HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

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DB:- Hon'ble Shri Justice S. A.Dharmadhikari &
Hon'ble Shri Justice G. S. Ahluwalia, J.J.

CRA 351/2007

Chatur Singh & Another
Vs.
State of MP

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Shri R.K.Sharma, Senior Counsel with Shri V.K.Agrawal, counsel for the appellants.

Shri S.S.Dhakad, Public Prosecutor for the respondent/ State.

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JUDGMENT

(Delivered on 07/03/2018)

Per G. S. Ahluwalia, J:-

This Criminal Appeal under Section 374(2) of Cr.P.C. has been filed against the judgment and sentence dated 28-3-2007, passed by VIIth Additional Sessions Judge (Fast Track Court), Gohad, Distt. Bhind in Sessions Trial No.217/2005, by which the appellant no.1 Chatur Singh has been convicted under Section 302 of I.P.C. and under Section 25(1-B)(a) read with Section 3 and Section 27 of Arms Act and has been sentenced to undergo the Life Imprisonment and a fine of Rs.100/-, rigorous imprisonment of 1 year and a fine of Rs.100/- with default imprisonment, and rigorous imprisonment of 1 year and a fine of Rs.100/- with default imprisonment, respectively. The appellant No.2 Sahab Singh has been convicted under Section 30 of Arms Act and has been sentenced to undergo the rigorous imprisonment of 6 months and fine of Rs.200/- with default imprisonment.

(2) The necessary facts for the disposal of the present appeal in short are that on 22-8-2005 at about 10 A.M., the complainant Vijay Singh was putting loose earth on the platform situated in front of his house. His daughter-in-law was also standing there. A dispute with the appellant no.1 was already going on in the Court. At that time, the appellant no.1 came there and asked the complainant and Guddi bai, not to put loose earth and

thereafter, went back to his house and came back along his 12 bore single barrel gun. When it was replied by the complainant Vijay Singh that he is putting the loose earth on his land, then the appellant no.1, with an intention to kill Guddi bai, fired two gun shots, causing injuries on her jaw and right hand. As a result of gun shot, the teeth and fingers of her hand got separated. The incident was seen by Veer Singh, Kalavati and several other persons. The Dehati Nalishi was lodged by the complainant Vijay Singh, on the spot itself. The F.I.R. was lodged. The injured Guddi bai was sent to Hospital and the plain and blood stained earth were seized from the spot. 2 fired cartridges of 12 bore were seized from the spot. The spot map was prepared on the information of the complainant Vijay Singh. The statements of Ramsumarani, Vijay Singh, Ramsewak, Veer Singh were recorded on the same day. The injured Guddi bai died on her way to the hospital. The postmortem of the dead body of the deceased Guddi bai was done. The appellant no.1 Chatur Singh was arrested. On his information, a 12 bore gun was seized along with one live cartridge and one fired cartridge. The seized gun was sent to F.S.L.Sagar. Sanction for prosecution was obtained from the District Magistrate and accordingly, the charge sheet was filed against the appellant no.1 for offence under Section 302 of I.P.C., Section 25(1-B)(a) read with Section 3 and Section 27 of Arms Act, whereas appellant no.2 was charge sheeted for offence under Section 30 of Arms Act.

(3) The Trial Court by order dated 20-12-2005 framed charges under Sections 307 of I.P.C. for making an attempt to kill the complainant Vijay Singh, under Section 302 of I.P.C. for killing Guddi Bai, Section 25(1-B)(a) read with Section 3 of Arms Act and under Section 27 of Arms Act against the appellant no.1 Chatur Singh, where as, charge under Section 30 of Arms Act was framed against the appellant no.2 Sahab Singh.

(4) The appellants abjured their guilt and pleaded not guilty.

