In India in the relevant provision of Section 32 of the Act, 1872, the first exception to the rule against admissibility of hearsay evidence, is as under: "32(1). When it relates to cause of death.— When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."

54. Jon R. Waltz, American Jurist observed that, "It has been thought, rightly or wrongly, that Dying Declarations have intrinsic assurances of trustworthiness, making cross examination unnecessary. The notion is that a person who is in the process of dying, and knows it, will be truthful immediately before departing to meet his Maker. (Of course, the validity of this hearsay exceptions is open to some debate. What about the person who is not deeply religious? What of the person who, as his last act, seeks revenge by

falsely naming a life-long enemy as his killer? How reliable is the perception and memory of a person who is dying?)" [See : Waltz, J.R. (1975) Criminal Evidence, Chicago : Nelson-Hall. pp.75-76]

55. The Privy Council in Neville Nembhard v. The Queen, [1982] 1 All ER 183, on Section 32(1) of the Act, 1872 opined that the evidence of dying declaration under the Indian law lacks the special quality as in Common Law and hence, the weight to be attached to a dying declaration admitted under Section 32 of the Act, 1872 would necessarily be less than that attached to a dying declaration admitted under the common law rules.

56. The below cited observations from the decision of Nembhard (supra) are of significant importance: "final observation should be made concerning the cases al ready mentioned that have been decided in the Court of Appeal for Eastern Africa. It appears that rule of practice has been developed that when a dying declaration has been the only evidence implicating an accused person a conviction usually cannot be allowed to stand where there had been a failure to give a warning on the necessity for corroboration : see for example Pius Jasunga s/o Akumu v. The Queen (1954) 21 E.A.C.A. 331 and Terikabi v. Uganda [1975] E.A. 60. But it is important to notice that in the countries concerned, the admissibility of a dying declaration does not depend upon the common law test : upon the deceased having at the time a settled hopeless expectation of impending death. Instead there is the very different statutory provision contained in section 32 (1) of the Indian Evidence Act, 1872. That section provides that statements of relevant facts made by a person who is dead are themselves relevant facts: "When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question." (emphasis added). In Pius Jasunga s/o Akumu v. The Queen it was pointed out (for the reason associated with the italicised words in the subsection) that the weight to be attached to a dying declaration admitted by reference to section 32 of the Indian Evidence Act, 1872 would necessarily be less than that attached to a dying declaration admitted under the common law rules. The first kind of statement would lack that special quality that is thought to surround a declaration made by a dying man who was conscious of his condition and who had given up all hope of survival. Accordingly it may not seem surprising that the courts dealing with such statements have felt the need to exercise even

more caution in the use to be made of them than is the case where the common law test is applied."

" 57. This Court in Muthu Kutty v. State by Inspector of Police, T.N., (2005) 9 SCC 113, while discussing the decision in Woodcock (supra) referred to above had cautioned the courts to ensure that a dying declaration is reliable before relying on it, with the following observations : "13. ... The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice. These aspects have been eloquently stated by Eyre, L.C.B. in R. v. Woodcock ((1789) 1 Leah 500 : 168 ER 352). Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain: "Have I met hideous death within my view, Retaining but a quantity of life, Which bleeds away even as a form of wax, Resolveth from his figure 'gainst the fire? What is the world should make me now deceive, Since I must lose the use of all deceit? Why should I then be false since it is true That I must die here and live hence by truth?" (See King John, Act V, Scene IV) The principle on which dying declaration is admitted in evidence is indicated in the legal maxim "nemo moriturus praesumitur mentire — a man will not meet his Maker with a lie in his mouth".

14. ... The situation in which a person is on the deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason that the requirements of oath and cross examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

15. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied

that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. …" (Emphasis supplied)

58. This Court in Nallapati Sivaiah v. Sub-Divisional Officer, Guntur, Andhra Pradesh, (2007) 15 SCC 465 and Bhajju alias Karan Singh v. State of Madhya Pradesh, (2012) 4 SCC 327 had explained the meaning and principles of dying declarations upon which its admissibility is founded, with the following observations:— "20. There is a historical and a literary basis for recognition of dying declaration as an exception to the hearsay rule. Some authorities suggest the rule is of Shakespearian origin. In The Life and Death of King John, Shakespeare had made Lord Melun utter "Have I met hideous death within my view, retaining but a quantity of life, which bleeds away, … lose the use of all deceit" and asked, "Why should I then be false, since it is true that I must die here and live hence by truth?" William Shakespeare, The Life and Death of King John, Act 5, Scene 4, lines 22-29

It is equally well settled and needs no restatement at our hands that dying declaration can form the sole basis for conviction. But at the same time due care and caution must be exercised in considering weight to be given to dying declaration inasmuch as there could be any number of circumstances which may affect the truth. This Court in more than one decision has cautioned that the courts have always to be on guard to see that the dying declaration was not the result of either tutoring or prompting or a product of imagination. It is the duty of the courts to find that the deceased was in a fit state of mind to make the dying declaration. In order to satisfy itself that the deceased was in a fit mental condition to make the dying declaration, the courts have to look for the medical opinion.

23. It is not difficult to appreciate why dying declarations are admitted in evidence at a trial for murder, as a striking exception to the general rule against hearsay. For example, any sanction of the oath in the case of a living witness is thought to be balanced at least by the final conscience of the dying man. Nobody, it has been said, would wish to die with a lie on his lips. A dying declaration has got sanctity and a person giving the dying declaration will be the last to give untruth as he stands before his creator.

24. There is a legal maxim "nemo moriturus praesumitur mentire" meaning, that a man will not meet his Maker with a lie in his mouth. Woodroffe and Amir Ali, in their Treatise on Evidence Act state: "when a man is dying, the grave position in which he is placed is held by law to be a sufficient ground for

his veracity and therefore the tests of oath and cross-examination are dispensed with".

25. The court has to consider each case in the circumstances of the case. What value should be given to a dying declaration is left to court, which on assessment of the circumstances and the evidence and materials on record, will come to a conclusion about the truth or otherwise of the version, be it written, oral, verbal or by sign or by gestures." (Emphasis supplied)

59. This Court in Bhajju (supra) has observed as under:

> "23. The "dying declaration" essentially means the statement made by a person as to the cause of his death or as to the circumstances of the transaction resulting into his death. The admissibility of the dying declaration is based on the principle that the sense of impending death produces in a man's mind, the same feeling as that of a conscientious and virtuous man under oath dying declaration is admissible upon the consideration that the declaration was made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to file a false suit is silenced in the mind and the person deposing is induced by the most powerful considerations to speak the truth.
>
> Xxx xxx xxx
>
> 26. The law is well settled that a dying declaration is admissible in evidence and the admissibility is founded on the principle of necessity. …
>
> " 60. Since time immemorial, despite a general consensus of presuming that the dying declaration is true, they have not been stricto-sensu accepted, rather the general course of action has been that judge decides whether the essentials of a dying declaration are met and if it can be admissible, once done, it is upon the duty of the court to see the extent to which the dying declaration is entitled to credit.
>
> 61. In India too, a similar pattern is followed, where the Courts are first required to satisfy themselves that the dying declaration in question is reliable and truthful before placing any reliance upon it. Thus, dying declaration while carrying a presumption of being true must be wholly reliable and inspire confidence. Where there is any suspicion over the veracity of the same or the evidence on record shows that the dying declaration is not true it will only be considered as

a piece of evidence but cannot be the basis for conviction alone.

62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility:—

(i) Whether the person making the statement was in expectation of death?

(ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"

(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?

(vi) Whether, the dying declarant had opportunity to clearly observe the incident?

(vii) Whether, the dying declaration has been consistent throughout?

(viii) Whether, the dying declaration in itself is a manifestation/fiction of the dying person's imagination of what he thinks transpired?

(ix) Whether, the dying declaration was itself voluntary?

(x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?

(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?

63. It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of

evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.

64. It is unsafe to record the conviction on the basis of a dying declaration alone in the cases where suspicion, like the case on hand is raised, as regards the correctness of the dying declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence. The evidence and material available on record must be properly weighed in each case to arrive at an appropriate conclusion. The reason why we say so is that in the case on hand, although the appellant-convict has been named in the two dying declarations as a person who set the room on fire yet the surrounding circumstances render such statement of the declarants very doubtful.

Extract Of Case Laws On Dying Declaration

77. This extract is taken from *Khushal Rao v. State of Bombay*, 1957 SCC OnLine SC 20 : 1958 SCR 552 : 1958 Cri LJ 106 : AIR 1958 SC 22

Brief fact of case: -

2. It appears that there are two rival factions in what has been called the mill area in Nagpur. The appellant and Tukaram who has been acquitted by the High Court, are the leaders of one of the factions, and Ramgopal, PW 4, Inayatullah, PW 1, and Tantu, PW 5, are said to be the leaders of the opposite faction. Before the time and date of the occurrence, there had been a number of incidents between the two rival factions in respect of some of which, Inayatullah and Tantu aforesaid had been prosecuted. Even on the date of the occurrence, apart from the one leading to the murder of Baboolal, which is the subject-matter of the present appeal, Tantu and Inayatullah had made two separate reports about the attacks on them by Khushal's party. There was another report lodged by Sampat — one of the four persons placed on trial along with the appellant, for the murder of Baboolal. That report was lodged at Ganeshpeth Police Station at about 9.30 p.m. on the same date — February 12, 1956 — against, Inayatulah *alias* Kalia and Tantu, that they had attacked the former with sharp-edged weapons (Ex. P-26). **The prosecution case is that** the appellant Khushal was on bad terms with Baboolal who was on very friendly terms with the leaders of the opposite faction aforesaid. Being infuriated by the conduct of Baboolal in associating with the enemies of the party of the accused, Sampat, Mahadeo, Khushal and Tukaram suddenly attacked Baboolal with swords and spears and inflicted injuries on different parts of his body. The occurrence took place in a narrow lane of Nagpur at about 9 p.m. Baboolal was taken by his father and other persons to the Mayo hospital where he reached at about 9.25 p.m. The doctor in attendance Dr Kanikdale (PW 14) at once questioned him about the incident and Baboolal is said to have made a statement to the doctor which the latter noted in the bed-head ticket (Ex. P-17) that he had been assaulted by Khushal and Tukaram with swords and spears. After noting the statement aforesaid, of Baboolal, the doctor telephoned to the Ganeshpeth Police Station where the information was noted at 9.45 p.m. On receiving the information Sub-Inspector A.K. Khan recorded (Ex. P-1) and registered an offence under Section 307 of the Indian Penal Code, and immediately went to the Mayo hospital along with a head-constable and several constables. He found Baboolal in a serious condition and suspecting that he might not survive and apprehending that it might take time for the Magistrate to be informed and to be at the spot, to record the dying

declaration, he consulted Dr Ingle, the attending doctor, whether Baboolal was in a fit condition to make a statement. The doctor advised him to have the dying declaration recorded by a Magistrate. The Sub-Inspector decided that it would be more advisable for him to record the dying declaration without any delay. Hence, he actually recorded Baboolal's statement in answer to the questions put by him (Ex. P-2) at 10.15 p.m. In the meantime, Shri M.S. Khetkar, a Magistrate, First Class, was called in, and he recorded the dying declaration (Ex. P-16) between 11.15 and 11.35 p.m., in the presence of Dr Ingle **who certified that he had examined Baboolal and had found him mentally in a fit condition to make his dying declaration**. Besides these **three dying declarations** recorded in quick succession, as aforesaid, by responsible public servants, Baboolal is said to have made oral statements to a number of persons, which it is not necessary to set out because the High Court has not acted upon those oral dying declarations. We shall have to advert, later, to the recorded dying declarations in some detail, in the course of this judgment. It is enough to say at this stage that the courts below have founded their orders of conviction of the appellant mainly on those dying declarations. Baboolal died the next morning at about 10 a.m. in hospital.

Appelant Argument :

9. In this Court, a good deal of argument was addressed to us, to the effect that the ruling of this Court lays down a sound proposition of law which should have been followed by the High Court, and that the alleged fact of the accused absconding and keeping out of the way of the police, could not be used as corroboration of the dying declaration. The decision of this Court in *Ram Nath Madhoprasad* v. *State of Madhya Pradesh* [(1953) 1 SCC 178 : AIR (1953) SC 420] contains the following observations at p. 423, which have been very strongly relied upon, on behalf of the appellant, as having a great bearing upon the value to be placed upon the dying declarations:

> "It is settled law that it is not safe to convict an accused person merely on the evidence furnished by a dying declaration without further corroboration because such a statement is not made on oath and is not subject to cross-examination and because the maker of it might be mentally and physically in a state of confusion and might well be drawing upon his imagination while he was making the declaration. It is in this light that the different dying declarations made by the deceased and sought to be proved in the case have to be considered...."

Ratio

10. We have, therefore, to examine the legal position whether it is settled law that a dying declaration by itself, can, in no circumstances, be the basis of a conviction. In the first place, we have to examine the decision aforesaid, of this Court from this point of view. This Court examined the evidence in detail with a view to satisfying itself that the dying declarations relied upon in that case, were true. In that case, apart from the dying declarations, there was the evidence of the approver. This Court found that the evidence of the approver and other oral testimony had been rightly rejected by the High Court. In that case also, the Court had mainly relied upon the dying declarations for basing the conviction under Section 302, read with Section 34 of the Indian Penal Code. This Court examined for itself, the dying declarations and the other evidence bearing upon the truth and reliability of the dying declarations, and after an elaborate discussion of all that evidence, came to the conclusion that the dying declarations did not contain "a truthful version of what actually happened". Thus, after a very careful and cautious examination of the facts of the case, connected with the recording of the dying declaration, and of the other evidence in the case and of the fact that it was a dark night without any lights available at the place of occurrence, this Court distinctly came to the conclusion that the dying declaration was not true and could not be relied upon to base, upon that alone, the conviction of the appellants. It is, thus, clear that the observations quoted above, of this Court, are in the nature of obiter dicta. But as it was insisted that those observations were binding upon the courts in India and upon us, we have to examine them with the care and caution they rightly deserve.

11. The legislature in its wisdom has enacted in Section 32(1) of the Evidence Act that "When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question", such a statement written or verbal made by a person who is dead (omitting the unnecessary words) is itself a relevant fact. This provision has been made by the legislature, advisedly, as a matter of sheer necessity by way of an exception to the general rule that hearsay is no evidence and that evidence which has not been tested by cross-examination, is not admissible. The purpose of cross-examination is to test the veracity of the statements made by a witness. In the view of the legislature, that test is supplied by the solemn occasion when it was made, namely, at a time when the person making the statement was in danger of losing his life. At such a serious and solemn

moment, that person is not expected to tell lies; and secondly, the test of cross-examination would not be available. In such a case, the necessity of oath also has been dispensed with for the same reasons. Thus, a statement made by a dying person as to the cause of death, has been accorded by the legislature, a special sanctity which should, on first principles, be respected unless there are clear circumstances brought out in the evidence to show that the person making the statement was not in expectation of death, not that that circumstance would affect the admissibility of the statement, but only its weight. It may also be shown by evidence that a dying declaration is not reliable because it was not made at the earliest opportunity, and, thus, there was a reasonable ground to believe its having been put into the mouth of the dying man, when his power of resistance against telling a falsehood, was ebbing away; or because the statement has not been properly recorded, for example, the statement had been recorded as a result of prompting by some interested parties or was in answer to leading questions put by the recording officer, or, by the person purporting to reproduce that statement. These may be some of the circumstances which can be said to detract from the value of a dying declaration. But in our opinion, there is no absolute role of law, or even a rule of prudence which has ripened into a rule of law, that a dying declaration unless corroborated by other independent evidence, is not fit to be acted upon, and made the basis of a conviction. No decision of this Court, apart from the decision already noticed, has been pointed out to us as an authority for the proposition that a dying declaration, in order to be acted upon by a court, must be corroborated by independent evidence. On the other hand, the different High Courts in India (including Burma) have taken conflicting views as to the value of a dying declaration in part or in its entirety, without any independent corroboration. For example, a Division Bench of the Bombay High Court, presided over by Sir John Beaumont, C.J., has laid down in the case of *Emperor* v. *Akbarali Karimbhai* [ILR (1932) 58 Bom 31] that a statement which is covered by Section 32(1) of the Evidence Act, is relevant evidence and has to be judged on the same principles as other evidence, bearing in mind that such a declaration was not made on oath and was not subject to cross-examination, and is, therefore, a weaker type of evidence than that given by a witness on oath. Therefore, if a part of a dying declaration is deliberately false, it will not be safe to act upon the other part of the declaration without very definite corroboration. That Bench also ruled that it is not correct to postulate that because some part of the dying declaration is false, the whole declaration must necessarily be disregarded. The Bombay High Court, thus, did not agree with the observations of the Calcutta High Court in the case

of *Emperor* v. *Premananda Dutt* [ILR (1925) 52 Cal 987] to the effect that it is not permissible to accept a dying declaration in part and to reject the other part and that a dying declaration stood on a widely different footing from the testimony of a witness given in court. On the other hand, we have the decision of the Rangoon High Court, reported in the case of the *King* v. *Maung Po Thi* [AIR (1938) Rang 282] . In that case, the positive evidence led on behalf of the prosecution, was found to have been tampered with and unreliable. The Court set aside the order of acquittal passed by the trial Judge, and recorded an order of conviction for murder, practically on the dying declaration of the victim of the crime. The Court observed that there was no such rule of prudence as had been invoked in aid of the accused by the trial Judge who had observed that an accusation by a dying man without corroboration from an independent source, could not be the sole basis for conviction. The learned Judges of the High Court further observed that in order to found on a dying declaration alone, a judgment of conviction of an accused person, the Court must be fully satisfied that the dying declaration has the impress of truth on it, after examining all the circumstances in which the dying person made his statement ex parte and without the accused having the opportunity of cross-examining him. If, on such an examination, the Court was satisfied that the dying declaration was the true version of the occurrence, conviction could be based solely upon it.

12. In the High Court of Madras, there was a difference of judicial opinion, as expressed in certain unreported cases, which resulted in a reference to a Full Bench. Sir Lionel Leach, C.J., presiding over the Full Bench (*In re Guruswami Tevar* [ILR (1940) Mad 158, 170]), delivered the unanimous opinion of the Court after examining the decisions of that High Court and of other High Courts in India. His conclusions are expressed in the penultimate paragraph of his judgment, thus:

> "In my judgment it is not possible to lay down any hard and fast rule when a dying declaration should be accepted, beyond saying that each case must be decided in the light of the other facts and the surrounding circumstances, but if the Court, after taking everything into consideration, is convinced that the statement is true, it is its duty to convict, notwithstanding that there is no corroboration in the true sense. The Court must, of course, be fully convinced of the truth of the statement and, naturally, it could not be fully convinced if there were anything in the other evidence or in the surrounding circumstances to raise suspicion as to its credibility."

To the same effect are the decisions of the Patna High Court in the case of *Mohamad Arif* v. *Emperor* [AIR (1941) Patna 409] and of the Nagpur High Court in *Gulabrao Krishnajee Maratha* v. *King-Emperor* [ILR (1945) Nag 613 : AIR (1945) Nag 153] .

13. The Judicial Committee of the Privy Council had to consider, in the case of *Chandrasekera alias Alisandiri* v. *King* [LR (1937) AC 220, 229] the question whether mere signs made by the victim of a murderous attack which had resulted in the cutting of the throat, thus, disabling her from speaking out, could come within the meaning of Section 32 of the Ceylon Evidence Ordinance, which was analogous to Section 32(1) of the Indian Evidence Act. The Privy Council affirmed the decision of the Supreme Court of Ceylon, and made the following observations in the course of their judgment, which would suggest that a dying declaration, if found reliable by a jury, may, by itself, sustain a conviction:

> "…Apart from the evidence proceeding from the deceased woman, the other evidence was not sufficient to warrant a conviction, but at the same time that other evidence was not merely consistent with the deceased's statement but pointed in the same direction. It was a case in which, if the deceased's statement was received, and was believed, as it evidently was by the jury, to be clear and unmistakable in its effect, then a conviction was abundantly justified and, indeed, inevitable."

14. In *Phipson on Evidence* — 9th Edn., p. 335, the author has discussed the question whether a dying declaration without other evidence in corroboration, could be sufficient for a conviction, and has made the following observations which are pertinent to this case:

> "…The deceased then signed a statement implicating the prisoner, but which was not elicited by question and answer, and died on March 20. It was objected that being begun in that form, it was inadmissible : Held (*1*) the questions and answers as to his state of mind were no part of the dying declaration; (*2*) that even if they were, they only affected its weight, not its admissibility; and (*3*) that the declaration was sufficient, without other evidence, for conviction (*R.* v. *Fitzpatrick*, (1910) 46 Ir. LTR 173, CCR)."

15. Sometimes, attempts have been made to equate a dying declaration with the evidence of an accomplice or the evidence furnished by a confession as against the maker, if it is retracted, and as against others, even though not retracted. But in our opinion, it is not right in principle to do so. Though under Section 133 of the Evidence Act, it is not illegal to convict a person on the

uncorroborated testimony of an accomplice, Illustration (*b*) to Section 114 of the Act, lays down as a rule of prudence based on experience, that an accomplice is unworthy of credit unless his evidence is corroborated in material particulars and this has now been accepted as a rule of law. The same cannot be said of a dying declaration because a dying declaration may not, unlike a confession, or the testimony of an approver, come from a tainted source. If a dying declaration has been made by a person whose antecedents are as doubtful as in the other cases, that may be a ground for looking upon it with suspicion, but generally speaking, the maker of a dying declaration cannot be tarnished with the same brush as the maker of a confession or an approver.

16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (*1*) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (*2*) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (*3*) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (*4*) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (*5*) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (*6*) that in order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

17. Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once, the court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. If, on the other hand, the court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, as held in some of the reported cases, but from the fact that the court, in a given case, has come to the conclusion that that particular dying declaration was not free from the infirmities referred to above or from such other infirmities as may be disclosed in evidence in that case.

18. Having made the general observations bearing on the question of the legality of basing a conviction on a dying declaration alone, and keeping in view the tests set out above, let us examine the dying declarations now in question before us. The most remarkable fact which emerges from an examination of the three successive dying declarations made in the course of about two hours, by the deceased, is that he consistently named the appellant and Tukaram as the persons who had assaulted him with sword and spear. The injuries found on his person, namely, the punctured wounds and the incised wounds on different parts of his body, are entirely consistent with his statement that he was attacked by a number of persons with cutting and piercing weapons. No part of his dying declarations has been shown to be false. Of the two assailants named by him, Tukaram was convicted by the learned trial Judge, but acquitted by the High Court which very reluctantly gave him the benefit of the doubt created by the similarity of names in that locality, as already stated. There was no such confusion in the case of the appellant. The deceased indicated that there were two more persons concerned in the crime, but he could not name them. The other two accused persons who were acquitted by the courts below had not been named in the dying declarations and, therefore, their acquittal did not, in any way militate against the truth of the dying declarations. The courts below also agreed in holding that Baboolal was in a position to see his assailants and to identify them in the light of the electric lamp nearby. They have also pointed out that there was no “coaching”. There is no doubt, therefore, that Baboolal had been consistent throughout in naming the appellant as one of his

assailants, and he named him within less than half an hour of the occurrence and as soon as he reached the Mayo Hospital. There was, thus, no opportunity or time to tutor the dying man to tell a lie. At all material times, he was in a proper state of mind in spite of multiple injuries on his person, to remember the names of his assailants. Hence, we have no reasons to doubt the truth of the dying declarations and their reliability. We have also no doubt that from the legal and from the practical points of view, the dying declarations of the deceased Baboolal are sufficient to sustain the appellant's conviction for murder. The only other question that remains to be considered is whether there are any extenuating circumstances in favour of the accused justifying the lesser of the two sentences prescribed by law. In our opinion, there are none. It was a case of a deliberate cold-blooded murder.

78. This extract is taken from *Lallubhai Devchand Shah v. State of Gujarat*, (1971) 3 SCC 767 : 1972 SCC (Cri) 13 : 1971 SCC OnLine SC 363 at page 771

FACTS OF CASE:-

2. Lallubhai is the father of Jayantilal and Bai Nathi is his wife. Together they lived in a house near the Jain Temple in Village Poshina in Idar Taluka, District Sabarkantha. The village is a small village with a population of about 1,500. At the relevant time, the deceased Bai Sharda was about 22 years old and was also living with them. Sharda had been married to another son of Lallubhai named Amritlal in about 1962-63. She was the daughter of one Kachralal Kevaldas PW 10 who lived in another village named Mau which is about 7 or 8 miles from Poshina. Her husband Amritlal had been living in Bombay to earn his livelihood since before his marriage. Though Sharda was betrothed to Amritlal for many years before the marriage, the marriage seems to have been a failure because Amritlal did not show any affection for her. He used to come from Bombay to Poshina once in six months or a year for a stay of one or two days and did not think of taking her to Bombay. He did not also visit his father-in-law's house at Mau. In or about 1964-65, Amritlal started giving tuition to one girl named Aruna in Bombay and in course of time formed an attachment for her. In. 1967, they decided to marry but as Amritlal's was living, they converted themselves to Islam and thus overcame the obstacle to marriage. Thereafter Amritlal and Aruna married on November 16, 1967, at Bombay and lived together as husband and wife. Aruna's brother thereafter filed a complaint at Bombay against Amritlal, but by about the first week of April, 1968, Aruna's relations were won over and nothing happened in the criminal case. The action of Amritlal seems to have met with the approval of his parents which we know from a letter written by Amritlal on April 8, 1968, Ex. 24. The letter has specifically referred to the criminal complaint against him and informed the family members about the changed attitude of Aruna's relations. It is in evidence that Aruna also used to write letters to the members of her husband's family. The same letter further shows Amritlal's general attitude towards his first wife Sharda. Sharda was living at that time with the accused having returned from her father's house a few months earlier. During all these six years of the marriage, Sharda lived sometimes with her father and sometimes with the accused. The letter reveals that Amritlal hated Sharda because he tells his father that if the matter were left to him, he would not have allowed Sharda to come to the house, let alone allow her to enter the kitchen. With a touch of sarcasm, he compliments his parents for giving shelter

to Sharda due to social pressure. In short, Sharda had been abandoned by her husband Amritlal.

3. At about 10.00 a.m. on April 18, 1968 i.e. about a week after the letter Ex 24 was received by the accused, there was a quarrel between the mother-in-law Nathi Bai and Sharda. We do not know the nature of the quarrel. But it was not a serious one. One of the witnesses Bhudarlal PW 5 described it as the usual quarrel which takes place in many houses which are joint. That witness and PW 8 Bai Tara who came there on hearing the quarrel advised them not to quarrel and the matter ended there. At about 1.00 p.m. neighbours heard cries and shrieks from the house of the accused and ran to the place. They saw a ghastly sight there. In the hind-most room which is also described as the second room in the judgment of the High Court, Sharda had fallen on the ground naked with burns all over her body. She was in great pain but perfectly conscious. The neighbours who came there asked her what had happened and she told them that the three accused had sprinkled kerosene on her clothes and set them on fire. A large crowd had collected and one of them was Amritlal Manga Lal, PW 1. Amritlal was a relation. He was related to Lallubhai, Accused 1, as his brother's son and he was also related to Sharda who was the daughter of the maternal uncle of Amritlal's wife. On hearing what the girl had stated within their hearing, the Sarpanch of the village, Dharam Chand, PW 3, prepared statement Ext. 10 and the same was signed by about 14 persons including PW 1 Amritlal. Neither the signature nor the thumb-impression of Sharda could be taken below the writing because that was not possible as the palms of her hands were burnt. After signing the writing, Amritlal and some others left the village to fetch a Doctor and to inform the Police. Amritlal obtained a jeep and went to the Police Outpost as Chitroda which is two miles away. Some other persons went to the Medical Officer, Dr Keshavlal, whose headquarters were also at Chitroda. Head Constable Samat Singh PW 19 was in charge of the Police Outpost. On a statement made by Amritlal to him, he prepared an occurrence report Ex. 9 to the effect that the three accused had, after beating Bai Sharda, sprinkled kerosene on her body and set fire to her clothes. The occurrence report was signed by PW 1 Amritlal who was instructed by the HeadConstable to proceed to the Police Station at Jadar which was about 10/12 miles away. The Head Constable thereafter proceeded to village Poshina.

4. In the meantime Dr Keshavlal, PW 15, having learnt that Bai Sharda had received burns, came to Poshina in a jeep. He reached the house of the accused at about 4.15 p.m. He directly went to the place where Sharda was lying. On seeing the Doctor,. Sharda implored him loudly “Save me, Save me”. He noticed

that her body had been extensively burnt and the case was very serious. He casually asked her as to how she got burnt. Thereupon she told him that she was burnt by her father-in-law Lallubhai, mother-in-law Bai Nathi and brother-in-law Jayantilal after sprinkling kerosene on her. He carried out whatever medical examination was possible and since the case was serious he recommended that she be taken to the Civil Hospital at Himatnagar. By this time. Head Constable Samat Singh had also arrived at that place. He also noticed that Sharda had extensive burns on her body and she was quite conscious and able to speak. He asked her what had happened and, according to the witness, she told him that her husband had contracted a second marriage and that her father-in-law, mother-in-law and brother-in-law had burnt her after sprinkling kerosene on her. At the instance of the Medical Officer, Dr Keshavlal, he then took Sharda to the Civil Hospital round about 6.00 p.m. Dr Pandya PW 11 examined Sharda at about 6.20 p.m. Her condition at that time was very bad. She was speaking in a very low voice and it was not possible to follow her. He started giving treatment to her and intimated the Police Station at Himatnagar to arrange for recording her dying declaration. Before the police could arrive, Sharda expired at 6.35 p.m. In due course Dr Pandya performed the post-mortem examination. The results noticed by him were as follows:

> "Pieces of clothes stuck to the body and black threads tying the hairs of the head were collected at the post-mortem examination. Smell of kerosene was found. Body had blisters which had burst and from head to legs she was blackened. The hair on the head were partially burnt. Face, legs, eyes, cheek, shoulders, chest, abdomen, neck, back of chest, both thighs, and buttocks, lower part of the abdomen and genitals, both knees and calves of legs were burnt and found black. Both the palms with fingers had also burns and blisters. All these injuries were found to be ante-mortem."

According to Dr Pandya the burns were so extensive that they were sufficient in the ordinary course of nature to cause death.

5. The principal evidence against the accused consisted of the **dying declarations made by Sharda from time to time. Firs**t there was the dying declaration recorded as per Ext. 10 by the Sarpanch Dharam Chand, PW 3. It was signed by no less than 14 persons who had come to the place immediately after hearing Sharda's cries. **The second time** when Sharda made the statement was when Dr Keshavlal questioned her. He had prepared rough notes at the time which he later transferred to the case papers Ext. 38, prepared the same day. Ext. 38 records the statement made by her to the effect that Sharda's father-in-law, mother-in-law and brother-in-law had sprinkled

kerosene on her and "set on fire". **The third dying declaration** is to be found in the statement of the Head Constable Samat Singh, PW 19, who says that when he asked Sharda as to what had happened, she told him that her husband had contracted a second marriage and her mother-in-law, Bai Nathi, father-in-law Lallubhai and brother-in-law Jayantilal had burnt her after sprinkling kerosene on her. The second and the third declarations have been proved by Dr Keshavlal and Head Constable Samat Singh respectively and Dr Keshavlal produced Ext. 38 — the case papers, in corroboration of his evidence. With regard to the first dying declaration Ext. 10 which was prepared by the neighbours who had come to the house on hearing the cries, no less than six persons out of the 14 persons who were signatories to the statements were examined. Most of them deliberately avoided supporting the prosecution. PW 1, Amritlal who had signed the statement and had also made his report at the Outpost in accordance with that statement, turned hostile and denied having heard the dying declaration or even having made the report Ext. 9 which he had signed. Sarpanch Dharam Chand, PW 3, though admitting that he had recorded the statement and signed it along with the others gave a twist in the course of evidence suggesting thereby that he had prepared the report on what the ladies surrounding Sharda had told him. In these circumstances, the learned Sessions Judge held that Ext. 10 was inadmissible in evidence. At the same time he held that the first dying declaration had been duly proved by PW 4 Ravashanker who did not disclose any disposition to turn hostile. Ravashanker stated that when he was returning home at about 1.00 p.m., he heard a noise at the house of the accused and so he went there. There were many persons including the females and the Sarpanch. Sharda was lying in the second room. The females were questioning Sharda and within his hearing Sharda said that she had been burnt by the accused. The Sarpanch prepared Ext. 10 and he also signed it, though in his cross-examination he admitted that he had not read it before signing because it was prepared on the basis of what they had heard from Sharda. The learned Sessions Judge found that this witness was a thoroughly independent and reliable witness and he had no difficulty in holding that Sharda had made a statement soon after she was burnt implicating the accused as the persons who had burnt her after sprinkling kerosene on her body.

Appellant Case

7. The burning could have been either homicidal or accidental. Accident was ruled out by the fact that even at the time of the post-mortem, there was smell of kerosene and there was no possibility of Sharda being burnt by accidentally

catching fire in the second room because the kitchen was far from the place and the room was used merely as a storeroom. Accident was not also suggested before us. There can be, therefore, no doubt that death was homicidal. The High Court has further noticed that in the Sessions Court it did not appear to have been suggested that death was suicidal, but the argument was advanced in the High Court that it was quite likely that Sharda might have committed suicide by sprinkling kerosene on her clothes and setting fire to herself — the reason being that she had been discarded by her husband, she was issueless and she had nothing to look forward in her life, her husband having married a second time.

Ratio : -

8. Both the courts have accepted the truthfulness of Sharda's dying declaration and on that basis the High Court has confirmed the conviction of the accused. The law with regard to dying declarations is very clear. A dying declaration must be closely scrutinised as to its truthfulness like any other important piece of evidence in the light of the surrounding facts and circumstances of the case, bearing in mind, on the one hand, that the statement is by a person who has not been examined in court on oath and, on the other hand, that the dying man is normally not likely to implicate innocent persons falsely. See *Khushal Rao* v. *State of Bombay* [AIR 1958 SC 22 : 1958 SCR 552 : 1958 SCJ 198] . If the Court is satisfied on a close scrutiny of the dying declaration that it is truthful it is open to the court to convict the accused on its basis without any independent corroboration. In the present case, we find that on a close scrutiny of the dying declaration both the courts, after a detailed consideration of the evidence, have come to the conclusion that the dying declaration is true. The normal rule so far as this Court is concerned is that when the High Court accepts a piece of evidence as true, this Court does not examine the evidence afresh for itself unless there is substantial error of law or procedure or there is a failure of justice by reason of misapprehension or mistake in reading the evidence or the case involves a question of principle of general importance. See *Brahmin Ishwarlal Manilal* v. *State of Gujarat* [Criminal Appeal No. 120 of 1963, decided on August 10, 1965] and *Tapinder Singh* v. *State of Punjab.* [(1970) 2 SCC 113 : AIR 1970 SC 1566]

79. This extract is taken from *Sham Shankar Kankaria v. State of Maharashtra*, (2006) 13 SCC 165 : (2007) 2 SCC (Cri) 663 : 2006 SCC OnLine SC 908 at page 169

3. Prosecution version in a nutshell is as follows:

On 13-1-1992 one Vijay alias Bablu, the son of Kashinath Kedare, who was residing with his parents and other members of the family in House No. 1342, situated at Khadkali area of Nasik city, was called by Accused 3, Sanjay and Accused 5, Khandu and, therefore, he left his house at about 8 p.m. along with the said accused persons. He did not return till late night. At about 2 o'clock in the night between 13-1-1992 and 14-1-1992, accused Khandu went to the house of Vijay and knocked the door of his house. On opening the door by Sanjay Kedare (PW 9), accused Khandu informed Sanjay that his brother Vijay had been assaulted and was lying at some place. Sanjay thereupon accompanied Khandu who took him to the top floor of Bharti Lodge, where Sanjay found his brother Vijay in injured condition tied to the cot with his hands and legs tied. Sanjay also saw some blood oozing out from the head of Vijay. Sanjay released the hands and legs of Vijay and asked him as to how it had happened, whereupon he was told by Vijay that all the six accused after tying him to the cot, assaulted him severely with instruments like iron pipe and wooden stick on the allegation that he had stolen a bicycle. Sanjay thereupon carried Vijay to his residence and Vijay once again narrated the said incident to his mother in the presence of Sanjay and from there, he was taken in a rickshaw to Civil Hospital, Nasik. On the way to the hospital, Vijay became unconscious and on being admitted to the hospital, he was declared to have been dead. Sanjay lodged complaint in writing at Bhadrakali Police Station where the FIR was registered relating to offences under Sections 302, 342, 143, 147 and 149 IPC read with Section 37(1) read with Section 135 of the Bombay Act. On commencement of the investigation, all the six accused were arrested, their clothes were seized under the panchnama. The body of the deceased Vijay was subjected to the inquest panchnama as well as post-mortem examination. The medical officer opined that the death of Vijay was due to shock, intracranial haemorrhage and due to fracture of the skull. After carrying out the spot panchnama, the articles at the spot of the incident including the blood scrapping were collected from the scene of offence. The iron pipe was recovered at the instance of Accused 1 Sham Kankaria, coir cord and pieces of wooden pegs having bloodstains were seized from the spot of the incident. The seized articles were sent for examination by the chemical analyser. The blood sample of the deceased was also collected and sent for medical analysis along with the

clothes on the body of the deceased. On conclusion of the investigation, all the six accused were charge-sheeted. They were tried before the learned Additional Sessions Judge and were convicted and sentenced by the judgment and order dated 6-2-1993. Challenge was made to the same before the High Court, as noted above.

4. The High Court analysed the evidence and was of the view that the trial court was not justified in acquitting the accused persons of the charge of offence punishable under Section 302 read with Section 34 IPC and by only convicting Accused 1 Sham Shankar Kankaria in terms of Section 304 Part II IPC. During the pendency of the appeals, Accused 3 Sanjay and Accused 5 Khandu Deoram Abhang expired. Therefore, the two appeals filed by them were held to have abated. Similar was the case in the appeals filed by the State, so far as they were concerned. For rest of the accused the appeal filed by the State was allowed and the appeals filed by the accused persons were dismissed.

8. At this juncture, it is relevant to take note of Section 32 of the Indian Evidence Act, 1872 (in short "the Evidence Act") which deals with cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant. The general rule is that all oral evidence must be direct viz. if it refers to a fact which could be seen, it must be the evidence of the witness who says he saw it, if it refers to a fact which could be heard, it must be the evidence of the witness who says he heard it, if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in Section 60. The eight clauses of Section 32 are exceptions to the general rule against hearsay just stated. Clause (1) of Section 32 makes relevant what is generally described as dying declaration, though such an expression has not been used in any statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of admission are : firstly, necessity for the victim being generally the only principal eyewitness to the crime, the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal

to that which is imposed by a positive oath administered in a court of justice. These aspects have been eloquently stated by Eyre, LCR in *R.* v. *Woodcock* [(1789) 1 Leach 500 : 168 ER 352] . Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain:

> "Have I met hideous death within my view,
> Retaining but a quantity of life,
> Which bleeds away even as a form of wax,
> Resolveth from his figure 'gainst the fire?
> What in the world should make me now deceive,
> Since I must lose the use of all deceit?
> Why should I then be false since it is true
> That I must die here and live hence by truth?"
> (*See* King John, Act V, Scene *iv*)

9. The principle on which dying declaration is admitted in evidence is indicated in legal maxim "*nemo moriturus praesumitur mentire* — a man will not meet his Maker with a lie in his mouth".

10. This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

11. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of deceased was not as a result of either tutoring or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule

of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in *Paniben* v. *State of Gujarat* [(1992) 2 SCC 474 : 1992 SCC (Cri) 403 : AIR 1992 SC 1817] : (SCC pp. 480-81, para 18)

(*i*) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See *Munnu Raja* v. *State of M.P.* [(1976) 3 SCC 104 : 1976 SCC (Cri) 376 : (1976) 2 SCR 764])

(*ii*) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See *State of U.P.* v. *Ram Sagar Yadav* [(1985) 1 SCC 552 : 1985 SCC (Cri) 127 : AIR 1985 SC 416] and *Ramawati Devi* v. *State of Bihar* [(1983) 1 SCC 211 : 1983 SCC (Cri) 169 : AIR 1983 SC 164] .)

(*iii*) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See *K. Ramachandra Reddy* v. *Public Prosecutor* [(1976) 3 SCC 618 : 1976 SCC (Cri) 473 : AIR 1976 SC 1994] .)

(*iv*) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See *Rasheed Beg* v. *State of M.P.* [(1974) 4 SCC 264 : 1974 SCC (Cri) 426])

(*v*) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See *Kake Singh* v. *State of M.P.* [1981 Supp SCC 25 : 1981 SCC (Cri) 645 : AIR 1982 SC 1021])

(*vi*) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See *Ram Manorath* v. *State of U.P.* [(1981) 2 SCC 654 : 1981 SCC (Cri) 581])

(*vii*) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. (See *State of Maharashtra* v. *Krishnamurti Laxmipati Naidu* [1980 Supp SCC 455 : 1981 SCC (Cri) 364 : AIR 1981 SC 617] .)

(*viii*) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See *Surajdeo Ojha* v. *State of Bihar* [1980 Supp SCC 769 : 1979 SCC (Cri) 519 : AIR 1979 SC 1505] .)

(*ix*) Normally the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See *Nanhau Ram* v. *State of M.P.* [1988 Supp SCC 152 : 1988 SCC (Cri) 342 : AIR 1988 SC 912])

(*x*) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See *State of U.P.* v. *Madan Mohan* [(1989) 3 SCC 390 : 1989 SCC (Cri) 585 : AIR 1989 SC 1519] .)

(*xi*) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See *Mohanlal Gangaram Gehani* v. *State of Maharashtra* [(1982) 1 SCC 700 : 1982 SCC (Cri) 334 : AIR 1982 SC 839] .)

12. In the light of the above principles, the acceptability of alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested evidence and must like any other evidence, satisfy the court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. If after careful scrutiny the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it a basis of conviction, even if there is no corroboration. (See *Gangotri Singh* v. *State of U.P.* [1993 Supp (1) SCC 327 : 1993 SCC (Cri) 102 : JT (1992) 2 SC 417] , *Goverdhan Raoji Ghyare* v. *State of Maharashtra* [1993 Supp (4) SCC 316 : 1994 SCC (Cri) 15 : JT (1993) 5 SC 87] , *Meesala Ramakrishan* v. *State of A.P.* [(1994) 4 SCC 182 : 1994 SCC (Cri) 838 : JT (1994) 3 SC 232] and *State of Rajasthan* v. *Kishore* [(1996) 8 SCC 217 : 1996 SCC (Cri) 646 : JT (1996) 2 SC 595] .)

13. There is no material to show that dying declaration was result of product of imagination, tutoring or prompting. On the contrary, the same appears to have been made by the deceased voluntarily. It is trustworthy and has credibility.

14. Criticism that PWs 9 and 10 being relatives have falsely implicated the accused persons needs rejection for the simple reason that no material has been brought on record to show as to why they would falsely implicate the accused and shield actual culprit.

Upheld Conviction.

15. It goes without saying that when the dying declaration has been recorded in accordance with law, and it gives a cogent and plausible explanation of the occurrence, the Court can rely upon it as the solitary piece of evidence to convict the accused. It is for this reason that Section 32 of the Evidence Act, 1872 is an exception to the general rule against the admissibility of hearsay evidence and its Clause (1) makes the statement of the deceased admissible. Such statement, classified as a "dying declaration" is made by a person as to the cause of his death or as to the injuries which culminated to his death or the circumstances under which injuries were inflicted. A dying declaration is thus admitted in evidence on the premise that the anticipation of brewing death breeds the same human feelings as that of a conscientious and guiltless person under oath. It is a statement comprising of last words of a person before his death which are presumed to be truthful, and not infected by any motive or malice. The dying declaration is therefore admissible in evidence on the principle of necessity as there is very little hope of survival of the maker, and if found reliable, it can certainly form the basis for conviction.

80. This extract is taken from *Purshottam Chopra v. State (NCT of Delhi)*, (2020) 11 SCC 489 : (2020) 4 SCC (Cri) 342 : 2020 SCC OnLine SC 6 at page 496

2. In a brief outline of the material aspects, it could be noticed that in the present case, the appellants are accused of causing death of one Sher Singh by putting him on fire. There had been no eyewitness to the incident but the prosecution has relied upon two statements said to have been made by the deceased after the incident: one when he was admitted to the hospital with 100% burns and another when he was under treatment, respectively to a doctor and to a police officer. The trial court as also the High Court have accepted these statements as being his dying declarations wherein the appellants were named as the assailants. Therefore, the appellants stand convicted essentially on the basis of the dying declarations of the victim. The reliability of such dying declarations has been assailed in these appeals apart from other contentions concerning the surrounding factors. The relevant facts and background aspects of the matter could be noticed, keeping in view of the points arising for determination in these appeals.

The relevant facts and background

3. Put in brief, the prosecution case had been that on 18-12-1997, at about 3.00-3.15 p.m., hearing the screams of a person and noticing smoke coming from Plot No. 17 situated near Goverdhan Park, Uttam Nagar, Delhi, a lot of people gathered at the spot and saw that a man was ablaze with his entire body covered with fire; and the people so gathered made efforts to put out the flames by throwing water over the said person. The information as regards this incident was received in the Police Control Room ("PCR") through a phone call from some unknown person at 3.28 p.m. by Ct. Anju (PW 7), who made an entry bearing No. 467 in Form I (Ext. PW-7/A) and passed on the information to the nearest police station. The officers concerned from PCR reached the spot and shifted the injured person to Safdarjung Hospital for treatment, where Dr Sushma (PW 8) prepared the MLC (Ext. PW-8/A). While preparing the MLC, the injured person identified himself as Sher Singh and gave his address; and narrated the incident that had led to his current condition while accusing one Purshottam and another Suresh (telwala), both residents of A-block, Uttam Nagar, Delhi as his assailants [These persons Purshottam and Suresh are the appellants herein.] .

11. In their **statements under Section 313 of the Code of Criminal Procedure, 1973 ("CrPC"),** both the appellants denied their involvement in the commission of the offence i.e. putting Sher Singh on fire.

11.1. The relevant portions of appellant Purshottam's statement read as under:

"*Q.3.* It is further in evidence against you that you are active worker of BJP. On two or three occasions, prior to the incident quarrels/disputes had taken place of yours with deceased Sher Singh. No report was got lodged with the police about the quarrels due to fear. What have you to say?

Ans. It is correct that I am an active member of BJP. Second part is incorrect.

***

Q.20. It is further in evidence against you that patient Sher Singh (since deceased) had further stated in his statement to PW 16 SI Rajesh Kumar that co-accused Suresh had put him on fire with matchstick and both of you were residing at A Block, Uttam Nagar. What have you to say?

Ans. It is correct that I am residing at A Block, Uttam Nagar. Rest is denied.

***

Q.43. Do you want to say anything else?

Ans. That being politically known person, I have been falsely implicated by certain persons adversely interested against me."

11.2. The accused Suresh also submitted that he had been falsely implicated in the case and that the evidence led in against him was false. He gave out his version in the following:

"*Q.42.* Do you want to say anything else?

Ans. I am innocent. I am running a business of hardware under the name and style of 'M/S NEW DELUX PAINTSand at no point of time I have kerosene oil depot. The police has implicated me in this case falsely and I was picked up from my residence by the police of PS Vikas Puri on the false pretext that certain enquiries are to be made and they assured me to release on the same day. But after taking me forcibly from my residence the police involved me in this case. I do not know the deceased."

Admission and acceptability of dying declaration: The principles

18. The principles relating to admission and acceptability of the statement made by a victim representing the cause of death, usually referred to as a dying declaration, are well settled and a few doubts as regards pre-requisites for acceptability of a dying declaration were also put at rest by the Constitution Bench of this Court in *Laxman* v. *State of Maharashtra* [*Laxman* v. *State of Maharashtra*, (2002) 6 SCC 710 : 2002 SCC (Cri) 1491] .

18.1. In the said case of *Laxman* [*Laxman* v. *State of Maharashtra*, (2002) 6 SCC 710 : 2002 SCC (Cri) 1491] , conviction of the appellant was based on dying declaration of the deceased which was recorded by the Judicial Magistrate. The Session Judge and the High Court [*Laxman Narsimlu Muniganthe* v. *State of Maharashtra*, Criminal Appeal No. 288 of 1994, decided on 14-10-1999 (Bom)] found such dying declaration to be truthful, voluntary and trustworthy; and recorded conviction on that basis. In appeal to this Court, it was urged with reference to the decision in *Paparambaka Rosamma* v. *State of A.P.* [*Paparambaka Rosamma* v. *State of A.P.*, (1999) 7 SCC 695 : 1999 SCC (Cri) 1361 : 1999 Cri LJ 4321] that the dying declaration could not have been accepted by the Court to form the sole basis of conviction since certification of the doctor was not to the effect that the patient was in a fit state of mind to make the statement. On the other hand, it was contended on behalf of the State, with reference to the decision in *Koli Chunilal Savji* v. *State of Gujarat* [*Koli Chunilal Savji* v. *State of Gujarat*, (1999) 9 SCC 562 : 2000 SCC (Cri) 432 : 1999 Cri LJ 4582] , that the material on record indicated that the deceased was fully conscious and was capable of making a statement; and his dying declaration cannot be ignored merely because the doctor had not made the endorsement about his fit state of mind to make the statement. In view of these somewhat discordant notes, the matter came to be referred [*Laxman* v. *State of Maharashtra*, (2019) 11 SCC 512 : (2019) 4 SCC (Cri) 259] to the larger Bench.

18.2. The Constitution Bench in *Laxman* [*Laxman* v. *State of Maharashtra*, (2002) 6 SCC 710 : 2002 SCC (Cri) 1491] summed up the principles applicable as regards the acceptability of dying declaration in the following: (*Laxman case* [*Laxman* v. *State of Maharashtra*, (2002) 6 SCC 710 : 2002 SCC (Cri) 1491] , SCC pp. 713-14, para 3)

> "*3.* The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great

caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and

therefore the voluntary and truthful nature of the declaration can be established otherwise."

18.3. The Constitution Bench affirmed the view in *Koli Chunilal Savji* [*Koli Chunilal Savji* v. *State of Gujarat*, (1999) 9 SCC 562 : 2000 SCC (Cri) 432 : 1999 Cri LJ 4582] while holding that *Paparambaka Rosamma* [*Paparambaka Rosamma* v. *State of A.P.*, (1999) 7 SCC 695 : 1999 SCC (Cri) 1361 : 1999 Cri LJ 4321] , was not correctly decided. The Court said: (*Laxman case* [*Laxman* v. *State of Maharashtra*, (2002) 6 SCC 710 : 2002 SCC (Cri) 1491] , SCC p. 715, para 5)

"*5.* ... It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this Court in *Paparambaka Rosamma* v. *State of A.P.* [*Paparambaka Rosamma* v. *State of A.P.*, (1999) 7 SCC 695 : 1999 SCC (Cri) 1361 : 1999 Cri LJ 4321] must be held to be not correctly decided and we affirm the law laid down by this Court in *Koli Chunilal Savji* v. *State of Gujarat* [*Koli Chunilal Savji* v. *State of Gujarat*, (1999) 9 SCC 562 : 2000 SCC (Cri) 432 : 1999 Cri LJ 4582] ."

19. In *Dal Singh case* [*State of M.P.* v. *Dal Singh*, (2013) 14 SCC 159 : (2014) 4 SCC (Cri) 141] , this Court has pointed out that the law does not provide as to who could record dying declaration nor is there a prescribed format or procedure for the same. All that is required is the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. This Court also pointed out that as to whether in a given burn case, the skin of thumb had been completely burnt or if some part of it will remain intact, would also be a question of fact. This Court said: (SCC p. 167, paras 20-22)

"*20.* The law on the issue can be summarised to the effect that law does not provide who can record a dying declaration, nor is there any prescribed form, format, or procedure for the same. The person who records a dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. Moreover, the requirement of a certificate provided by a doctor in respect of such state of the deceased, is not essential in every case.

21. Undoubtedly, the subject of the evidentiary value and acceptability of a dying declaration, must be approached with caution for the reason that

the maker of such a statement cannot be subjected to cross-examination. However, the court may not look for corroboration of a dying declaration, unless the declaration suffers from any infirmity.

22. So far as the question of thumb impression is concerned, the same depends upon facts, as regards whether the skin of the thumb that was placed upon the dying declaration was also burnt. Even in case of such burns in the body, the skin of a small part of the body i.e. of the thumb, may remain intact. Therefore, it is a question of fact regarding whether the skin of the thumb had in fact been completely burnt, and if not, whether the ridges and curves had remained intact."

19.1. In *Bhagwan* [*Bhagwan* v. *State of Maharashtra*, (2019) 8 SCC 95 : (2019) 3 SCC (Cri) 289] , this Court accepted the dying declaration made by a person having suffered 92% burn injury and whose continued consciousness was certified by the doctor. This Court referred to the decision in *Vijay Pal* v. *State (NCT of Delhi)* [*Vijay Pal* v. *State (NCT of Delhi)*, (2015) 4 SCC 749 : (2015) 2 SCC (Cri) 733] , where the statement made by the victim having suffered 100% burn injury was also accepted. This Court said: (*Bhagwan case* [*Bhagwan* v. *State of Maharashtra*, (2019) 8 SCC 95 : (2019) 3 SCC (Cri) 289] , SCC pp. 106-107, paras 24-25)

"**(B)** ***Can a person who has suffered 92% burn injuries be in a condition to give a dying declaration?***

24. This question is also no longer res integra. In *Vijay Pal* v. *State (NCT of Delhi)* [*Vijay Pal* v. *State (NCT of Delhi)*, (2015) 4 SCC 749 : (2015) 2 SCC (Cri) 733] , we notice the following discussion: (SCC p. 759, paras 23-24)

'*23*. It is contended by the learned counsel for the appellant that when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in *Mafabhai Nagarbhai Raval* v. *State of Gujarat* [*Mafabhai Nagarbhai Raval* v. *State of Gujarat*, (1992) 4 SCC 69 : 1992 SCC (Cri) 810] wherein it has been held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

24. In *State of M.P.* v. *Dal Singh* [*State of M.P.* v. *Dal Singh*, (2013) 14 SCC 159 : (2014) 4 SCC (Cri) 141] , a two-Judge Bench placed reliance on the dying declaration of the deceased who had suffered 100% burn

injuries on the ground that the dying declaration was found to be credible.'

25. Therefore, the mere fact that the patient suffered 92% burn injuries as in this case would not stand in the way of patient giving a dying declaration which otherwise inspires the confidence of the Court and is free from tutoring, and can be found reliable."

20. In *Gian Kaur* [*State of Punjab* v. *Gian Kaur*, 1998 SCC (Cri) 942 : AIR 1998 SC 2809] , the dying declaration was disbelieved on the ground that though as per medical evidence the deceased had 100% burn injuries but the thumb mark appearing on the dying declaration had clear ridges and curves. The benefit of doubt extended [*Gian Kaur* v. *State of Punjab*, 1988 SCC OnLine P&H 395] by the High Court was found to be not unreasonable and hence, this Court declined to interfere while observing as under: (*Gian Kaur case* [*State of Punjab* v. *Gian Kaur*, 1998 SCC (Cri) 942 : AIR 1998 SC 2809] , SCC p. 943, para 5)

"*5*. The High Court disbelieved the dying declaration on the ground that even though according to the medical evidence Rita had 100% burns, the thumb mark of Rita appearing on the dying declaration had clear ridges and curves. The High Court found the evidence of Dr Ajay Sahni-PW 1 not reliable as he failed to satisfactorily explain how such a thumb mark could appear on the dying declaration when Rita had 100% burns over her body. The High Court relied upon the deposition of Doctor Aneja, who had performed the post-mortem and who has categorically stated that there were 100% burns over her body and both the thumbs of Rita were burnt. In view of such inconsistent evidence, the High Court was right in giving benefit of doubt to the respondents. It cannot be said in this case that the High Court has taken an unreasonable view."

20.1. In *Gopalsingh* [*Gopalsingh* v. *State of M.P.*, (1972) 3 SCC 268 : 1972 SCC (Cri) 513 : AIR 1972 SC 1557] , the Court found that the dying declaration did not contain complete names and addresses of the persons charged with the offence and it was found that conviction could not be based on such dying declaration alone without corroboration. Essentially, for the infirmity carried by such dying declaration, this Court found lesser justification for the High Court's interference with the order of acquittal while observing as under: (SCC p. 272, para 8)

"*8*. But even if we assume that the High Court was right in concluding that the dying declaration established the identity of the appellants, it was certainly not of that character as would warrant its acceptance without corroboration. It is settled law that a court is entitled to convict on the sole

basis of a dying declaration if it is such that in the circumstances of the case it can be regarded as truthful. On the other hand if on account of an infirmity, it cannot be held to be entirely reliable, corroboration would be required."

20.2. In *Dalip Singh* [*Dalip Singh* v. *State of Punjab*, (1979) 4 SCC 332 : 1979 SCC (Cri) 968] , the alleged dying declaration turned out to be doubtful for it contained such facts which could not have been in the knowledge of the deceased and hence, this Court found it unsafe to rely on the same while observing as under: (SCC p. 335, para 9)

"*9*. ... The dying declaration seems to be otherwise truthful but for the fact that it could not be within the knowledge or vision of Teja Singh that Jetha Singh was murdered by the appellants. His saying so in the dying declaration makes his statement a bit doubtful. It is, therefore, safe to leave out of consideration this dying declaration."

20.3. In *Thurukanni Pompiah* [*Thurukanni Pompiah* v. *State of Mysore*, AIR 1965 SC 939 : (1965) 2 Cri LJ 31] , this Court held that while a truthful and reliable dying declaration may form the sole basis of conviction, even without corroboration but the Court must be satisfied about its truthfulness and reliability; and if the Court finds that the declaration is not wholly reliable and a material portion of the deceased's version of the occurrence is untrue, the Court may, in the circumstances of a given case, may consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration. This Court observed, inter alia, as under: (AIR p. 941, para 9)

"*9*. Under clause (1) of Section 32 of the Evidence Act, 1872, a statement made by a person who is dead, as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death is a relevant fact in cases in which the cause of that person's death comes into question, and such a statement is relevant whether the person who made it was or was not, at the time when it was made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. The dying declaration of Eranna is, therefore, relevant and material evidence in the case. A truthful and reliable dying declaration may form the sole basis of conviction, even though it is not corroborated. But the Court must be satisfied that the declaration is truthful. The reliability of the declaration should be subjected to a close scrutiny, considering that it was made in the absence of the accused who had no opportunity to test its veracity by cross-examination. If the Court finds that the declaration is not wholly reliable and a material and integral portion of the deceased's version of the entire occurrence is untrue, the

Court may, in all the circumstances of the case, consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration."

81. This extract is taken from *Laxman v. State of Maharashtra*, (2002) 6 SCC 710 : 2002 SCC (Cri) 1491 : 2002 SCC OnLine SC 791 at page 712

G.B. PATTANAIK, J.— In this criminal appeal, the conviction of the accused-appellant is based upon the dying declaration of the deceased which was recorded by the Judicial Magistrate (PW 4). The learned Sessions Judge as well as the High Court held the dying declaration made by the deceased to be truthful, voluntary and trustworthy. The Magistrate in his evidence had stated that he had contacted the patient through the medical officer on duty and after putting some questions to the patient to find out whether she was able to make the statement; whether she was set on fire; whether she was conscious and able to make the statement and on being satisfied he recorded the statement of the deceased. There was a certificate of the doctor which indicates that the patient was conscious. The High Court on consideration of the evidence of the Magistrate as well as on the certificate of the doctor on the dying declaration recorded by the Magistrate together with other circumstances on record came to the conclusion that the deceased Chandrakala was physically and mentally fit and as such the dying declaration can be relied upon. When the appeal against the judgment of the Aurangabad Bench of the Bombay High Court was placed before **a three-Judge Bench of this Court**, the counsel for the appellant relied upon the decision of this Court in the case of ***Paparambaka Rosamma* v. *State of A.P.* [(1999) 7 SCC 695 : 1999 SCC (Cri) 1361**] and contended that since the certification of the doctor was not to the effect that the patient was in a fit state of mind to make the statement, the dying declaration could not have been accepted by the Court to form the sole basis of conviction. On behalf of the counsel appearing for the State **another three-Judge Bench decision of this Court in the case of *Koli Chunilal Savji* v. *State of Gujarat* [(1999) 9 SCC 562** : 2000 SCC (Cri) 432] was relied upon wherein this Court has held that if the materials on record indicate that the deceased was fully conscious and was capable of making a statement, the dying declaration of the deceased thus recorded cannot be ignored merely because the doctor had not made the endorsement that the deceased was in a fit state of mind to make the statement in question. **Since the two aforesaid decisions expressed by two Benches of three learned Judges was somewhat contradictory the Bench by order dated 24-7-2002 [*Laxman* v. *State of Maharashtra*, (2019) 11 SCC 512] referred the question to the Constitution Bench.**

3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. **Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness.** The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. **Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable.** A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by

the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

4. Bearing in mind the aforesaid principle, let us now examine the two decisions of the Court which persuaded the Bench to make the reference to the Constitution Bench. In *Paparambaka Rosamma* v. *State of A.P.* [(1999) 7 SCC 695 : 1999 SCC (Cri) 1361] the dying declaration in question had been recorded by a Judicial Magistrate and the Magistrate had made a note that on the basis of answers elicited from the declarant to the questions put he was satisfied that the deceased is in a fit disposing state of mind to make a declaration. The doctor had appended a certificate to the effect that the patient was conscious while recording the statement, yet the Court came to the conclusion that it would not be safe to accept the dying declaration as true and genuine and was made when the injured was in a fit state of mind since the certificate of the doctor was only to the effect that the patient is conscious while recording the statement. Apart from the aforesaid conclusion in law the Court had also found serious lacunae and ultimately did not accept the dying declaration recorded by the Magistrate. In the latter decision of this Court in *Koli Chunilal Savji* v. *State of Gujarat* [(1999) 9 SCC 562 : 2000 SCC (Cri) 432] it was held that the ultimate test is whether the dying declaration can be held to be a truthful one and voluntarily given. It was further held that before recording the declaration the officer concerned must find that the declarant was in a fit condition to make the statement in question. The Court relied upon the earlier decision in *Ravi Chander* v. *State of Punjab* [(1998) 9 SCC 303 : 1998 SCC (Cri) 1004] wherein it had been observed that for not examining by the doctor the dying declaration recorded by the Executive Magistrate and the dying declaration orally made need not be doubted. The Magistrate being a disinterested witness and a responsible officer and there being no circumstances or material to suspect that the Magistrate had any animus against the accused or was in any way interested for fabricating a dying declaration, question of doubt on the declaration, recorded by the Magistrate does not arise.

5. The Court also in the aforesaid case relied upon the decision of this Court in *Harjit Kaur* v. *State of Punjab* [(1999) 6 SCC 545 : 1999 SCC (Cri) 1130] wherein the Magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying

declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this Court in *Paparambaka Rosamma* v. *State of A.P.* [(1999) 7 SCC 695 : 1999 SCC (Cri) 1361] (at SCC p. 701, para 8) to the effect that

> "in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration"

has been too broadly stated and is not the correct enunciation of law. It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this Court in *Paparambaka Rosamma* v. *State of A.P.* [(1999) 7 SCC 695 : 1999 SCC (Cri) 1361] must be held to be not correctly decided and we affirm the law laid down by this Court in *Koli Chunilal Savji* v. *State of Gujarat* [(1999) 9 SCC 562 : 2000 SCC (Cri) 432] .

Burn Injuries Dying Declaration

82. This extract is taken from *Jayamma v. State of Karnataka*, (2021) 6 SCC 213 : (2021) 3 SCC (Cri) 8 : 2021 SCC OnLine SC 369 at page 216

2. The parties in the present case are closely related. The case of the prosecution is that there was a long-standing animosity between the families of Jayamma, wife of Reddinaika (Appellant 1) and Jayamma, wife of Sanna Ramanaika (deceased) and in connection thereto, a quarrel took place on 10-9-1998 in which, Thippeswamynaika son of the deceased assaulted and injured Reddinaika (husband of Appellant 1). Thereafter the appellants allegedly went to the house of the deceased on 21-9-1998 and confronted her about the assault on Reddinaika. The appellants demanded Rs 4000 for the cost incurred on the medical treatment of Reddinaika. After a heated exchange of words, the appellants allegedly doused the deceased Jayamma in kerosene and set her on fire. Specific roles have been attributed to all the appellants in respect thereto. Upon hearing the wails of Jayamma, her other son Ravi Kumar (PW 2) and daughter-in-law, Saroja Bai (PW 5; wife of Thippeshi or Thippeswamynaika) came to the spot and tried to extinguish the fire. The appellants meanwhile ran away from the spot. Since Jayamma was seriously injured, PW 2 sought help from Kumaranaika (PW 3) to shift Jayamma to the hospital. PW 2 and PW 3 then took the injured Jayamma on a bullock cart to Primary Health Centre (PHC), Thalak and there Dr A. Thippeswamy (PW 16) provided primary treatment to the injured Jayamma, including, administering her certain painkillers. Dr A. Thippeswamy (PW 16) sent medico-legal case information to Thalak Police Station, and on receipt thereof, SHO K.V. Mallikarjunappa (PW 11) reached the hospital and recorded the statement of the injured Jayamma (Ext. P-5) in the presence of PW 16. Jayamma in her statement implicated all the appellants. On the basis of the said statement, Crime No. 101 of 1998 was registered at Thalak Police Station under Sections 504, 307, 114 read with Section 34 IPC. Owing to the seriousness of injuries, the victim was later shifted to Government Hospital, Chitradurga. However, on 23-9-1998 at 5.30 a.m., Jayamma succumbed to her injuries.

11. In light of the rival contentions, the following questions fall for our consideration.

11.1. (*a*) Whether the High Court erred in reversing the findings of the trial court in exercise of its powers under Section 378 CrPC?

11.2. (*b*) Whether the prosecution has successfully established that the deceased died a homicidal death at the hands of the appellants?

12. It may be seen that the entire case revolves around the evidentiary value of the purported dying declaration dated 22-9-1998 (Ext. P-5). The High Court has heavily relied upon it along with the corroborative statements of K.V. Mallikarjunappa (PW 11), who is the police officer who recorded Ext. P-5, and of Dr A. Thippeswamy (PW 16), who was present at the time of recording the dying declaration and also endorsed the mental fitness of the deceased to make such statement. It thus appears useful to reproduce the translated version of the said dying declaration (Ext. P-5) which reads as follows:

> "I have been residing at the above given address. Today after having food, I was sleeping in front of my house near Kurukoppa, in the night at 10.00 p.m. a resident of our village Reddy Nayak and his wife Jayamma, came near our Kurukoppa and complained that since my son had beaten her husband, she has spent four thousand rupees and scolded in filthy language. I was keeping quiet at that time. All of a sudden Jayamma, wife of Reddy Nayak, Laccha Nayaka, son of Chandra Nayak, Thippeshi, son of Rama Naika, Shankara Nayaka, son of Namya Nayka all of them advanced towards her and threatened to kill her, and poured kerosene oil all over her body and torched. Therefore, I have sustained burn injuries over my hands and entire body. When I started shouting, the accused ran away from the spot. My son Ravi, son of Rama Nayaka, and my daughter Sharadamma, wife of Mallenayaka poured water all over my body, doused the fire, and my son Ravi and my daughter Sharadamma took me to Taluk Hospital in a cart for treatment. I pray for taking suitable action against the accused as provided in law."

14. Before we advert to the actual admissibility and credibility of the dying declaration (Ext. P-5), it will be beneficial to brace ourselves of the case law on the evidentiary value of a dying declaration and the sustenance of conviction solely based thereupon. We may hasten to add that while there is huge wealth of case law, and incredible jurisprudential contribution by this Court on this subject, we are consciously referring to only a few decisions which are closer to the facts of the case in hand. We may briefly notice these judgments.

14.1. In *P.V. Radhakrishna* v. *State of Karnataka* [*P.V. Radhakrishna* v. *State of Karnataka*, (2003) 6 SCC 443, para 16 : 2003 SCC (Cri) 1679] , this Court considered the residuary question whether the percentage of burns suffered is a determinative factor to affect the credibility of a dying declaration and the probability of its recording. It was held that there is no hard-and-fast rule of universal application in this regard and much would

depend upon the nature of the burns, part of the body affected, impact of burns on the faculties to think and other relevant factor.

14.2. In *Chacko* v. *State of Kerala* [*Chacko* v. *State of Kerala*, (2003) 1 SCC 112, paras 3 and 4 : 2003 SCC (Cri) 246] , this Court declined to accept the prosecution case based on the dying declaration where the deceased was about 70 years old and had suffered 80 per cent burns. It was held that it would be difficult to accept that the injured could make a detailed dying declaration after a lapse of about 8 to 9 hours of the burning, giving minute details as to the motive and the manner in which he had suffered the injuries. That was of course a case where there was no certification by the doctor regarding the mental and physical condition of the deceased to make dying declaration. Nevertheless, this Court opined that the manner in which the incident was recorded in the dying declaration created grave doubts to the genuineness of the document. The Court went on to opine that even though the doctor therein had recorded "*patient conscious, talking*" in the wound certificate, that fact by itself would not further the case of the prosecution as to the condition of the patient making the dying declaration, nor would the oral evidence of the doctor or the investigating officer, made before the court for the first time, in any manner improve the prosecution case.

14.3. In *Sham Shankar Kankaria* v. *State of Maharashtra* [*Sham Shankar Kankaria* v. *State of Maharashtra*, (2006) 13 SCC 165, paras 10 and 11 : (2007) 2 SCC (Cri) 663] , it was restated that the dying declaration is only a piece of untested evidence and must like any other evidence satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. Further, relying upon the decision in *Paniben* v. *State of Gujarat* [*Paniben* v. *State of Gujarat*, (1992) 2 SCC 474, para 18 : 1992 SCC (Cri) 403] wherein this Court (at SCC pp. 480-81, para 18) summed up several previous judgments governing dying declaration, the Court in *Sham Shankar Kankaria* [*Sham Shankar Kankaria* v. *State of Maharashtra*, (2006) 13 SCC 165, paras 10 and 11 : (2007) 2 SCC (Cri) 663] reiterated: (*Sham Shankar Kankaria* [*Sham Shankar Kankaria* v. *State of Maharashtra*, (2006) 13 SCC 165, paras 10 and 11 : (2007) 2 SCC (Cri) 663] , SCC pp. 172-73, para 11)

> "*11.* … (*i*) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See *Munnu Raja* v. *State of M.P.* [*Munnu Raja* v. *State of M.P.*, (1976) 3 SCC 104 : 1976 SCC (Cri) 376]);
>
> (*ii*) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See *State of*

U.P. v. *Ram Sagar Yadav* [*State of U.P.* v. *Ram Sagar Yadav*, (1985) 1 SCC 552 : 1985 SCC (Cri) 127] and *Ramawati Devi* v. *State of Bihar* [*Ramawati Devi* v. *State of Bihar*, (1983) 1 SCC 211 : 1983 SCC (Cri) 169] .);

(*iii*) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See *K. Ramachandra Reddy* v. *Public Prosecutor* [*K. Ramachandra Reddy* v. *Public Prosecutor*, (1976) 3 SCC 618 : 1976 SCC (Cri) 473] .);

(*iv*) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See *Rasheed Beg* v. *State of M.P.* [*Rasheed Beg* v. *State of M.P.*, (1974) 4 SCC 264 : 1974 SCC (Cri) 426]);

(*v*) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See *Kake Singh* v. *State of M.P.* [*Kake Singh* v. *State of M.P.*, 1981 Supp SCC 25 : 1981 SCC (Cri) 645]);

(*vi*) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See *Ram Manorath* v. *State of U.P.* [*Ram Manorath* v. *State of U.P.*, (1981) 2 SCC 654 : 1981 SCC (Cri) 581]);

(*vii*) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See *State of Maharashtra* v. *Krishnamurti Laxmipati Naidu* [*State of Maharashtra* v. *Krishnamurti Laxmipati Naidu*, 1980 Supp SCC 455 : 1981 SCC (Cri) 364] .);

(*viii*) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See *Surajdeo Ojha* v. *State of Bihar* [*Surajdeo Ojha* v. *State of Bihar*, 1980 Supp SCC 769 : 1979 SCC (Cri) 519] .);

(*ix*) Normally the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See *Nanhau Ram* v. *State of M.P.* [*Nanhau Ram* v. *State of M.P.*, 1988 Supp SCC 152 : 1988 SCC (Cri) 342]);

(*x*) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See *State of U.P.* v. *Madan Mohan* [*State of U.P.* v. *Madan Mohan*, (1989) 3 SCC 390 : 1989 SCC (Cri) 585] .);

(*xi*) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See *Mohanlal Gangaram Gehani* v. *State of Maharashtra* [*Mohanlal Gangaram Gehani* v. *State of Maharashtra*, (1982) 1 SCC 700 : 1982 SCC (Cri) 334] .)"

15. It goes without saying that when the dying declaration has been recorded in accordance with law, and it gives a cogent and plausible explanation of the occurrence, the Court can rely upon it as the solitary piece of evidence to convict the accused. It is for this reason that Section 32 of the Evidence Act, 1872 is an exception to the general rule against the admissibility of hearsay evidence and its Clause (1) makes the statement of the deceased admissible. Such statement, classified as a "dying declaration" is made by a person as to the cause of his death or as to the injuries which culminated to his death or the circumstances under which injuries were inflicted. A dying declaration is thus admitted in evidence on the premise that the anticipation of brewing death breeds the same human feelings as that of a conscientious and guiltless person under oath. It is a statement comprising of last words of a person before his death which are presumed to be truthful, and not infected by any motive or malice. The dying declaration is therefore admissible in evidence on the principle of necessity as there is very little hope of survival of the maker, and if found reliable, it can certainly form the basis for conviction.

16. We may also take note of the decision of this Court in *Surinder Kumar* [*Surinder Kumar* v. *State of Haryana*, (2011) 10 SCC 173, paras 25, 26 and 28 : (2012) 1 SCC (Cri) 230] . In the said case, the victim was admitted in hospital with burn injuries and her dying declaration was recorded by an Executive Magistrate. This Court, first doubted whether the victim could put a thumb impression on the purported dying declaration when she had suffered 95-97% burn injuries. Thereafter, it was noted that "*at the time of recording the statement of the deceased … no endorsement of the doctor was made about her position to make such statement*", and only after the recording of the statement did the doctor state that the patient was conscious while answering the questions, and was "*fit to give statement*". This Court lastly noticed that before the alleged dying declaration was recorded, the victim in the course of her treatment had been administered Fortwin and Pethidine injections, and therefore she could not have possessed normal alertness. It was hence held that although there is neither a rule of law nor of prudence that the dying declaration cannot be acted upon without corroboration, the Court must

nonetheless be satisfied that the dying declaration is true and voluntary, and only then could it be the sole basis for conviction without corroboration.

17. Consistent with the cited principles, this Court refused to uphold the conviction in *Sampat Babso Kale* v. *State of Maharashtra* [*Sampat Babso Kale* v. *State of Maharashtra*, (2019) 4 SCC 739, paras 14 and 16 : (2019) 2 SCC (Cri) 345] . The dying declaration in that case was made by a victim who had suffered 98% burn injuries, and the statement was recorded after the victim was injected with painkillers. This Court adopted a cautious approach, and opined that there were serious doubts as to whether the victim was in a fit state of mind to make the statement. Given the extent of burn injuries, it was observed that the victim must have been in great agony, and once a sedative had been injected, the possibility of her being in a state of delusion could not be completely ruled out. Further, it was specifically noted that: (SCC p. 744, para 14)

> "*14. … the endorsement made by the doctor that the victim was in a fit state of mind to make the statement has been made not before the statement but after the statement was recorded. Normally it should be the other way around.*"
>
> (emphasis supplied)

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Common Intention Extract

1. This extract is taken from *Ramaswami Ayyangar v. State of T.N.*, (1976) 3 SCC 779 : 1976 SCC (Cri) 518 : 1976 SCC OnLine SC 124 at page 783

11. It is contended that A-2 cannot be held vicariously liable with the aid of Section 34 for the act of A-3 and A-4, for two reasons: firstly, he did not physically participate in the fatal beating administered by A-3 and A-4 to the deceased and thus the "criminal act" of murder was not done by all these three accused within the contemplation of Section 34, the act committed by A-2 in regard to the beating of PW 1 being a different and separate act of A-2. Secondly, it has not been shown that the act of A-2 in beating PW 1 was committed in furtherance of the common intention of all the three, pursuant to a prearranged plan.

12. The contention is fallacious and cannot be accepted. Section 34 is to be read along with the preceding Section 33 which makes it clear that the "act" spoken of in Section 34 includes a series of acts as a single act. It follows that the words "when a criminal act is done by several persons" in Section 34, may be construed to mean "when criminal acts are done by several persons". The acts committed by different confederates in the criminal action may be different but all must in one way or the other participate and engage in the criminal enterprise, for instance, one may only stand guard to prevent any person coming to the relief of the victim, or may otherwise facilitate the execution of the common design. Such a person also commits an "act" as much as his coparticipants actually committing the planned crime. In the case of an offence involving physical violence, however, it is essential for the application of Section 34 that the person who instigates or aids the commission of the crime must be physically present at the actual commission of the crime for the purpose of facilitating or promoting the offence, the commission of which is the aim of the joint criminal venture. Such presence of those who in one way or the other facilitate the execution of the common design, is itself tantamount to actual participation in the 'criminal act'. The essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result. Such consensus can be developed at the spot and thereby intended by all of them. In the case before us, A-2 obviously, was acting in concert with A-3 and A-4 in causing the murder of the deceased, when he prevented PW 1 from going to the relief of the deceased. Section 34 was therefore fully attracted and under the circumstances A-2 was equally responsible for the murder of the deceased. Under these circumstances we think the High Court was justified in convicting A-2 for the offence of

murder of Kaliaperumal with the aid of Section 34 of the Penal Code. There was absolutely no difficulty in maintaining the convictions of A-3 and A-4 for the murder of Kaliaperumal with the aid of Section 34 because both had mercilessly assaulted him with aruvals on the vital parts of the body. In the case of A-2 also it is quite legitimate to hold that he had shared the common intention of A-3 and A-4 in the commission of the murder of Kaliaperumal.