(5) The prosecution in order to prove its case, examined Ramsumarni (P.W.1), Dr.J.S. Yadav (P.W.2), Ratan Singh (P.W.3), Ram Prakash (P.W.4), Ramvaran (P.W.5), Vijay Singh (P.W.6), Kalavati (P.W.7), R.K. Sharma (P.W.8), Gaya Prasad (P.W.9) and

Yogendra Singh (P.W.10). The appellants examined Bhagwan Singh (D.W.1), Shiv Kumar (D.W.2) and Arvind Kumar (D.W.3) in their evidence.

(6) The Trial Court by judgment dated 28-3-2007 acquitted the appellant No.1 Chatur Singh, for offence under Section 307 of I.P.C. and convicted him under Section 302 of I.P.C. and under Section 25(1-B)(a) read with Section 3 and under Section 27 of Arms Act and sentenced him to undergo the Life Imprisonment and a fine of Rs.100/-, rigorous imprisonment of 1 year and a fine of Rs.100/- with default imprisonment, and rigorous imprisonment of 1 year and a fine of Rs.100/- with default imprisonment respectively. The appellant No.2 Sahab Singh has been convicted under Section 30 of Arms Act, and has been sentenced to undergo the rigorous imprisonment of 6 months and fine of Rs.200/- with default imprisonment.

(7) Challenging the conviction and sentence recorded by the Trial Court, it is submitted by the Counsel for the appellants, that the prosecution has failed to prove the guilt of the appellants beyond reasonable doubt. The police had already arrested the appellant no.1, Chatur Singh, even prior to lodging of Dehati Nalishi, therefore, in fact the entire prosecution case has been created falsely. All the prosecution witnesses are related witnesses and, therefore, their evidence is not worth credence. It is further submitted that even if it is found that the appellant no.1 Chatur Singh had fired two gun shots, but under the facts and circumstances of the case, his act would fall within Section 304 Part I of I.P.C. and would not be a murder.

(8) Per contra, it is submitted by the Counsel for the State that the prosecution has proved beyond reasonable doubt, that it is the appellant no.1 who has killed the deceased Guddi bai and the appellant no.2 Sahab Singh is guilty of offence under Section 30 of Arms Act, and the Trial Court has given a well- reasoned judgment which does not call for any interference.

(9) Heard the learned Counsel for the parties, and perused the record.

(10) The first question for determination is that whether the deceased Guddi bai had died a homicidal death or not?

(11) Dr. J.S. Yadav (P.W.2) had conducted the postmortem of the dead body of deceased Guddi bai and had found the following injuries :-

(I) Wound of entry : 2 cm x 3 cm lacerated wound with inverted margins present on left side of face below ear, with loss of ear lobe, fracture of Left T.M.Jt. seen through wound

(II) Wound of exit :7 cm x 5 cm on right cheek extending from right angle of mouth, upper lip, lacerated with lower part of nose, lacerated gums present with exfoliation of teeth tongue found lacerated.

(III) Traumatic amputation of right middle and ring finger, index finger hanging by skin tag.

Direction of track oblique left to right posterior to anterior above to downwards.

On internal examination, fracture of base of skull with laceration, laceration of tongue, gum and Palate exfoliation of teeth present.

According to the Doctor, the cause of death was shock due to injury to brain and hemorrhage within six to twenty four hours from examination. The Postmortem report is Ex.P.1. This witness was cross-examined, and it was stated by this witness that the gun shot must have been fired from a distance of more than 6 feet and the direction of the gun shot was downwards, therefore, the accused should have been on a higher place.

Thus, from the evidence of Dr. J.S. Yadav (P.W.2), it is clear that the deceased Guddi Bai had sustained gun shot injuries as a result of which she succumbed to the head injury. Therefore, the prosecution has succeeded in establishing that the deceased Guddi Bai had died a homicidal death.

(12) The next question for determination is that who is the author of the injuries caused to the deceased Guddi Bai.