2. This extract is taken from *Rajesh Govind Jagesha v. State of Maharashtra*, (1999) 8 SCC 428 : 1999 SCC (Cri) 1452 : 1999 SCC OnLine SC 1151 at page 435

7. We are also not impressed with the submission of the learned counsel appearing for the appellants that PWs 1 and 2 are not reliable being interested and chance witnesses. Both the courts below have held and we agree with their finding that the said witnesses were eyewitnesses who had seen the occurrence in which Joy Kutty was murdered. Mr Nambiar, the learned Senior Advocate appearing for Accused 1 further submitted that as a common object was not established, the trial court committed a mistake of law by applying the provisions of Section 34 IPC in holding the appellants guilty of the crime. Section 34 and Section 149 IPC are distinct and distinguishable. The meaning and scope of common intention and common object has properly been understood by the trial court as well as the High Court. No premeditation or previous meeting of mind is necessary for the applicability of Section 34 IPC. The existence of common intention can be inferred from the attending circumstances of the case and the conduct of the parties. No direct evidence of common intention is necessary. For the purposes of common intention even the participation in the commission of the offence need not be proved in all cases. The common intention can develop even during the course of an occurrence. The circumstances of the present case clearly show that the accused persons had come on the spot with deadly weapons and inflicted injuries on Joy Kutty, obviously with the intention of causing his death. The eyewitnesses ran from the spot to save their lives. We do not find any error of law in appreciation of evidence by the trial court as well as the High Court, so far as the accused persons other than Accused 2 are concerned.

3. This extract is taken from *Surendra Chauhan v. State of M.P.*, (2000) 4 SCC 110 : 2000 SCC (Cri) 772 : 2000 SCC OnLine SC 585 at page 117

10. It is contended that Chauhan could not be convicted with the aid of Section 34 IPC. Section 34 IPC is as under:

> "34. *Acts done by several persons in furtherance of common intention.*— When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

11. Under Section 34 a person must be physically present at the actual commission of the crime for the purpose of facilitating or promoting the offence, the commission of which is the aim of the joint criminal venture. Such presence of those who in one way or the other facilitate the execution of the common design is itself tantamount to actual participation in the criminal act. The essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result. Such consensus can be developed at the spot and thereby intended by all of them. (*Ramaswami Ayyangar* v. *State of T.N.* [(1976) 3 SCC 779 : 1976 SCC (Cri) 518]) The existence of a common intention can be inferred from the attending circumstances of the case and the conduct of the parties. No direct evidence of common intention is necessary. For the purpose of common intention even the participation in the commission of the offence need not be proved in all cases. The common intention can develop even during the course of an occurrence. (*Rajesh Govind Jagesha* v. *State of Maharashtra* [(1999) 8 SCC 428 : 1999 SCC (Cri) 1452] .) To apply Section 34 IPC apart from the fact that there should be two or more accused, two factors must be established: (*i*) common intention, and (*ii*) participation of the accused in the commission of an offence. If a common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and a common intention is absent, Section 34 cannot be invoked. In every case, it is not possible to have direct evidence of a common intention. It has to be inferred from the facts and circumstances of each case.

4. This extract is taken from *Dharnidhar v. State of U.P.*, (2010) 7 SCC 759 : (2010) 3 SCC (Cri) 491 : 2010 SCC OnLine SC 708 at page 777

38. Let us examine the judgments of this Court in relation to common intention and commission of crime by the members of an unlawful assembly. It is a settled principle of law that to show common intention to commit a crime it is not necessary for the prosecution to establish, as a matter of fact, that there was a pre-meeting of the minds and planning before the crime was committed.

39. In *Surendra Chauhan* v. *State of M.P.* [(2000) 4 SCC 110 : 2000 SCC (Cri) 772 : AIR 2000 SC 1436] , this Court held that common intention can be developed on the spur of the moment. Also, under Section 34, a person must be physically present at the place of actual commission of the crime. The essence is the simultaneous consensus of the minds of persons participating in the criminal act and such consensus can be developed on the spot.

40. It is not mandatory for the prosecution to bring direct evidence of common intention on record and this depends on the facts and circumstances of the case. The intention could develop even during the course of occurrence. In this regard reference can be made to *Ramaswami Ayyangar* v. *State of T.N.* [(1976) 3 SCC 779 : 1976 SCC (Cri) 518] and *Rajesh Govind Jagesha* v. *State of Maharashtra* [(1999) 8 SCC 428 : 1999 SCC (Cri) 1452] .

41. In other words, to apply Section 34, two or more accused should be present and two factors must be established i.e. common intention and participation of the accused in the crime. Section 34 moreover, involves vicarious liability and therefore, if intention is proved but no overt act is committed, the section can still be invoked. In the present case all the four accused had gone together armed with three guns and one spear and after shouting, making their minds clear, had fired at Bahadur Singh causing gun injuries and spear injury on his shoulder.

5. This extract is taken from *Shyamal Ghosh v. State of W.B.*, (2012) 7 SCC 646 : (2012) 3 SCC (Cri) 685 : 2012 SCC OnLine SC 512 at page 677

84. Lastly, it was contended that the provisions of Section 34 IPC are not attracted in the present case as the prosecution has not been able to prove either common intention or participation of the accused persons in the commission of the crime. Resultantly, they could not have been held guilty of the offence under Section 302 read with Section 34 IPC. Before we discuss the evidence relevant to this aspect of the case, let us examine the law in relation to ingredients and application of Section 34 IPC.

85. In a very recent judgment of this Court in *Nand Kishore* v. *State of M.P.* [(2011) 12 SCC 120 : (2012) 1 SCC (Cri) 378] , this Court discussed the ambit and scope of Section 34 IPC as well as its applicability to a given case as under: (SCC pp. 126-28, paras 20-26)

"*20*. A bare reading of this section shows that the section could be dissected as follows:

(*a*) Criminal act is done by several persons;

(*b*) Such act is done in furtherance of the common intention of all; and

(*c*) Each of such persons is liable for that act in the same manner as if it were done by him alone.

In other words, these three ingredients would guide the court in determining whether an accused is liable to be convicted with the aid of Section 34. While first two are the acts which are attributable and have to be proved as actions of the accused, the third is the consequence. Once the criminal act and common intention are proved, then by fiction of law, criminal liability of having done that act by each person individually would arise. The criminal act, according to Section 34 IPC must be done by several persons. The emphasis in this part of the section is on the word 'done'. It only flows from this that before a person can be convicted by following the provisions of Section 34, that person must have done something along with other persons. Some individual participation in the commission of the criminal act would be the requirement. Every individual member of the entire group charged with the aid of Section 34 must, therefore, be a participant in the joint act which is the result of their combined activity.

21. Under Section 34, every individual offender is associated with the criminal act which constitutes the offence both physically as well as mentally i.e. he is a participant not only in what has been described as a common act but also what is termed as the common intention and,

therefore, in both these respects his individual role is put into serious jeopardy although this individual role might be a part of a common scheme in which others have also joined him and played a role that is similar or different. But referring to the common intention, it needs to be clarified that the courts must keep in mind the fine distinction between 'common intention' on the one hand and 'mens rea' as understood in criminal jurisprudence on the other. Common intention is not alike or identical to mens rea. The latter may be coincidental with or collateral to the former but they are distinct and different.

22. Section 34 also deals with constructive criminal liability. It provides that where a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it was done by him alone. If the common intention leads to the commission of the criminal offence charged, each one of the persons sharing the common intention is constructively liable for the criminal act done by one of them. (Refer to *Brathi* v. *State of Punjab* [(1991) 1 SCC 519 : 1991 SCC (Cri) 203] .)

23. Another aspect which the court has to keep in mind while dealing with such cases is that the common intention or state of mind and the physical act, both may be arrived at the spot and essentially may not be the result of any predetermined plan to commit such an offence. This will always depend on the facts and circumstances of the case, like in the present case Mahavir, all alone and unarmed went to demand money from Mahesh but Mahesh, Dinesh and Nand Kishore got together outside their house and as is evident from the statements of the witnesses, they not only became aggressive but also committed a crime and went to the extent of stabbing him over and over again at most vital parts of the body puncturing both the heart and the lung as well as pelting stones at him even when he fell on the ground. But for their participation and a clear frame of mind to kill the deceased, Dinesh probably would not have been able to kill Mahavir. The role attributable to each one of them, thus, clearly demonstrates common intention and common participation to achieve the object of killing the deceased. In other words, the criminal act was done with the common intention to kill the deceased Mahavir. The trial court has rightly noticed in its judgment that all the accused persons coming together in the nighttime and giving such serious blows and injuries with active participation shows a common intention to murder the deceased. In these circumstances, the conclusions arrived at by the trial court and the High Court would not call for any interference.

24. The learned counsel appearing for the appellant had relied upon the judgment of this Court in *Shivalingappa Kallayanappa* v. *State of Karnataka* [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] to contend that they could not be charged or convicted for an offence under Section 302 with the aid of Section 34 IPC. The said judgment has rightly been distinguished by the High Court in the judgment under appeal. In that case, the Supreme Court had considered the role of each individual and recorded a finding that there was no common object on the part of the accused to commit murder. In that case, the Court was primarily concerned with the common object falling within the ambit of Section 149 IPC. In fact, Section 34 IPC has not even been referred to in the aforereferred judgment of this Court.

25. Another case to which attention of this Court was invited is *Jai Bhagwan* v. *State of Haryana* [(1999) 3 SCC 102 : 1999 SCC (Cri) 388] . In that case also, the Court had discussed the scope of Section 34 IPC and held that common intention and participation of the accused in commission of the offence are the ingredients which should be satisfied before a person could be convicted with the aid of Section 34 IPC. The Court held as under: (SCC p. 107, para 10)

> '*10*. To apply Section 34 IPC apart from the fact that there should be two or more accused, two factors must be established: (*i*) common intention and (*ii*) participation of the accused in the commission of an offence. If a common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and a common intention is absent, Section 34 cannot be invoked. In every case, it is not possible to have direct evidence of a common intention. It has to be inferred from the facts and circumstances of each case.'

26. The facts of the present case examined in the light of the above principles do not leave any doubt in our minds that all the three accused had a common intention in commission of this brutal crime. Each one of them participated though the vital blows were given by Dinesh Dhimar. But for Mahesh catching hold of the arms of the deceased, probably the death could have been avoided. Nand Kishore showed no mercy and continued pelting stones on the deceased even when he collapsed to the ground. The prosecution has been able to establish the charge beyond reasonable doubt."

86. In *Lallan Rai* v. *State of Bihar* [(2003) 1 SCC 268 : 2003 SCC (Cri) 301] this Court noticed the dominant feature for attracting the applicability of Section 34 IPC and dealt with the case where the contention was that several persons may have similar intention, yet they may not have common intention in furtherance of which they participated in an action. The Court noticed as under: (SCC pp. 275-77, paras 17-22)

> "*17*. In para 44 of the judgment in *Suresh* [*Suresh* v. *State of U.P.*, (2001) 3 SCC 673 : 2001 SCC (Cri) 601] this Court (the majority view) stated: (SCC pp. 689-90)
>
> > '*44*. Approving the judgments of the Privy Council in *Barendra Kumar Ghosh* [*Barendra Kumar Ghosh* v. *King Emperor*, (1924-25) 52 IA 40] and *Mahbub Shah* [*Mahbub Shah* v. *King Emperor*, (1944-45) 72 IA 148] cases a three-Judge Bench of this Court in *Pandurang* v. *State of Hyderabad* [AIR 1955 SC 216 : 1955 Cri LJ 572] held that to attract the applicability of Section 34 of the Code the prosecution is under an obligation to establish that there existed a common intention which requires a prearranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of all. This Court had in mind the ultimate act done in furtherance of the common intention. In the absence of a prearranged plan and thus a common intention even if several persons simultaneously attack a man and each one of them by having his individual intention, namely, the intention to kill and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section. In a case like that each would be individually liable for whatever injury he caused but none could be vicariously convicted for the act of any or the other. The Court emphasised the sharing of the common intention and not the individual acts of the persons constituting the crime. Even at the cost of repetition it has to be emphasised that for proving the common intention it is necessary either to have direct proof of prior concert or proof of circumstances which necessarily lead to that inference and "incriminating facts must be incompatible with the innocence of the accused and incapable of explanation or any other reasonable hypothesis". Common intention, arising at any time prior to the criminal act, as contemplated under Section 34 of the Code, can thus be proved by circumstantial evidence.'

18. In *Suresh* [*Suresh* v. *State of U.P.*, (2001) 3 SCC 673 : 2001 SCC (Cri) 601] this Court while recording the dominant feature for attracting Section 34 has the following to state: (SCC p. 686, para 39)

> '*39*. The dominant feature for attracting Section 34 of the Penal Code (hereinafter referred to as "the Code") is the element of participation in absence resulting in the ultimate "criminal act". The "act" referred to in the later part of Section 34 means the ultimate criminal act with which the accused is charged of sharing the common intention. The accused is, therefore, made responsible for the ultimate criminal act done by several persons in furtherance of the common intention of all. The section does not envisage the separate act by all the accused persons for becoming responsible for the ultimate criminal act. If such an interpretation is accepted, the purpose of Section 34 shall be rendered infructuous.'

19. For true and correct appreciation of legislative intent in the matter of engrafting of Section 34 in the statute book, one needs to have a look into the provision and as such Section 34 is set out as below:

> '**34.*Acts done by several persons in furtherance of common intention***.—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.'

20. A plain look at the statute reveals that the essence of Section 34 is simultaneous consensus of the mind of persons participating in the criminal action to bring about a particular result. It is trite to record that such consensus can be developed at the spot. The observations above obtain support from the decision of this Court in *Ramaswami Ayyangar* v. *State of T.N.* [(1976) 3 SCC 779 : 1976 SCC (Cri) 518]

21. In a similar vein the Privy Council in *Barendra Kumar Ghosh* v. *King Emperor* [*Barendra Kumar Ghosh* v. *King Emperor*, (1924-25) 52 IA 40] stated the true purport of Section 34 as below: (IA p. 51)

> '[T]he words of Section 34 are not to be eviscerated by reading them in this exceedingly limited sense. By Section 33 a criminal act in Section 34 includes a series of acts and, further, "act" includes omission to act, for example, an omission to interfere in order to prevent a murder being done before one's very eyes. By Section 37, when any offence is committed by means of several acts, whoever intentionally cooperates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence. Even if the appellant did nothing as he stood outside the door, it is to be

remembered that in crimes, as in other things, "they also serve who only stand and wait" [John Milton, "On his blindness" (1655)] .'

22. The above discussion in fine thus culminates to the effect that the requirement of a statute is sharing the common intention upon being present at the place of occurrence. Mere distancing himself from the scene cannot absolve the accused—though the same however depends upon the fact situation of the matter under consideration and no rule steadfast can be laid down therefor."

87. Upon analysis of the above judgments and in particular the judgment of this Court in *Dharnidhar* v. *State of U.P.* [(2010) 7 SCC 759 : (2010) 3 SCC (Cri) 491] , it is clear that Section 34 IPC applies where two or more accused are present and two factors must be established i.e. common intention and participation of the accused in the crime. Section 34 IPC, moreover, involves vicarious liability and therefore, if the intention is proved but no overt act was committed, the section can still be invoked. This provision carves out an exception from general law that a person is responsible for his own act, as it provides that a person can also be held vicariously responsible for the act of others, if he had the common intention to commit the act. The phrase "common intention" means a pre-oriented plan and acting in pursuance to the plan, thus, common intention must exist prior to the commission of the act in a point of time. The common intention to give effect to a particular act may even develop on the spur of the moment between a number of persons with reference to the facts of a given case.

88. The ingredients of more than two persons being present, existence of common intention and commission of an overt act stand established in the present case. The statements of the witnesses clearly show that all the eight accused were present at the scene of occurrence. They had demanded money and extended threat of dire consequences, if their demand was not satisfied. Thereafter, they had altercation with the deceased and the deceased was strangulated by the accused persons and then his body was disposed of by cutting it into pieces and packing the same in gunny bags and abandoning the same at a deserted place near the Barrackpore-Dum Dum Highway. Thus, all these acts obviously were in furtherance to the common intention of doing away with the deceased, if he failed to give them Rs 40,000 as demanded. The offence was committed with common intention and collective participation. The various acts were performed by different accused in presence of each one of them. In other words, each of the accused had common intention. Thus, we find that the argument on the application of Section 34 IPC advanced on behalf of the accused is without any substance.

6. This extract is taken from *Jasdeep Singh v. State of Punjab*, (2022) 2 SCC 545 : (2022) 1 SCC (Cri) 526 : 2022 SCC OnLine SC 20 at page 554

18. On a comparison, one could decipher that the phrase "in furtherance of the common intention" was added into the statute book subsequently. It was first coined by Barnes Peacock, C.J. presiding over a Bench of the Calcutta High Court, while delivering its decision in *R.* v. *Gorachand Gope* [*R.* v. *Gorachand Gope*, 1866 SCC OnLine Cal 16] which would have probably inspired and hastened the amendment to Section 34 IPC, made in 1870. The following passage may lend credence to the aforesaid possible view : (SCC OnLine Cal)

> "It does not follow that, because they were present with the intention of taking him away, that they assisted by their presence in the beating of him to such an extent as to cause death. If the object and design of those who seized Amordi was merely to take him to the thannah on a charge of theft, and it was no part of the common design to beat him, they would not all be liable for the consequence of the beating merely because they were present. It is laid down that, when several persons are in company together engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits an offence, the others will not be involved in the guilt, unless the act done was in some manner in furtherance of the common intention. It is also said, although a man is present when a felony is committed, if he take no part in it, and do not act in concert with those who commit it, he will not be a principal merely because he did not endeavour to prevent it or to apprehend the felon. But if several persons go out together for the purpose of apprehending a man and taking him to the thannah on a charge of theft, and some of the party in the presence of the others beat and ill-treat the man in a cruel and violent manner, and the others stand by and look on without endeavouring to dissuade them from their cruel and violent conduct, it appears to me that those who have to deal with the facts might very properly infer that they were all assenting parties and acting in concert, and that the beating was in furtherance of a common design. I do not know what the evidence was, all that I wish to point out is, that all who are present do not necessarily assist by their presence every act that is done in their presence, nor are consequently liable to be punished as principals."

19. Before we deal further with Section 34 IPC, a peep at Section 33 IPC may give a better understanding. Section 33 IPC brings into its fold a series of acts as that of a single one. Therefore, in order to attract Sections 34 to 39 IPC,

a series of acts done by several persons would be related to a single act which constitutes a criminal offence. A similar meaning is also given to the word "omission", meaning thereby, a series of omissions would also mean a single omission. This provision would thus make it clear that an act would mean and include other acts along with it.

20. Section 34 IPC creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one, into others, in pursuance to a common intention. Onus is on the prosecution to prove the common intention to the satisfaction of the court. The quality of evidence will have to be substantial, concrete, definite and clear. When a part of evidence produced by the prosecution to bring the accused within the fold of Section 34 IPC is disbelieved, the remaining part will have to be examined with adequate care and caution, as we are dealing with a case of vicarious liability fastened on the accused by treating him on a par with the one who actually committed the offence.

21. What is required is the proof of common intention. Thus, there may be an offence without common intention, in which case Section 34 IPC does not get attracted.

22. It is a team effort akin to a game of football involving several positions manned by many, such as defender, mid-fielder, striker, and a keeper. A striker may hit the target, while a keeper may stop an attack. The consequence of the match, either a win or a loss, is borne by all the players, though they may have their distinct roles. A goal scored or saved may be the final act, but the result is what matters. As against the specific individuals who had impacted more, the result is shared between the players. The same logic is the foundation of Section 34 IPC which creates shared liability on those who shared the common intention to commit the crime.

23. The intendment of Section 34 IPC is to remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a simultaneous conscious mind of the persons participating in the criminal action of bringing about a particular result. A common intention qua its existence is a question of fact and also requires an act "in furtherance of the said intention". One need not search for a concrete evidence, as it is for the court to come to a conclusion on a cumulative assessment. It is only a rule of evidence and thus does not create any substantive offence.

24. Normally, in an offence committed physically, the presence of an accused charged under Section 34 IPC is required, especially in a case where the act attributed to the accused is one of instigation/exhortation. However,

there are exceptions, in particular, when an offence consists of diverse acts done at different times and places. Therefore, it has to be seen on a case-to-case basis.

25. The word "furtherance" indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion.

26. There may be cases where all acts, in general, would not come under the purview of Section 34 IPC, but only those done in furtherance of the common intention having adequate connectivity. When we speak of intention it has to be one of criminality with adequacy of knowledge of any existing fact necessary for the proposed offence. Such an intention is meant to assist, encourage, promote and facilitate the commission of a crime with the requisite knowledge as aforesaid.

27. The existence of common intention is obviously the duty of the prosecution to prove. However, a court has to analyse and assess the evidence before implicating a person under Section 34 IPC. A mere common intention per se may not attract Section 34 IPC, sans an action in furtherance. There may also be cases where a person despite being an active participant in forming a common intention to commit a crime, may actually withdraw from it later. Of course, this is also one of the facts for the consideration of the court. Further, the fact that all accused charged with an offence read with Section 34 IPC are present at the commission of the crime, without dissuading themselves or others might well be a relevant circumstance, provided a prior common intention is duly proved. Once again, this is an aspect which is required to be looked into by the court on the evidence placed before it. It may not be required on the part of the defence to specifically raise such a plea in a case where adequate evidence is available before the court.

28. The essence and scope of Section 34 IPC can be borne out of excerpts from the following judgments:

28.1.*Suresh* v. *State of U.P.* [*Suresh* v. *State of U.P.*, (2001) 3 SCC 673 : 2001 SCC (Cri) 601] : (SCC pp. 682-83 & 686-87, paras 24 & 40)

> "*24.* Looking at the first postulate pointed out above, the accused who is to be fastened with liability on the strength of Section 34 IPC should have done some act which has nexus with the offence. Such an act need not be very substantial, it is enough that the act is only for guarding the scene for facilitating the crime. The act need not necessarily be overt, even if it is only a covert act it is enough, provided such a covert act is proved to have been done by the co-accused in furtherance of the common intention. Even an omission can, in certain circumstances, amount to an act. This is the

purport of Section 32 IPC. So the act mentioned in Section 34 IPC need not be an overt act, even an illegal omission to do a certain act in a certain situation can amount to an act e.g. a co-accused, standing near the victim face to face saw an armed assailant nearing the victim from behind with a weapon to inflict a blow. The co-accused, who could have alerted the victim to move away to escape from the onslaught deliberately refrained from doing so with the idea that the blow should fall on the victim. Such omission can also be termed as an act in a given situation. Hence an act, whether overt or covert, is indispensable to be done by a co-accused to be fastened with the liability under the section. But if no such act is done by a person, even if he has common intention with the others for the accomplishment of the crime, Section 34 IPC cannot be invoked for convicting that person. In other words, the accused who only keeps the common intention in his mind, but does not do any act at the scene, cannot be convicted with the aid of Section 34 IPC.

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40. Participation in the crime in furtherance of the common intention cannot conceive of some independent criminal act by all accused persons, besides the ultimate criminal act because for that individual act law takes care of making such accused responsible under the other provisions of the Code. The word "act" used in Section 34 denotes a series of acts as a single act. What is required under law is that the accused persons sharing the common intention must be physically present at the scene of occurrence and be shown not to have dissuaded themselves from the intended criminal act for which they shared the common intention. Culpability under Section 34 cannot be excluded by mere distance from the scene of occurrence. The presumption of constructive intention, however, has to be arrived at only when the court can, with judicial servitude, hold that the accused must have preconceived the result that ensued in furtherance of the common intention. A Division Bench of the Patna High Court in *Satrughan Patar* v. *Emperor* [*Satrughan Patar* v. *Emperor*, 1919 SCC OnLine Pat 4 : AIR 1919 Pat 111] held that it is only when a court with some certainty holds that a particular accused must have preconceived or premeditated the result which ensued or acted in concert with others in order to bring about that result, that Section 34 may be applied."

28.2.*Lallan Rai* v. *State of Bihar* [*Lallan Rai* v. *State of Bihar*, (2003) 1 SCC 268 : 2003 SCC (Cri) 301] : (SCC p. 277, para 22)

"*22.* The above discussion in fine thus culminates to the effect that the requirement of statute is sharing the common intention upon being present at the place of occurrence. Mere distancing himself from the scene cannot

absolve the accused — though the same however depends upon the fact situation of the matter under consideration and no rule steadfast can be laid down therefor."

28.3.*Chhota Ahirwar* v. *State of M.P.* [*Chhota Ahirwar* v. *State of M.P.*, (2020) 4 SCC 126] : (SCC p. 133, para 24)

"*24.* Section 34 is only attracted when a specific criminal act is done by several persons in furtherance of the common intention of all, in which case all the offenders are liable for that criminal act in the same manner as the principal offender as if the act were done by all the offenders. This section does not whittle down the liability of the principal offender committing the principal act but additionally makes all other offenders liable. The essence of liability under Section 34 is simultaneous consensus of the minds of persons participating in the criminal act to bring about a particular result, which consensus can even be developed at the spot as held in *Lallan Rai* v. *State of Bihar* [*Lallan Rai* v. *State of Bihar*, (2003) 1 SCC 268 : 2003 SCC (Cri) 301] . There must be a common intention to commit the particular offence. To constitute common intention, it is absolutely necessary that the intention of each one of the accused should be known to the rest of the accused."

28.4.*Barendra Kumar Ghosh* v. *Emperor* [*Barendra Kumar Ghosh* v. *Emperor*, 1924 SCC OnLine PC 49 : (1924-25) 52 IA 40 : AIR 1925 PC 1] : (SCC OnLine PC)

"… the words of Section 34 are not to be eviscerated by reading them in this exceedingly limited sense. By Section 33 a criminal act in Section 34 includes a series of acts and, further, "act" includes omissions to act, for example, an omission to interfere in order to prevent a murder being done before one's very eyes. By Section 37, when any offence is committed by means of several acts whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence. Even if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes as in other things "they also serve who only stand and wait". By Section 38, when several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act. Read together, these sections are reasonably plain. Section 34 deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself, for "that act" and "the act" in the latter part of the section must include the whole action covered by "a

criminal act" in the first part, because they refer to it. Section 37 provides that, when several acts are done so as to result together in the commission of an offence, the doing of any one of them, with an intention to co-operate in the offence (which may not be the same as an intention common to all), makes the actor liable to be punished for the commission of the offence. Section 38 provides for different punishments for different offences as an alternative to one punishment for one offence, whether the persons engaged or concerned in the commission of a criminal act are set in motion by the one intention or by the other."

28.5.*Mahbub Shah* v. *Emperor* [*Mahbub Shah* v. *Emperor*, 1945 SCC OnLine PC 5 : (1944-45) 72 IA 148 : AIR 1945 PC 118] : (SCC OnLine PC)

"… Section 34 lays down a principle of joint liability in the doing of a criminal act. The section does not say "the common intentions of all", nor does it say "an intention common to all." Under the section, the essence of that liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. To invoke the aid of Section 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan."

28.6.*Rambilas Singh* v. *State of Bihar* [*Rambilas Singh* v. *State of Bihar*, (1989) 3 SCC 605 : 1989 SCC (Cri) 659] : (SCC pp. 609-10, para 7)

"*7.* … It is true that in order to convict persons vicariously under Section 34 or Section 149 IPC, it is not necessary to prove that each and every one of them had indulged in overt acts. Even so, there must be material to show that the overt act or acts of one or more of the accused was or were done in furtherance of the common intention of all the accused or in prosecution of the common object of the members of the unlawful assembly."

28.7.*Krishnan* v. *State of Kerala* [*Krishnan* v. *State of Kerala*, (1996) 10 SCC 508 : 1996 SCC (Cri) 1375] : (SCC p. 515, para 15)

"*15.* Question is whether it is obligatory on the part of the prosecution to establish commission of an overt act to press into service Section 34 of the Penal Code. It is no doubt true that court likes to know about an overt act to

decide whether the person concerned had shared the common intention in question. Question is whether an overt act has *always* to be established? I am of the view that establishment of an overt act is not a requirement of law to allow Section 34 to operate inasmuch as this section gets attracted when "a criminal act is done by several persons in furtherance of the common intention of all". What has to be, therefore, established by the prosecution is that all the persons concerned had shared the common intention. Court's mind regarding the sharing of common intention gets satisfied when an overt act is established qua each of the accused. But then, there may be a case where the proved facts would themselves speak of sharing of common intention : *res ipsa loquitur*."

(emphasis in original)

28.8.*Surendra Chauhan* v. *State of M.P.* [*Surendra Chauhan* v. *State of M.P.*, (2000) 4 SCC 110 : 2000 SCC (Cri) 772] : (SCC p. 117, para 11)

"*11*. Under Section 34 a person must be physically present at the actual commission of the crime for the purpose of facilitating or promoting the offence, the commission of which is the aim of the joint criminal venture."

28.9.*Gopi Nath* v. *State of U.P.* [*Gopi Nath* v. *State of U.P.*, (2001) 6 SCC 620] : (SCC p. 625, para 8)

"*8*. … As for the challenge made to the conviction under Section 302 read with Section 34 IPC, it is necessary to advert to the salient principles to be kept into consideration and often reiterated by this Court, in the matter of invoking the aid of Section 34 IPC, before dealing with the factual aspect of the claim made on behalf of the appellant. Section 34 IPC has been held to lay down the rule of joint responsibility for criminal acts performed by plurality of persons who joined together in doing the criminal act, provided that such commission is in furtherance of the common intention of all of them. Even the doing of separate, similar or diverse acts by several persons, so long as they are done in furtherance of a common intention, render each of such persons liable for the result of them all, as if he had done them himself, for the whole of the criminal action — be it that it was not overt or was only a covert act or merely an omission constituting an illegal omission. The section, therefore, has been held to be attracted even where the acts committed by the different confederates are different when it is established in one way or the other that all of them participated and engaged themselves in furtherance of the common intention which might be of a pre-concerted or pre-arranged plan or one manifested or developed at the spur of the moment in the course of the commission of the offence. The common intention or the intention of the individual concerned in furtherance of the

common intention could be proved either from direct evidence or by inference from the acts or attending circumstances of the case and conduct of the parties. The ultimate decision, at any rate, would invariably depend upon the inferences deducible from the circumstances of each case."

28.10.*Ramesh Singh* v. *State of A.P.* [*Ramesh Singh* v. *State of A.P.*, (2004) 11 SCC 305 : 2004 SCC (Cri) Supp 70] : (SCC p. 314, para 12)

"*12*. … As a general principle in a case of criminal liability it is the primary responsibility of the person who actually commits the offence and only that person who has committed the crime can be held guilty. By introducing Section 34 in the Penal Code the legislature laid down the principle of joint liability in doing a criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention, then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share which he had in its perpetration."

28.11.*Nand Kishore* v. *State of M.P.* [*Nand Kishore* v. *State of M.P.*, (2011) 12 SCC 120 : (2012) 1 SCC (Cri) 378] : (SCC pp. 126-27, paras 20-23)

"*20*. A bare reading of this section shows that the section could be dissected as follows:

(*a*) Criminal act is done by several persons;

(*b*) Such act is done in furtherance of the common intention of all; and

(*c*) Each of such persons is liable for that act in the same manner as if it were done by him alone.

In other words, these three ingredients would guide the court in determining whether an accused is liable to be convicted with the aid of Section 34. While first two are the acts which are attributable and have to be proved as actions of the accused, the third is the consequence. Once the criminal act and common intention are proved, then by fiction of law, criminal liability of having done that act by each person individually would arise. The criminal act, according to Section 34 IPC must be done by several persons. The emphasis in this part of the section is on the word "done". It only flows from this that before a person can be convicted by following the provisions of Section 34, that person must have done something along with other persons. Some individual participation in the commission of the criminal act would be the requirement. Every individual member of the entire group

charged with the aid of Section 34 must, therefore, be a participant in the joint act which is the result of their combined activity.

21. Under Section 34, every individual offender is associated with the criminal act which constitutes the offence both physically as well as mentally i.e. he is a participant not only in what has been described as a common act but also what is termed as the common intention and, therefore, in both these respects his individual role is put into serious jeopardy although this individual role might be a part of a common scheme in which others have also joined him and played a role that is similar or different. But referring to the common intention, it needs to be clarified that the courts must keep in mind the fine distinction between "common intention" on the one hand and "mens rea" as understood in criminal jurisprudence on the other. Common intention is not alike or identical to mens rea. The latter may be coincidental with or collateral to the former but they are distinct and different.

22. Section 34 also deals with constructive criminal liability. It provides that where a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it was done by him alone. If the common intention leads to the commission of the criminal offence charged, each one of the persons sharing the common intention is constructively liable for the criminal act done by one of them. (Refer to *Brathi* v. *State of Punjab* [*Brathi* v. *State of Punjab*, (1991) 1 SCC 519 : 1991 SCC (Cri) 203] .)

23. Another aspect which the court has to keep in mind while dealing with such cases is that the common intention or state of mind and the physical act, both may be arrived at the spot and essentially may not be the result of any predetermined plan to commit such an offence. This will always depend on the facts and circumstances of the case,..."

28.12.*Shyamal Ghosh* v. *State of W.B.* [*Shyamal Ghosh* v. *State of W.B.*, (2012) 7 SCC 646 : (2012) 3 SCC (Cri) 685] : (SCC p. 682, para 87)

"*87*. Upon analysis of the above judgments and in particular the judgment of this Court in *Dharnidhar* v. *State of U.P.* [*Dharnidhar* v. *State of U.P.*, (2010) 7 SCC 759 : (2010) 3 SCC (Cri) 491] , it is clear that Section 34 IPC applies where two or more accused are present and two factors must be established i.e. common intention and participation of the accused in the crime. Section 34 IPC, moreover, involves vicarious liability and therefore, if the intention is proved but no overt act was committed, the section can still be invoked. This provision carves out an exception from general law that a person is responsible for his own act, as it provides that a person can also

be held vicariously responsible for the act of others, if he had the common intention to commit the act. The phrase "common intention" means a pre-oriented plan and acting in pursuance to the plan, thus, common intention must exist prior to the commission of the act in a point of time. The common intention to give effect to a particular act may even develop on the spur of the moment between a number of persons with reference to the facts of a given case."

29. The aforesaid principle has also been dealt with in extenso by the Supreme Court in *Virendra Singh* v. *State of M.P.* [*Virendra Singh* v. *State of M.P.*, (2010) 8 SCC 407 : (2010) 3 SCC (Cri) 893] through the following paragraphs : (SCC pp. 413 & 420-21, paras 15-17 & 36-42)

"*15*. Ordinarily, a person is responsible for his own act. A person can also be vicariously responsible for the acts of others if he had the common intention to commit the offence. The words "common intention" implies a prearranged plan and acting in concert pursuant to the plan. It must be proved that the criminal act was done in concert pursuant to the prearranged plan. Common intention comes into force prior to the commission of the act in point of time, which need not be a long gap. Under this section a pre-concert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. Though common intention may develop on the spot, it must, however, be anterior in point of time to the commission of the crime showing a prearranged plan and prior concert. The common intention may develop in course of the fight but there must be clear and unimpeachable evidence to justify that inference. This has been clearly laid down by this Court in *Amrik Singh* v. *State of Punjab* [*Amrik Singh* v. *State of Punjab*, (1972) 4 SCC (N) 42 : 1972 Cri LJ 465] .

16. The essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. Undoubtedly, it is difficult to prove even the intention of an individual and, therefore, it is all the more difficult to show the common intention of a group of persons. Therefore, in order to find whether a person is guilty of common intention, it is absolutely necessary to carefully and critically examine the entire evidence on record. The common intention can be spelt out only from the evidence on record.

17. Section 34 is not a substantive offence. It is imperative that before a man can be held liable for acts done by another under the provisions of this

section, it must be established that there was common intention in the sense of a prearranged plan between the two and the person sought to be so held liable had participated in some manner in the act constituting the offence. Unless common intention and participation are both present, this section cannot apply.

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36. Referring to the facts of this case, the short question which arises for adjudication in this appeal is whether the appellant Virendra Singh can be convicted under Section 302 with the aid of Section 34 IPC. Under the Penal Code, the persons who are connected with the preparation of a crime are divided into two categories : (*1*) those who actually commit the crime i.e. principals in the first degree; and (*2*) those who aid in the actual commission i.e. principals in the second degree. The law does not make any distinction with regard to the punishment of such persons, all being liable to be punished alike.

37. Under the Penal Code, a person is responsible for his own act. A person can also be vicariously responsible for the acts of others if he had a common intention to commit the acts or if the offence is committed by any member of the unlawful assembly in prosecution of the common object of that assembly, then also he can be vicariously responsible. Under the Penal Code, two sections, namely, Sections 34 and 149, deal with the circumstances when a person is vicariously responsible for the acts of others.

38. The vicarious or constructive liability under Section 34 IPC can arise only when two conditions stand fulfilled i.e. the mental element or the intention to commit the criminal act conjointly with another or others; and the other is the actual participation in one form or the other in the commission of the crime.

39. The common intention postulates the existence of a prearranged plan implying a prior meeting of the minds. It is the intention to commit the crime and the accused can be convicted only if such an intention has been shared by all the accused. Such a common intention should be anterior in point of time to the commission of the crime, but may also develop on the spot when such a crime is committed. In most of the cases it is difficult to procure direct evidence of such intention. In most of the cases, it can be inferred from the acts or conduct of the accused and other relevant circumstances. Therefore, in inferring the common intention under Section 34 IPC, the evidence and documents on record acquire a great significance and they have to be very carefully scrutinised by the court. This is

particularly important in cases where evidence regarding development of the common intention to commit the offence graver than the one originally designed, during execution of the original plan, should be clear and cogent.

40. The dominant feature of Section 34 is the element of intention and participation in action. This participation need not in all cases be by physical presence. Common intention implies acting in concert.

41. The essence of Section 34 IPC is a simultaneous consensus of the minds of the persons participating in criminal action to bring about a particular result. Russell in his celebrated book *Russell on Crime*, 12th Edn., Vol. 1 indicates some kind of aid or assistance producing an effect in future and adds that any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken for the purpose of effecting that felony. It was observed by Russell that any act of preparation for the commission of felony is done in furtherance of the act.

42. Section 34 IPC does not create any distinct offence, but it lays down the principle of constructive liability. Section 34 IPC stipulates that the act must have been done in furtherance of the common intention. In order to incur joint liability for an offence there must be a prearranged and premeditated concert between the accused persons for doing the act actually done, though there might not be long interval between the act and the premeditation and though the plan may be formed suddenly. In order that Section 34 IPC may apply, it is not necessary that the prosecution must prove that the act was done by a particular or a specified person. In fact, the section is intended to cover a case where a number of persons act together and on the facts of the case it is not possible for the prosecution to prove as to which of the persons who acted together actually committed the crime. Little or no distinction exists between a charge for an offence under a particular section and a charge under that section read with Section 34."

Common Object Section 149 IPC And Extract Of Case Law

7. This extract is taken from *Masalti v. State of U.P.*, 1964 SCC OnLine SC 30 : (1964) 8 SCR 133 : AIR 1965 SC 202 : (1965) 1 Cri LJ 226

Factual Matrix of the Case : 3. Before dealing with the points raised in these appeals, it is necessary to set out very briefly the relevant facts on which the prosecution case against the appellants and their co-accused substantially rests. The incident which has given rise to the present criminal proceedings took place on 29th November, 1961 in village Bilati Khet in the district of Jhansi at about 8 a.m. It is clear that this village is cursed with keen rivalry and enmity between two factions. One group was led by Gayadin who and four other members of his family were murdered on the said date. All these murders were committed according to the prosecution, by the members of the rival faction amongst whom are included the present appellants before us. Criminal proceedings have continued between the parties for several years almost without interruption. The rival group was led by Laxmi Prasad alias Laxmi Narain who is one of the appellants in this Court. In the last election of the village panchayat Laxmi Prasad succeeded as Pradhan of the village and defeated the candidate set up by Gayadin. On 28th November, 1961, a boundary dispute led to an incident between the members of the two groups. This dispute related to two fields one of which belonged to Gayadin and the other to Laxmi Prasad. Attempts were made to settle this dispute by arbitration, but they failed. It appears that Laxmi Prasad and the members of his group did not agree to submit to any arbitration and they left the meeting called for the purpose threatening that they would see that the matter in dispute between them was settled the next day. It is on this grim note that the incident of the 28th November ended.

4. On the 29th November in the early morning, Bahoran, one of the sons of Gayadin, had gone out to ease himself. He was then carrying a pharasa. In the field he met Laxmi Prasad who attacked him with a *lathi*. Bahoran retaliated this attack with his own pharasa and in the scuffle the nose of Laxmi Prasad was injured and it began to bleed, in fact, a part of the nose was actually cut. Infuriated by this injury, Laxmi Prasad went to his house and collected the whole crowd belonging to his faction. Bahoran eased himself and returned to his house. Soon thereafter he washed his hands and went to the north where his father, brothers and other relations were warming themselves by fire. At that stage, Ram Prasad and Dayaram rushed to the scene and informed them that Laxmi Prasad and his companions were all armed with guns, spears, swords, *gandasas* and *lathis* and were proceeding to the house of Gayadin

determined to kill all the members of Gayadin's family. On receiving this alarming information, Gayadin and his friends and relatives thought of proceeding towards the house of Gayadin. About that time, Laxmi Prasad and his companions reached near the house of Gayadin whereon Laxmi Prasad fired a gun. Bhagwati was carrying a large quantity of cartridges in the folds of his *dhoti* and was instigating Laxmi Prasad to fire at everyone sitting near the fire to the north of the house and to exterminate the family of Gayadin. On hearing this, everyone of the group sitting near the fire rushed into the house and closed the door. The assailants then broke open the doors of the house and entered the sehan of Gayadin. Inside the house the assailants pursued Gayadin on the upper storey and killed him there. Brindaban, Radha Saran and Dayaram were hiding in different rooms of the house the door of these rooms were broken open and all the three of them were shot dead. Bahoran and Shiroman Singh, both sons of Gayadin, escaped through the tiled roof into the cattleshed of Harbans which is situated towards the south-east of Gayadin's house. Shrimon concealed himself in the godown while Bahoran concealed himself in the room in the upper storey where chaff had been stored. After killing Gayadin, Brindaban, Radha Saran and Dayaram, the assailants mercilessly dragged the bodies of the victims out of the house of Gayadin and began their search for Bahoran and other male inmates of the house. When the dead bodies were thus being dragged, Gori Dulaiya wife of Gayadin rushed after the assailants and implored them not to take the dead bodies away. One of the assailants, however, struck her with a stick and she was forced to re-trace her steps. The dead bodies were then dragged towards the east of the house. On reaching the cattleshed of Harbans the assailants broke open the outer door of the house and entered into it. They then injured Harbans and managed to discover Shiroman Singh who was promptly killed. The fire dead bodies were then taken into the field of Bhagwati. In the field, two big piles of cowding cakes were prepared. On one of the piles the bodies of Gayadin, Brindaban, Radha Saran and Dayaram were placed and on the other Shiroman Singh's body was put. Kerosene oil was sprinkled on the bodies and fire was set to them. That in brief, is the story of the gruesome murder, which have given rise to the present proceedings.

RATIO :

15. Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This criticism again is not well-founded. Where a crowd of assailants who are members of an unlawful

assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such complex case is no doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not. In the present case, the High Court has in fact refused to act upon the evidence of Bahoran and Prabhu Dayal, because it appeared to the High Court that the evidence of these two witnesses suffered from serious infirmities.

16. Mr Sawhney also urged that the test applied by the High Court in convicting the appellants is mechanical. He argues that under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. That, no doubt is true; but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable. Therefore, we do not think any grievance can be made by the appellants against the adoption of this test. If at all the prosecution may be entitled to say that the seven accused persons were acquitted because their cases did not satisfy the mechanical test of four witnesses, and if the said test had not been applied, they might as well have been convicted. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. But sometimes it is useful to adopt a test like the one which the High Court has adopted in dealing with the present case.

17. Mr Sawhney then attempted to argue that the High Court failed to give effect to the principles enunciated by this Court in the case of *Baladin* v. *State of Uttar Pradesh* [AIR 1956 SC 181] . In that case, it was observed by Sinha, J., who spoke for the Court that it is well-settled that mere presence in an assembly does not make a person, who is present, a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly, or unless the case falls under Section 142 IPC. The argument is that evidence adduced used by the prosecution in the present case does not assign any specific part to most of the accused persons in relation to any overt act, and so, the High Court was in error in holding that the appellants were members of an unlawful assembly. The observation of which Mr Sawhney relies, prima facie, does seem to support his contention; but, with respect, we ought to add that the said observation cannot be read as laying down a general proposition of law that unless an overt act is proved against a person who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of such an unlawful assembly. In appreciating the effect of the relevant observation on which Mr Sawhney has built his argument, we must bear in mind the facts which were found in that case. It appears that in the case of *Baladin* [AIR 1956 SC 181] the members of the family of the appellants and other residents of the village had assembled together; some of them shared the common object of the unlawful assembly, while others were merely passive witnesses. Dealing with such an assembly, this Court observed that the presence of a person in an assembly of that kind would not necessarily show that he was a member of an unlawful assembly. What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained along with the other members of the assembly the common object as defined by Section 141 IPC Section 142 provides that however, being aware of facts which render any assembly an unlawful assembly intentionally joins that assembly, or continue in it, is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of Section 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to

entertain the common object of the assembly. It is in that context that the observations made by this Court in the case of *Baladin* [AIR 1956 SC 181] assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, Section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly. Therefore, we are satisfied that the observations made in the case of *Baladin* [AIR 1956 SC 181] must be read in the context of the special facts of that case and cannot be treated as laying down an unqualified proposition or law such as Mr Sawhney suggests.

Conclusion: 18. In this case, the High Court has carefully examined the evidence and has made a finding that the whole group of persons who constituted the assembly were members of the faction of Laxmi Prasad and they assembled together, armed with several weapons, because they entertained a common object in pursuance of which the five murders were committed on that day. Therefore, there is no substance in the argument that the conclusion of the High Court that the appellants are guilty of the offences charged is not supported by the principles of law enunciated by this Court in the case of *Baladin* [AIR 1956 SC 181] .

8. This extract is taken from *Joseph v. State*, (2018) 12 SCC 283 : (2018) 3 SCC (Cri) 365 : 2017 SCC OnLine SC 1456 at page 288

11. Before we consider the testimony of the witnesses, let us consider the requirements for invoking the vicarious liability under Section 149 IPC. Section 149 IPC consists of two parts:

11.1. The first part of the section means that there exists common object and that the offence has been committed in prosecution of the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member.

11.2. The second part of the section means that even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 149, if it can be shown that the offence was such as the members knew was likely to be committed.

11.3. What is important in each case is to find out if the offence was committed to accomplish the common object of the assembly or was the one which the members knew to be likely to be committed. Once the court finds that the ingredients of Section 149 IPC are fulfilled, every person who at the time of committing that offence was a member of the assembly has to be held guilty of that offence. After such a finding, it would not be open to the court to see as to who actually did the offensive act nor would it be open to the court to require the prosecution to prove which of the members did which of the above two ingredients. Before recording the conviction under Section 149 IPC, the essential ingredients of Section 141 IPC must be established.

12. The scope of two parts of Section 149 IPC has been explained in *Rajendra Shantaram Todankar* v. *State of Maharashtra* [*Rajendra Shantaram Todankar* v. *State of Maharashtra*, (2003) 2 SCC 257 : 2003 SCC (Cri) 506] , wherein this Court has explained Section 149 and held as under: (SCC pp. 263-64, para 14)

> "*14.* Section 149 of the Penal Code, 1860 provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly

knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence, is a member of the same assembly is guilty of that offence. *The two clauses of Section 149 vary in degree of certainty. The first clause contemplates the commission of an offence by any member of an unlawful assembly which can be held to have been committed in prosecution of the common object of the assembly. The second clause embraces within its fold the commission of an act which may not necessarily be the common object of the assembly, nevertheless, the members of the assembly had knowledge of likelihood of the commission of that offence in prosecution of the common object*. The common object may be commission of one offence while there may be likelihood of the commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. In either case, every member of the assembly would be vicariously liable for the offence actually committed by any other member of the assembly. A mere possibility of the commission of the offence would not necessarily enable the court to draw an inference that the likelihood of commission of such offence was within the knowledge of every member of the unlawful assembly. It is difficult indeed, though not impossible, to collect direct evidence of such knowledge. An inference may be drawn from circumstances such as the background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime. Unless the applicability of Section 149 — either clause — is attracted and the court is convinced, on facts and in law, both, of liability capable of being fastened vicariously by reference to either clause of Section 149 IPC, merely because a criminal act was committed by a member of the assembly every other member thereof would not necessarily become liable for such criminal act. The inference as to likelihood of the commission of the given criminal act must be capable of being held to be within the knowledge of another member of the assembly who is sought to be held vicariously liable for the said criminal act."

(emphasis supplied)

The same principles have been reiterated in *State of Punjab* v. *Sanjiv Kumar* [*State of Punjab* v. *Sanjiv Kumar*, (2007) 9 SCC 791 : (2007) 3 SCC (Cri) 578] .

13. Creation of vicarious liability under Section 149 IPC is well elucidated in *Allauddin Mian* v. *State of Bihar* [*Allauddin Mian* v. *State*

***of Bihar*, (1989) 3 SCC 5** : 1989 SCC (Cri) 490] , wherein this Court held: (SCC pp. 16-17, para 8)

> "*8. … Therefore, in order to fasten vicarious responsibility on any member of an unlawful assembly the prosecution must prove that the act constituting an offence was done in prosecution of the common object of that assembly or the act done is such as the members of that assembly knew to be likely to be committed in prosecution of the common object of that assembly. Under this section, therefore, every member of an unlawful assembly renders himself liable for the criminal act or acts of any other member or members of that assembly provided the same is/are done in prosecution of the common object or is/are such as every member of that assembly knew to be likely to be committed*. This section creates a specific offence and makes every member of the unlawful assembly liable for the offence or offences committed in the course of the occurrence provided the same was/were committed in prosecution of the common object or was/were such as the members of that assembly knew to be likely to be committed. Since this section imposes a constructive penal liability, it must be strictly construed as it seeks to punish members of an unlawful assembly for the offence or offences committed by their associate or associates in carrying out the common object of the assembly."
>
> (emphasis supplied)

The same principles were reiterated in paras 26 and 27 in *Daya Kishan* v. *State of Haryana* [*Daya Kishan* v. *State of Haryana*, (2010) 5 SCC 81 : (2010) 2 SCC (Cri) 1249] and also in *Kuldip Yadav* v. *State of Bihar* [*Kuldip Yadav* v. *State of Bihar*, (2011) 5 SCC 324 : (2011) 2 SCC (Cri) 632] .

14. Whether the members of the unlawful assembly really had the common object to cause the murder of the deceased has to be decided in the facts and circumstances of each case, nature of weapons used by such members, the manner and sequence of attack made by those members on the deceased and the circumstances under which the occurrence took place. It is an inference to be deduced from the facts and circumstances of each case (vide *Lalji* v. *State of U.P.* [*Lalji* v. *State of U.P.*, (1989) 1 SCC 437 : 1989 SCC (Cri) 211] ; *Ranbir Yadav* v. *State of Bihar* [*Ranbir Yadav* v. *State of Bihar*, (1995) 4 SCC 392 : 1995 SCC (Cri) 728] ; *Rachamreddi Chenna Reddy* v. *State of A.P.* [*Rachamreddi Chenna Reddy* v. *State of A.P.*, (1999) 3 SCC 97 : 1999 SCC (Cri) 384]).

9. This extract is taken from *Mahendran v. State of T.N.*, (2019) 5 SCC 67 : (2019) 2 SCC (Cri) 436 : 2019 SCC OnLine SC 251 at page 82

Facts on Section 149 : 46. The prosecution has proved the active role played by Ravi (A-1) and Singaravelu (A-2). The presence of other accused at the time of occurrence as part of the crowd who lynched Murugaiyan also stands proved. There is physical severance on the parts of the body of the deceased. The presence of the appellants was disclosed in the first information report recorded soon after the occurrence. Therefore, there is no reason to hold that the appellant-accused have been implicated falsely. It may be noticed that the appellants are also Backward Class Hindus. The prosecution witnesses PW 1 Ganesamoorthy, PW 2 Raja and PW 3 Ramesh have clearly defined the role of each of the appellants in the occurrence which has taken the life of Murugaiyan. Such statement is corroborated by PW 5 Lakshmi wife of the deceased who deposed that it is Ravi (A-1) and Singaravelu (A-2) who poured kerosene and lit the matchstick respectively along with twenty-thirty other persons. Therefore, the active participation of all the appellants stands proved on record.

Finding of Court 47. We do not find any merit in the argument that all the appellants cannot be said to have common object in view, in the absence of an overt act attributed to the appellants other than Ravi (A-1) and Singaravelu (A-2) by PW 5 Lakshmi. Even PW 5 Lakshmi is categorical that Ravi (A-1) and Singaravelu (A-2) were accompanied by twenty-thirty other people. Though she has not named other accused but the fact that the other accused have been named specifically by PW 1 Ganesamoorthy, PW 2 Raja and PW 3 Ramesh, clearly shows that all the accused came as a group to attack the hut of the deceased and then took his life.

Case laws relied, Distinguished and cited

48. In *Joseph case* [*Joseph* v. *State*, (2018) 12 SCC 283 : (2018) 3 SCC (Cri) 365] as relied upon by the counsel for the appellants, the Court held that if the prosecution succeeds in improving the existence of common object amongst the accused and that the accused actuated the prosecution of common object and knew that the death was likely to be committed, the conviction under Section 302 IPC read with Section 149 is made out. The Court held as under: (SCC p. 288, para 11.3)

"*11.3.* What is important in each case is to find out if the offence was committed to accomplish the common object of the assembly or was the one which the members knew to be likely to be committed. Once the court finds that the ingredients of Section 149 IPC are fulfilled, every person who at the time of committing that offence was a member of the assembly has to be held guilty of that offence. After such a finding, it would not be open to the court to see as to who actually did the offensive act nor would it be open to the court to require the prosecution to prove which of the members did which of the above two ingredients. Before recording the conviction under Section 149 IPC, the essential ingredients of Section 141 IPC must be established."

49. In the above case, the Court held that as to whether the members of the unlawful assembly really had the common object to cause the murder of the deceased has to be decided on the facts and circumstances of each case. The nature of weapons used by such members, the manner and sequence of attack made by those members on the deceased and the circumstances under which the occurrence took place are the factors to decide as to whether the accused had common object. It is an inference to be deduced from the facts and circumstances of each case. The Court held that there is no evidence to prove that Accused 1 to 11 had any common object to commit the murder of Kennedy which activated all of them to join in furtherance of the common object.

51. In *Gangadhar Behera case* [*Gangadhar Behera* v. *State of Orissa*, (2002) 8 SCC 381 : 2003 SCC (Cri) 32] , while considering Section 141 IPC, it was held that common object is not common intention as the mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object. Common object does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view if the five or more act as an assembly to achieve that object. The "common object" of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. The Court while considering the plea that definite roles ascribed to the accused and therefore Section 149 is not applicable was not accepted. It is held as under: (SCC pp. 398-99, paras 25-28)

"*25.* The other plea that definite roles have not been ascribed to the accused and therefore Section 149 is not applicable, is untenable. A four-

Judge Bench of this Court in *Masalti case* [*Masalti* v. *State of U.P.*, AIR 1965 SC 202 : (1965) 1 Cri LJ 226] observed as follows: (AIR p. 210, para 15)

> "*15.* Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This criticism again is not well founded. Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not."

26. To similar effect is the observation in *Lalji* v. *State of U.P.* [*Lalji* v. *State of U.P.*, (1989) 1 SCC 437 : 1989 SCC (Cri) 211] It was observed that: (SCC p. 441, para 8)

> "*8.* … Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before the scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case."

27. In *State of U.P.* v. *Dan Singh* [*State of U.P.* v. *Dan Singh*, (1997) 3 SCC 747 : 1997 SCC (Cri) 469] it was observed that it is not necessary for the prosecution to prove which of the members of the unlawful assembly did which or what act. Reference was made to *Lalji case* [*Lalji* v. *State of U.P.*, (1989) 1 SCC 437 : 1989 SCC (Cri) 211] where it was observed that: (SCC p. 442, para 9)

> "*9.* … While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149."

28. Above being the position, we find no substance in the plea that evidence of eyewitnesses is not sufficient to fasten guilt by application of Section 149. So far as the observations made in *Kamaksha Rai case* [*Kamaksha Rai* v. *State of U.P.*, (1999) 8 SCC 701 : 2000 SCC (Cri) 52] are concerned, it is to be noted that the decision in the said case was rendered in a different factual scenario altogether. There is always peril in treating the words of a judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases (see *Padma Sundara Rao* v. *State of T.N.* [*Padma Sundara Rao* v. *State of T.N.*, (2002) 3 SCC 533]). It is more so in a case where conclusions relate to appreciation of evidence in a criminal trial, as was observed in *Krishna Mochi case* [*Krishna Mochi* v. *State of Bihar*, (2002) 6 SCC 81 : 2002 SCC (Cri) 1220] ."

52. In *Sanjeev Kumar case* [*Sanjeev Kumar Gupta* v. *State of U.P.*, (2015) 11 SCC 69 : (2015) 4 SCC (Cri) 289] , the conviction under Section 302 with the aid of Section 149 was maintained when, it was found that there was no object of killing but only of stopping the deceased and other contestants from elections. It was held that it cannot be ruled out that the common intention to kill might have arisen on the spur of the moment.

53. It is held in *Gangadhar Behera case* [*Gangadhar Behera* v. *State of Orissa*, (2002) 8 SCC 381 : 2003 SCC (Cri) 32] that the words of a judgment cannot be treated as words in a legislative enactment. It is to be remembered that judicial orders are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases, therefore, whether there was common object of the accused in each case would depend upon cumulative effects of the facts of that particular case.

10. This extract is taken from *Vishnu v. State of Rajasthan*, (2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302 : 2009 SCC OnLine SC 1645 at page 486

45. Section 149 of the Penal Code provides for vicarious liability. If an offence is committed by any member of an unlawful assembly in prosecution of a common object thereof or such as the members of that assembly knew that the offence to be likely to be committed in prosecution of that object, every person who at the time of committing that offence was member would be guilty of the offence committed. The common object may be commission of one offence while there may be likelihood of commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. Whether a member of such unlawful assembly was aware as regards likelihood of commission of another offence or not would depend upon the facts and circumstances of each case. Background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime would be relevant factors for drawing an inference in that behalf.

No Common Object

15. This extract is taken from *Mahendran v. State of T.N.*, (2019) 5 SCC 67 : (2019) 2 SCC (Cri) 436 : 2019 SCC OnLine SC 251 at page 83

50. In *Najabhai case* [*Najabhai Desurbhai Wagh* v. *Valerabhai Deganbhai Vagh*, (2017) 3 SCC 261 : (2017) 2 SCC (Cri) 67] , there was no evidence that there was a common object of murder amongst the accused, as Accused 1 was infuriated on the question by the appellant regarding the damage to the electricity pole near his house. There is nothing on record to suggest any previous enmity between the parties. Such judgment is again on the appreciation of the evidence in the case in hand.

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Motive

11. This extract is taken from *Babu Lodhi v. State of U.P.*, (1987) 2 SCC 352 : 1987 SCC (Cri) 371 : 1987 SCC OnLine SC 181 at page 356

10. We shall now deal with the contentions of Mr Kohli in detail. It was argued that the story of the first appellant approaching the deceased for compounding the case against Kallu cannot be believed because Bhagwan Das had not accused Kallu of having committed theft of his gun in the report given by him. It was further stated that even if the first appellant had interceded in the matter, the refusal of Bhagwan Das to compound the offence would have been long forgotten as it had happened one year ago and there was no reason for the appellants to make up a closed incident on the day of occurrence. Even with reference to the incident which had taken place the previous day when the deceased prevented the first appellant from impounding their buffalo the argument was that it was too flimsy a motive for the appellants to commit the murder of Bhagwan Das and Ram Nath. It was lastly stated that in any event Smt Koshi could not have had any personal knowledge about these matters and as such her evidence regarding the motive for the occurrence cannot he given any value. We are not persuaded by any of these contentions. Smt Koshi being the daughter-in-law of Bhagwan Das and the wife of Ram Nath should have certainly known about the theft of the gun and the case pertaining to it as well as the attempt on the previous day to impound the buffalo. Insofar as the adequacy of the motive is concerned, it is not a matter which can be accurately weighed on the scales of a balance. It is quite likely that perhaps there were other factors also for the appellants to have animosity towards the deceased but about which Smt Koshi was not aware of. Over and above all this, it has to be remembered that this is not a case resting on circumstantial evidence but a case where the murders had taken place in broad daylight and had been witnessed by Smt Koshi, Anant Ram, and others. It is needless to say that when there is acceptable evidence of eyewitnesses to the commission of an offence the question of motive cannot loom large. It was also incidentally argued that the prosecution had failed to establish any community of interest between Appellants 1 to 3. But this argument also cannot prevail when the complicity of all the three appellants in the commission of the offences is unmistakably proved by acceptable evidence.

12. This extract is taken from *State of U.P. v. Moti Ram*, (1990) 4 SCC 389 : 1990 SCC (Cri) 585 : 1990 SCC OnLine SC 342 at page 398

21. So far as the motive is concerned, we have clearly stated in the narrative portion of the judgment that the prosecution party and the accused party were on warpath on account of a series of incidents over a considerable length of time. The evidence — both oral and documentary — demonstrably establish that each one was out for the blood of other. The very fact that 13 persons have been done away with by an inhuman, archaic and drastic mode of execution indicates that the culprits whoever they might have been should have been fomenting their hatred and pre-planned to perpetuate this heinous crime on that particular day. According to the prosecution, the perpetrators of the crime were numbering between 80 to 90. When the victims and the witnesses started running away apprehending imminent danger to their lives, they were chased by the perpetrators of the crime and attacked ruthlessly by deadly weapons including firearms. The prosecution case is that except the father of PW 1, Prabhu Nath who was armed with a gun others were armless. PW 1 speaks about the entire motive for the occurrence. On a careful analysis of the evidence, we have no reservation in holding that there was bitter animosity between the prosecution and accused parties and as such there was sufficient motive on the part of the accused party to attack the prosecution party. But at the same time, one should not lose sight of the fact that the prosecution party which was also entertaining the same amount of animosity against the accused party had sufficient motive to implicate all the leading persons of the accused party with the offence in question. As repeatedly said, motive is a double-edged weapon and that it could be made use of by either party to wield that weapon of motive against each other. Therefore, the key question for consideration is whether the prosecution had convincingly and satisfactorily established guilt of all or any of the accused beyond all reasonable doubt by letting in reliable and cogent evidence.

13. This extract is taken from *Prem Kumar v. State of Bihar*, (1995) 3 SCC 228 : 1995 SCC (Cri) 445 at page 232

5. Certain crucial aspects appearing in the case deserve to be highlighted. Tarkeshwar Prasad Singh was shot dead inside the bus bearing Registration No. BRO 3555 at the bus-stop Ketat at about 6.30 p.m. on 13-1-1983. The deceased met with instantaneous death. PW 1, PW 2, PW 5 and PW 8 are the eyewitnesses. PW 8 lodged FIR on the same day at 7.30 p.m. PW 5, a forest guard, was a co-passenger and an independent witness. He also speaks about the incident and he was injured in the act of firing by Accused 1 and 2. The post-mortem report and the evidence of PW 4 proves that the injury resulted due to shots of firearms. There was, admittedly enmity between the family of the informants and that of the accused. Deceased Tarkeshwar Prasad Singh, along with PWs 1, 2, 8 and PWs 5 & 6, and few others was returning in the bus, belonging to Santosh Transport Company, on 13-1-1983, after attending the murder case of Rajan and Bishwanath. The prosecution states that Prem Singh and Ramesh Singh (Accused 1 and 2), who came from behind in the jeep and the car along with few others, fired fatal shots at Tarkeshwar Prasad Singh with their rifles in furtherance of common intention of the other accused persons, which caused the instantaneous death of Tarkeshwar Prasad Singh. The courts below have concurrently held that *the motive* suggested by the prosecution against the accused persons is established. When there is sufficient direct evidence regarding the commission of the offence, the question of motive will not loom large in the mind of the court. It is true that this Court has held in *State of U.P.* v. *Moti Ram* [(1990) 4 SCC 389 : 1990 SCC (Cri) 585] that in a case where the prosecution party and the accused party were in animosity on account of series of incidents over a considerable length of time, the motive is a double-edged weapon and the key question for consideration is whether the prosecution had convincingly and satisfactorily established the guilt of all or any of the accused beyond reasonable doubt by letting in reliable and cogent evidence. Very often, a motive is alleged to indicate the high degree of probability that the offence was committed by the person who was prompted by the motive. In our opinion, in a case when motive alleged against the accused is fully established, it provides a foundational material to connect the chain of circumstances. We hold that if the motive is proved or established, *it affords a key or pointer*, to scan the evidence in the case, *in that perspective* and as a satisfactory circumstance of corroboration. It is a very relevant and important aspect — (*a*) to highlight the intention of the accused and (*b*) the approach to be made in appreciating the totality of the

circumstances including the evidence disclosed in the case. The relevance of motive and the importance or value to be given to it are tersely stated by Shamsul Huda in delivering the *Tagore Law Lectures (1902) — The Principles of the Law of Crimes in British India*, at page 176, as follows:

> "But proof of the existence of a motive is not necessary for a conviction for any offence. But where the motive is proved it is evidence of the evil intent and is also relevant to show that the person who had the motive to commit a crime actually committed it, although *such evidence alone would not ordinarily be* sufficient. Under Section 8 of the Evidence Act any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact."
>
> (emphasis supplied)

In these circumstances, the only crucial factor that falls for determination is to see *whether satisfactory evidence* was available on record for bringing home the guilt of the appellants/accused persons. We shall discuss in brief the evidence of the four eyewitnesses PWs 1, 2, 5 and 8 to the extent it is necessary to show how far the prosecution has established its case.

14. This extract is taken from *Dharnidhar v. State of U.P.*, (2010) 7 SCC 759 : (2010) 3 SCC (Cri) 491 : 2010 SCC OnLine SC 708 at page 770

16. The second contention raised on behalf of the appellants is that the prosecution has failed to prove any motive for the commission of the crime, and in absence of clear and emphatic motive, the order of conviction is liable to be set aside and the accused are entitled to acquittal. This submission, firstly, is based on misreading of the record and secondly, it is devoid of any merit. It has come on record that one Umrao, father of the appellant Ram Sanehi was murdered. Bahadur Singh (the deceased) was prosecuted for the said murder. Pyare Lal (the deceased), father of Bahadur Singh, was doing pairvi on behalf of and along with Bahadur Singh, in which he was finally acquitted. It is also the case of the prosecution that there was enmity between these persons and all the other appellants and the family of Ram Sanehi, the appellant. The evidence of PW 1, PW 2 and PW 3 indicates that the relations between these two families were quite strained, and the way the crime has been committed clearly indicates that the family of Ram Sanehi would have been unhappy with the acquittal of Bahadur Singh in that murder case. This itself indicates some kind of motive for committing the crime in question.

17. Be that as it may, it is not always necessary for the prosecution to establish a definite motive for the commission of the crime. It will always be relatable to the facts and circumstances of a given case. It will not be correct to say as an absolute proposition of law, that the existence of a strong or definite motive is a sine qua non to holding an accused guilty of a criminal offence. It is not correct to say that absence of motive essentially results in the acquittal of an accused if he is otherwise found to be guilty. In *Babu Lodhi* v. *State of U.P.* [(1987) 2 SCC 352 : 1987 SCC (Cri) 371] , this Court took the view that insofar as the adequacy of motive is concerned, it is not a matter which can be accurately weighed on the scales of a balance.

18. In *Prem Kumar* v. *State of Bihar* [(1995) 3 SCC 228 : 1995 SCC (Cri) 445] the Court discussed the concept of motive as applicable to Indian criminal jurisprudence and held as under : (SCC p. 233, para 5)

> "*5.* ... The courts below have concurrently held that *the motive* suggested by the prosecution against the accused persons is established. When there is sufficient direct evidence regarding the commission of the offence, the question of motive will not loom large in the mind of the court. It is true that this Court has held in *State of U.P.* v. *Moti Ram* [(1990) 4 SCC 389 : 1990 SCC (Cri) 585] that in a case where the prosecution party and the accused party were in animosity on account of series of incidents over a considerable

length of time, the motive is a double-edged weapon and the key question for consideration is whether the prosecution had convincingly and satisfactorily established the guilt of all or any of the accused beyond reasonable doubt by letting in reliable and cogent evidence. Very often, a motive is alleged to indicate the high degree of probability that the offence was committed by the person who was prompted by the motive. In our opinion, in a case when motive alleged against the accused is fully established, it provides a foundational material to connect the chain of circumstances. We hold that if the motive is proved or established, *it affords a key or pointer*, to scan the evidence in the case, *in that perspective* and as a satisfactory circumstance of corroboration. It is a very relevant and important aspect — (*a*) to highlight the intention of the accused, and (*b*) the approach to be made in appreciating the totality of the circumstances including the evidence disclosed in the case. The relevance of motive and the importance or value to be given to it are tersely stated by Shamsul Huda in delivering the *Tagore Law Lectures (1902)—The Principles of the Law of Crimes in British India*, at p. 176, as follows:

> 'But proof of the existence of a motive is not necessary for a conviction for any offence. But where the motive is proved it is evidence of the evil intent and is also relevant to show that the person who had the motive to commit a crime actually committed it, although *such evidence alone would not ordinarily be* sufficient. Under Section 8 of the Evidence Act any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.' "
>
> (emphasis in original)

19. However, in cases which are entirely or mainly based upon and rest on circumstantial evidence, motive can have greater relevancy or significance (*Babu Lodhi* [(1987) 2 SCC 352 : 1987 SCC (Cri) 371] and *Prem Kumar case* [(1995) 3 SCC 228 : 1995 SCC (Cri) 445]). But it is equally true that when positive evidence against the accused is clear in relation to the offence, motive is not of much importance. Mere absence of motive, even if assumed, will not per se entitle the accused to acquittal, if otherwise, the commission of the crime is proved by cogent and reliable evidence (*State of Punjab* v. *Kuljit Singh* [(2003) 2 RCR (Cri) 629 (P&H)]).

20. Significance of relevancy of motive would primarily depend upon the facts and circumstances of a given case. In the case in hand, there are eyewitnesses whose version is supported by expert and other evidence. Their statements find corroboration and in fact, they completely fit in with the case put forward by the prosecution and there is hardly any occasion for the Court

to doubt the version of the prosecution. Firstly, we find that there exists some motive for Ram Sanehi and the other appellants, who are his family members, to commit the crime, but in case of direct and clear evidence, there is no need for the Court to attach undue emphasis or importance to the motive behind the crime. The principles aforestated would clearly apply to the facts of the present case and we cannot find fault in the concurrent judgments, which is the subject-matter of the present appeals.

Ratio Expert Opinion

1. This extract is taken from *State of H.P. v. Jai Lal*, (1999) 7 SCC 280 : 1999 SCC (Cri) 1184 : 1999 SCC OnLine SC 885 at page 285

17. Section 45 of the Evidence Act which makes opinion of experts admissible lays down that when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

18. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions.

19. The report submitted by an expert does not go in evidence automatically. He is to be examined as a witness in court and has to face cross-examination. This Court in the case of *Hazi Mohammad Ekramul Haq* v. *State of W.B.* [AIR 1959 SC 488 : 1959 Supp (1) SCR 922] concurred with the finding of the High Court in not placing any reliance upon the evidence of an expert witness on the ground that his evidence was merely an opinion unsupported by any reasons.

2. This extract is taken from *Malay Kumar Ganguly v. Dr. Sukumar Mukherjee*, (2009) 9 SCC 221 : (2009) 3 SCC (Civ) 663 : (2010) 2 SCC (Cri) 299 : 2009 SCC OnLine SC 1472 at page 248

C. DETERMINATION OF CERTAIN SALIENT POINTS OF LAW AND FACTS

C.1. Expert evidence

33. Section 45 of the Evidence Act, 1872 speaks of expert evidence. It reads as under:

> "45. *Opinions of experts*.—When the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts.
>
> Such persons are called experts.
>
> *Illustrations*
>
> (*a*) The question is, whether the death of *A* was caused by poison.
>
> The opinions of experts as to the symptoms produced by the poison by which *A* is supposed to have died, are relevant.
>
> (*b*) The question is, whether *A*, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.
>
> The opinions of experts upon the question whether the symptoms exhibited by *A* commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or knowing that what they do is either wrong or contrary to law, are relevant.
>
> (*c*) The question is, whether a certain document was written by *A*. Another document is produced which is proved or admitted to have been written by *A*.
>
> The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant."

A court is not bound by the evidence of the experts which is to a large extent advisory in nature. The court must derive its own conclusion upon considering the opinion of the experts which may be adduced by both sides, cautiously, and upon taking into consideration the authorities on the point on which he deposes.

34. Medical science is a difficult one. The court for the purpose of arriving at a decision on the basis of the opinions of experts must take into consideration the difference between an "expert witness" and an "ordinary witness". The opinion must be based on a person having special skill or knowledge in medical science. It could be admitted or denied. Whether such an evidence could be admitted or how much weight should be given thereto, lies within the domain of the court. The evidence of an expert should, however, be interpreted like any other evidence. This Court in *State of H.P.* v. *Jai Lal* [(1999) 7 SCC 280 : 1999 SCC (Cri) 1184] held as under: (SCC pp. 285-86, paras 17-19)

> "*17*. Section 45 of the Evidence Act which makes opinion of experts admissible lays down that when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.
>
> *18*. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions.
>
> *19*. The report submitted by an expert does not go in evidence automatically. He is to be examined as a witness in court and has to face cross-examination. This Court in *Haji Mohammad Ekramul Haq* v. *State of W.B.* [AIR 1959 SC 488] concurred with the finding of the High Court in not placing any reliance upon the evidence of an expert witness on the ground that his evidence was merely an opinion unsupported by any reasons."

3. This extract is taken from *Ramesh Chandra Agrawal v. Regency Hospital Ltd.*, (2009) 9 SCC 709 : (2009) 3 SCC (Civ) 840 : 2009 SCC OnLine SC 1625 at page 714

Expert opinion

16. The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the layperson. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge. Thus cases where the science involved, is highly specialised and perhaps even esoteric, the central role of an expert cannot be disputed. The other requirements for the admissibility of expert evidence are:

(*i*) that the expert must be within a recognised field of expertise,

(*ii*) that the evidence must be based on reliable principles, and

(*iii*) that the expert must be qualified in that discipline.

(See *Errors, Medicine and the Law*, Alan Merry and Alexander McCall Smith, 2001 Edn., Cambridge University Press, p. 178.)

17. Section 45 of the Evidence Act, 1872 speaks of expert evidence. It reads as under:

"45. *Opinions of experts.*—When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts.

Such persons are called experts.

Illustrations

(*a*) The question is, whether the death of *A* was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(*b*) The question is, whether *A*, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by *A* commonly show unsoundness of mind, and whether such

unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(*c*) The question is, whether a certain document was written by *A*. Another document is produced which is proved or admitted to have been written by *A*.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant."

18. The importance of the provision has been explained in *State of H.P.* v. *Jai Lal* [(1999) 7 SCC 280 : 1999 SCC (Cri) 1184] . It is held, that, Section 45 of the Evidence Act which makes opinion of experts admissible lays down, that, when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

19. It is not the province of the expert to act as Judge or Jury. It is stated in *Titli* v. *Alfred Robert Jones* [AIR 1934 All 273] that the real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials.

20. An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. (See *Malay Kumar Ganguly* v. *Dr. Sukumar Mukherjee* [(2009) 9 SCC 221 : (2009) 10 Scale 675] , SCC p. 249, para 34.)

21. In *State of Maharashtra* v. *Damu* [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088 : AIR 2000 SC 1691] , it has been laid down that without examining the expert as a witness in court, no reliance can be placed on an opinion alone. In this regard, it has been observed in *State (Delhi Admn.)* v. *Pali Ram* [(1979) 2 SCC 158 : 1979 SCC (Cri) 389 : AIR 1979 SC 14] that "no expert would claim today that he could be absolutely sure that his opinion was correct, expert depends to a great extent upon the materials put before him and the nature of question put to him".

22. In the article "Relevancy of Expert's Opinion" it has been opined that the value of expert opinion rests on the facts on which it is based and his competency for forming a reliable opinion. The evidentiary value of the opinion of an expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Thus the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be crosschecked. Therefore, the emphasis has been on the data on the basis of which opinion is formed. The same is clear from the following inference:

> "Mere assertion without mentioning the data or basis is not evidence, even if it comes from an expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value."

4. This extract is taken from *Dayal Singh v. State of Uttaranchal*, (2012) 8 SCC 263 : (2012) 4 SCC (Civ) 424 : (2012) 3 SCC (Cri) 838 : (2012) 2 SCC (L&S) 583 : 2012 SCC OnLine SC 580 at page 283

35. This brings us to an ancillary issue as to how the Court would appreciate the evidence in such cases. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour of the accused. Of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. In *Kamaljit Singh* v. *State of Punjab* [(2003) 12 SCC 155 : 2004 SCC (Cri) Supp 343 : 2004 Cri LJ 28] , the Court, while dealing with the discrepancies between ocular and medical evidence, held: (SCC p. 159, para 8)

> "*8.* It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out."

36. Where the eyewitness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive.

> "*34.* … The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by [examining] the terms of science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion, because once the expert's opinion is accepted, it is not the opinion of the medical officer but [that] of the court."

(See *Madan Gopal Kakkad* v. *Naval Dubey* [(1992) 3 SCC 204 : 1992 SCC (Cri) 598 : (1992) 2 SCR 921] , SCC pp. 221-22, para 34.)

37. Profitably, reference to the value of an expert in the eye of the law can be assimilated as follows:

"The essential principle governing expert evidence is that the expert is not only to provide reasons to support his opinion but the result should be directly demonstrable. The court is not to surrender its own judgment to that of the expert or delegate its authority to a third party, but should assess his evidence like any other evidence.

If the report of an expert is slipshod, inadequate or cryptic and the information of similarities or dissimilarities is not available in his report and his evidence in the case, then his opinion is of no use. It is required of an expert whether a government expert or private, if he expects, his opinion to be accepted to put before the court the material which induces him to come to his conclusion so that the court though not an expert, may form its own judgment on that material. If the expert in his evidence as a witness does not place the whole lot of similarities or dissimilarities, etc., which influence his mind to lead him to a particular conclusion which he states in the court then he fails in his duty to take the court into confidence. The court is not to believe the ipse dixit of an expert.