(13) In order to establish the guilt of the appellant no.1 Chatur Singh, the prosecution has examined Ramsumarni (P.W.1), Ramvaran (P.W.5), Vijay Singh (P.W.6),Kalavati (P.W.7), and Gaya Prasad (P.W.9) as eye-witnesses. All these witnesses are eye-witnesses, however, they are closely related to each other. Challenging the evidence of the above mentioned witnesses, it is submitted by the Counsel for the appellants, that since, all the

witnesses are related witnesses, therefore, in absence of corroboration by independent witnesses, they should not be relied upon. Before considering the evidence of the above mentioned witnesses, it would be appropriate to consider the law relating to appreciation of evidence of related witnesses.

Thus, the important question would be that whether these "related witnesses" are merely "related witnesses" or they are "interested witnesses" also. It is also well-settled principle of law that the evidence of a witness cannot be rejected or discarded merely because he is "related" or "interested witness". However, their testimony should be scrutinized very cautiously.

(14) The Supreme Court in the case of **Raju v. State of T.N.,** reported in **(2012) 12 SCC 701,** has held as under :-

> **''21.** What is the difference between a related witness and an interested witness? This has been brought out in *State of Rajasthan* v. *Kalki [(1981) 2 SCC 752]*. It was held that: (SCC p. 754, para 7)
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> > "*7.* … 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'."
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> **22.** In light of the Constitution Bench decision in *State of Bihar* v. *Basawan Singh [AIR 1958 SC 500]*, the view that a "natural witness" or "the only possible eyewitness" cannot be an interested witness may not be, with respect, correct. In *Basawan Singh [AIR 1958 SC 500]*, a trap witness (who would be a natural eyewitness) was considered an interested witness since he was "concerned in the success of the trap". The Constitution Bench held: (AIR p. 506, para 15)
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> > "*15.* … The correct rule is this: if any of the witnesses are accomplices who are *particeps criminis* in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is

> treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the court may even look for independent corroboration before convicting the accused person."

The Supreme Court in the case of **Jalpat Rai v. State of Haryana,** reported in **(2011) 14 SCC 208** has held as under :-

> **''42.** There cannot be a rule of universal application that if the eyewitnesses to the incident are interested in the prosecution case and/or are disposed inimically towards the accused persons, there should be corroboration of their evidence. The evidence of eyewitnesses, irrespective of their interestedness, kinship, standing or enmity with the accused, if found credible and of such a calibre as to be regarded as wholly reliable could be sufficient and enough to bring home the guilt of the accused. But it is a reality of life, albeit unfortunate and sad, that human failing tends to exaggerate, over implicate and distort the true version against the person(s) with whom there is rivalry, hostility and enmity. Cases are not unknown where an entire family is roped in due to enmity and simmering feelings although one or only few members of that family may be involved in the crime.
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> **43.** In the circumstances of the present case, to obviate any chance of false implication due to enmity of the complainant party with the accused party and the interestedness of PW 1, PW 4 and PW 8 in the prosecution case, it is prudent to look for corroboration of their evidence by medical/ballistic evidence and seek adequate assurance from the collateral and surrounding circumstances before acting on their testimony. The lack of corroboration from medical and ballistic evidence and the circumstances brought out on record may ultimately persuade that in fact their evidence cannot be safely acted upon.
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> **44.** Besides PW 1, PW 4 and PW 8, who are closely related to the three deceased, no other independent witness has been examined although the incident occurred in a busy market area. The place of occurrence was visited by PW 20 in the same night after the incident. He

> found three two-wheelers one bearing No. HR 31 A 5071, the second bearing No. RJ 13 M 7744 and the third without number lying there. One Maruti car bearing No. HR 20 D 8840 with broken glass was also parked there. The owners of these vehicles have not been examined. At the place of occurrence, one HMT Quartz wristwatch with black strap, one belcha and four pairs of chappals were also found. There is no explanation at all by the prosecution with regard to these articles. Nothing has come on record whether four pairs of chappals belonged to the accused party or the complainant party or some other persons. Whether the HMT Quartz wristwatch that was found at the site was worn by one of the accused or one of the members of the complainant party or somebody else is not known. Then, the mystery remains about the belcha that was found at the site. These circumstances instead of lending any corroboration to the evidence of those three key witnesses, rather suggest that they have not come out with the true and complete disclosure of the incident.''