Indeed the value of the expert evidence consists mainly on the ability of the witness by reason of his special training and experience to point out the court such important facts as it otherwise might fail to observe and in so doing the court is enabled to exercise its own view or judgment respecting the cogency of reasons and the consequent value of the conclusions formed thereon. The opinion is required to be presented in a convenient manner and the reasons for a conclusion based on certain visible evidence, properly placed before the Court. In other words the value of expert evidence depends largely on the cogency of reasons on which it is based." [See *Forensic Science in Criminal Investigation & Trial* (4th Edn.), by B.R. Sharma.]

38. The purpose of expert testimony is to provide the trier of fact with useful, relevant information. The overwhelming majority rule in the United States, is that an expert need not be a member of a learned profession. Rather, experts in the United States have a wide range of credentials and testify regarding a tremendous variety of subjects based on their skills, training, education or experience. The role of the expert is to apply or supply specialised, valuable knowledge that lay jurors would not be expected to possess. An expert may present the information in a manner that would be unacceptable with an ordinary witness. The common law tried to strike a balance between the benefits and dangers of expert testimony by allowing expert testimony to be admitted only if the testimony were particularly important to aiding the trier of fact. Even in the United States, if the helpfulness of expert testimony is

substantially outweighed by the risk of unfair prejudice, confusion or waste of time, then the testimony should be excluded under the relevant Rules, and State equally balanced. Expert testimony on any issue of fact and significance of its application has been doubted by the scholars in the United States. Even under the law prevalent in that country, the opinion of an expert has to be scientific, specific and experience based. Conflict in expert opinions is a well-prevalent practice there. While referring to such incidence David H. Kaye and other authors in *The New Wigmore: A Treatise on Evidence—Expert Evidence* (2004 Edn.) opined as under:

> "The District Court opinion reveals that one pharmacologist asserted 'that Danocrine more probably than not caused plaintiff's death from pulmonary hypertension,' but it describes the reasoning behind this opinion in the vaguest of terms, referring only to 'extensive education and training in pharmacology' and an unspecified 'scientific technique' that 'relied upon epidemiological, clinical and animal studies, as well as plaintiff's medical records and medical history…'. The nature of these studies and their relationship to the patient's records is left unstated. The District Court incanted the same mantra to justify admitting the remaining testimony. It asserted that the other experts 'similarly base their testimony upon a careful review of medical literature concerning Danocrine and pulmonary hypertension, and plaintiff's medical records and medical history'.
>
> The court of appeals [*Zuchowicz* v. *United States*, 140 F 3d 381 (2d Cir CA 1998)] elaborated on the testimony of two of the experts. The physician 'was confident to a reasonable medical certainty that the Danocrine caused Mrs Zuchowicz's PPH' because of 'the temporal relationship between the overdose and the start of the disease and the differential etiology method of excluding other possible causes'. Yet the 'differential etiology' here was barely more than a differential diagnosis of PPH. The causes of PPH are generally unknown and it appears that the only other putative alternative causes considered were drugs other than Danocrine. It is not at all clear that such a 'differential etiology' is adequate to support a conclusion of causation to any kind of a 'medical certainty'. The pharmacologist, not being a medical doctor, testified 'to a reasonable degree of scientific certainty … [that] the overdose of Danocrine, more likely than not, caused PPH…'. He postulated a mechanism by which this might have occurred: '(*1*) a decrease in estrogen; (*2*) hyperinsulinemia, in which abnormally high levels of insulin circulate in the body; and (*3*) increase in free testosterone and progesterone … that … taken together, likely caused a dysfunction of the endothelium leading to PPH'.

In sum, plaintiff's experts did not know what else might have caused the hypertension, and they offered a conjecture as to a causal chain leading from the drug to the hypertension. This logic would be more than enough to justify certain clinical recommendations—the advice to Mrs Zuchowicz to discontinue the medication, for example. But is it enough to allow an expert not merely to testify to a reasonable diagnosis of PPH, or 'unexplained pulmonary hypertension', as the condition also is known, but also be able to propound a novel explanation that has yet to be verified, even in an animal model?"

39. The Indian law on expert evidence does not proceed on any significantly different footing. The skill and experience of an expert is the ethos of his opinion, which itself should be reasoned and convincing. Not to say that no other view would be possible, but if the view of the expert has to find due weightage in the mind of the court, it has to be well authored and convincing. Dr C.N. Tewari was expected to prepare the post-mortem report with appropriate reasoning and not leave everything to the imagination of the Court. He created a serious doubt as to the very cause of death of the deceased. His report apparently shows an absence of skill and experience and was, in fact, a deliberate attempt to disguise the investigation.

40. We really need not reiterate various judgments which have taken the view that the purpose of an expert opinion is primarily to assist the court in arriving at a final conclusion. Such report is not binding upon the court. The court is expected to analyse the report, read it in conjunction with the other evidence on record and then form its final opinion as to whether such report is worthy of reliance or not. Just to illustrate this point of view, in a given case, there may be two diametrically contradictory opinions of handwriting experts and both the opinions may be well reasoned. In such case, the court has to critically examine the basis, reasoning, approach and experience of the expert to come to a conclusion as to which of the two reports can be safely relied upon by the court. The assistance and value of expert opinion is indisputable, but there can be reports which are, ex facie, incorrect or deliberately so distorted as to render the entire prosecution case unbelievable. But if such eyewitnesses and other prosecution evidence are trustworthy, have credence and are consistent with the eye-version given by the eyewitnesses, the court will be well within its jurisdiction to discard the expert opinion. An expert report, duly proved, has its evidentiary value but such appreciation has to be within the

limitations prescribed and with careful examination by the court. A complete contradiction or inconsistency between the medical evidence and the ocular evidence on the one hand and the statement of the prosecution witnesses between themselves on the other, may result in seriously denting the case of the prosecution in its entirety but not otherwise.

5. This extract is taken from *State of Karnataka v. J. Jayalalitha*, (2017) 6 SCC 263 : (2017) 3 SCC (Cri) 1 : (2017) 2 SCC (L&S) 179 : (2017) 392 ITR 97 : (2017) 201 Comp Cas 230 : 2017 SCC OnLine SC 134 at page 534

Probative worth of expert evidence

254. In re the probative worth of experts evidence, a host of decisions in *Mahmood* v. *State of U.P.* [*Mahmood* v. *State of U.P.*, (1976) 1 SCC 542 : 1976 SCC (Cri) 72] , *Chatt Ram* v. *State of Haryana* [*Chatt Ram* v. *State of Haryana*, (1980) 1 SCC 460 : 1980 SCC (Cri) 243] , *State of H.P.* v. *Jai Lal* [*State of H.P.* v. *Jai Lal*, (1999) 7 SCC 280 : 1999 SCC (Cri) 1184] , *Ramesh Chandra Agrawal* v. *Regency Hospital Ltd.* [*Ramesh Chandra Agrawal* v. *Regency Hospital Ltd.*, (2009) 9 SCC 709 : (2009) 3 SCC (Civ) 840] and *Dayal Singh* v. *State of Uttaranchal* [*Dayal Singh* v. *State of Uttaranchal*, (2012) 8 SCC 263 : (2012) 4 SCC (Civ) 424 : (2012) 3 SCC (Cri) 838 : (2012) 2 SCC (L&S) 583] have been cited at the Bar. As all these decisions postulate identical propositions, the gravamen of these authorities would only be referred to avoid inessential prolixity. These renderings explicate that an expert is one who has made a subject upon which he speaks or renders his opinion, a matter of particular study, practice or observation and has a special knowledge thereof. His knowledge must be within the recognised field of expertise and he essentially has to be qualified in that discipline of study. It has been propounded that an expert is not a witness of fact and his evidence is really of an advisory character and it is his duty to furnish to the judge/court the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge/court to form his/its independent judgment by the application of such criteria to the facts proved by the evidence. Referring to Section 45 of the Evidence Act, 1872, which makes the opinion of an expert admissible, it has been underlined that not only an expert must possess necessary special skill and experience in his discipline, his opinion must be backed by reason and has to be examined and cross-examined to ascertain the probative worth thereof. That it would be unsafe to convict the person charged on the basis of expert opinion without any independent corroboration has also been indicated. It has been held that the evidentiary value of the opinion of an expert depends on the facts upon which it is based and also the validity of the process by which the conclusion has been reached. The decisions underline that the court is not to subjugate its own judgment to that of the expert or delegate its authority to a third party but ought to assess the evidence of the expert like any other evidence.

6. This extract is taken from *Pattu Rajan v. State of T.N.*, (2019) 4 SCC 771 : (2019) 2 SCC (Cri) 354 : 2019 SCC OnLine SC 444 at page 790

48. Shri Sushil Kumar also argued that a DNA test should have been conducted in order to identify the dead body, and identification merely on the basis of a superimposition test, which is not a tangible piece of evidence, may not be proper.

49. One cannot lose sight of the fact that DNA evidence is also in the nature of opinion evidence as envisaged in Section 45 of the Evidence Act. Undoubtedly, an expert giving evidence before the court plays a crucial role, especially since the entire purpose and object of opinion evidence is to aid the court in forming its opinion on questions concerning foreign law, science, art, etc., on which the court might not have the technical expertise to form an opinion on its own. In criminal cases, such questions may pertain to aspects such as ballistics, fingerprint matching, handwriting comparison, and even DNA testing or superimposition techniques, as seen in the instant case.

50. The role of an expert witness rendering opinion evidence before the Court may be explained by referring to the following observations of this Court in *Ramesh Chandra Agrawal* v. *Regency Hospital Ltd.* [*Ramesh Chandra Agrawal* v. *Regency Hospital Ltd.*, (2009) 9 SCC 709 : (2009) 3 SCC (Civ) 840] : (SCC p. 714, para 16)

> "*16.* The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the lay person. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge. *Thus cases where the science involved is highly specialised and perhaps even esoteric, the central role of an expert cannot be disputed*."

51. Undoubtedly, it is the duty of an expert witness to assist the Court effectively by furnishing it with the relevant report based on his expertise along with his reasons, so that the Court may form its independent judgment by assessing such materials and reasons furnished by the expert for coming to an appropriate conclusion. Be that as it may, it cannot be forgotten that opinion evidence is advisory in nature, and the Court is not bound by the evidence of the experts. [See *State (UT of Delhi)* v. *Pali Ram* [*State (UT of Delhi)* v. *Pali Ram*, (1979) 2 SCC 158 : 1979 SCC (Cri) 389] ; *State of H.P.* v. *Jai Lal* [*State of H.P.* v. *Jai Lal*, (1999) 7 SCC 280 : 1999 SCC (Cri) 1184] ; *Baso Prasad* v. *State*

of Bihar [*Baso Prasad* v. *State of Bihar*, (2006) 13 SCC 65 : (2007) 2 SCC (Cri) 567] ; *Ramesh Chandra Agrawal* v. *Regency Hospital Ltd.* [*Ramesh Chandra Agrawal* v. *Regency Hospital Ltd.*, (2009) 9 SCC 709 : (2009) 3 SCC (Civ) 840] and *Malay Kumar Ganguly* v. *Sukumar Mukherjee* [*Malay Kumar Ganguly* v. *Sukumar Mukherjee*, (2009) 9 SCC 221 : (2009) 3 SCC (Civ) 663 : (2010) 2 SCC (Cri) 299] .]

(emphasis supplied)

52. Like all other opinion evidence, the probative value accorded to DNA evidence also varies from case to case, depending on the facts and circumstances and the weight accorded to other evidence on record, whether contrary or corroborative. This is all the more important to remember, given that even though the accuracy of DNA evidence may be increasing with the advancement of science and technology with every passing day, thereby making it more and more reliable, we have not yet reached a juncture where it may be said to be infallible. Thus, it cannot be said that the absence of DNA evidence would lead to an adverse inference against a party, especially in the presence of other cogent and reliable evidence on record in favour of such party.

7. This extract is taken from *State of M.P. v. Paltan Mallah*, (2005) 3 SCC 169 : 2005 SCC (Cri) 674 : 2005 SCC OnLine SC 147 at page 184

36. The evidence of PW 159 and his report are seriously challenged by the counsel for the respondent-accused. He extensively referred to the textbooks written by foreign ballistic experts such as Burrad, Hatcher and Taylor. It was argued that in the instant case, the weapon was a country-made pistol and the barrel was not grooved and there was absolutely no question of any identifiable marking coming on the pellets to enable the expert to give any opinion whatsoever. Reliance was placed by him on the observations of this Court in *Chatar Singh* v. *State of Haryana* [(1976) 2 SCC 263] wherein this Court relied on the opinion of J.S. Hatcher in his *Text Book of Fire Arms Investigation* and held that: (SCC pp. 266-67, para 9)

> "Unless there were rifling marks in the bullets and which were not defaced by the entry in the bodies of the victims, no expert could ordinarily and generally give an opinion."

It was also pointed out that in the case of country-made pistol, it was difficult to assume that the ballistic expert could have found identifying marks on the pellets. The evidence given by the ballistic expert was questioned in great detail. He was cross-examined extensively by counsel for all the accused. He deposed in the cross-examination that when these pellets are fired, then they among themselves would press each other inside the barrel (on inside parts) their effect could be on one side of inner side of barrel, they will take special individual mark on them and these marks will be in the form of a line on the pellets and if the barrel is tight then pellets will be more rubbed, and on more parts, lines will come. If barrel is tight then half part of the pellets is pressed and the barrel was nicely tight and the witness himself said that in the test-fire which he did on all of the six pellets good marks of barrel had come. He had also stated that he had taken microphotograph of only one pellet and had compared all pellets but he had not made any separate comparative record or photograph.

37. It was argued that microphotographs were not produced and mere observation by the expert was not sufficient and that he should have produced these photographs. We do not think that there was any such necessity to produce the microphotographs when the expert has given convincing reasons to support his opinion. This Court in *Ramanathan* v. *State of T.N.* [(1978) 3 SCC 86 : 1978 SCC (Cri) 341] held that the production of such photographs is not necessary and such a plea was rejected. In para 26, it was held as under: (SCC p. 99)

"*26*. It is true that there has been considerable difference of opinion amongst investigators regarding the use of photographs in a court for the purpose of illustrating the matching of the markings, and while it may be that microscopic photographs, when taken with due care and in the best of conditions, may enable the evidence to be placed on the record in a visible form, it cannot be denied that a court would not be justified in rejecting the opinion of an expert who has examined the markings under the comparison microscope simply for the reason that he has not thought it necessary to take the photographs. It is therefore not possible for us to reject the evidence of Ramiah (PW 23) who has categorically stated that he had compared the land and groove markings on the bullets under a comparison microscope, simply because he did not think it necessary to take the photographs."

8. This extract is taken from *Gulab v. State of U.P.*, (2022) 12 SCC 677 : 2021 SCC OnLine SC 1211 at page 689

Failure to recover weapon and non examination of ballistic expert

20. The deceased had sustained a gunshot injury with a point of entry and exit. The non-recovery of the weapon of offences would therefore not discredit the case of the prosecution which has relied on the eyewitness accounts of PWs 1, 2 and 3. In *Sukhwant Singh* v. *State of Punjab* [*Sukhwant Singh* v. *State of Punjab*, (1995) 3 SCC 367 : 1995 SCC (Cri) 524] , Dr A.S. Anand, J. (as the learned Chief Justice then was) speaking for a two-Judge Bench held : (SCC p. 377, para 21)

> "*21.* There is yet another infirmity in this case. We find that whereas an empty [*sic*] had been recovered by PW 6, ASI Raghubir Singh from the spot and a pistol along with some cartridges were seized from the possession of the appellant at the time of his arrest, yet the prosecution, for reasons best known to it, did not send the recovered empty [*sic*] and the seized pistol to the ballistic expert for examination and expert opinion. Comparison could have provided link evidence between the crime and the accused. This again is an omission on the part of the prosecution for which no explanation has been furnished either in the trial court or before us. *It hardly needs to be emphasised that in cases where injuries are caused by firearms, the opinion of the ballistic expert is of a considerable importance where both the firearm and the crime cartridge are recovered during the investigation to connect an accused with the crime. Failure to produce the expert opinion before the trial court in such cases affects the creditworthiness of the prosecution case to a great extent.*"
>
> (emphasis supplied)

The above extract which has been relied upon by the learned counsel for the appellant emphasises that in a case where injury has been caused by a firearm, the opinion of the ballistic expert is of considerable importance where *both* the firearm and the crime cartridge had been recovered during the investigation. Failure to produce the expert opinion in such a case affects the creditworthiness of the prosecution case.

21. However, a three-Judge Bench of this Court in *Gurucharan Singh* v. *State of Punjab* [*Gurucharan Singh* v. *State of Punjab*, (1963) 3 SCR 585 : AIR 1963 SC 340] , has analysed the precedents of this Court and held that

examination of a ballistic expert is not an inflexible rule in every case involving use of a lethal weapon. Speaking through P.B. Gajendragadkar, J. (as the learned Chief Justice then was), this Court held : (AIR pp. 346-47, para 19)

> "*19*. It has, however, been argued that in every case where an accused person is charged with having committed the offence of murder by a lethal weapon, it is the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which, and in the manner in which, they have been alleged to have been caused; and in support of this proposition, reliance has been placed on the decision of this Court in *Mohinder Singh* v. *State* [*Mohinder Singh* v. *State*, 1950 SCC 673] . In that case, this Court has held that where the prosecution case was that the accused shot the deceased with a gun, but it appeared likely that the injuries on the deceased were inflicted by a rifle and there was no evidence of a duly qualified expert to prove that the injuries were caused by a gun, and the nature of the injuries was also such that the shots must have been fired by more than one person and not by one person only, and there was no evidence to show that another person also shot, and the oral evidence was such which was not disinterested, the failure to examine an expert would be a serious infirmity in the prosecution case. *It would be noticed that these observations were made in a case where the prosecution evidence suffered from serious infirmities and in determining the effect of these observations, it would not be fair or reasonable to forget the facts in respect of which they came to be made. These observations do not purport to lay down an inflexible rule that in every case where an accused person is charged with murder caused by a lethal weapon, the prosecution case can succeed in proving the charge only if an expert is examined. It is possible to imagine cases where the direct evidence is of such an unimpeachable character and the nature of the injuries disclosed by post-mortem notes is so clearly consistent with the direct evidence that the examination of a ballistic expert may not be regarded as essential. Where the direct evidence is not satisfactory or disinterested or where the injuries are alleged to have been caused with a gun and they prima facie appear to have been inflicted by a rifle, undoubtedly the apparent inconsistency can be cured or the oral evidence can be corroborated by leading the evidence of a ballistic expert. In what cases the examination of a ballistic expert is essential for the proof of the prosecution case, must naturally depend upon the circumstances of each case.* Therefore, we do not think that Mr Purushottam is right in contending as a general proposition that in every case where a firearm is alleged to have been used by an accused person, in addition to the direct

evidence, prosecution must lead the evidence of a ballistic expert, however good the direct evidence may be and though on the record there may be no reason to doubt the said direct evidence."

(emphasis supplied)

22. Similarly, a two-Judge Bench of this Court in *State of Punjab* v. *Jugraj Singh* [*State of Punjab* v. *Jugraj Singh*, (2002) 3 SCC 234 : 2002 SCC (Cri) 630] had noticed that surrounding circumstances in the prosecution case are sufficient to prove a death caused by a lethal weapon, without a ballistic examination of the recovered weapon. The Court, speaking through R.P. Sethi, J., had noted : (SCC pp. 243-44, para 18)

"*18*. In the instant case the investigating officer has categorically stated that guns seized were not in a working condition and he, in his discretion, found that no purpose would be served by sending the same to the ballistic expert for his opinion. No further question was put to the investigating officer in cross-examination to find out whether despite the guns being defective the fire pin was in order or not. In the presence of convincing evidence of two eyewitnesses and other attending circumstances we do not find that the non-examination of the expert in this case has, in any way, affected the creditworthiness of the version put forth by the eyewitnesses."

23. The present case is not one where despite the recovery of a firearm, or of the cartridge, the prosecution had failed to produce a report of the ballistic expert. Therefore, the failure to produce a report by a ballistic expert who can testify to the fatal injuries being caused by a particular weapon is not sufficient to impeach the credible evidence of the direct eyewitnesses.

DNA Test For Identification Of Dead Body

9. This extract is taken from *Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107 : 2009 SCC OnLine SC 1551 at page 728

37. In a case where the dead body is found in a jungle which had been eaten away by vultures or other animals and garments have also been found in torn condition and the dead body stood converted into a skeleton and has been fully decomposed, the identification of the dead body may not be a trustworthy evidence and in such a case the DNA test may be required (vide *Keshav* v. *State of Maharashtra* [(2007) 13 SCC 284 : (2009) 1 SCC (Cri) 184]). But in the instant case, the facts are not the same. Thus, in view of the above, we are of the considered opinion that the finding recorded by the courts below on the issue of identification of dead body also does not call for any interference.

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When Judgement Is Perverse

83. This extract is taken from *Arulvelu v. State*, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288 : 2009 SCC OnLine SC 1695 at page 216

23. We also fail to arrive at the conclusion that the discussion and appreciation of the evidence of the trial court so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse and the findings rendered by the trial court are against the weight of evidence. The law is well settled that, in an appeal against acquittal, unless the judgment of the trial court is perverse, the appellate court would not be justified in substituting its own view and reversing the judgment of acquittal.

24. The expression "perverse" has been dealt with in a number of cases. In *Gaya Din* v. *Hanuman Prasad* [(2001) 1 SCC 501] this Court observed that the expression "perverse" means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

25. In *Parry's (Calcutta) Employees' Union* v. *Parry & Co. Ltd.* [AIR 1966 Cal 31] the Court observed that "perverse finding" means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In *Triveni Rubber & Plastics* v. *CCE* [1994 Supp (3) SCC 665 : AIR 1994 SC 1341] the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.

26. In *M.S. Narayanagouda* v. *Girijamma* [AIR 1977 Kant 58] the Court observed that any order made in conscious violation of pleading and law is a perverse order. In *Moffett* v. *Gough* [(1878) 1 LR 1r 331] the Court observed that a "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In *Godfrey* v. *Godfrey* [106 NW 814] the Court defined "perverse" as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

27. The expression "perverse" has been defined by various dictionaries in the following manner:

1. Oxford Advanced Learner's Dictionary of Current English, 6th Edn.

"*Perverse.*—Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable."

2. Longman Dictionary of Contemporary English, International Edn.

Perverse.—Deliberately departing from what is normal and reasonable.

3. The New Oxford Dictionary of English, 1998 Edn.

Perverse.—Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

4. The New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.)

Perverse.—Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. Stroud's Judicial Dictionary of Words & Phrases, 4th Edn.

"*Perverse*.—A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence."

28. In *Shailendra Pratap* v. *State of U.P.* [(2003) 1 SCC 761 : 2003 SCC (Cri) 432] the Court observed thus : (SCC p. 766, para 8)

"*8*. ... we are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was a reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."

29. In *Kuldeep Singh* v. *Commr. of Police* [(1999) 2 SCC 10 : 1999 SCC (L&S) 429] the Court while dealing with the scope of Articles 32 and 226 of the Constitution observed as under : (SCC p. 14, paras 9-10)

"*9*. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of 'guilt' is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

30. The meaning of "perverse" has been examined in *Excise and Taxation Officer-cum-Assessing Authority* v. *Gopi Nath & Sons* [1992 Supp (2) SCC 312] , this Court observed as under : (SCC pp. 316-17, para 7)

"7. In the present case, the stage at and the points on which the challenge to the assessment in judicial review was raised and entertained was not appropriate. In our opinion, the High Court was in error in constituting itself into a court of appeal against the assessment. While it was open to the respondent to have raised and for the High Court to have considered whether the denial of relief under the proviso to Section 39(5) was proper or not, it was not open to the High Court to reappreciate the primary or perceptive facts which were otherwise within the domain of the fact-finding authority under the statute. The question whether the transactions were or were not sales exigible to sales tax constituted an exercise in recording secondary or inferential facts based on primary facts found by the statutory authorities. But what was assailed in review was, in substance, the correctness—as distinguished from the legal permissibility—of the primary or perceptive facts themselves. It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

The Question Is Not Put To The Witness In Cross-Examination

84. This extract is taken from *Mahavir Singh v. State of Haryana*, (2014) 6 SCC 716 : (2014) 3 SCC (Cri) 107 : 2014 SCC OnLine SC 476 at page 722

16. It is a settled legal proposition that in case the question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact/issue could not be raised. (Vide *Atluri Brahmanandam* v. *Anne Sai Bapuji* [(2010) 14 SCC 466 : (2012) 1 SCC (Civ) 644 : AIR 2011 SC 545] and *Laxmibai* v. *Bhagwantbuva* [(2013) 4 SCC 97 : (2013) 2 SCC (Civ) 480 : AIR 2013 SC 1204] .)

17. In the instant case, we had gone through the cross-examination of the witnesses who could furnish an explanation for the discrepancies pointed out by the learned counsel for the appellant. However, we came to the conclusion that the defence had never put any question in these regards to the material witness who could furnish the explanation for the same. So the chain of all the circumstantial evidence is complete and no link is missing and the accused persons had an opportunity to commit the murder of the deceased.

85. This extract is taken from *Atluri Brahmanandam v. Anne Sai Bapuji*, (2010) 14 SCC 466 : (2012) 1 SCC (Civ) 644 : 2010 SCC OnLine SC 1302 at page 468

10. The aforesaid deed of adoption was produced in evidence and the same was duly proved in the trial by the evidence led by PW 1, the respondent. We have carefully scrutinised the cross-examination of the said witness. In the entire cross-examination, no challenge was made by the appellant herein either to the legality of the said document or to the validity of the same. Therefore, the said registered adoption deed went unrebutted and unchallenged. We have already referred to the recitals in the said document which is a registered document and according to the recitals therein, the respondent was legally and validly adopted by the adoptive father, late Anne Seetharamaiah and that such adoption even beyond the age of 15 years is permissible and recognised in the "Kamma" community of Andhra Pradesh. All these factors also go unrebutted and unchallenged.

86. This extract is taken from *Laxmibai v. Bhagwantbuva*, (2013) 4 SCC 97 : (2013) 2 SCC (Civ) 480 : 2013 SCC OnLine SC 101 at page 114

40. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination-in-chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses. (See *Khem Chand* v. *State of H.P.* [1994 Supp (1) SCC 7 : 1994 SCC (Cri) 212 : AIR 1994 SC 226] , *State of U.P.* v. *Nahar Singh* [(1998) 3 SCC 561 : 1998 SCC (Cri) 850 : AIR 1998 SC 1328] , *Rajinder Pershad* v. *Darshana Devi* [(2001) 7 SCC 69 : AIR 2001 SC 3207] and *Sunil Kumar* v. *State of Rajasthan* [(2005) 9 SCC 283 : 2005 SCC (Cri) 1230 : AIR 2005 SC 1096] .)

87. This extract is taken from *State of U.P. v. Nahar Singh*, (1998) 3 SCC 561 : 1998 SCC (Cri) 850 : 1998 SCC OnLine SC 775 at page 566

12. Now, we shall examine those reasons. The High Court laid some emphasis on certain aspects dealing with the FIR; firstly delay in filing the FIR, which remained unexplained, and also on the fact that there was consultation before filing the FIR. The evidence on record discloses that gruesome murder of the deceased persons was committed by the appellants and others who dragged the dead bodies to the rear side of the Junior High School placed them on the heap of dung cakes and burnt them there. The assailants were keeping a watch on the road throughout the night. The atmosphere there was awesome. In such circumstances, late in the night no reasonable person would have dared to go to the police station to lodge the complaint. PW 1 stated that he noticed that the assailants left the place at about 5.00 a.m. He then proceeded from the house to go to the police. Thus, he lodged a complaint at the earliest possible time. It has come in evidence that the distance from the scene of occurrence to the police station can be covered in about two hours. The complaint was given in the police station at about 7.00 a.m. This account, in our view, is a good and sufficient explanation for the delay in giving the complaint to the police by PW 1.

13. It may be noted here that that part of the statement of PW 1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:

(*1*) to test his veracity,

(*2*) to discover who he is and what is his position in life, or

(*3*) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

14. The oft-quoted observation of Lord Herschell, L.C. in *Browne* v. *Dunn* [(1893) 6 R 67] clearly elucidates the principle underlying those provisions. It reads thus:

> "I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses."

This aspect was unfortunately missed by the High Court when it came to the conclusion that explanation for the delay is not at all convincing. This reason is, therefore, far from convincing.

88. This extract is taken from *Rajinder Pershad v. Darshana Devi*, (2001) 7 SCC 69 : 2001 SCC OnLine SC 940 at page 70

4. The only point urged albeit strenuously on behalf of the appellant by Mr P.S. Mishra, the learned Senior Counsel is that as there has been no valid service of notice, so all proceedings taken on the assumption of service of notice are illegal and void. He has invited our attention to the judgment of the learned Rent Control Tribunal wherein it is recorded that Exhibit AW 1/6 dated 5-8-1986 was sent by registered post and the same was taken by the postman to the address of the tenant on 6-8-1986, 8-8-1986, 19-8-1986 and 20-8-1986 but on those days the tenant was not available; on 21-8-1986, he met the tenant who refused to receive the notice. This finding remained undisturbed by both the Tribunals as well as the High Court. Learned counsel attacks this finding on the ground that the postman was on leave on those days and submits that the records called for from the post office to prove that fact, were reported as not available. On those facts, submits the learned counsel, it follows that there was no refusal by the tenant and no service of notice. We are afraid we cannot accept these contentions of the learned counsel. In the Court of the Rent Controller, the postman was examined as AW 2. We have gone through his cross-examination. It was not suggested to him that he was not on duty during the period in question and the endorsement "refused" on the envelope was incorrect. In the absence of cross-examination of the postman on this crucial aspect, his statement in the chief examination has been rightly relied upon. There is an age-old rule that if you dispute the correctness of the statement of a witness you must give him opportunity to explain his statement by drawing his attention to that part of it which is objected to as untrue, otherwise you cannot impeach his credit. In *State of U.P.* v. *Nahar Singh* [(1998) 3 SCC 561 : 1998 SCC (Cri) 850] a Bench of this Court (to which I was a party) stated the principle that Section 138 of the Evidence Act confers a valuable right to cross-examine a witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by permitting a witness to be questioned, inter alia, to test his veracity. It was observed: (SCC p. 567, para 14)

> "*14.* The oft-quoted observation of Lord Herschell, L.C. in *Browne* v. *Dunn* [(1893) 6 R 67 (HL)] clearly elucidates the principle underlying those provisions. It reads thus:
>
> 'I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his

attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses.' "

Prejudice

89. This extract is taken from *Rafiq Ahmad v. State of U.P.*, (2011) 8 SCC 300 : (2011) 3 SCC (Cri) 498 : 2011 SCC OnLine SC 1040 at page 319

34. In the light of the above principles, let us now examine the meaning of "**prejudice**". The expression has been defined in *Black's Law Dictionary* (8th Edn., p. 1218), as follows:

"*Prejudice.—1.* Damage or detriment to one's legal rights or claims. See *dismissal with prejudice, dismissal without prejudice* under DISMISSAL.

Legal prejudice.—A condition that, if shown by a party, will usu. defeat the opposing party's action; esp., a condition that, if shown by the defendant, will defeat a plaintiff's motion to dismiss a case without prejudice. The defendant may show that dismissal will deprive the defendant of a substantive property right or preclude the defendant from raising a defence that will be unavailable or endangered in a second suit.

Undue prejudice.—The harm resulting from a fact-trier's being exposed to evidence that is persuasive but inadmissible (such as evidence of prior criminal conduct) or that so arouses the emotions that calm and logical reasoning is abandoned.

2. A preconceived judgment formed without a factual basis; a strong bias."

35. When we speak of prejudice to an accused, it has to be shown that the accused has suffered some disability or detriment in the protections available to him under the Indian criminal jurisprudence. It is also a settled canon of criminal law that this has occasioned the accused with failure of justice. One of the other cardinal principles of criminal justice administration is that the courts should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage, as this expression is perhaps too pliable. With the development of law, Indian courts have accepted the following protections to and rights of the accused during investigation and trial:

(*a*) The accused has the freedom to maintain silence during investigation as well as before the court. The accused may choose to maintain silence or make complete denial even when his statement under Section 313 of the Code of Criminal Procedure is being recorded, of course, the court would be entitled to draw an inference, including adverse inference, as may be permissible to it in accordance with law;

(*b*) Right to fair trial;

(*c*) Presumption of innocence (not guilty);

(*d*) Prosecution must prove its case beyond reasonable doubt.

36. Prejudice to an accused or failure of justice, thus, has to be examined with reference to these aspects. That alone, probably, is the method to determine with some element of certainty and discernment whether there has been actual failure of justice. "Prejudice" is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial and not matters falling beyond their scope. Once the accused is able to show that there is serious prejudice to either of these aspects and that the same has defeated the rights available to him under the criminal jurisprudence, then the accused can seek benefit under the orders of the court.

37. Right to fair trial, presumption of innocence until pronouncement of guilt and the standards of proof i.e. the prosecution must prove its case beyond reasonable doubt are the basic and crucial tenets of our criminal jurisprudence. The courts are required to examine both the contents of the allegation of prejudice as well as its extent in relation to these aspects of the case of the accused. It will neither be possible nor appropriate to state such principle with exactitude as it will always depend on the facts and circumstances of a given case. Therefore, the court has to ensure that the ends of justice are met as that alone is the goal of criminal adjudication.

38. Thus, wherever a plea of prejudice is raised by the accused, it must be examined with reference to the above rights and safeguards, as it is the violation of these rights alone that may result in the weakening of the case of the prosecution and benefit to the accused in accordance with law.

Material Contradiction In Testimony Of Witness

90. This extract is taken from *Edakkandi Dineshan v. State of Kerala*, (2025) 3 SCC 273 : 2025 SCC OnLine SC 28 at page 279

15. The law relating to material contradiction in witness testimony has been discussed by this Court in the judgment of *Rammi* v. *State of M.P.* [*Rammi* v. *State of M.P.*, (1999) 8 SCC 649 : 2000 SCC (Cri) 26] It was held that : (SCC pp. 656-57, paras 25-26)

> "*25.* It is common practice in the trial court to make out contradictions from the previous statements. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. …
>
> *26.* … Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness."

16. The abovementioned settled position of law in *Rammi* [*Rammi* v. *State of M.P.*, (1999) 8 SCC 649 : 2000 SCC (Cri) 26] was again reiterated by this Court in the judgment of *Birbal Nath* v. *State of Rajasthan* [*Birbal Nath* v. *State of Rajasthan*, (2024) 15 SCC 190 : 2023 SCC OnLine SC 1396 : 2023 INSC 957] wherein it was held as under : (*Birbal Nath case* [*Birbal Nath* v. *State of Rajasthan*, (2024) 15 SCC 190 : 2023 SCC OnLine SC 1396 : 2023 INSC 957] , SCC paras 21 & 26)

> "*21.* No doubt statement given before police during investigation under Section 161 are "previous statements" under Section 145 of the Evidence Act and therefore can be used to cross-examine a witness. But this is only for a limited purpose, to "contradict" such a witness. Even if the defence is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness. It is here that we feel that the learned Judges of the High Court have gone wrong.
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> ***
>
> *26.* In the landmark case of *Tahsildar Singh* v. *State of U.P.* [*Tahsildar Singh* v. *State of U.P.*, 1959 SCC OnLine SC 17 : AIR 1959 SC 1012] this Court has held that to contradict a witness would mean to "discredit" a witness. Therefore, unless and until the former statement of this witness is capable of "discrediting" a witness, it would have little relevance. A mere

variation in the two statements would not be enough to discredit a witness. This has been followed consistently by this Court in its later judgment, including *Rammi* [*Rammi* v. *State of M.P.*, (1999) 8 SCC 649 : 2000 SCC (Cri) 26] ."

Beyond Reasonable Doubt

91. This extract is taken from *Yogesh Singh v. Mahabeer Singh*, (2017) 11 SCC 195 : (2017) 4 SCC (Cri) 257 : 2016 SCC OnLine SC 1163 at page 208

15. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all *reasonable* doubt and not *all* doubts. Here, it is worthwhile to reproduce the observations made by Venkatachaliah, J. in *State of U.P.* v. *Krishna Gopal* [*State of U.P.* v. *Krishna Gopal*, (1988) 4 SCC 302 : 1988 SCC (Cri) 928] : (SCC pp. 313-14, paras 25-26)

> "*25*. … Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.
>
> *26*. The concept of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice."

[See also *Krishnan* v. *State* [*Krishnan* v. *State*, (2003) 7 SCC 56 : 2003 SCC (Cri) 1577] ; *Valson* v. *State of Kerala* [*Valson* v. *State of Kerala*, (2008) 12 SCC 241 : (2009) 2 SCC (Cri) 208] and *Bhaskar Ramappa Madar* v. *State of Karnataka* [*Bhaskar Ramappa Madar* v. *State of Karnataka*, (2009) 11 SCC 690 : (2010) 1 SCC (Cri) 133] .]

16. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. (Vide *Kali Ram* v. *State of H.P.* [*Kali Ram* v. *State of H.P.*, (1973) 2 SCC 808 : 1973 SCC (Cri) 1048] , *State of Rajasthan* v. *Raja Ram* [*State of*

Rajasthan v. *Raja Ram*, (2003) 8 SCC 180 : 2003 SCC (Cri) 1965] , *Chandrappa* v. *State of Karnataka* [*Chandrappa* v. *State of Karnataka*, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , *Upendra Pradhan* v. *State of Orissa* [*Upendra Pradhan* v. *State of Orissa*, (2015) 11 SCC 124 : (2015) 4 SCC (Cri) 309] and *Golbar Hussain* v. *State of Assam* [*Golbar Hussain* v. *State of Assam*, (2015) 11 SCC 242 : (2015) 4 SCC (Cri) 384] .)

17. However, the rule regarding the benefit of doubt does not warrant acquittal of the accused by resorting to surmises, conjectures or fanciful considerations, as has been held by this Court in *State of Punjab* v. *Jagir Singh* [*State of Punjab* v. *Jagir Singh*, (1974) 3 SCC 277 : 1973 SCC (Cri) 886] : (SCC pp. 285-86, para 23)

> "*23*. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy, on grounds which are fanciful or in the nature of conjectures."

18. Similarly, in *Shivaji Sahabrao Bobade* v. *State of Maharashtra* [*Shivaji Sahabrao Bobade* v. *State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] , V.R. Krishna Iyer, J., stated thus: (SCC p. 799, para 6)

> "*6*. … The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community."

92. This extract is taken from *State of Haryana v. Bhagirath*, (1999) 5 SCC 96 : 1999 SCC (Cri) 658 : 1999 SCC OnLine SC 577 at page 100

8. It is nearly impossible in any criminal trial to prove all the elements with a scientific precision. A criminal court could be convinced of the guilt only beyond the range of a reasonable doubt. Of course, the expression "reasonable doubt" is incapable of definition. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the Judge.

9. Francis Wharton, a celebrated writer on criminal law in the United States has quoted from judicial pronouncements in his book *Wharton's Criminal Evidence* (at p. 31, Vol. 1 of the 12th Edn.) as follows:

> "It is difficult to define the phrase 'reasonable doubt'. However, in all criminal cases a careful explanation of the term ought to be given. A definition often quoted or followed is that given by Chief Justice Shaw in the *Webster case*. He says: 'It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that consideration that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.' "

10. In the treatise *The Law of Criminal Evidence* authored by H.C. Underhill it is stated (at p. 34, Vol. 1 of the 5th Edn.) thus:

> "The doubt to be reasonable must be such a one as an honest, sensible and fair-minded man might, with reason, entertain consistent with a conscientious desire to ascertain the truth. An honestly entertained doubt of guilt is a reasonable doubt. A vague conjecture or an inference of the possibility of the innocence of the accused is not a reasonable doubt. A reasonable doubt is one which arises from a consideration of all the evidence in a fair and reasonable way. There must be a candid consideration of all the evidence and if, after this candid consideration is had by the jurors, there remains in the minds a conviction of the guilt of the accused, then there is no room for a reasonable doubt."

93. This extract is taken from *Noorahammad v. State of Karnataka*, (2016) 3 SCC 325 : (2016) 2 SCC (Cri) 97 : 2016 SCC OnLine SC 99 at page 339

36. Thus, for the aforesaid reasons, the evidence adduced by the prosecution to support its version does not prove beyond reasonable doubt the offences levelled against all the appellant-accused. This Court in *Raj Kumar Singh* v. *State of Rajasthan* [*Raj Kumar Singh* v. *State of Rajasthan*, (2013) 5 SCC 722 : (2013) 4 SCC (Cri) 812] has held thus : (SCC pp. 731-32, para 21)

> "*21.* Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved and 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite large and divides vague conjectures from sure conclusions. *In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied.* In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. *The court must ensure that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.*"
>
> (emphasis supplied)

It is also a fundamental principle that a court can convict an accused only if their guilt is established beyond reasonable doubt and not merely on the possibility of guilt. The gap between "may be guilty" and "must be guilty" is significant, separating uncertain speculations from definitive conclusions. Thus, it is the duty of the prosecution to elevate its case from the realm of 'may be true' to 'must be true'.

Burden Of Proof And Benefit Of Doubt

94. This extract is taken from *State of Karnataka v. J. Jayalalitha*, (2017) 6 SCC 263 : (2017) 3 SCC (Cri) 1 : (2017) 2 SCC (L&S) 179 : (2017) 392 ITR 97 : (2017) 201 Comp Cas 230 : 2017 SCC OnLine SC 134 at page 524

Burden of proof and benefits of doubt

222. That the burden of proof of a charge is on the prosecution subject to the defence of insanity and any other statutory exception has been authoritatively proclaimed in *Woolmington* v. *Director of Public Prosecutions* [*Woolmington* v. *Director of Public Prosecutions*, 1935 AC 462 (HL)] and testified by the following extract : (AC pp. 481-82)

> "... Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."

223. In *Shivaji Sahabrao Bobade* v. *State of Maharashtra* [*Shivaji Sahabrao Bobade* v. *State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] , Hon'ble Krishna Iyer, J., in his inimitable expressional felicity cautioned against the dangers of exaggerated affinity to the rule of benefit of doubt as hereunder : (SCC p. 799, para 6)

> "*6.* ... The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. *The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of*

justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light-heartedly as a learned author (Glanville Williams in "*Proof of Guilt*") has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. *If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated "persons" and more severe punishment of those who are found guilty*."

(emphasis supplied)

224. In *Collector of Customs* v. *D. Bhoormall* [*Collector of Customs* v. *D. Bhoormall*, (1974) 2 SCC 544 : 1974 SCC (Cri) 784] , this Court had observed (SCC p. 553, para 30) that in all human affairs, *absolute certainty is a myth and the law does not require the prosecution to prove the impossible. It was highlighted that all that was required is the establishment of such a degree of probability that a prudent man may on this basis believe in the existence of the fact in issue. It was exposited that legal proof is thus not necessarily perfect proof and is nothing more than a prudent man's estimate as to the probability of the case*.

225. That proof beyond reasonable doubt is only a guideline and not a fetish and that a guilty man cannot get away with it because truth suffers from infirmity, when projected through human processes, was underscored by this Court in *Inder Singh* v. *State (Delhi Admn.)* [*Inder Singh* v. *State (Delhi Admn.)*, (1978) 4 SCC 161 : 1978 SCC (Cri) 564] . It was remarked that if a case is proved too perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is, too imperfect and thus whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many, guilty men must be callously allowed to escape.

226. In the same vein, this Court in *Ashok Debbarma* v. *State of Tripura* [*Ashok Debbarma* v. *State of Tripura*, (2014) 4 SCC 747 : (2014) 2 SCC (Cri) 417] expounded that in our criminal justice system, for recording guilt of the accused, *it is not necessary that the prosecution should prove the case with absolute or mathematical certainty but only beyond reasonable doubt* and the criminal courts, while examining whether any doubt is beyond reasonable doubt, may carry in their mind, some "residual doubt" even though the courts are convinced of the accused persons' guilt beyond reasonable doubt.

Evidence Obtained By Illegal Means

95. This extract is taken from *State of M.P. v. Paltan Mallah*, (2005) 3 SCC 169 : 2005 SCC (Cri) 674 : 2005 SCC OnLine SC 147 at page 180

28. In India, the evidence obtained under illegal search is not completely excluded unless it has caused serious prejudice to the accused. The discretion has always been given to the court to decide whether such evidence is to be accepted or not. In *Radhakishan* v. *State of U.P.* [1963 Supp (1) SCR 408 : AIR 1963 SC 822 : (1963) 1 Cri LJ 809] speaking for a three-Judge Bench, Justice Mudholkar held: (SCR pp. 411-12)

> "So far as the alleged illegality of the search is concerned it is sufficient to say that even assuming that the search was illegal the seizure of the articles is not vitiated. It may be that where the provisions of Sections 103 and 165 of the Code of Criminal Procedure are contravened the search could be resisted by the person whose premises are sought to be searched. It may also be that because of the illegality of the search the Court may be inclined to examine carefully the evidence regarding the seizure. But beyond these two consequences no further consequence ensues."

96. This extract is taken from *State of M.P. v. Paltan Mallah*, (2005) 3 SCC 169 : 2005 SCC (Cri) 674 : 2005 SCC OnLine SC 147 at page 181

29. In a subsequent decision reported in *Pooran Mal* v. *Director of Inspection* [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] this Court held: (SCC pp. 364-66, para 24)

> "*24.* So far as India is concerned its law of evidence is modelled on the rules of evidence which prevailed in English law, and courts in India and in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure. … It would thus be seen that in India, as in England, where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law evidence obtained as a result of illegal search or seizure is not liable to be shut out."

30. This decision was later followed in *Partap Singh (Dr.)* v. *Director of Enforcement* [(1985) 3 SCC 72 : 1985 SCC (Cri) 312 : 1985 SCC (Tax) 352] .

31. The provisions contained in the Criminal Procedure Code relating to search and seizure are safeguards to prevent the clandestine use of powers conferred on the law-enforcing authorities. They are powers incidental to the conduct of investigation and the legislature has imposed certain conditions for carrying out search and seizure in the Code. The courts have interpreted these provisions in different ways. One view is that disregard to the provisions of the Code of Criminal Procedure relating to the powers of search and seizures amounts to a default in doing what is enjoined by law and in order to prevent default in compliance with the provisions of the Code, the courts should take strict view of the matter and reject the evidence adduced on the basis of such illegal search. But often this creates a serious difficulty in the matter of proof. Though different High Courts have taken different views, the decisions of this Court quoted above have settled the position and we have followed the English decisions in this regard. In the Privy Council decision in *Kuruma* v. *R.* [1955 AC 197 : (1955) 1 All ER 236 : (1955) 2 WLR 223 (PC)] Lord Goddard, C.J. was of the firm view that in a criminal case the Judge always has a discretion to disallow evidence if the strict rule of admissibility would operate unfairly against an accused. The trend of judicial pronouncements is to the effect that evidence illegally or improperly obtained is not *per se* inadmissible. If the violation committed by the investigating authority is of serious nature and causes serious prejudice to the accused, such evidence may be excluded.

32. It may also be noticed that the Law Commission of India in the 94th Report suggested the incorporation of a provision in Chapter 10 of the Indian Evidence Act, 1872. The suggestion was to the effect that in a criminal proceeding, where it is shown that anything in evidence was obtained by illegal or improper means, the court, after considering the nature of the illegality or impropriety and all the circumstances under which the thing tendered was obtained, may refuse to admit it in evidence, if the court is of the opinion that because of the nature of the illegal or improper means by which it was obtained, its admission would tend to bring the administration of justice into disrepute. The Commission also quoted the various circumstances surrounding the proceedings that may entail the exclusion of such evidence but the suggestion of the Law Commission was not accepted and no legislation was effected in line with the recommendations of the 94th Report of the Law Commission and the position continues to be that the evidence obtained under illegal search could still be admitted in evidence provided there is no express statutory violation or violation of the constitutional provisions. For example, if certain specific enactments are made and the search or seizure is to be effected in accordance with the provisions of such enactment, the authorities shall comply with such provisions. The general provisions given in the Criminal Procedure Code are to be treated as guidelines and if at all there is any minor violation, still the court can accept the evidence and the courts have got discretionary power to either accept it or reject it.

Exhortation

97. This extract is taken from *Jainul Haque v. State of Bihar*, (1974) 3 SCC 543 : 1974 SCC (Cri) 1 : 1973 SCC OnLine SC 313 at page 545

9. It would appear from the above that there is a clear discrepancy between the evidence of the witnesses given at the trial and the version given in the first information report regarding the part played by the appellant. The part attributed to the appellant according to the first information report is that he had exhorted the other accused to assault Leyaquat, while according to the evidence adduced at the trial the appellant actually joined in the assault on Leyaquat. The High Court did not accept the prosecution evidence on the point that the appellant had joined in the assault on Leyaquat. All the same, the High Court convicted the appellant because it was of the view that the appellant had exhorted the other accused to assault Leyaquat. In the absence of any substantive and cogent evidence adduced at the trial that **the appellant had *exhorted* the other accused** to assault Leyaquat, the High Court, in our opinion, should not have convicted the appellant for the offence under Section 323 read with Section 114 of the Penal Code, 1860. The High Court has found the evidence of the eyewitnesses to be unsatisfactory. It has also found that the eyewitness were prone to exaggerate things and to involve as many accused as possible. In the circumstances it was, in our opinion, not safe to base the conviction of the appellant on the aforesaid evidence. The evidence of exhortation is, in the very nature of things, a weak piece of evidence. **There is quite often a tendency to implicate some person, in addition to the actual assailant, by attributing to that person an exhortation to the assailant to assault the victim. Unless the evidence in this respect be clear, cogent and reliable, no conviction for abetment can be recorded against the person alleged to have exhorted the actual assailant.** The evidence adduced at the trial in respect of the part alleged to have been played by the appellant is contradictory and far from convincing. We would, therefore, accept the appeal, set aside the conviction of the appellant and acquit him.

Facts Must Be Proved

15. It is also a fundamental principle that a court can convict an accused only if their guilt is established beyond reasonable doubt and not merely on the possibility of guilt. The gap between "may be guilty" and "must be guilty" is significant, separating uncertain speculations from definitive conclusions. Thus, it is the duty of the prosecution to elevate its case from the realm of 'may be true' to 'must be true' **Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 79**.

65. In Sujit Biswas v. State of Assam, (2013) 12 SCC 406, this Court, while examining the distinction between "proof beyond reasonable doubt" and "suspicion" in para 13 has held as under:

"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."

Fair Trial

jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts. Here, it is worthwhile to reproduce the observations made by Venkatachaliah, J., in State of U.P. Vs. Krishna Gopal and Anr., (1988) 4 SCC 302:

"25. ... Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concept of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice." [See also Krishnan Vs. State, (2003) 7 SCC 56; Valson and Anr.

Vs. State of Kerala, (2008) 12 SCC 24 and Bhaskar Ramappa Madar and Ors. Vs. State of Karnataka, (2009) 11 SCC 690].

16. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. [Vide Kali Ram Vs. State of Himachal Pradesh, (1973) 2 SCC 808; State of Rajasthan Vs. Raja Ram, (2003) 8 SCC 180; Chandrappa & Ors. Vs. State of Karnataka, (2007) 4 SCC 415; Upendra Pradhan Vs. State of Orissa, (2015) 11 SCC 124 and Golbar Hussain & Ors. Vs. State of Assam and Anr., (2015) 11 SCC 242].

17. However, the rule regarding the benefit of doubt does not warrant acquittal of the accused by resorting to surmises, conjectures or fanciful considerations,

as has been held by this Court in the case of State of Punjab Vs. Jagir Singh, (1974) 3 SCC 277:
"A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge, the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy, on grounds which are fanciful or in the nature of conjectures."

18. Similarly, in Shivaji Sahebrao Bobade & Anr. Vs. State of Maharashtra, (1973) 2 SCC 793, V.R. Krishna Iyer, J., stated thus:
"The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community."

19. Keeping in mind the aforesaid position of law, we shall examine the arguments advanced and the evidence adduced by the parties as also the materials on record and see in view of the nature of offence alleged to have been committed by the respondents whether the findings of fact recorded by the High Court call for interference in the facts and circumstances of the case.

98. Yogesh Singh vs Mahabeer Singh & Ors on 20 October, 2016 Equivalent citations: 2017 CRI. L. J. 291, 2017 (11) SCC 195, AIR 2016 SC (CRIMINAL) 1521,

CARDINAL PRINCIPAL OF FAIR TRIAL

15. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts. Here, it is worthwhile to reproduce the observations made by Venkatachaliah, J., in State of U.P. Vs. Krishna Gopal and Anr., (1988) 4 SCC 302:

"25. … Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concept of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice." [See also Krishnan Vs. State, (2003) 7 SCC 56; Valson and Anr. Vs. State of Kerala, (2008) 12 SCC 24 and Bhaskar Ramappa Madar and Ors. Vs. State of Karnataka, (2009) 11 SCC 690].

16. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. [Vide Kali Ram Vs. State of Himachal Pradesh, (1973) 2 SCC 808; State of

Rajasthan Vs. Raja Ram, (2003) 8 SCC 180; Chandrappa & Ors. Vs. State of Karnataka, (2007) 4 SCC 415; Upendra Pradhan Vs. State of Orissa, (2015) 11 SCC 124 and Golbar Hussain & Ors. Vs. State of Assam and Anr., (2015) 11 SCC 242].

17. However, the rule regarding the benefit of doubt does not warrant acquittal of the accused by resorting to surmises, conjectures or fanciful considerations, as has been held by this Court in the case of State of Punjab Vs. Jagir Singh, (1974) 3 SCC 277: "A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge, the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy, on grounds which are fanciful or in the nature of conjectures."

18. Similarly, in Shivaji Sahebrao Bobade & Anr. Vs. State of Maharashtra, (1973) 2 SCC 793, V.R. Krishna Iyer, J., stated thus: "The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community."

99. This extract is taken from *Edakkandi Dineshan v. State of Kerala*, (2025) 3 SCC 273 : 2025 SCC OnLine SC 28 at page 279

Analysis

10. Crime creates a sense of societal fear and it affects adversely the societal conscience. It is inequitable and unjust if such a situation is allowed to perpetuate and continue in the society. In every civilised society, the purpose of criminal administrative system is to protect individual dignity and to restore societal stability and order and to create faith and cohesion in the society. The courts in the discharge of their duties are tasked with balancing of interests of the accused on one hand and the State/society on the other.

Falsus In Uno Falsus In Omnibus

100. This extract is taken from *Arvind Kumar v. State of Rajasthan*, (2022) 16 SCC 732 : 2021 SCC OnLine SC 1099 at page 754

Falsus in uno, falsus in omnibus

50. The principle that when a witness deposes falsehood, the evidence in its entirety has to be eschewed may not have strict application to the criminal jurisprudence in our country. The principle governing sifting the chaff from the grain has to be applied. However, when the evidence is inseparable and such an attempt would either be impossible or would make the evidence unacceptable, the natural consequence would be one of avoidance. The said principle has not assumed the status of law but continues only as a rule of caution. One has to see the nature of discrepancy in a given case. When the discrepancies are very material shaking the very credibility of the witness leading to a conclusion in the mind of the court that it is neither possible to separate it nor to rely upon, it is for the said court to either accept or reject.

51. The said principle of law has been dealt with by this Court in *Anand Ramachandra Chougule* v. *Sidarai Laxman Chougala* [*Anand Ramachandra Chougule* v. *Sidarai Laxman Chougala*, (2019) 8 SCC 50 : (2019) 3 SCC (Cri) 309] , which states thus : (SCC pp. 53-54, paras 9-13)

> "*9.* We have considered the respective submissions and perused the materials on record. The relationship between parties and the existence of a land dispute regarding which a civil suit was also pending are undisputed facts. The fact that a verbal duel followed by scuffle took place between the parties culminating in injuries is a concurrent finding of fact by two courts. The fact that the accused also lodged an FIR with regard to the same occurrence stands established by the evidence of PWs 19 and 22, the investigating officers, who have admitted that the respondent-accused had also lodged BRPS Cr. No. 79/02 — marked Ext. D-10, which was not investigated by them. Similarly, PW 11, the police constable, deposed that two of the accused were admitted in District Hospital, Belgaum and that he was posted on watch duty. The occurrence is of 7-6-2002 and respondent Accused 1 and 2 were discharged on 11-6-2002. Their injury report has not been brought on record by the prosecution and no explanation has been furnished in that regard.
>
> *10.* The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond

all reasonable doubt, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt.

11. The fact that a defence may not have been taken by an accused under Section 313CrPC again cannot absolve the prosecution from proving its case beyond all reasonable doubt. If there are materials which the prosecution is unable to answer, the weakness in the defence taken cannot become the strength of the prosecution to claim that in the circumstances it was not required to prove anything. In *Sunil Kundu* v. *State of Jharkhand* [*Sunil Kundu* v. *State of Jharkhand*, (2013) 4 SCC 422 : (2013) 2 SCC (Cri) 427] , this Court observed : (SCC pp. 433-34, para 28)

> '*28*. … When the prosecution is not able to prove its case beyond reasonable doubt it cannot take advantage of the fact that the accused have not been able to probabilise their defence. It is well settled that the prosecution must stand or fall on its own feet. It cannot draw support from the weakness of the case of the accused, if it has not proved its case beyond reasonable doubt.'

12. The fact that an FIR was lodged by the accused with regard to the same occurrence, the failure of the police to explain why it was not investigated, coupled with the admitted fact that the accused were also admitted in the hospital for treatment with regard to injuries sustained in the same occurrence, but the injury report was not brought on record and suppressed by the prosecution, creates sufficient doubts which the prosecution has been unable to answer.

13. We find it difficult to concur with the submission on behalf of the appellants that the failure of the prosecution to investigate the FIR lodged by the accused with regard to the same occurrence or to place their injury reports on record was merely a defective investigation. We are of the considered opinion that the failure of the prosecution to act fairly and place all relevant materials with regard to the occurrence before the court enabling it to take just and fair decision has caused serious prejudice to them. A fair criminal trial encompasses a fair investigation at the pre-trial stage, a fair trial where the prosecution does not conceal anything from the court and discharges its obligations in accordance with law impartially to facilitate a just and proper decision by the court in the larger interest of justice concluding with a fairness in sentencing also."

101. This extract is taken from *Edakkandi Dineshan v. State of Kerala*, (2025) 3 SCC 273 : 2025 SCC OnLine SC 28 at page 281

20. Either a partial, untrue version of one of the witnesses or an exaggerated version of a witness may not be a sole reason to discard the entire prosecution case which is otherwise supported by clinching evidence such as truthful version of the witnesses, medical evidence, recovery of the weapons, etc. At this stage, it may not be out of place to refer to the principle called as "*falsus in uno, falsus in omnibus*".

21. It is a settled position that "*falsus in uno, falsus in omnibus*" (false in one thing, false in everything) that the above principle is foreign to our criminal law jurisprudence. This aspect has been considered by this Court in a plethora of judgments. In *Ram Vijay Singh* v. *State of U.P.* [*Ram Vijay Singh* v. *State of U.P.*, (2021) 15 SCC 241] , a three-Judge Bench of this Hon'ble Court had held that : (SCC pp. 254-55, paras 20-21)

> *20.* We do not find any merit in the arguments raised by the learned counsel for the appellant. A part statement of a witness can be believed even though some part of the statement may not be relied upon by the court. The maxim *falsus in uno, falsus in omnibus* is not the rule applied by the courts in India. This Court recently in a judgment in *Ilangovan* v. *State of T.N.* [*Ilangovan* v. *State of T.N.*, (2020) 10 SCC 533 : (2021) 1 SCC (Cri) 137] held that Indian Courts have always been reluctant to apply the principle as it is only a rule of caution. It was held as under : (SCC p. 536, para 11)
>
> > '*11.* The counsel for the appellant lastly argued that once the witnesses had been disbelieved with respect to the co-accused, their testimonies with respect to the present accused must also be discarded. The counsel is, in effect, relying on the legal maxim "*falsus in uno, falsus in omnibus*", which Indian Courts have always been reluctant to apply. A three-Judge Bench of this Court, as far back as in 1957, in *Nisar Ali* v. *State of U.P.* [*Nisar Ali* v. *State of U.P.*, 1957 SCC OnLine SC 42 : AIR 1957 SC 366] held on this point as follows : (SCC OnLine SC paras 9-10)
> >
> > > "*9. … This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded. …*

10. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence"." '

21. Therefore, merely because a prosecution witness was not believed in respect of another accused, the testimony of the said witness cannot be disregarded qua the present appellant. Still, further, it is not necessary for the prosecution to examine all the witnesses who might have witnessed the occurrence. It is the quality of evidence which is relevant in criminal trial and not the quantity."

(emphasis in original)

General Principles Of Criminal Trial

102. This extract is taken from *Edakkandi Dineshan v. State of Kerala*, (2025) 3 SCC 273 : 2025 SCC OnLine SC 28 at page 279

1. Analysis

10. Crime creates a sense of societal fear and it affects adversely the societal conscience. It is inequitable and unjust if such a situation is allowed to perpetuate and continue in the society. In every civilised society, the purpose of criminal administrative system is to protect individual dignity and to restore societal stability and order and to create faith and cohesion in the society. The courts in the discharge of their duties are tasked with balancing of interests of the accused on one hand and the State/society on the other.

103. This extract is taken from *Inder Singh v. State (Delhi Admn.)*, (1978) 4 SCC 161 : 1978 SCC (Cri) 564 : 1978 SCC OnLine SC 74 at page 162

2. Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. If a case is proved too perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty men must be callously allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes. Judicial quest for perfect proof often accounts for police presentation of fool-proof concoction. Why fake up? Because the court asks for manufacture to make truth look true? No, we must be realistic.

3. We are satisfied that the broad features of the case, the general trend of the testimony and the convincing array of facts which are indisputable, converge to the only conclusion that may be reasonably drawn, namely that the accused are guilty. Theoretical possibilities may not shake up, fancied weaknesses may not defeat, when verdicts are rested on sure foundations. Stray chances of innocence haunting the corridors of the court cannot topple concurrent findings of guilt.

4. We feel unhappy that, while infirmity in some aspect or other of this prosecution case should not invalidate the culpability which is otherwise veraciously made out, tragic occurrences like this one, should and could be avoided by pre-emptive State action, given imagination and intelligence. Had that been done the lethal episode might not have materialised and a young life not been lost. And, on the other side, two boys, if we may say so, are the convicts, one who is 16 years and the other barely 20 years, and yet the attack was induced by a previous murder, rending a family into two feuding branches and leading to this vengeful murder. And the pity of it is this bleeding explosion was sparked off by a trivial friction caused by turns of irrigation. We refer to the observation of the High Court:

> "As is well known and borne out by the reported cases the drawing of water by turns is an endless cause of dispute."

In this socio-economic source of irritation, induced by turns of irrigation, were so frequent, it behoved any aware Government not to watch and wait for murders to take place and then to prosecute after lives have been lost but to anticipate and smoothen the whole process so that avoidable frictions and tensions do not hot up. Violence often erupts from stress and distress. If wars are made in the minds of men crimes are rooted in the consciousness of man. It is the vigilant duty of a responsible Government not to merely track down criminals *after* the crime but to forestall escalation of traumatic build-ups by quite timely steps *before* the crime. The Administration, we hope, will not wait for drunken brawls and deaths in festivals, fights over turns of water and deaths in fields and other like collusions, but, like good Governments should do, produce detente in the villages by appropriate measures which deepen the finer awareness and foster the better fellowship of men. It is obvious that this duty has gone by default and may continue to do so, unless the etiology of crime, in a broader social perspective, were traced and holistic measures adopted in advance. Criminology is more than police billy and "peace and order" is more than smart FIR. It is positive action for prevention, detection and prompt prosecution.

If two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.

104. This extract is taken from *Dhanapal v. State*, (2009) 10 SCC 401 : (2010) 1 SCC (Cri) 336 : 2009 SCC OnLine SC 1576 at page 411

33. In *Bhagwan Singh* v. *State of M.P.* [(2002) 4 SCC 85 : 2002 SCC (Cri) 736] the Court repeated one of the fundamental principles of criminal jurisprudence that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The Court observed as under: (SCC p. 89, para 7)

> "*7.* ... **The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.** Such is not a jurisdiction limitation on the appellate court but [a] Judge-made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided."

34. In *Harijana Thirupala* v. *Public Prosecutor, High Court of A.P.* [(2002) 6 SCC 470 : 2002 SCC (Cri) 1370] this Court again had an occasion to deal with the settled principles of law restated in several decisions of this Court. Despite a number of judgments, the High Courts continue to fail to keep them in mind before reaching a conclusion. The Court observed thus: (SCC pp. 476-77, paras 10-13)

> "*10.* The principles to be kept in mind in our system of administration of criminal justice are stated and restated in several decisions of this Court. Yet, sometimes the High Courts fail to keep them in mind before reaching a conclusion as to the guilt or otherwise of the accused in a given case. The case on hand is one such case. Hence it is felt necessary to remind about the well-settled principles again. It is desirable and useful to remind and keep in mind these principles in deciding a case.
>
> *11.* In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the

same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added that ultimately and finally the decision in every case depends upon the facts of each case.

12. Doubtless the High Court in appeal either against an order of acquittal or conviction as a court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of innocence in favour of the accused gets reinforced and strengthened. *The High Court would not be justified to interfere with the order of acquittal merely because it feels that sitting as a trial court it would have proceeded to record a conviction*; a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity.

13. It is unfortunate that by the impugned order, the High Court has upset the well-reasoned order of acquittal passed by the trial court. It appears to us that the High Court while doing so, did not bear in mind the well-settled principles stated above as to what should be the approach in reversing an order of acquittal and under what circumstances it should be reversed." [**Ed.**: Closely similar observations as made in paras 24 to 34 have been made in *Ghurey Lal* v. *State of U.P.*, (2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60, at SCC pp. 466-75, paras 44-64.]

(emphasis supplied)

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Identification In A Crowd Of Assailants

105. This extract is taken from *Abdul Sayeed v. State of M.P.*, (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262 : 2010 SCC OnLine SC 1027 at page 269

Identification in a crowd of assailants

25. In cases where there are a large number of assailants, it can be difficult for a witness to identify each assailant and attribute a specific role to him. In *Masalti* v. *State of U.P.* [AIR 1965 SC 202 : (1965) 1 Cri LJ 226] this Court held as under : (AIR p. 210, para 15)

> "*15.* … Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, *it is often not possible for witnesses to describe accurately the part played by each one of the assailants*. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task; but criminal *courts have to do their best* in dealing with such cases and it is their duty *to sift the evidence carefully and decide which part of it is true and which is not*."
>
> (emphasis added)

A similar view was taken by this Court in *Kallu* v. *State of M.P.* [(2006) 10 SCC 313 : (2006) 3 SCC (Cri) 546] and *Viji* v. *State of Karnataka* [(2008) 15 SCC 786 : (2009) 3 SCC (Cri) 1214] observing that in such a case it is not possible that all the witnesses may specifically refer to the acts of each assailants.

106. This extract is taken from *Abdul Sayeed v. State of M.P.*, (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262 : 2010 SCC OnLine SC 1027 at page 270

26. In *Bhag Singh* v. *State of Punjab* [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163] , while dealing with a similar contention, this Court observed : (SCC p. 715, para 10)

> "*10*. It is a general handicap attached to all eyewitnesses, if they fail to speak with precision their evidence would be assailed as vague and evasive, on the contrary if they speak to all the events very well and correctly their evidence becomes vulnerable to be attacked as tutored. Both approaches are dogmatic and fraught with lack of pragmatism. The testimony of a witness should be viewed from broad angles. It should not be weighed in golden scales, but with cogent standards. In a particular case an eyewitness may be able to narrate the incident with all details without mistake if the occurrence had made an imprint on the canvas of his mind in the sequence in which it occurred. He may be a person whose capacity for absorption and retention of events is stronger than another person. It should be remembered that what he witnessed was not something that happens usually but a very exceptional one so far as he is concerned. If he reproduces it in the same sequence as it registered in his mind the testimony cannot be dubbed as artificial on that score alone."

107. This extract is taken from *Abdul Sayeed v. State of M.P.*, (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262 : 2010 SCC OnLine SC 1027 at page 270

27. In the instant case, a very large number of assailants attacked Chand Khan and Shabir (the deceased), caused injuries with deadly weapons to them. The incident stood concluded within few minutes. Thus, it is natural that the exact version of the incident revealing every minute detail i.e. meticulous exactitude of individual acts cannot be given by the eyewitnesses.

Test Identification Parade

108. This extract is taken from *Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107 : 2009 SCC OnLine SC 1551 at page 727

31. At the time of recovery of vehicle Tata Sumo, Sikandar Rai (PW 6) was present in the vehicle itself and it was recovered when accused Inderjit Singh was driving the vehicle and four other accused were also sitting therein. In such a fact situation, though identification in a case like this, may be of paramount importance, but in view of the fact that the accused had been identified by the witnesses at the time of arrest itself, holding the identification parade would have been a futile exercise/inconsequential.

32. Identification parade is of paramount importance in a criminal case. In *Suresh Chandra Bahri* v. *State of Bihar* [1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60 : AIR 1994 SC 2420] this Court held that : (SCC p. 126, para 78)

> "*78.* … when the accused person is not previously known to the witness concerned [the] identification of the accused by the witness soon after his arrest is of great importance because it furnishes an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in court at the trial."

But the position would be entirely different when the accused or culprit who stands trial had been seen at times by the witness as it may do away with the necessity of identification parade. Where the accused has been arrested in the presence of the witness, the accused has been shown to the witness or even his photograph has been shown by the investigating officer prior to test identification parade, holding identification parade in such facts and circumstances remained inconsequential (vide *Sk. Umar Ahmed Shaikh* v. *State of Maharashtra* [(1998) 5 SCC 103 : 1998 SCC (Cri) 1276 : AIR 1998 SC 1922] , *Dastagir Sab* v. *State of Karnataka* [(2004) 3 SCC 106 : 2004 SCC (Cri) 678] and *Maya Kaur Baldevsingh Sardar* v. *State of Maharashtra* [(2007) 12 SCC 654 : (2008) 3 SCC (Cri) 343]).

109. This extract is taken from *Dana Yadav v. State of Bihar*, (2002) 7 SCC 295 : 2002 SCC (Cri) 1698 : 2002 SCC OnLine SC 867 at page 299

2. The prosecution case, in short, is that the informant Shambhu Prasad Komal (PW 14), who was a worker of Revolutionary Group of Forward Bloc, along with his companions was undertaking a *padyatra* from 22-4-1983 to 27-4-1983 which was led by their leader Balmukund Rahi. In the evening of 25-4-1983 they held a meeting at Guraru and after the same was over PW 14 along with 150 workers went to Village Karma for night halt where they stayed in the house of one Ramratan Yadav (PW 12) and after taking dinner when some of them were sitting inside the *baithaka* and others outside, at about 9-9.15 p.m., they heard slogans coming from towards south of the village. In the meantime, nearly 150-200 members of Naxalite group came, surrounded the house of PW 12, amongst whom accused Dara Singh @ Kamdeo Yadav and appellant Bindeshwar Yadav were carrying guns and pointing towards the prosecution party saying "be careful and raise your hands" whereupon out of fear some of the members of the prosecution party went inside the house and closed the door from within. Thereafter, they heard sounds of bullet-firing and bomb explosion and the house in which they were hiding themselves was set on fire. When the members of the prosecution party found that they were exposed to the risk of being roasted alive as a result of fire, they came out of the house and at that point of time the accused persons surrounded them and took them to the south-eastern direction where they were forced to sit. Out of the members of the prosecution party, Balmukund Rahi, Chandradeo Yadav and Ganesh Yadav (PW 1) were taken to eastern direction by the appellants Bindeshwar Yadav and Bhuvneshwar Bind besides accused Dara Singh, Madan Dusadh, Dhudheshwar Dusadh and Gupta Yadav. Out of them appellants Bindeshwar Yadav and Bhuvneshwar Bind apart from accused Dara Singh and Dhudheshwar Dusadh were said to have cut throats of Balmukund Rahi and Chandradeo Yadav with *pasuli* whereas PW 1 was inflicted injuries on the head by *pharsa* but he managed to escape. Appellants Dana, Rambilas, Doman and Ramchandra along with eight other named accused persons and several other unknown were alleged to have surrounded other members of the prosecution party and assaulted Bal Govind (PW 8), Chandrika (PW 4) and Ramratan Yadav (PW 12) who received injuries. Thereafter the accused persons took to their heels. Motive for the occurrence disclosed was that members of the prosecution party had undertaken *padyatra* against terror spread by the Naxalites. Stating the aforesaid facts, *fardbeyan* of the informant (PW 14) was

recorded by the Sub-Inspector of Police on the same day at 11 p.m. in the village on the basis of which formal first information report was drawn up against 14 named accused persons, including the appellants, excepting Deo Nandan, and the police, after registering the case, took up investigation, during the course of which appellant Deo Nandan was also made accused in the case and on completion thereof, submitted charge-sheet, on receipt whereof the learned Magistrate took cognizance and committed 14 accused persons, including the appellants, to the Court of Session to face trial.

4. During trial, the prosecution examined 15 witnesses in all and several documents were exhibited whereas the defence failed to adduce any evidence. Upon the completion of trial, the learned Additional Sessions Judge convicted the accused persons, as stated above, and the High Court upheld the convictions and sentences of the seven accused and acquitted two of them, as mentioned above. Hence these appeals by special leave. Out of seven appellants, name of Appellant 5 Bhuvneshwar Bind was deleted, as such we are required to consider in these appeals cases of six appellants.

5. Shri Prabha Shankar Mishra, learned Senior Counsel appearing on behalf of the appellants in support of the appeals raised several points. It has been submitted that Deo Nandan (Appellant 3) was not named in the first information report and neither known to the informant nor to any of the prosecution witnesses and although no test identification parade was held, he was identified in court for the first time, as such no reliance should have been placed upon such an identification more so when there were no exceptional circumstances to place reliance upon his identification for the first time made in court without the same being corroborated by previous identification in the test identification parade or any other evidence. Section 9 of the Evidence Act deals with relevancy of facts necessary to explain or introduce relevant facts. It says, inter alia, facts which establish the identity of any thing or person whose identity is relevant, insofar as they are necessary for the purpose, are relevant. So the evidence of identification is a relevant piece of evidence under Section 9 of the Evidence Act where the evidence consists of identification of the accused at his trial. The identification of an accused by a witness in court is substantive evidence whereas evidence of identification in test identification parade is though primary evidence but not substantive one and the same can be used only to corroborate identification of the accused by a witness in court. This Court has dealt with this question on several occasions. In the case of *Vaikuntam Chandrappa* v. *State of A.P.* [AIR 1960 SC 1340 : 1960 Cri LJ

1681] which is a three-Judge Bench decision of this Court, Wanchoo, J., with whom A.K. Sarkar and K. Subba Rao, JJ. agreed, speaking for the Court, observed that the substantive evidence of a witness is his statement in court but the purpose of test identification is to test that evidence and the safe rule is that the sworn testimony of witnesses in court as to the identity of the accused who are strangers to the witnesses, generally speaking, requires corroboration which should be in the form of an earlier identification proceeding or any other evidence. The law laid down in the aforesaid decision has been reiterated in the cases of *Budhsen* v. *State of U.P.* [(1970) 2 SCC 128 : 1970 SCC (Cri) 343] , *Sk. Hasib* v. *State of Bihar* [(1972) 4 SCC 773] , *Bollavaram Pedda Narsi Reddy* v. *State of A.P.* [(1991) 3 SCC 434 : 1991 SCC (Cri) 586] , *Ronny* v. *State of Maharashtra* [(1998) 3 SCC 625 : 1998 SCC (Cri) 859] and *Rajesh Govind Jagesha* v. *State of Maharashtra* [(1999) 8 SCC 428 : 1999 SCC (Cri) 1452] . It is well settled that identification parades are held ordinarily at the instance of the investigating officer for the purpose of enabling the witnesses to identify either the properties which are the subject-matter of alleged offence or the persons who are alleged to have been involved in the offence. Such tests or parades, in ordinary course, belong to the investigation stage and they serve to provide the investigating authorities with material to assure themselves if the investigation is proceeding on right lines. In other words, it is through these identification parades that the investigating agency is required to ascertain whether the persons whom they suspect to have committed the offence were the real culprits. Reference in this connection may be made to the decisions of this Court in the cases of *Budhsen* [(1970) 2 SCC 128 : 1970 SCC (Cri) 343] , *Sk. Hasib* [(1972) 4 SCC 773] , *Rameshwar Singh* v. *State of J&K* [(1971) 2 SCC 715 : 1971 SCC (Cri) 638 : (1972) 1 SCR 627] and *Ravindra* v. *State of Maharashtra* [(1998) 6 SCC 609 : 1998 SCC (Cri) 1527] .

Ratio:

6. It is also well settled that failure to hold test identification parade, which should be held with reasonable dispatch, does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Question is, what is its probative value? Ordinarily, identification of an accused for the first time in court by a witness should not be relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous identification in the test identification parade or any other evidence. The purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen

earlier, strength or trustworthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. If a witness identifies the accused in court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence. We are fortified in our view by a catena of decisions of this Court in the cases of *Kanta Prashad* v. *Delhi Admn.* [AIR 1958 SC 350 : 1958 Cri LJ 698] , *Vaikuntam Chandrappa* [AIR 1960 SC 1340 : 1960 Cri LJ 1681] , *Budhsen* [(1970) 2 SCC 128 : 1970 SCC (Cri) 343] , *Kanan* v. *State of Kerala* [(1979) 3 SCC 319 : 1979 SCC (Cri) 621] , *Mohanlal Gangaram Gehani* v. *State of Maharashtra* [(1982) 1 SCC 700 : 1982 SCC (Cri) 334] , *Bollavaram Pedda Narsi Reddy* [(1991) 3 SCC 434 : 1991 SCC (Cri) 586] , *State of Maharashtra* v. *Sukhdev Singh* [(1992) 3 SCC 700 : 1992 SCC (Cri) 705] , *Jaspal Singh* v. *State of Punjab* [(1997) 1 SCC 510 : 1997 SCC (Cri) 358] , *Raju* v. *State of Maharashtra* [(1998) 1 SCC 169 : 1998 SCC (Cri) 296] , *Ronny* [(1998) 3 SCC 625 : 1998 SCC (Cri) 859] , *George* v. *State of Kerala* [(1998) 4 SCC 605 : 1998 SCC (Cri) 1232] , *Rajesh Govind Jagesha* [(1999) 8 SCC 428 : 1999 SCC (Cri) 1452] , *State of H.P.* v. *Lekh Raj* [(2000) 1 SCC 247 : 2000 SCC (Cri) 147] and *Ramanbhai Naranbhai Patel* v. *State of Gujarat* [(2000) 1 SCC 358 : 2000 SCC (Cri) 113] .