The Supreme Court in the case of **Rohtash Kumar v. State of Haryana,** reported in **(2013) 14 SCC 434,** has held as under:-

> **''35.** The term witness, means a person who is capable of providing information by way of deposing as regards relevant facts, via an oral statement, or a statement in writing, made or given in the court, or otherwise. In *Pradeep Narayan Madgaonkar* v. *State of Maharashtra [(1995) 4 SCC 255]* this Court examined the issue of the requirement of the examination of an independent witness, and whether the evidence of a police witness requires corroboration. The Court therein held that the same must be subject to strict scrutiny. However, the evidence of police officials cannot be discarded merely on the ground that they belonged to the police force, and are either interested in the investigating or the prosecuting agency. However, as far as possible the corroboration of their evidence on material particulars, should be sought. (See also *Paras Ram* v. *State of Haryana [(1992) 4 SCC 662]*, *Balbir Singh* v. *State [(1996) 11 SCC 139]*, *Kalpnath Rai* v. *State [(1997) 8 SCC 732]*, *M. Prabhulal* v. *Directorate of Revenue Intelligence [(2003) 8 SCC 449]* and

Ravindran v. *Supt. of Customs [(2007) 6 SCC 410]*.)

Thus, a witness is normally considered to be independent, unless he springs from sources which are likely to be tainted and this usually means that the said witness has cause, to bear such enmity against the accused, so as to implicate him falsely. In view of the above, there can be no prohibition to the effect that a policeman cannot be a witness, or that his deposition cannot be relied upon.''

The Supreme Court in the case of **State of Rajasthan Vs. Chandgi Ram** reported in **(2014) 14 SCC 596** has held as under :-

''17. It was contended that all the witnesses were family members of the deceased and being interested witnesses, their version cannot be relied upon in toto. When we consider the same, we fail to understand as to why the evidence of the witnesses should be discarded solely on the ground that the said witnesses are related to the deceased. It is well settled that the credibility of a witness and his/her version should be tested based on his/her testimony vis-à-vis the occurrence with reference to which the testimonies are deposed before the court. As the evidence is tendered invariably before the court, the court will be in the position to assess the truthfulness or otherwise of the witness while deposing about the evidence and the persons on whom any such evidence is tendered. As every witness is bound to face the cross-examination by the defence side, the falsity, if any, deposed by the witness can be easily exposed in that process. The trial court will be able to assess the quality of witnesses irrespective of the fact whether the witness is related or not. Pithily stated, if the version of the witness is credible, reliable, trustworthy, admissible and the veracity of the statement does not give scope to any doubt, there is no reason to reject the testimony of the said witness, simply because the witness is related to the deceased or any of the parties. In this context, reference can be made to the decision of this Court in *Mano Dutt* v. *State of U.P. [(2012) 4 SCC 79]* Para 24 is relevant which reads as under: (SCC p. 88)

"*24*. Another contention raised on behalf of the appellant-accused is that only family members of the deceased were

examined as witnesses and they being interested witnesses cannot be relied upon. Furthermore, the prosecution did not examine any independent witnesses and, therefore, the prosecution has failed to establish its case beyond reasonable doubt. This argument is again without much substance. *Firstly, there is no bar in law in examining family members, or any other person, as witnesses. More often than not, in such cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured*. Those alone are the people who take the risk of sustaining injuries by jumping into such a quarrel and trying to defuse the crisis. *Besides, when the statement of witnesses, who are relatives, or are parties known to the affected party, is credible, reliable, trustworthy, admissible in accordance with the law and corroborated by other witnesses or documentary evidence of the prosecution, there would hardly be any reason for the Court to reject such evidence merely on the ground that the witness was a family member or an interested witness or a person known to the affected party*."

(emphasis added)

18. Reliance can also be placed upon *Dinesh Kumar* v. *State of Rajasthan [(2008)8 SCC 270]*, wherein in para 12, the law has been succinctly laid down as under: (SCC p. 273)

"*12*. In law, testimony of an injured witness is given importance. *When the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically*. The court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same. Conviction

> can be made on the basis of such evidence.''
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> (emphasis supplied)

The Supreme Court in the case of **Nagappan Vs. State** reported in **(2013) 15 SCC 252** has held as under :-

> **''10.** As regards the first contention about the admissibility of the evidence of PW 1 and PW 3 being closely related to each other and the deceased, first of all, there is no bar in considering the evidence of relatives. It is true that in the case on hand, other witnesses turned hostile and have not supported the case of the prosecution. The prosecution heavily relied on the evidence of PW 1, PW 3 and PW 10. The trial court and the High Court, in view of their relationship, closely analysed their statements and ultimately found that their evidence is clear, cogent and without considerable contradiction as claimed by their counsel. This Court, in a series of decisions, has held that where the evidence of "interested witnesses" is consistent and duly corroborated by medical evidence, it is not possible to discard the same merely on the ground that they were interested witnesses. In other words, relationship is not a factor to affect the credibility of a witness. (Vide *Dalip Singh* v. *State of Punjab [AIR 1953 SC 364]*, *Guli Chand* v. *State of Rajasthan [(1974) 3 SCC 698]*, *Vadivelu Thevar* v. *State of Madras[AIR 1957 SC 614]*, *Masalti* v. *State of U.P. [AIR 1965 SC 202]*, *State of Punjab* v. *Jagir Singh [(1974) 3 SCC 277]*, *Lehna* v. *State of Haryana [(2002) 3 SCC 76]*, *Sucha Singh* v. *State of Punjab[(2003) 7 SCC 643]*, *Israr* v. *State of U.P. [(2005) 9 SCC 616]*, *S. Sudershan Reddy* v. *State of A.P. [(2006) 10 SCC 163]*, *Abdul Rashid Abdul Rahiman Patel* v. *State of Maharashtra [2007) 9 SCC 1]*, *Waman* v. *State of Maharashtra [(2011) 7 SCC 295]*, *State of Haryana* v. *Shakuntla [(2012) 5 SCC 171]*, *Raju* v. *State of T.N. [(2012) 12 SCC 701]* and *Subal Ghorai* v. *State of W.B. [(2013) 4 SCC 607]*)''

The Supreme Court in the case of **Mohd. Ishaque Vs. State of W.B.** reported in **(2013) 14 SCC 581,** has held as under :-

> **''14.** We also fully endorse the view of the High Court that the mere fact that some of the witnesses are interested witnesses, that by

itself is not a ground to discard their evidence, the evidence taken as a whole supports the case of the prosecution.

15. In *Hari Obula Reddy* v. *State of A.P. [(1981) 3 SCC 675]*, this Court laid down certain broad guidelines to be borne in mind, while scrutinising the evidence of the eyewitnesses; in para 13 of the judgment, this Court held as follows: (SCC pp. 683-84)

> "*13*. … 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."
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> **16.** PW1, PW2, PW4 in the present case sustained serious injuries and their evidence was believed by the court. It is trite law that the testimony of injured witnesses is entitled to great weight and it is unlikely that they would spare the real culprit and implicate an innocent person. Of course, there is no immutable rule of appreciation of evidence that the evidence of injured witnesses should be mechanically accepted, it should also be in consonance with probabilities (Ref: *Makan Jivan* v. *State of Gujara[(1971) 3 SCC 297], Machhi Singh* v. *State of Punjab [(1983) 3 SCC 470]*, *Jangir Singh* v. *State of Punjab [(2000) 10 SCC 261]*).
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> 17. In this respect, reference may be made to the judgment of this Court in *Jaishree Yadav* v. *State of U.P. [(2005) 9 SCC 788]* wherein this Court held that whether witnesses are interested persons and whether they had deposed out of some motive cannot be the sole criterion for judging credibility of a witness, but the main criterion would be whether their physical presence at the place of occurrence was possible and probable.''