7. Apart from the ordinary rule laid down in the aforesaid decisions, **certain exceptions to the same have been carved out where identification of an accused for the first time in court without there being any corroboration whatsoever can form the sole basis for his conviction. In the case of *Budhsen*** [(1970) 2 SCC 128 : 1970 SCC (Cri) 343] it was observed : (SCC p. 132, para 7)

> "There may, however, be exceptions to this general rule, when for example, the court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration."

110. This extract is taken from *Dana Yadav v. State of Bihar*, (2002) 7 SCC 295 : 2002 SCC (Cri) 1698 : 2002 SCC OnLine SC 867 at page 303

8. In the case of *State of Maharashtra* v. *Sukhdev Singh* [(1992) 3 SCC 700 : 1992 SCC (Cri) 705] it was laid down that if a witness had any particular reason to remember about the identity of an accused, in that event, the case can be brought under the exception and upon solitary evidence of identification of an accused in court for the first time, conviction can be based. In the case of *Ronny* [(1998) 3 SCC 625 : 1998 SCC (Cri) 859] it has been laid down that where the witness had a chance to interact with the accused or that in a case where the witness had an opportunity to notice the distinctive features of the accused which lends assurance to his testimony in court, the evidence of identification in court for the first time by such a witness cannot be thrown away merely because no test identification parade was held. In that case, the accused concerned had a talk with the identifying witnesses for about 7/8 minutes. In these circumstances, the conviction of the accused, on the basis of sworn testimony of witnesses identifying for the first time in court without the same being corroborated either by previous identification in the test identification parade or any other evidence, was upheld by this Court. In the case of *Rajesh Govind Jagesha* [(1999) 8 SCC 428 : 1999 SCC (Cri) 1452] it was laid down that the absence of test identification parade may not be fatal if the accused is sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement or is arrested on the spot immediately after the occurrence and in either eventuality, the evidence of witnesses identifying the accused for the first time in court can form the basis for conviction without the same being corroborated by any other evidence and, accordingly, conviction of the accused was upheld by this Court. In the case of *State of H.P.* v. *Lekh Raj* [(2000) 1 SCC 247 : 2000 SCC (Cri) 147] it was observed (at SCC p. 253, para 3) that

> "test identification is considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them. There may, however, be exceptions to this general rule, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely without such or other corroboration".

In that case, laying down the aforesaid law, acquittal of one of the accused by the High Court was converted into conviction by this Court on the basis of identification by a witness for the first time in court without the same being

corroborated by any other evidence. In the case of *Ramanbhai Naranbhai Patel* [(2000) 1 SCC 358 : 2000 SCC (Cri) 113] it was observed : (SCC p. 369, para 20)

> "It, therefore, cannot be held, as tried to be submitted by learned counsel for the appellants, that in the absence of a test identification parade, the evidence of an eyewitness identifying the accused would become inadmissible or totally useless; whether the evidence deserves any credence or not would always depend on the facts and circumstances of each case."

The Court further observed

> "the fact remains that these eyewitnesses were seriously injured and they could have easily seen the faces of the persons assaulting them and their appearance and identity would well remain imprinted in their minds especially when they were assaulted in broad daylight".

In these circumstances, conviction of the accused was upheld on the basis of solitary evidence of identification by a witness for the first time in court.

38. In view of the law analysed above, we conclude thus:

(*a*) If an accused is well known to the prosecution witnesses from before, no test identification parade is called for and it would be meaningless and sheer waste of public time to hold the same.

(*b*) In cases where according to the prosecution the accused is known to the prosecution witnesses from before, but the said fact is denied by him and he challenges his identity by the prosecution witnesses by filing a petition for holding test identification parade, a court while dealing with such a prayer, should consider without holding a mini-inquiry as to whether the denial is bona fide or a mere pretence and/or made with an ulterior motive to delay the investigation. In case the court comes to the conclusion that the denial is bona fide, it may accede to the prayer, but if, however, it is of the view that the same is a mere pretence and/or made with an ulterior motive to delay the investigation, question for grant of such a prayer would not arise. Unjustified grant or refusal of such a prayer would not necessarily enure to the benefit of either party nor the same would be detrimental to their interest. In case prayer is granted and test identification parade is held in which a witness fails to identify the accused, his so-called claim that the accused was known to him from before and the evidence of identification in court should not be accepted. But in case either prayer is not granted or granted but no test identification parade held, the same *ipso facto* cannot be

a ground for throwing out evidence of identification of an accused in court when evidence of the witness, on the question of identity of the accused from before, is found to be credible. The main thrust should be on answer to the question as to whether evidence of a witness in court to the identity of the accused from before is trustworthy or not. In case the answer is in the affirmative, the fact that prayer for holding test identification parade was rejected or although granted, but no such parade was held, would not in any manner affect the evidence adduced in court in relation to identity of the accused. But if, however, such an evidence is not free from doubt, the same may be a relevant material while appreciating the evidence of identification adduced in court.

(*c*) Evidence of identification of an accused in court by a witness is substantive evidence whereas that of identification in test identification parade is, though a primary evidence but not substantive one, and the same can be used only to corroborate identification of the accused by a witness in court.

(*d*) Identification parades are held during the course of investigation ordinarily at the instance of investigating agencies and should be held with reasonable dispatch for the purpose of enabling the witnesses to identify either the properties which are the subject-matter of alleged offence or the accused persons involved in the offence so as to provide it with materials to assure itself if the investigation is proceeding on right lines and the persons whom it suspects to have committed the offence were the real culprits.

(*e*) Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form the basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law.

(*f*) In exceptional circumstances only, as discussed above, evidence of identification for the first time in court, without the same being corroborated by previous identification in the test identification parade or any other evidence, can form the basis of conviction.

(*g*) Ordinarily, if an accused is not named in the first information report, his identification by witnesses in court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above.

111. This extract is taken from *C. Muniappan v. State of T.N.*, (2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402 : 2010 SCC OnLine SC 946 at page 585

Test identification parade

38. In *Lal Singh* v. *State of U.P.* [(2003) 12 SCC 554 : 2004 SCC (Cri) Supp 489] this Court held that the court must be conscious of the fact that the witnesses should have sufficient opportunity to see the accused at the time of occurrence of the incident. In case the witness has ample opportunity to see the accused before the identification parade is held, it may adversely affect the trial and in that case, the evidence as a whole is to be considered. The prosecution should take precautions and should establish before the court that right from the day of his arrest, the accused was kept "baparda" so as to rule out the possibility of his face being seen while in police custody.

39. In *Suresh Chandra Bahri* v. *State of Bihar* [1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60 : AIR 1994 SC 2420] this Court held that the object of conducting test identification parade is to enable the witnesses to satisfy themselves that the accused whom they suspect is really one who was seen by them in connection with commission of crime and to satisfy the investigating authorities that the suspect is really the person whom the witnesses had seen in connection with the said occurrence.

> "*78.* … it furnishes an assurance that the investigation is proceeding on right lines, in addition to furnishing corroboration of the evidence to be given by the witness later in court at the trial." (*Suresh Chandra case* [1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60 : AIR 1994 SC 2420] , SCC p. 126, para 78)

Therefore, the test identification parade is primarily meant for investigation purposes. (Vide *Malkhansingh* v. *State of M.P.* [(2003) 5 SCC 746 : 2003 SCC (Cri) 1247 : AIR 2003 SC 2669] , *Ankush Maruti Shinde* v. *State of Maharashtra* [(2009) 6 SCC 667 : (2009) 3 SCC (Cri) 308] , and *Jarnail Singh* v. *State of Punjab* [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] .)

40. But the position would be entirely different when the accused or the culprit who stands trial has been seen a number of times by the witness, as it may do away with the necessity of identification parade. Where the accused has been arrested in presence of the witness or the accused has been shown to the witness or even his photograph has been shown by the investigating officer prior to test identification parade, holding an identification parade in such facts and circumstances remains inconsequential. (Vide *Sk. Umar Ahmed Shaikh* v. *State of Maharashtra* [(1998) 5 SCC 103 : 1998 SCC (Cri) 1276 : AIR

1998 SC 1922] , *Lalli* v. *State of Rajasthan* [(2003) 12 SCC 666 : 2005 SCC (Cri) 822] , *Dastagir Sab* v. *State of Karnataka* [(2004) 3 SCC 106 : 2004 SCC (Cri) 678] , *Maya Kaur Baldevsingh Sardar* v. *State of Maharashtra* [(2007) 12 SCC 654 : (2008) 3 SCC (Cri) 343] and *Aslam* v. *State of Rajasthan* [(2008) 9 SCC 227 : (2008) 3 SCC (Cri) 764] .)

41. In *Yuvaraj Ambar Mohite* v. *State of Maharashtra* [(2006) 12 SCC 512 : (2007) 2 SCC (Cri) 554] this Court placed reliance upon its earlier judgment in *D. Gopalakrishnan* v. *Sadanand Naik* [(2005) 1 SCC 85 : (2006) 1 SCC (Cri) 600] , and held that if the photograph of the accused has been shown to the witness before the test identification parade, the identification itself loses its purpose. If the suspect is available for identification or for video identification, the photograph should never be shown to the witness.

42. Holding the test identification parade is not a substantive piece of evidence, yet it may be used for the purpose of corroboration; for believing that a person brought before the court is the real person involved in the commission of the crime. However, the test identification parade, even if held, cannot be considered in all the cases as trustworthy evidence on which the conviction of the accused can be sustained. It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant. (Vide *State of H.P.* v. *Lekh Raj* [(2000) 1 SCC 247 : 2000 SCC (Cri) 147 : AIR 1999 SC 3916] , SCC p. 253, para 3.)

43. In *Mulla* v. *State of U.P.* [(2010) 3 SCC 508 : (2010) 2 SCC (Cri) 1150] this Court placed reliance on *Matru* v. *State of U.P.* [(1971) 2 SCC 75 : 1971 SCC (Cri) 391 : AIR 1971 SC 1050] and *Santokh Singh* v. *Izhar Hussain* [(1973) 2 SCC 406 : 1973 SCC (Cri) 828 : AIR 1973 SC 2190] and observed as under : (*Mulla case* [(2010) 3 SCC 508 : (2010) 2 SCC (Cri) 1150] , SCC pp. 521-22, para 41)

> "*41.* ... The evidence of test identification is admissible under Section 9 of the Evidence Act, 1872. The identification parade belongs to the stage of investigation by the police. The question whether a witness has or has not identified the accused during the investigation is not one which is in itself relevant at the trial. The actual evidence regarding identification is that which is given by witnesses in court. There is no provision in CrPC entitling the accused to demand that an identification parade should be held at or before the inquiry of the trial. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance corroborative of the identification in court."

44. In *Kartar Singh* v. *State of Punjab* [(1994) 3 SCC 569 : 1994 SCC (Cri) 899] , a Constitution Bench of this Court has suo motu examined the validity

of Section 22 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 and held that : (SCC p. 711, para 361)

> "*361*. If the evidence regarding the identification on the basis of a photograph is to be held to have the same value as the evidence of a test identification parade, we feel that gross injustice to the detriment of the persons suspected may result."

This Court, thus, struck down the provisions of Section 22 of the said Act.

45. The said judgment was considered by this Court in *Umar Abdul Sakoor Sorathia* v. *Narcotic Control Bureau* [(2000) 1 SCC 138 : 2000 SCC (Cri) 200 : AIR 1999 SC 2562] , and the Court observed that in the said case, the evidence of a witness regarding identification of a proclaimed offender involved in a terrorist case was in issue. The courts below had taken a view that evidence by showing photographs must have the same value as evidence of a test identification parade. The Court distinguished the aforesaid case on facts. The Court further held that the court must bear in mind that in a case where the accused is not a proclaimed offender and the person who had taken the photographs was making deposition before the court was being examined by the prosecution as a witness, and he identified the accused in the court, that may be treated as a substantive evidence. However, courts should be conscious of the fact that during investigation, the photograph of the accused was shown to the witness and he identified that person as the one whom he saw at the relevant time.

46. Thus, it is evident from the above, that the test identification parade is a part of the investigation and is very useful in a case where the accused are not known beforehand to the witnesses. It is used only to corroborate the evidence recorded in the court. Therefore, it is not substantive evidence. The actual evidence is what is given by the witnesses in the court. The test identification parade provides for an assurance that the investigation is proceeding in the right direction and it enables the witnesses to satisfy themselves that the accused whom they suspect is really one who was seen by them at the time of commission of offence. The accused should not be shown to any of the witnesses after arrest, and before holding the test identification parade, he is required to be kept "baparda".

112. This extract is taken from *Ravi Kapur v. State of Rajasthan*, (2012) 9 SCC 284 : (2012) 4 SCC (Civ) 660 : (2012) 3 SCC (Cri) 1107 : 2012 SCC OnLine SC 607 at page 305

36. We may refer to a judgment of this Court in *Shyamal Ghosh* v. *State of W.B.* [(2012) 7 SCC 646 : (2012) 3 SCC (Cri) 685] wherein this Court has held that the Code of Criminal Procedure, 1973 (for short "CrPC") does not oblige the investigating agency to necessarily hold the test identification parade without exception. The Court held as under: (SCC pp. 675-76, paras 78-81)

"*78.* On behalf of accused Shyamal, it was also contended that despite the identification parade being held, he was not identified by the witnesses and also that the identification parade had been held after undue delay and even when details about the incident had already been telecasted on the television. Thus, the court should not rely upon the identification of the accused persons as the persons involved in the commission of the crime and they should be given the benefit of doubt.

79. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime.

80. It is equally correct that CrPC does not oblige the investigating agency to necessarily hold the test identification parade. Failure to hold the test identification parade while in police custody, does not by itself render the evidence of identification in court inadmissible or unacceptable. There have been numerous cases where the accused is identified by the witnesses in the court for the first time. One of the views taken is that identification in court for the first time alone may not form the basis of conviction, but this is not an absolute rule. The purpose of the test identification parade is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of the witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence is, however subjected to exceptions. Reference can be made to *Munshi Singh Gautam* v. *State of M.P.* [(2005) 9 SCC 631 : 2005

SCC (Cri) 1269] and *Sheo Shankar Singh* v. *State of Jharkhand* [(2011) 3 SCC 654 : (2011) 2 SCC (Cri) 25] .

81. Identification parade is a tool of investigation and is used primarily to strengthen the case of the prosecution on the one hand and to make doubly sure that persons named as the accused in the case are actually the culprits. The identification parade primarily belongs to the stage of investigation by the police. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance corroborative of the identification in court. Thus, it is only a relevant consideration which may be examined by the court in view of other attendant circumstances and corroborative evidence with reference to the facts of a given case."

113. This extract is taken from *Manoj v. State of M.P.*, (2023) 2 SCC 353 : 2022 SCC OnLine SC 677 at page 419

VI. *Test identification parade of the accused*

108. The prosecution relied upon the testimonies of PW 10 and PW 18 (Pratap Kumar Agasiya, Naib Tahsildar). Both deposed that PW 10 had correctly identified Manoj and Rahul by specifically tapping their heads. According to PW 18, both the accused were made to stand with 10 other persons resembling them. The result of this identification memo i.e. the test identification parade ("TIP") proceedings was recorded as Ext. P-38, where Manoj and Rahul were identified by PW 10, and Ext. P-40 where only Manoj was identified by PW 11 Raju Sen. Likewise, PW 18 deposed that in a separate proceeding recorded as Ext. P-39, PW 10 had identified Neha from amongst five other girls who had similar physical features.

110. A popular and widely used method of accused identification, by witness, in criminal trials, is the identification parade. TIP procedures are used, where witnesses who claim to have seen the accused at, or about the time of occurrence to identify such accused from the midst of other individuals, who bear physical attributes similar to them, without any aid or other source. TIPs are meant to test witness veracity and their capability to identify unknown persons. TIPs should normally be conducted at the earliest possible time to eliminate the chance of accused being shown to witnesses before the identification parade, which might otherwise affect such witnesses' memory. TIPs are conducted during investigation; however, there is no provision of law enabling an accused to claim it as a matter of right, as held in *Malkhansingh* v. *State of M.P.* [*Malkhansingh* v. *State of M.P.*, (2003) 5 SCC 746, para 7 : 2003 SCC (Cri) 1247] In *Ramanathan* v. *State of T.N.* [*Ramanathan* v. *State of T.N.*, (1978) 3 SCC 86, para 18 : 1978 SCC (Cri) 341] this Court outlined the utility and weight of a TIP. There is no hard-and-fast rule that delay or failure in holding the TIP ipso facto renders the evidence inadmissible or unacceptable; it however, affects the credibility and weight attached to such identification, as held in *Shyamal Ghosh* v. *State of W.B.* [*Shyamal Ghosh* v. *State of W.B.*, (2012) 7 SCC 646 : (2012) 3 SCC (Cri) 685]

114. This extract is taken from *Manoj v. State of M.P.*, (2023) 2 SCC 353 : 2022 SCC OnLine SC 677 at page 424

125. This Court would take up the last argument, at the outset. In *Sonvir* v. *State (NCT of Delhi)* [*Sonvir* v. *State (NCT of Delhi)*, (2018) 8 SCC 24 : (2018) 3 SCC (Cri) 486] , it was held that the provisions of the Identification of Prisoners Act, 1920, were not mandatory, but rather directory, and that they only affirm the bona fides of the sample-taking (of the fingerprints of an accused) and eliminate the possibility of evidence fabrication. This Court however, made it clear that not following or complying with the provisions of the Act, would not per se vitiate the evidence, in a given case. This was again affirmed in *Ashish Jain* v. *Makrand Singh* [*Ashish Jain* v. *Makrand Singh*, (2019) 3 SCC 770 : (2019) 2 SCC (Cri) 256] .

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Injured Witness

115. This extract is taken from *Ramlagan Singh v. State of Bihar*, (1973) 3 SCC 881 : 1973 SCC (Cri) 563 : 1972 SCC OnLine SC 360 at page 883

10. Mr Chari has referred to the fact that injuries were found on the persons of the two of the accused, namely, Ram Nandan Singh and Suresh Singh. It is stated that these injuries have not been satisfactorily explained by the prosecution witnesses. No question, however, appears to have been put to any of the prosecution witnesses regarding the injuries caused to Ram Nandan Singh and Suresh Singh accused. As such, there arose no occasion for the prosecution witnesses to explain the injuries on the persons of the two of the accused. Apart from that, we find that a cross case was started against the prosecution witnesses in this case regarding the injuries to Ram Nandan Singh and Suresh Singh accused. The accused in the cross case, we have been informed by Mr Chari, were acquitted on appeal by the High Court. It appears that the witnesses refrained from referring to the injuries on the persons of Ram Nandan Singh and Suresh Singh because of fear of being implicated in the cross case. Looking to the circumstances of the case, we are of the opinion that the non-mention of the injuries on the persons of the two accused in the prosecution evidence would not justify interference with the appraisement of the evidence by the trial court and the High Court.

116. This extract is taken from *Vishnu v. State of Rajasthan*, (2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302 : 2009 SCC OnLine SC 1645 at page 484

34. It is wholly irrelevant whether the FIR got prepared by first informant Babu Lal was lodged at the police station when Babu Lal is stated to have gone there or the report already written on 28-8-1995 was handed over to the police on its arrival at the place of incident. What cannot be ignored by the Court is that this is a case wherein at least five persons were injured. Those five injured persons are closely related to the deceased. When a person receives injuries in the course of occurrence, there can be hardly any doubt regarding his presence at the spot. Further, injured witnesses would not spare the real assailants and falsely involve innocent persons.

117. This extract is taken from *Jodhan v. State of M.P.*, (2015) 11 SCC 52 : (2015) 4 SCC (Cri) 275 : 2015 SCC OnLine SC 303 at page 64

DIPAK MISRA, J.— The present appeal calls in question the defensibility and the legal sustainability of the judgment of conviction and order of sentence passed by the Division Bench of the High Court of Madhya Pradesh, Bench at Gwalior in *State of M.P.* v. *Ramswaroop* [*State of M.P.* v. *Ramswaroop* Criminal Appeal No. 214 of 1995, decided on 28-11-2005 (MP)] whereby the High Court has dislodged the judgment of acquittal recorded by the learned Additional Sessions Judge in respect of all the accused persons including the present appellant for the offences punishable under Sections 302, 323, 324 read with Section 149 of the Penal Code, 1860 (IPC) and Section 148 IPC and proceeded to sentence each of the accused under Section 302 read with Section 149 IPC and imposed rigorous imprisonment for life along with separate sentences for other offences with the stipulation that all the sentences would be concurrent. Be it noted, the appellant and one Mangal Singh were also tried under Sections 3 and 4 of the Explosive Substances Act, 1908.

2. The facts which are essential to be exposited for the disposal of this appeal are that on 7-1-1984 at about 9.00 a.m. when Ratta, PW 7, was at his home, the accused persons, namely, Mangal Singh, Babbu, Jodhan, Kanchhedi, Bhinua, Ramswaroop and Natthu and others came there armed with lathis, farsa and handmade bombs and started abusing Ratta and his family members and exhorted that they would not leave the Kumharwalas alive. As alleged, Kanchhedi assaulted Rukmanibai on her left hand with farsa, Jodhan, the present appellant, caused injury in the right leg of Heeralal, PW 16, by throwing a handmade bomb at him and accused Mangal Singh threw a handmade bomb on the chest of Siriya alias Shriram as a result of which he received serious injuries. Other accused persons used lathi in the incident. As the prosecution story proceeds, Ratta lodged an FIR, Ext. P-24, on 7-1-1984 about 12.15 p.m. and by that time Siriya alias Shriram had already succumbed to the injuries. The injured persons were medically examined and on requisition by the investigating agency post-mortem was carried out. The investigating agency in the course of investigation prepared the spot map, collected the bloodstained soil from the place of incident, and further, as is demonstrable, on being led by the accused persons seized the weapons, namely, lathi, farsa and handmade bombs and, thereafter, sent the seized articles to the chemical examiner for analysis. The investigating officer recorded the statements of the witnesses and eventually placed the charge-sheet in the

Court of the Chief Judicial Magistrate, Vidisha, who, in turn, committed the matter to the Court of Session, Vidisha.

22. As per the evidence brought on record, the incident had taken place near the house of the deceased and the witnesses. The criticism that has been advanced against these witnesses is to the effect that they are interested witnesses and hence, their version does not deserve acceptance is sans merit, for they are the witnesses who were there at the spot and sustained injuries. They are close relatives and they have stood firm despite incisive cross-examination. There can be no cavil over the proposition that when the witnesses are related and interested, their testimony should be closely scrutinised, but as we find, nothing has been elicited in the cross-examination to discredit their version. On a studied scrutiny of their evidence, it can be said with certitude that they have lent support to each other's version in all material particulars. There are some minor contradictions and omissions which have been emphasised by the learned trial Judge. The High Court has treated the said discrepancies and the minor contradictions as natural. That apart, their evidence also find support from the medical evidence and the initial allegations made in the FIR. The High Court has opined that there is no inconsistency in their version and on a perusal of the said evidence, we find there is absolutely no inconsistency which will compel a court of law to discard their version. The learned trial Judge, as is evincible, has attached immense emphasis to such omissions and contradictions which, according to the High Court, with which we concur, are absolutely insignificant and trivial. It is also perceived that the learned trial Judge has given notable stress on the fact that the accused persons and the informant were on inimical terms due to non-voting by the informant's party in their favour. In our considered opinion, in the present case, the same cannot be a ground for not placing reliance on the eyewitnesses who have supported the prosecution version.

23. It is emphatically submitted by Mr Sharma, learned counsel for the appellant, that when the witnesses are interested witnesses and other independent witnesses had turned hostile, the High Court should not have relied on such witnesses and overturned the judgment of acquittal by the learned trial Judge.

24. First, we shall deal with the credibility of related witnesses. In *Dalip Singh* v. *State of Punjab* [*Dalip Singh* v. *State of Punjab*, (1953) 2 SCC 36 : AIR 1953 SC 364 : 1953 Cri LJ 1465] , it has been observed thus: (AIR p. 366, para 25)

"*25*. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in *Rameshwar* v. *State of Rajasthan* [*Rameshwar* v. *State of Rajasthan*, 1951 SCC 1213 : AIR 1952 SC 54 : 1952 Cri LJ 547] ."

In the said case, it has also been further observed: (AIR p. 366, para 26)

"*26*. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

25. In *Hari Obula Reddy* v. *State of A.P.* [*Hari Obula Reddy* v. *State of A.P.*, (1981) 3 SCC 675 : 1981 SCC (Cri) 795] , the Court has ruled that evidence of interested witnesses per se cannot be said to be unreliable evidence. Partisanship by itself is not a valid ground for discrediting or discarding sole testimony. We may fruitfully reproduce a passage from the said authority: (SCC pp. 683-84, para 13)

"*13*. … an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

26. The principles that have been stated in number of decisions are to the effect that evidence of an interested witness can be relied upon if it is found to be trustworthy and credible. Needless to say, a testimony, if after careful

scrutiny is found as unreliable and improbable or suspicious it ought to be rejected. That apart, when a witness has a motive or makes false implication, the court before relying upon his testimony should seek corroboration in regard to material particulars. In the instant case, the witnesses who have deposed against the accused persons are close relatives and had suffered injuries in the occurrence. Their presence at the scene of occurrence cannot be doubted, their version is consistent and nothing has been elicited in the cross-examination to shake their testimony. There are some minor or trivial discrepancies, but they really do not create a dent in their evidence warranting to treat the same as improbable or untrustworthy.

27. In this context, it is requisite to quote the observations made by the Court in *State of Punjab* v. *Jagir Singh* [*State of Punjab* v. *Jagir Singh*, (1974) 3 SCC 277 : 1973 SCC (Cri) 886] : (SCC pp. 285-86, para 23)

> "*23.* A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

28. Tested on the backdrop of the aforesaid enunciation of law, we are unable to accept the submission of the learned counsel for the appellant that the High Court has fallen into error by placing reliance on the evidence of the said prosecution witnesses. The submission that when other witnesses have turned hostile, the version of these witnesses also should have been discredited does not commend acceptance, for there is no rule of evidence that the testimony of the interested witnesses is to be rejected solely because other independent witnesses who have been cited by the prosecution have turned hostile. Additionally, we may note with profit that these witnesses had sustained injuries and their evidence as we find is cogent and reliable. A testimony of an injured witness stands on a higher pedestal than other witnesses. In *Abdul Sayeed* v. *State of M.P.* [*Abdul Sayeed* v. *State of M.P.*, (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] , it has been observed that: (SCC p. 271, para 28)

"*28*. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone."

It has been also reiterated that convincing evidence is required to discredit an injured witness. Be it stated, the opinion was expressed by placing reliance upon *Ramlagan Singh* v. *State of Bihar* [*Ramlagan Singh* v. *State of Bihar*, (1973) 3 SCC 881 : 1973 SCC (Cri) 563] , *Malkhan Singh* v. *State of U.P.* [*Malkhan Singh* v. *State of U.P.*, (1975) 3 SCC 311 : 1974 SCC (Cri) 919] , *Vishnu* v. *State of Rajasthan* [*Vishnu* v. *State of Rajasthan*, (2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302] , *Balraje* v. *State of Maharashtra* [*Balraje* v. *State of Maharashtra*, (2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] and *Jarnail Singh* v. *State of Punjab* [*Jarnail Singh* v. *State of Punjab*, (2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] .

29. From the aforesaid summarisation of the legal principles, it is beyond doubt that the testimony of the injured witness has its own significance and it has to be placed reliance upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and inconsistencies. As has been stated, the injured witness has been conferred special status in law and the injury sustained by him is an inbuilt guarantee of his presence at the place of occurrence. Thus perceived, we really do not find any substance in the submission of the learned counsel for the appellant that the evidence of the injured witnesses have been appositely discarded being treated as untrustworthy by the learned trial Judge.

118. This extract is taken from *Brahm Swaroop v. State of U.P.*, (2011) 6 SCC 288 : (2011) 2 SCC (Cri) 923 : 2010 SCC OnLine SC 1222 at page 302

28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." (Vide *State of U.P.* v. *Kishan Chand* [(2004) 7 SCC 629 : 2004 SCC (Cri) 2021] , *Krishan* v. *State of Haryana* [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214] , *Dinesh Kumar* v. *State of Rajasthan* [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472] , *Jarnail Singh* v. *State of Punjab* [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , *Vishnu* v. *State of Rajasthan* [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302] , *Annareddy Sambasiva Reddy* v. *State of A.P.* [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630 : AIR 2009 SC 2661] and *Balraje* v. *State of Maharashtra* [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] .)

119. This extract is taken from *Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107 : 2009 SCC OnLine SC 1551 at page 726

28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa* v. *State of Karnataka* [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In *State of U.P.* v. *Kishan Chand* [(2004) 7 SCC 629 : 2004 SCC (Cri) 2021] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan* v. *State of Haryana* [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.

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Testimony Of Interested

Testimony of Interested/Inimical Witnesses

24. On the issue of appreciation of evidence of interested witnesses, **Dalip Singh Vs. State of Punjab, AIR 1953 SC 364 = 1954 SCR 145**, is one of the earliest cases on the point. In that case, it was held as follows: "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

25. Similarly, in Piara Singh and Ors. Vs. State of Punjab, AIR 1977 SC 2274 = (1977) 4 SCC 452, this Court held: "It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being a partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is creditworthy there is no bar in the Court relying on the said evidence."

26. In Hari Obula Reddy and Ors. Vs. The State of Andhra Pradesh, (1981) 3 SCC 675, a three-judge Bench of this Court observed: ".. it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

27. Again, in Ramashish Rai Vs. Jagdish Singh, (2005) 10 SCC 498, the following observations were made by this Court: "The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double- edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a

duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence."

28. A survey of the judicial pronouncements of this Court on this point leads to the inescapable conclusion that the evidence of a closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (See Anil Rai Vs. State of Bihar, (2001) 7 SCC 318; State of U.P. Vs. Jagdeo Singh, (2003) 1 SCC 456; Bhagalool Lodh & Anr. Vs. State of U.P., (2011) 13 SCC 206; Dahari & Ors. Vs. State of U. P., (2012) 10 SCC 256; Raju @ Balachandran & Ors. Vs. State of Tamil Nadu, (2012) 12 SCC 701; Gangabhavani Vs. Rayapati Venkat Reddy & Ors., (2013) 15 SCC 298; Jodhan Vs. State of M.P., (2015) 11 SCC 52)

120. This extract is taken from *Yogesh Singh v. Mahabeer Singh*, (2017) 11 SCC 195 : (2017) 4 SCC (Cri) 257 : 2016 SCC OnLine SC 1163 at page 212

28. A survey of the judicial pronouncements of this Court on this point leads to the inescapable conclusion that the evidence of a closely related witness is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (See *Anil Rai* v. *State of Bihar* [*Anil Rai* v. *State of Bihar*, (2001) 7 SCC 318 : 2001 SCC (Cri) 1009] , *State of U.P.* v. *Jagdeo* [*State of U.P.* v. *Jagdeo*, (2003) 1 SCC 456 : 2003 SCC (Cri) 351] , *Bhagaloo Lodh* v. *State of U.P.* [*Bhagaloo Lodh* v. *State of U.P.*, (2011) 13 SCC 206 : (2012) 1 SCC (Cri) 813] , *Dahari* v. *State of U.P.* [*Dahari* v. *State of U.P.*, (2012) 10 SCC 256 : (2013) 1 SCC (Cri) 22] , *Raju* v. *State of T.N.* [*Raju* v. *State of T.N.*, (2012) 12 SCC 701 : (2012) 4 SCC (Cri) 184] , *Gangabhavani* v. *Rayapati Venkat Reddy* [*Gangabhavani* v. *Rayapati Venkat Reddy*, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182] and *Jodhan* v. *State of M.P.* [*Jodhan* v. *State of M.P.*, (2015) 11 SCC 52 : (2015) 4 SCC (Cri) 275])

121. This extract is taken from *Dalip Singh v. State of Punjab*, (1953) 2 SCC 36 : 1953 SCC OnLine SC 104 at page 44

24. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

122. This extract is taken from *Piara Singh v. State of Punjab*, (1977) 4 SCC 452 : 1977 SCC (Cri) 614 : 1977 SCC OnLine SC 273 at page 455

4. The central evidence against the appellant consisted of the three eyewitnesses, namely, PW 3 Harbhajan Singh, PW 5 Chanan Kaur and PW 6 Kesar Kaur. It is true that the three witnesses were relations of the deceased and bore animus against the accused but as the occurrence had taken place near the door of the house of the deceased these persons were the natural witnesses and were in fact sitting in the court-yard when the occurrence took place. It may be difficult to get witnesses from the village when an assault of the type suddenly takes place in the house of the deceased. It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being a partisan evidence. If on a perusal of the evidence the court is satisfied that the evidence is credit-worthy there is no bar in the Court relying on the said evidence. The High Court was fully alive to these principles and has in fact found that the evidence of these three witnesses has a ring of truth. After having perused the evidence ourselves also we fully agree with the view taken by the High Court. In fact, the learned Sessions Judge has not made any attempt to dwell into the intrinsic merits of the evidence of these witnesses but has rejected them mainly on general grounds most of which are either unsupportable in law or based on speculation. The evidence of the eyewitnesses is sought to be corroborated by the evidence of PW 7 Kundan Singh to whom the whole occurrence was narrated immediately after the accused left the house. There is also the evidence of Balbir Singh, PW 17, who is a Sarpanch of the village and an independent witness and who proves that the appellant Piara Singh had made an extra judicial confession before him in which he admitted to have committed the murder of the deceased Surjit Singh along with his companions Kashmir Singh, Gian Singh and Joginder Singh. This witness also proves that Kashmir Singh on being narrated by the details made a disclosure which resulted in the recovery of the Kirpan from the sugarcane field of Meja Singh for which a search list was prepared and the Kirpan was also found stained with human blood. According to the Investigating Officer an empty cartridge was also found at the spot and he sent the same to the Ballistic Expert along with the rifle recovered from Piara Singh who was a constable in the Border Security Force and the Ballistic Expert found that the empty could have been shot from the rifle in question. These circumstances fully corroborate the evidence of the eyewitnesses. Finally, there is the medical evidence of Dr Jatinder Singh who

performed the post-mortem examination on the deceased and he found as many as 7 incised wounds on the various parts of the body of the deceased and 7 incised punctured wounds on some vital parts of the body. Apart from these injuries the deceased had also sustained a gun shot injury with a wound of entry and exit on the left buttock, which according to Dr Jatinder Singh could be caused by a firearm including a rifle. The Doctor further deposed that the contusions and abrasions were caused by a blunt weapon and the other incised wounds were caused by a sharp cutting instrument like the Gandasa. Another Doctor was examined by the Sessions Judge as Court Witness 1 who on seeing the post-mortem report of Dr Jatinder Singh was of the view that Injury 11 could not have been caused by a rifle and much capital was made by the accused out of the evidence given by Dr Paramjit Singh.

123. This extract is taken from *Hari Obula Reddy v. State of A.P.*, (1981) 3 SCC 675 : 1981 SCC (Cri) 795 : 1980 SCC OnLine SC 264 at page 683

13. PW 1 also had fully supported the prosecution story set out at the commencement of this judgment. He emerged unshaken from the ordeal of a lengthy and searing cross-examination. He frankly admitted his close relationship with the deceased. At first flush, our impression was that PW 1 is a partyman of the deceased who had borne with the deceased in earlier incidents of factious strife. In order to clear up the point, we further heard the arguments of the learned counsel and carefully scrutinized the record all over again. We find that in any incident, litigation or previous proceeding with which the deceased or his partymen were concerned, PW 1 did not figure as an accused, or respondent or a witness or in any other capacity. Thus, all that can be said is that PW 1, being the maternal uncle of the deceased, and PW 2, being the son of a person who was being prosecuted along with the deceased for the murder of a person belonging to the opposing faction of the accused, can be said to be interested witnesses. But it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon. Although in the matter of appreciation of evidence, no hard and fast rule can be laid down, yet, in most cases, in evaluating the evidence of an interested or even a partisan witness, it is useful as a first step to focus attention on the question, whether the presence of the witness at the scene of the crime at the material time was probable. If so, whether the substratum of the story narrated by the witness, being consistent with the other evidence on record, the natural course of human events, the surrounding circumstances and inherent probabilities of the case, is such which will carry conviction with a prudent person. If the answer to these questions be in the affirmative, and the evidence of the witness appears to the court to be almost flawless, and free from suspicion, it may accept it, without seeking corroboration from any other source. Since perfection in this imperfect world is seldom to be found, and the

evidence of a witness, more so of an interested witness, is generally fringed with embellishment and exaggerations, however true in the main, the court may look for some assurance, the nature and extent of which will vary according to the circumstances of the particular case, from independent evidence, circumstantial or direct, before finding the accused guilty on the basis of his interested testimony. We may again emphasise that these are only broad guidelines which may often be useful in assessing interested testimony, and are not iron-cased rules uniformly applicable in all situations.

124. This extract is taken from *Anil Rai v. State of Bihar*, (2001) 7 SCC 318 : 2001 SCC (Cri) 1009 : 2001 SCC OnLine SC 906 at page 334

18. There is no doubt that PWs 1, 2, 5 and 6 relied upon and believed by the trial as well as the High Court are not friendly to the accused persons on account of previous existing enmity between them. The admitted position of law is that enmity is a double-edged weapon which can be a motive for the crime as also the ground for false implication of the accused persons. In case of inimical witnesses, the courts are required to scrutinise their testimony with anxious care to find out whether their testimony inspires confidence to be acceptable notwithstanding the existence of enmity. Where enmity is proved to be the motive for the commission of the crime, the accused cannot urge that despite proof of the motive of the crime, the witnesses proved to be inimical should not be relied upon. Bitter animosity, held to be a double-edged weapon, may be instrumental for false involvement or for the witnesses inferring and strongly believing that the crime must have been committed by the accused. Such possibility has to be kept in mind while evaluating the prosecution witnesses regarding the involvement of the accused in the commission of the crime. Testimony of eyewitnesses, which is otherwise convincing and consistent, cannot be discarded simply on the ground that the deceased were related to the eyewitnesses or previously there were some disputes between the accused and the deceased or the witnesses. The existence of animosity between the accused and the witnesses may, in some cases, give rise to the possibility of the witnesses exaggerating the role of some of the accused or trying to rope in more persons as accused persons for the commission of the crime. Such a possibility is required to be ascertained on the facts of each case. However, the mere existence of enmity in this case, particularly when it is alleged as a motive for the commission of the crime, cannot be made a basis to discard or reject the testimony of the eyewitnesses, the deposition of whom is otherwise consistent and convincing.