The Supreme Court in the case of **Namdeo Vs. State of Maharashtra** reported in **(2007) 14 SCC 150** has held as under :-

> **''16.** Having heard the learned counsel for the parties, in our opinion, no interference is called for in exercise of power under Article 136 of the Constitution. It is no doubt true that there is only one eyewitness who is also a close relative of the deceased viz. his son. But it is well settled that it is quality of evidence and not

quantity of evidence which is material. Quantity of evidence was never considered to be a test for deciding a criminal trial and the emphasis of courts is always on quality of evidence.

17. So far as legal position is concerned, it is found in the statutory provision in Section 134 of the Evidence Act, 1872, which reads:

"134. *Number of witnesses*.—No particular number of witnesses shall in any case be required for the proof of any fact."

18. Let us now consider few leading decisions on the point.

19. Before more than six decades, in *Mohd. Sugal Esa Mamasan Rer Alalah* v. *R. [AIR 1946 PC 3]*, one *M* together with his brother *E* caused murder of his half-brother *A*. The trial court convicted *M* and sentenced him to death acquitting his brother *E*. The conviction was confirmed by the appellate court. It was contended before the Privy Council that the conviction was solely based on unsworn evidence of a girl aged about 10-11 years. The trial court found her competent to testify, but was of the view that she was not able to understand the nature of an oath and, therefore, oath was not administered. It was contended by the accused that no conviction could be recorded on a solitary witness and that too on an unsworn evidence of a tender aged girl of 10-11 years without corroboration. Considering the question raised before the Judicial Committee, leave was granted. Their Lordships considered the legal position in England and in India. It was held that such evidence is admissible under Indian law "whether corroborated or not".

20. Lord Goddard, speaking for the Board stated: (AIR p. 6)

> "Once there is admissible evidence a court can act upon it; corroboration, unless required by statute, goes only to the weight and value of the evidence. It is a sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law. In a careful and satisfactory judgment the Judge of the Protectorate Court shows that he was fully alive to this rule and that he applied it, and Their Lordships are in agreement with him as to the matters he took into account as corroborative of the girl's evidence."

21. In *Vadivelu Thevar* v. *State of Madras [AIR 1957 SC 614]* referring to *Mohd. Sugal [AIR 1946 PC 3]* this Court stated: (AIR pp. 618-19, para 10)

> "On a consideration of the relevant authorities and the provisions of the Evidence Act, the following propositions may be safely stated as firmly established:
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> (*1*) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.
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> (*2*) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.
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> (*3*) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the judge before whom the case comes."

22. Quoting Section 134 of the Evidence Act, Their Lordships stated (at AIR p. 619, para 11) that

> "we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated".

The Court proceeded to state: (AIR p. 619, para 11)

> "It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence where determination of guilt depends entirely on circumstantial evidence. If the legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the Presiding Judge comes into play. The matter thus must depend

> upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution.

The Court also stated: (AIR p. 619, para 12)

> "There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable."

23. In the leading case of *Shivaji Sahebrao Bobade* v. *State of Maharashtra [(1973) 2 SCC 793]* this Court held that even where a case hangs on the evidence of a single eyewitness it

may be enough to sustain the conviction given the sterling testimony of a competent, honest man although as a rule of prudence courts call for corroboration.

"It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs." (SCC p. 807, para 19)

24. In *Anil Phukan* v. *State of Assam [(1993) 3 SCC 282]* the Court observed: (SCC p. 285, para 3)

> "Indeed, conviction can be based on the testimony of a single eyewitness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eyewitness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eyewitness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect."