125. This extract is taken from *State of U.P. v. Jagdeo*, (2003) 1 SCC 456 : 2003 SCC (Cri) 351 : 2002 SCC OnLine SC 1182 at page 460

7. There are three eyewitnesses of the incident, that is, PW 1 Ramraj, son of the deceased Ram Lachhan, PW 2 Firangi and PW 4 Sudama, who is an injured witness and whose son Rajendra is the other deceased. The High Court doubted the evidence of these eyewitnesses merely on the ground that they had motive in supporting the prosecution case. Legally speaking, we are unable to accept this reasoning. Most of the times eyewitnesses happen to be family members or close associates because unless a crime is committed in a public place, strangers are not likely to be present at the time of occurrence. Ultimately, eyewitnesses have to be persons who have reason to be present on the scene of occurrence because they happen to be either friends or family members of the victim. The law is long settled that for the mere reason that an eyewitness can be said to be an interested witness, his/her testimony need not be rejected. For the interest which an eyewitness may have, the court can while considering his or her evidence exercise caution and give a reasonable discount, if required. But this surely cannot be reason to ignore the evidence of eyewitnesses. The High Court was clearly in error in not considering the evidence of eyewitnesses at all in the present case for the reason that they were interested witnesses. As seen earlier, one of the eyewitnesses is an injured person who received injuries in the incident itself. He was rather seriously injured. If he was not present at the time of occurrence, wherefrom he received the injuries, would be an obvious question. In fact, PW 4 is also the father of the deceased Rajendra. It is common in villages that male members of a family sleep together in the open during summer season. Sleeping near the tubewell is understandable because that would lend some coolness to the atmosphere. The High Court totally ignored the other aspect of the evidence of the eyewitnesses. That is, the evidence was consistent and the version of the witnesses tallied with each other. In our view, there was no reason to discard the evidence of the eyewitnesses. This evidence is clinching and it clearly implicates the accused persons. There is no reason to doubt the veracity of the evidence of at least PW 1 and PW 4 and that is sufficient to convict the accused persons.

126. This extract is taken from *Ramashish Rai v. Jagdish Singh*, (2005) 10 SCC 498 : 2005 SCC (Cri) 1611 : 2004 SCC OnLine SC 1435 at page 501

7. We are clearly of the view that the findings of the High Court were erroneous, resulting in grave miscarriage of justice. The eyewitnesses — PWs 1, 2, 3, 5, 8 and 10 consistently supported the case of the prosecution throughout. They were subjected to lengthy cross-examination but nothing could be elicited from their mouth so as to discard the creditworthiness of their statements. The ocular evidence of the eyewitnesses was corroborated in material particulars by the medical evidence. In our view, therefore, the acquittal recorded by the High Court on the aforesaid reasoning is perverse. The High Court discarded the eyewitness account, branded them as inimical witnesses. This is not the requirement of law. The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence. In the present case the High Court has rejected the otherwise creditworthy testimony of eyewitness account merely on the ground that there was enmity between the prosecution party and the accused party.

127. This extract is taken from *Bhagaloo Lodh v. State of U.P.*, (2011) 13 SCC 206 : (2012) 1 SCC (Cri) 813 : 2011 SCC OnLine SC 837 at page 211

18. Evidence of a close relation can be relied upon provided it is trustworthy. Such evidence is required to be carefully scrutinised and appreciated before resting of conclusion to convict the accused in a given case. But where the Sessions Court properly appreciated the evidence and meticulously analysed the same and the High Court reappreciated the said evidence properly to reach the same conclusion, it is difficult for the superior court to take a view contrary to the same, unless there are reasons to disbelieve such witnesses. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are interrelated to each other or to the deceased. [Vide *M.C. Ali* v. *State of Kerala* [(2010) 4 SCC 573 : (2010) 2 SCC (Cri) 885 : AIR 2010 SC 1639] , *Myladimmal Surendran* v. *State of Kerala* [(2010) 11 SCC 129 : (2011) 1 SCC (Cri) 150 : AIR 2010 SC 3281] , *Shyam* v. *State of M.P.* [(2009) 16 SCC 531 : (2010) 3 SCC (Cri) 351] , *Prithi* v. *State of Haryana* [(2010) 8 SCC 536 : (2010) 3 SCC (Cri) 960] , *Surendra Pal* v. *State of U.P.* [(2010) 9 SCC 399 : (2010) 3 SCC (Cri) 1385] and *Himanshu* v. *State (NCT of Delhi)* [(2011) 2 SCC 36 : (2011) 1 SCC (Cri) 593] .]

128. This extract is taken from *Dahari v. State of U.P.*, (2012) 10 SCC 256 : (2013) 1 SCC (Cri) 22 : 2012 SCC OnLine SC 856 at page 261

11. It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. [Vide *Himanshu* v. *State (NCT of Delhi)* [(2011) 2 SCC 36 : (2011) 1 SCC (Cri) 593] , *Ranjit Singh* v. *State of M.P.* [(2011) 4 SCC 336 : (2011) 2 SCC (Cri) 227 : AIR 2011 SC 255] and *Onkar* v. *State of U.P.* [(2012) 2 SCC 273 : (2012) 1 SCC (Cri) 646]]

129. This extract is taken from *Gangabhavani v. Rayapati Venkat Reddy*, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182 : 2013 SCC OnLine SC 799 at page 307

Evidence of related/interested witnesses

15. It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (Vide *Bhagaloo Lodh* v. *State of U.P.* [(2011) 13 SCC 206 : (2012) 1 SCC (Cri) 813] and *Dahari* v. *State of U.P.* [(2012) 10 SCC 256 : (2013) 1 SCC (Cri) 22])

130. This extract is taken from *Gangabhavani v. Rayapati Venkat Reddy*, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182 : 2013 SCC OnLine SC 799 at page 307

16. In *State of Rajasthan* v. *Kalki* [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] , this Court held : (SCC p. 754, para 7)

> "*7.* As mentioned above the High Court has declined to rely on the evidence of PW 1 on two grounds : (*1*) she was a 'highly interested' witness because she 'is the wife of the deceased'.... For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is, she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. *'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation*; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be 'interested'. In the instant case PW 1 had no interest in protecting the real culprit, and falsely implicating the respondents."
>
> (emphasis added)

(See also *Chakali Maddilety* v. *State of A.P.* [(2010) 12 SCC 72 : (2011) 2 SCC (Cri) 445])

131. This extract is taken from *Gangabhavani v. Rayapati Venkat Reddy*, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182 : 2013 SCC OnLine SC 799 at page 308

17. In *Sachchey Lal Tiwari* v. *State of U.P.* [(2004) 11 SCC 410 : 2004 SCC (Cri) Supp 105 : AIR 2004 SC 5039] , while dealing with the case this Court held : (SCC pp. 414-15, para 7)

> "*7.* ... Murders are not committed with previous notice to witnesses—soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere 'chance witnesses'. The expression 'chance witness' is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter of explaining their presence."

132. This extract is taken from *Gangabhavani v. Rayapati Venkat Reddy*, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182 : 2013 SCC OnLine SC 799 at page 308

18. In view of the above, it can safely be held that natural witnesses may not be labelled as interested witnesses. Interested witnesses are those who want to derive some benefit out of the litigation/case. In case the circumstances reveal that a witness was present on the scene of the occurrence and had witnessed the crime, his deposition cannot be discarded merely on the ground of being closely related to the victim/deceased.

133. This extract is taken from *Jodhan v. State of M.P.*, (2015) 11 SCC 52 : (2015) 4 SCC (Cri) 275 : 2015 SCC OnLine SC 303 at page 63

26. The principles that have been stated in number of decisions are to the effect that evidence of an interested witness can be relied upon if it is found to be trustworthy and credible. Needless to say, a testimony, if after careful scrutiny is found as unreliable and improbable or suspicious it ought to be rejected. That apart, when a witness has a motive or makes false implication, the court before relying upon his testimony should seek corroboration in regard to material particulars. In the instant case, the witnesses who have deposed against the accused persons are close relatives and had suffered injuries in the occurrence. Their presence at the scene of occurrence cannot be doubted, their version is consistent and nothing has been elicited in the cross-examination to shake their testimony. There are some minor or trivial discrepancies, but they really do not create a dent in their evidence warranting to treat the same as improbable or untrustworthy.

134. This extract is taken from *Jodhan v. State of M.P.*, (2015) 11 SCC 52 : (2015) 4 SCC (Cri) 275 : 2015 SCC OnLine SC 303 at page 63

27. In this context, it is requisite to quote the observations made by the Court in *State of Punjab* v. *Jagir Singh* [*State of Punjab* v. *Jagir Singh*, (1974) 3 SCC 277 : 1973 SCC (Cri) 886] : (SCC pp. 285-86, para 23)

> "*23.* A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

135. This extract is taken from *Brahm Swaroop v. State of U.P.*, (2011) 6 SCC 288 : (2011) 2 SCC (Cri) 923 : 2010 SCC OnLine SC 1222 at page 301

26. Merely because the witnesses were closely related to the deceased persons, their testimonies cannot be discarded. Their relationship to one of the parties is not a factor that affects the credibility of a witness, more so, a relation would not conceal the actual culprit and make allegations against an innocent person. A party has to lay down a factual foundation and prove by leading impeccable evidence in respect of its false implication. However, in such cases, the court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible evidence. (Vide *Dalip Singh* v. *State of Punjab* [(1953) 2 SCC 36 : AIR 1953 SC 364 : 1953 Cri LJ 1465] , *Masalti* v. *State of U.P.* [AIR 1965 SC 202 : (1965) 1 Cri LJ 226] , *Lehna* v. *State of Haryana* [(2002) 3 SCC 76 : 2002 SCC (Cri) 526] and *Rizan* v. *State of Chhattisgarh* [(2003) 2 SCC 661 : 2003 SCC (Cri) 664] .)

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Non-Examination Of Material Witness

136. This extract is taken from *Jodhan v. State of M.P.*, (2015) 11 SCC 52 : (2015) 4 SCC (Cri) 275 : 2015 SCC OnLine SC 303 at page 66

35. Another limb of submission which has been propounded by Mr Sharma is that the prosecution has deliberately not examined other independent material witnesses who were present at the spot and, therefore, the whole case of prosecution becomes unacceptable. In this context, it would be profitable to refer to what has been held in *State of H.P.* v. *Gian Chand* [*State of H.P.* v. *Gian Chand*, (2001) 6 SCC 71 : 2001 SCC (Cri) 980] . In the said case, the three-Judge Bench has opined that: (SCC p. 81, para 14)

> "*14.* ... Non-examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses are available for being examined in the court and were yet withheld by the prosecution."

It has been further ruled therein that the court is required to first consider and assess the credibility of the evidence available on record and if the court finds that the evidence adduced is worthy of credence, the testimony has to be accepted and acted upon though there may be other witnesses available, who could also have been examined but not examined.

36. In *Takhaji Hiraji* v. *Thakore Kubersing Chamansing* [*Takhaji Hiraji* v. *Thakore Kubersing Chamansing*, (2001) 6 SCC 145 : 2001 SCC (Cri) 1070] , it has been opined that if the material witness, who unfolds the genesis of the incident or an essential part of the prosecution case, not convincingly brought to the fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution, but if there is an overwhelming evidence available, and which can be placed reliance upon, non-examination of such other witnesses may not be material. Similarly, in *Dahari* v. *State of U.P.* [*Dahari* v. *State of U.P.*, (2012) 10 SCC 256 : (2013) 1 SCC (Cri) 22] , while dwelling upon the issue of non-examination of material witnesses, it has been succinctly expressed that when the witness is not the only competent witness, who would have been fully

capable of explaining the factual score correctly and the prosecution stood fully corroborated by the medical evidence and the testimony of other reliable witnesses, it would be inappropriate to draw an adverse inference against the prosecution.

37. In the instant case, the witnesses, as the High Court has found and we have no reason to differ, are reliable and have stood embedded in their version and remained unshaken. They have vividly deposed about the genesis of occurrence, the participation and involvement of the accused persons in the crime and the injuries inflicted on the deceased, and on each of them. Therefore, non-examination of any other witnesses who might have been available on the scene of occurrence, would not make the case of the prosecution unacceptable. On that score, the case of the prosecution cannot be thrown overboard. Thus, we are constrained to reject the submission canvassed by Mr Sharma, learned counsel for the appellant.

137. This extract is taken from *Gangabhavani v. Rayapati Venkat Reddy*, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182 : 2013 SCC OnLine SC 799 at page 309

Non-cross-examination of a witness on a particular issue

21. This Court in *Laxmibai* v. *Bhagwantbuva* [(2013) 4 SCC 97 : (2013) 2 SCC (Civ) 480 : AIR 2013 SC 1204] examined the effect of non-cross-examination of witness on a particular fact/circumstance and held as under : (SCC p. 114, para 40)

> "*40*. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, *the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility*. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination-in-chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses."
>
> (emphasis supplied)

(See also *Rohtash Kumar* v. *State of Haryana* [(2013) 14 SCC 434] and *Gian Chand* v. *State of Haryana* [(2013) 14 SCC 420] .)

138. This extract is taken from *Gangabhavani v. Rayapati Venkat Reddy*, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182 : 2013 SCC OnLine SC 799 at page 309

22. Thus, it becomes crystal clear that the defence cannot rely on nor can the court base its finding on a particular fact or issue on which the witness has not made any statement in his examination-in-chief and the defence has not cross-examined him on the said aspect of the matter.

139. This extract is taken from *Vijendra Singh v. State of U.P.*, (2017) 11 SCC 129 : (2017) 3 SCC (Cri) 881 : 2017 SCC OnLine SC 21 at page 146

35. The next plank of argument of Mr Giri is that since Nepal Singh who had been stated to have accompanied PW 2 and PW 3 has not been examined and similarly, Ram Kala and Bansa who had been stated to have arrived at the tubewell as per the testimony of PW 2, have not been examined, the prosecution's version has to be discarded, for it has deliberately not cited the independent material witnesses. It is noticeable from the decision of the trial court and the High Court, that reliance has been placed on the testimony of PWs 1 to 3 and their version has been accepted. They have treated PW 2 and PW 3 as natural witnesses who have testified that the accused persons were leaving the place after commission of the offence and they had seen them quite closely. The contention that they were interested witnesses and their implication is due to inimical disposition towards accused persons has not been accepted and we have concurred with the said finding. It has come out in evidence that witnesses and the accused persons belong to the same village. The submission of Mr Giri is that non-examination of Nepal Singh, Ramlal and Kalsa is quite critical for the case of the prosecution and as put forth by him, their non-examination crucially affects the prosecution version and creates a sense of doubt. According to Mr Giri, Nepal Singh is a material witness. In this regard we may refer to the authority in *State of H.P.* v. *Gian Chand* [*State of H.P.* v. *Gian Chand*, (2001) 6 SCC 71 : 2001 SCC (Cri) 980] wherein it has been held that : (SCC p. 81, para 14)

> "*14.* Non-examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses were available for being examined in the court and were yet withheld by the prosecution."

The Court after so holding further ruled that it is the duty of the court to first assess the trustworthiness of the evidence available on record and if the court finds the evidence adduced worthy of being relied on and deserves acceptance, then non-examination of any other witnesses available who could also have been examined but were not examined, does not affect the case of the prosecution.

36. In *Takhaji Hiraji* v. *Thakore Kubersing Chamansing* [*Takhaji Hiraji* v. *Thakore Kubersing Chamansing*, (2001) 6 SCC 145 : 2001 SCC (Cri) 1070] , it has been held that : (SCC p. 155, para 19)

> "*19*. … if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand, if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. … If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable, the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses."

37. In *Dahari* v. *State of U.P.* [*Dahari* v. *State of U.P.*, (2012) 10 SCC 256 : (2013) 1 SCC (Cri) 22] , while discussing about the non-examination of material witness, the Court expressed the view that when he was not the only competent witness who would have been fully capable of explaining the factual situation correctly and the prosecution case stood fully corroborated by the medical evidence and the testimony of other reliable witnesses, no adverse inference could be drawn against the prosecution. Similar view has been expressed in *Manjit Singh* v. *State of Punjab* [*Manjit Singh* v. *State of Punjab*, (2013) 12 SCC 746 : (2014) 4 SCC (Cri) 531] and *Joginder Singh* v. *State of Haryana* [*Joginder Singh* v. *State of Haryana*, (2014) 11 SCC 335 : (2014) 3 SCC (Cri) 366] .

38. Tested on the aforesaid parameters, we are unable to accept the submission of Mr Giri that non-examination of Nepal Singh and other two persons who had been referred to by PW 2 affects the prosecution version or creates any doubt in the mind of the court. We arrive at such a conclusion since the witnesses examined by the prosecution are trustworthy and the court can safely act on their testimony. There is no justification in the instant case to draw any adverse inference against the prosecution.

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Cardinal Principal Of Criminal Jurisprudence

The cardinal Principal of Criminal Jurisprudence : -

140. The burden of proof rests on the prosecution.

141. The prosecution must establish guilt beyond reasonable doubt

142. The benefit of doubt belongs to the accused.

143. High probability is not enough to convict – where there are several possible accounts, the account supporting the accused should be upheld

1. This extract is taken from *Yogesh Singh v. Mahabeer Singh*, (2017) 11 SCC 195 : (2017) 4 SCC (Cri) 257 : 2016 SCC OnLine SC 1163 at page 208

(1). 15. It is **a cardinal principle of criminal jurisprudence** that the **guilt of the accused must be proved beyond all reasonable doubts**. However, the burden on the prosecution is only to establish its case beyond all *reasonable* doubt and not *all* doubts. Here, it is worthwhile to reproduce the observations made by Venkatachaliah, J. in *State of U.P.* v. *Krishna Gopal* [*State of U.P.* v. *Krishna Gopal*, (1988) 4 SCC 302 : 1988 SCC (Cri) 928] : (SCC pp. 313-14, paras 25-26)

> "*25*. … Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.
>
> *26*. The concept of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice."

[See also *Krishnan* v. *State* [*Krishnan* v. *State*, (2003) 7 SCC 56 : 2003 SCC (Cri) 1577] ; *Valson* v. *State of Kerala* [*Valson* v. *State of Kerala*, (2008) 12 SCC 241 : (2009) 2 SCC (Cri) 208] and *Bhaskar Ramappa Madar* v. *State of Karnataka* [*Bhaskar Ramappa Madar* v. *State of Karnataka*, (2009) 11 SCC 690 : (2010) 1 SCC (Cri) 133] .]

(2). 16. Another golden thread which runs through the web of the administration of justice in criminal cases is **that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted**. (Vide *Kali Ram* v. *State of H.P.* [*Kali Ram* v. *State*

of H.P., (1973) 2 SCC 808 : 1973 SCC (Cri) 1048] , *State of Rajasthan* v. *Raja Ram* [*State of Rajasthan* v. *Raja Ram*, (2003) 8 SCC 180 : 2003 SCC (Cri) 1965] , *Chandrappa* v. *State of Karnataka* [*Chandrappa* v. *State of Karnataka*, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , *Upendra Pradhan* v. *State of Orissa* [*Upendra Pradhan* v. *State of Orissa*, (2015) 11 SCC 124 : (2015) 4 SCC (Cri) 309] and *Golbar Hussain* v. *State of Assam* [*Golbar Hussain* v. *State of Assam*, (2015) 11 SCC 242 : (2015) 4 SCC (Cri) 384] .)

3. **Testimony of interested/inimical / related witnesses**

24. On the issue of **appreciation of evidence of interested witnesses**, *Dalip Singh* v. *State of Punjab* [*Dalip Singh* v. *State of Punjab*, (1953) 2 SCC 36 : AIR 1953 SC 364 : 1954 SCR 145 : 1953 Cri LJ 1465] is one of the earliest cases on the point. In that case, it was held as follows: (AIR p. 366, para 26)

> "*26.* A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

25. Similarly, in *Piara Singh* v. *State of Punjab* [*Piara Singh* v. *State of Punjab*, (1977) 4 SCC 452 : 1977 SCC (Cri) 614] , this Court held: (SCC p. 455, para 4)

> "*4.* … It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being a partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is creditworthy there is no bar in the Court relying on the said evidence."

26. In *Hari Obula Reddy* v. *State of A.P.* [*Hari Obula Reddy* v. *State of A.P.*, (1981) 3 SCC 675 : 1981 SCC (Cri) 795] , a three-Judge Bench of this Court observed: (SCC pp. 683-84, para 13)

"*13.* … it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

27. Again, in *Ramashish Rai* v. *Jagdish Singh* [*Ramashish Rai* v. *Jagdish Singh*, (2005) 10 SCC 498 : 2005 SCC (Cri) 1611] , the following observations were made by this Court: (SCC p. 501, para 7)

"*7.* … The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence."

28. A survey of the judicial pronouncements of this Court on this point leads to the inescapable conclusion that the evidence of a closely related witness is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (See *Anil Rai* v. *State of Bihar* [*Anil Rai* v. *State of Bihar*, (2001) 7 SCC 318 : 2001 SCC (Cri) 1009] , *State of U.P.* v. *Jagdeo* [*State of U.P.* v. *Jagdeo*, (2003) 1 SCC 456 : 2003 SCC (Cri) 351] , *Bhagaloo Lodh* v. *State of U.P.* [*Bhagaloo Lodh* v. *State of U.P.*, (2011) 13 SCC 206 : (2012) 1 SCC (Cri) 813] , *Dahari* v. *State of U.P.* [*Dahari* v. *State of U.P.*, (2012) 10 SCC 256 : (2013) 1 SCC (Cri) 22] , *Raju* v. *State of T.N.* [*Raju* v. *State of T.N.*, (2012) 12 SCC 701 : (2012) 4 SCC (Cri) 184] , *Gangabhavani* v. *Rayapati Venkat Reddy* [*Gangabhavani* v. *Rayapati Venkat Reddy*, (2013) 15 SCC 298 : (2014) 6

SCC (Cri) 182] and *Jodhan* v. *State of M.P.* [*Jodhan* v. *State of M.P.*, (2015) 11 SCC 52 : (2015) 4 SCC (Cri) 275])

3A. NO Independent Witness

50. The learned counsel for the respondents has also sought to assail the prosecution version on the ground of lack of independent witnesses. We are not impressed by this submission in the light of the observations made by this Court in *Darya Singh* v. *State of Punjab* [*Darya Singh* v. *State of Punjab*, AIR 1965 SC 328 : (1964) 3 SCR 397 : (1965) 1 Cri LJ 350] , wherein it was observed: (AIR p. 333, para 12)

> "*12*. … It is well known that in villages where murders are committed as a result of factions existing in the village or in consequence of family feuds, independent villagers are generally reluctant to give evidence because they are afraid that giving evidence might invite the wrath of the assailants and might expose them to very serious risks. It is quite true that it is the duty of a citizen to assist the prosecution by giving evidence and helping the administration of criminal law to bring the offender to book, but it would be wholly unrealistic to suggest that if the prosecution is not able to bring independent witnesses to the Court because they are afraid to give evidence, that itself should be treated as an infirmity in the prosecution case so as to justify the defence contention that the evidence actually adduced should be disbelieved on that ground alone without examining its merits."

51. Similarly, in *Raghubir Singh* v. *State of U.P.* [*Raghubir Singh* v. *State of U.P.*, (1972) 3 SCC 79 : 1972 SCC (Cri) 399] , it was held that **the prosecution is not bound to produce all the witnesses said to have seen the occurrence.** Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary and redundant multiplication of witnesses. In this connection, general reluctance of an average villager to appear as a witness and get himself involved in cases of rival village factions when tempers on both sides are running high, has to be borne in mind.

52. Further, in *Appabhai* v. *State of Gujarat* [*Appabhai* v. *State of Gujarat*, 1988 Supp SCC 241 : 1988 SCC (Cri) 559] , this Court has observed: (SCC pp. 245-46, para 11)

"*11.* ... Experience reminds us that civilised people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused."

144. Discrepancies in evidence

29. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission. (See *Rammi* v. *State of M.P.* [*Rammi* v. *State of M.P.*, (1999) 8 SCC 649 : 2000 SCC (Cri) 26] , *Leela Ram* v. *State of Haryana* [*Leela Ram* v. *State of Haryana*, (1999) 9 SCC 525 : 2000 SCC (Cri) 222] , *Bihari Nath Goswami* v. *Shiv Kumar Singh* [*Bihari Nath Goswami* v. *Shiv Kumar Singh*, (2004) 9 SCC 186 : 2004 SCC (Cri) 1435] , *Vijay* v. *State of M.P.* [*Vijay* v. *State of M.P.*, (2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639] , *Sampath Kumar* v. *Inspector of Police* [*Sampath Kumar* v. *Inspector of Police*, (2012) 4 SCC 124 : (2012) 2 SCC (Cri) 42] , *Shyamal Ghosh* v. *State of W.B.* [*Shyamal Ghosh* v. *State of W.B.*, (2012) 7

SCC 646 : (2012) 3 SCC (Cri) 685] and *Mritunjoy Biswas* v. *Pranab* [*Mritunjoy Biswas* v. *Pranab*, (2013) 12 SCC 796 : (2014) 4 SCC (Cri) 564] .)

37. Another reason for which the High Court disbelieved the prosecution story is the improvement made by PW 2 in the story of beheading of the deceased. We find it difficult to agree with this conclusion of the High Court in the light of the judgment of this Court in *Leela Ram* v. *State of Haryana* [*Leela Ram* v. *State of Haryana*, (1999) 9 SCC 525 : 2000 SCC (Cri) 222] , wherein it was observed: (SCC p. 534, para 12)

> "*12*. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment — sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give a slightly exaggerated account. **The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses**. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same."

145. Delay in recording Statement of Prosecution witnesses

34. The learned counsel for the respondents has further sought to attack the testimony of this prosecution witness (PW 5) on the ground of delay in recording of her statement by the investigating officer. In support of this submission, the learned counsel has relied upon the judgments of this Court in *State of U.P.* v. *Ashok Dixit* [*State of U.P.* v. *Ashok Dixit*, (2000) 3 SCC 70 : 2000 SCC (Cri) 579] , *Vijaybhai Bhanabhai Patel* v. *Navnitbhai Nathubhai Patel* [*Vijaybhai Bhanabhai Patel* v. *Navnitbhai Nathubhai Patel*, (2004) 10 SCC 583 : 2004 SCC (Cri) 2032] and *Jagjit Singh* v. *State of Punjab* [*Jagjit Singh* v. *State of Punjab*, (2005) 3 SCC 689 : 2005 SCC (Cri) 893] . However, we find that none of these cases help the case of the respondents since *Vijaybhai Bhanabhai Patel* v. *Navnitbhai Nathubhai Patel* [*Vijaybhai Bhanabhai Patel* v. *Navnitbhai Nathubhai Patel*, (2004) 10 SCC 583 : 2004 SCC (Cri) 2032] , does not pertain to the case of a child witness and in *State of U.P.* v. *Ashok Dixit* [*State of U.P.* v. *Ashok Dixit*, (2000) 3 SCC 70 : 2000 SCC (Cri) 579] and *Jagjit Singh* v. *State of Punjab* [*Jagjit Singh* v. *State of Punjab*, (2005) 3 SCC 689 : 2005 SCC (Cri) 893] , delay in recording of evidence was not per se held

to be fatal to the prosecution case but the testimony of the child witness in each case was found to be incredible on account of material contradictions and lack of independent corroboration. We find that this is not the case here. In this context, we may note that the trial court has observed that PW 5 was cross-examined on practically every detail of the prosecution story and her statement corroborated every part thereof. Moreover, the delay in recording of the statement of PW 5 was not unexplained. It was rightly observed by the learned trial Judge that the delay was on account of the fact that the investigating officer wanted to assure himself of the veracity of her statement and hence, she was examined after she had time to recover from the shock of the incident and compose herself. Under these circumstances, any delay in examining this witness under Section 161 CrPC will not prejudice the prosecution.

6. **it cannot be laid down as a rule of universal application that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable and the trial stands vitiated**.

40. It has been consistently held by this Court through a catena of judicial decisions that although in terms of Section 157 CrPC, the police officer concerned is required to forward a copy of the FIR to the Magistrate empowered to take cognizance of such offence promptly and without undue delay, **it cannot be laid down as a rule of universal application that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable and the trial stands vitiated.** When there is positive evidence to the fact that the FIR was recorded without unreasonable delay and investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the Court, then in the absence of any prejudice to the accused, it cannot be concluded that the investigation was tainted and the prosecution story rendered unsupportable. (See *Pala Singh* v. *State of Punjab* [*Pala Singh* v. *State of Punjab*, (1972) 2 SCC 640 : 1973 SCC (Cri) 55] , *Sarwan Singh* v. *State of Punjab* [*Sarwan Singh* v. *State of Punjab*, (1976) 4 SCC 369 : 1976 SCC (Cri) 646] , *Anil Rai* v. *State of Bihar* [*Anil Rai* v. *State of Bihar*, (2001) 7 SCC 318 : 2001 SCC (Cri) 1009] , *Munshi Prasad* v. *State of Bihar* [*Munshi Prasad* v. *State of Bihar*, (2002) 1 SCC 351 : 2002 SCC (Cri) 175] , *Aqeel Ahmad* v. *State of U.P.* [*Aqeel Ahmad* v. *State of U.P.*, (2008) 16 SCC 372 : (2010) 4 SCC (Cri) 11] , *Dharamveer* v. *State of U.P.* [*Dharamveer* v. *State of U.P.*, (2010) 4 SCC 469 : (2010) 2 SCC (Cri) 872]

and *Sandeep* v. *State of U.P.* [*Sandeep* v. *State of U.P.*, (2012) 6 SCC 107 : (2012) 3 SCC (Cri) 18])

7. inconsistencies between the ocular evidence and the medical evidence.

43. The learned counsel appearing for the respondents has then tried to create a dent in the prosecution story by pointing out inconsistencies between the ocular evidence and the medical evidence. However, we are not persuaded with this submission since both the courts below have categorically ruled that the medical evidence was consistent with the ocular evidence and we can safely say that to that extent, it corroborated the direct evidence proffered by the eyewitnesses. We hold that there is no material discrepancy in the medical and ocular evidence and there is no reason to interfere with the judgments of the courts below on this ground. In any event, it has been consistently held by this Court that the evidentiary value of medical evidence is only corroborative and not conclusive and, hence, in case of a conflict between oral evidence and medical evidence, the former is to be preferred unless the medical evidence completely rules out the oral evidence. [See *Solanki Chimanbhai Ukabhai* v. *State of Gujarat* [*Solanki Chimanbhai Ukabhai* v. *State of Gujarat*, (1983) 2 SCC 174 : 1983 SCC (Cri) 379] , *Mani Ram* v. *State of Rajasthan* [*Mani Ram* v. *State of Rajasthan*, 1993 Supp (3) SCC 18 : 1993 SCC (Cri) 853] , *State of U.P.* v. *Krishna Gopal* [*State of U.P.* v. *Krishna Gopal*, (1988) 4 SCC 302 : 1988 SCC (Cri) 928] , *State of Haryana* v. *Bhagirath* [*State of Haryana* v. *Bhagirath*, (1999) 5 SCC 96 : 1999 SCC (Cri) 658] , *Dhirajbhai Gorakhbhai Nayak* v. *State of Gujarat* [*Dhirajbhai Gorakhbhai Nayak* v. *State of Gujarat*, (2003) 9 SCC 322 : 2003 SCC (Cri) 1809] , *Thaman Kumar* v. *State (UT of Chandigarh)* [*Thaman Kumar* v. *State (UT of Chandigarh)*, (2003) 6 SCC 380 : 2003 SCC (Cri) 1362] , *Krishnan* v. *State* [*Krishnan* v. *State*, (2003) 7 SCC 56 : 2003 SCC (Cri) 1577] , *Khambam Raja Reddy* v. *Public Prosecutor* [*Khambam Raja Reddy* v. *Public Prosecutor*, (2006) 11 SCC 239 : (2007) 1 SCC (Cri) 431] , *State of U.P.* v. *Dinesh* [*State of U.P.* v. *Dinesh*, (2009) 11 SCC 566 : (2009) 3 SCC (Cri) 1484] , *State of U.P.* v. *Hari Chand* [*State of U.P.* v. *Hari Chand*, (2009) 13 SCC 542 : (2010) 1 SCC (Cri) 1112] , *Abdul Sayeed* v. *State of M.P.* [*Abdul Sayeed* v. *State of M.P.*, (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] and *Bhajan Singh* v. *State of Haryana* [*Bhajan Singh* v. *State of Haryana*, (2011) 7 SCC 421 : (2011) 3 SCC (Cri) 241] .]

8. **mere non-recovery of weapon does not falsify the prosecution case where there is ample unimpeachable ocular evidence**

47. The next line of contention taken by the learned counsel for the respondents is that the recovery evidence was false and fabricated. We feel no need to address this issue since it had already been validly discarded by the trial court while convicting the respondents. In any case, it is an established proposition of law that mere non-recovery of weapon does not falsify the prosecution case where there is ample unimpeachable ocular evidence. (See *Lakhan Sao* v. *State of Bihar* [*Lakhan Sao* v. *State of Bihar*, (2000) 9 SCC 82 : 2000 SCC (Cri) 1163] , *State of Rajasthan* v. *Arjun Singh* [*State of Rajasthan* v. *Arjun Singh*, (2011) 9 SCC 115 : (2011) 3 SCC (Cri) 647] and *Manjit Singh* v. *State of Punjab* [*Manjit Singh* v. *State of Punjab*, (2013) 12 SCC 746 : (2014) 4 SCC (Cri) 531] .)

9. Miotive in case of direct evidence

46. It has next been contended by the learned counsel for the respondents that there was no immediate motive with the respondents to commit the murder of the deceased. However, the trial court found that there was sufficient motive with the accused persons to commit the murder of the deceased since the deceased had defeated accused Harcharan in the Pradhan elections, thus putting an end to his position as Pradhan for the last 28-30 years. The long nursed feeling of hatred and the simmering enmity between the family of the deceased and the accused persons most likely manifested itself in the outburst of anger resulting in the murder of the deceased. We are not required to express any opinion on this point in the light of the evidence adduced by the direct witnesses to the incident. It is a settled legal proposition that even if the absence of motive, as alleged, is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of the witnesses as to commission of an offence, motive loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only on the ground of absence of motive, if otherwise the evidence is worthy of reliance. (*Hari Shanker* v. *State of U.P.* [*Hari Shanker* v. *State of U.P.*, (1996) 9 SCC 40 : 1996 SCC (Cri) 913] , *Bikau Pandey* v. *State of Bihar* [*Bikau Pandey* v. *State of Bihar*, (2003) 12 SCC 616 : 2004 SCC (Cri) Supp 535] , *State of U.P.* v. *Kishanpal* [*State of U.P.* v. *Kishanpal*, (2008) 16 SCC 73 : (2010) 4 SCC (Cri) 182] , *Abu Thakir* v. *State of T.N.* [*Abu Thakir* v. *State of T.N.*, (2010) 5 SCC 91 : (2010) 2 SCC (Cri) 1258] and *Bipin Kumar Mondal* v. *State of W.B.* [*Bipin Kumar Mondal* v. *State of W.B.*, (2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150])

10. The purpose of Section 313 is only to bring the attention of the accused to all the *inculpatory* pieces of evidence to give him an opportunity to offer an explanation

48. It was further contended by the learned counsel for the respondents that material questions regarding marriage, on which the prosecution had allegedly relied upon, were not put to the accused under Section 313 CrPC, thereby causing great prejudice to them. We feel that there is no weight in this submission of the learned counsel for the respondents since the purpose of Section 313 is only to bring the attention of the accused to all the *inculpatory* pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. As has been succinctly held by this Court in *Raj Kumar Singh* v. *State of Rajasthan* [*Raj Kumar Singh* v. *State of Rajasthan*, (2013) 5 SCC 722 : (2013) 4 SCC (Cri) 812] : (SCC p. 735, para 30)

> "*30.* In a criminal trial, the purpose of examining the accused person under Section 313 CrPC, is to meet the requirement of the principles of natural justice i.e. audi alteram partem. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation."

11. Site Plan

53. Next, it has been contended by the learned counsel for the respondents that the site plan belies the prosecution claim in view of the height of agricultural crops, as PW 1, PW 2 and PW 5 could not have seen the incident and more precisely as to which accused was doing what. However, when we examine the deposition of PW 8, it appears that there was some disparity in the height of the agricultural crops. While some crops were waist high, others were only as high as the knees. Hence, there is not much force in this submission of the learned counsel for the respondents either. Besides, the judgment of this Court in *Prithvi* v. *Mam Raj* [*Prithvi* v. *Mam Raj*, (2004) 13 SCC 279 : 2005 SCC (Cri) 198] is an authority for the proposition that site plan is not a ground to disbelieve the otherwise credible testimony of eyewitnesses.

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Suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt

1. This extract is taken from *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116 : 1984 SCC (Cri) 487 : 1984 SCC OnLine SC 138 at page 194

179. We can fully understand that though the case superficially viewed bears an ugly look so as to prima facie shock the conscience of any court yet suspicion, however great it may be, cannot take the place of legal proof. A moral conviction however strong or genuine cannot amount to a legal conviction supportable in law.

180. It must be recalled that the well established rule of criminal justice is that "fouler the crime higher the proof". In the instant case, the life and liberty of a subject was at stake. As the accused was given a capital sentence, a very careful, cautious and meticulous approach was necessary to be made.

2. This extract is taken from *Mohd. Faizan Ahmad v. State of Bihar*, (2013) 2 SCC 131 : (2013) 1 SCC (Cri) 872 : 2013 SCC OnLine SC 5 at page 136

15. The material witnesses have expressed suspicion but there is not a single credible piece of evidence linking the appellant to the crime in question. We have no manner of doubt that the offence is grave; the children were abducted and kept in a tunnel for over five months and anonymous calls were made for ransom. The accused whose involvement in such crimes is proved must be dealt with with a firm hand, but the seriousness or gravity of the crime must not influence the court to punish a person against whom there is no credible evidence. The trial court, therefore, erred in convicting the appellant.

16. We are distressed to note that by affirming the trial court's order, the High Court has compounded the error. The circumstances which the High Court has taken against the appellant are:

(*a*) the fact that the appellant was employed in the telephone booth of PW 4 Nusrat Bano;

(*b*) that he was removed from the service due to his misconduct;

(*c*) that he used to give threats and claim his dues from PW 4 Nusrat Bano and her husband;

(*d*) that on the day of the incident he was seen in the locality; and

(*e*) that after the incident telephone call was received by the prosecution witnesses warning them not to harass the appellant.

According to the High Court all this indicates a well-conceived plan with role assigned to everyone.

17. We have already noted that except PW 11 Takki Imam nobody has said that the appellant was seen in the locality on the day of the incident. That he was employed in PW 4 Nusrat Bano's telephone booth and was removed from the service because of his bad conduct appears to be true. But, even if the story that he used to give threats to the prosecution witnesses and demand his dues is accepted, it does not further the prosecution case. There is no evidence on record to establish that infuriated by his removal from service and non-payment of dues, the appellant masterminded the plot to abduct the children or played any active role in abducting them. If a telephone call was received making ransom demand and making grievance about alleged ill-treatment of the appellant, the police should have traced the calls and identified the caller. The police have failed to do so. Criminal courts recognise only legally admissible evidence and not far-fetched conjectures and surmises.

18. The High Court's observation that there was a preconceived plan to abduct the children would not be applicable to the appellant because there is nothing on record to establish that the appellant met the co-accused and planned a strategy to abduct the children and demand ransom. His case stands on a different footing from that of the other accused. The case of the other accused will have to be dealt with on its own merit. The High Court was carried away by the heinous nature of the crime and, in that, it lost sight of the basic principle underlying criminal jurisprudence that suspicion, however grave, cannot take the place of proof. If a criminal court allows its mind to be swayed by the gravity of the offence and proceeds to hand out punishment on that basis, in the absence of any credible evidence, it would be doing great violence to the basic tenets of criminal jurisprudence. We hope and trust that this is just an aberration.

3. CRIMINAL APPEAL NO. 3869 OF 2023

RAVISHANKAR TANDON ...APPELLANT(S)

VERSUS

STATE OF CHHATTISGARH ...RESPONDENT(S)

10. It is settled law that suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

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