25. In *Kartik Malhar* v. *State of Bihar [(1996) 1 SCC 614]* referring to several cases, this Court stated: (SCC pp. 619-20, para 7)

> "*7*. On a conspectus of these decisions, it clearly comes out that there has been no departure from the principles laid down in *Vadivelu Thevar case [AIR 1957 SC 614]* and, therefore, conviction can be recorded on the basis of the statement of a single eyewitness provided his credibility is not shaken by any adverse circumstance appearing on the record against him and the court, at the same time, is convinced that he is a truthful witness. The court will not then insist on corroboration by any other eyewitness particularly as the incident might have occurred at a time or place when there was no possibility of any other eyewitness being present. Indeed, the courts insist on the quality, and, not on the quantity of evidence."

> **26.** In *Chittar Lal* v. *State of Rajasthan [(2003) 6 SCC 397]* this Court had an occasion to consider a similar question. In that case, the sole testimony of a young boy of 15 years was relied upon for recording an order of conviction. Following *Mohd. Sugal [AIR 1946 PC 3]* and reiterating the law laid down therein, this Court stated: (SCC p.400, para 7)
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> > "The legislative recognition of the fact that no particular number of witnesses can be insisted upon is amply reflected in Section 134 of the Evidence Act, 1872 (in short 'the Evidence Act'). Administration of justice can be affected and hampered if number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of one witness, leaving aside those cases which are not of unknown occurrence where determination of guilt depends entirely on circumstantial evidence. If plurality of witnesses would have been the legislative intent, cases where the testimony of a single witness only could be available, in number of crimes the offender would have gone unpunished. It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. *It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact*."
> >
> > (emphasis supplied)
>
> 27. Recently, in *Bhimappa Chandappa Hosamani* v. *State of Karnataka [(2006) 11 SCC 323]* this Court held that testimony of a solitary witness can be made the basis of conviction. The credibility of the witness requires to be tested with reference to the quality of his evidence which must be free from blemish or suspicion and must impress the court as natural, wholly truthful and so convincing that the court has no hesitation in recording a conviction solely on his uncorroborated testimony.''

(15) Thus, it is well-established principle of law that a witness might be a related witness, but his evidence cannot be discarded merely on that ground and if his evidence is found to be trustworthy, then a person can be convicted.

(16) Ramsumarani (P.W.1) is the wife of the younger-brother-in-law of the deceased (*Devrani*). Ramvaran (P.W.5) is the brother of the deceased (*Bhai)*. Vijay Singh (P.W.6) is the father-in-law of the deceased *(Sasur).* Kalavati (P.W.7) is the sister-in-law of the deceased (*Nanad*). Gaya Prasad (P.W.9) is the uncle-in-law of the deceased (*Chacha Sasur)*. All these witnesses are the eye-witnesses, who had seen the incident. Their presence on the spot is natural as the incident has taken place just outside the house of the deceased.

(17) Ratan Singh (P.W.3) is the son of the uncle-in-law of the deceased, but he is a hearsay witness, who was immediately informed by Vijay Singh (P.W. 6) that the appellant no.1 Chatur Singh has caused gunshot injuries to the deceased Guddi Bai.

(18) Challenging the evidence of these witnesses, the Counsel for the appellants has submitted that these witnesses, in their Court evidence had tried to over-implicate other members of the family. It was alleged by them, that one gunshot was fired by Shrikrishan, who was not even made accused by the prosecution. Further, these witnesses have stated that multiple gun shots were fired by various persons. It is submitted that except appellant No.1 Chatur Singh and appellant no.2 Sahab Singh have been prosecuted, no other person was even made an accused, thus, it is clear that these witnesses have tried to falsely implicate all the members of the family of the appellants and that part of their evidence has not been relied upon by the Trial Court, therefore, their entire evidence becomes doubtful and is liable to be rejected.

(19) The submission made by the Counsel for the appellants cannot be accepted and hence, rejected.

(20) The Supreme Court in the case of **Shakila Abdul Gafar Khan Vs. Vasant Raghunath Dhoble,** reported in **(2003) 7 SCC 749** has held as under :-

> **''25.** It is the duty of the court to separate the grain from the chaff. Falsity of a particular material witness or a 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. 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". (See *Nisar Ali* v. *State of U.P. [AIR 1957 SC 366]*)

26. The doctrine is a dangerous one especially in India for if a whole body of the testimony were to be rejected, because the witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate an exaggeration, embroideries or embellishment. (See *Sohrab* v. *State of M.P. [(1972) 3 SCC 751]* and *Ugar Ahir* v. *State of Bihar [AIR 1965 SC 277]*.) An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See *Zwinglee Ariel* v. *State of M.P. [AIR 1954 SC 15*] and *Balaka Singh* v. *State of Punjab [(1975) 4 SCC 511]*.) As observed by this Court in *State of Rajasthan* v. *Kalki [(1981) 2 SCC 752]* normal discrepancies in the evidence are those which are due to normal errors of observation, normal errors of memory due to

> lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in *Krishna Mochi* v. *State of Bihar [(2002) 6 SCC 81]*, *Gangadhar Behera* v. *State of Orissa [(2002) 8 SCC 381]* and *Rizan* v. *State of Chhattisgarh [(2003) 2 SCC 661]*."

The Supreme Court in the case of **Yogendra Vs. State of Rajasthan** reported in **(2013) 12 SCC 399** has held as under :-

> **"13.** The argument advanced by Shri Altaf Hussain, learned counsel for the appellants, stating that the evidence which has been disbelieved in respect of certain accused, cannot be enough to convict the present appellants, has no force. This Court, in *Ranjit Singh* v. *State of M.P. [(2011) 4 SCC 336]* has dealt with a similar issue. The Court herein, considered its earlier judgments in *Balaka Singh* v. *State of Punjab [(1975) 4 SCC 511]*, *Ugar Ahir* v. *State of Bihar [(1975) 4 SCC 511]* and *Nathu Singh Yadav* v. *State of M.P. [(2002) 10 SCC 366]* and has referred to the doctrine *falsus in uno, falsus in omnibus* and held, that the same has no application in India. The court must assess the extent to which the deposition of a witness can be relied upon. The court must make every attempt to separate falsehoods from the truth, and it must only be in exceptional circumstances, when it is entirely impossible to separate the grain from the chaff, for the same are so inextricably intertwined, that the entire evidence of such a witness must be discarded.

The Supreme Court in the case of **Bhagwan Jagannath Markad Vs. State of Maharashtra** reported in **(2016) 10 SCC 537** has held as under :-

> **"19.** While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether

such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted [*Leela Ram* v. *State of Haryana*, (1999) 9 SCC 525]. Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a "partisan" or "interested" witness may lead to failure of justice. It is well known that principle "*falsus in uno, falsus in omnibus*" has no general acceptability [*Gangadhar Behera* v. *State of Orissa*, (2002) 8 SCC 381]. On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness.

> **20.** Exaggerated to the rule of benefit of doubt can result in miscarriage of justice. Letting the guilty escape is not doing justice. A Judge presides over the trial not only to ensure that no innocent is punished but also to see that guilty does not escape.''

The Supreme court in the case of **Raja Vs. State of Haryana** reported in **(2015) 11 SCC 43** has held as under :-

> **''20.** Another circumstance which needs to be noted is that Sukha PW 7, a taxi driver, has deposed that on 18-1-2003 about 11.00 p.m. while he was going to Fatehabad for taking passengers, he saw a bullock cart parked in front of the house of the accused and certain persons were tying a bundle in a "palli". On query being made by him, the accused persons told him that they are carrying manure to the fields. Though, this witness has given an exaggerated version and stated differently about the time of arrest, yet his testimony to the effect that he had seen the accused with a bundle in "palli" at a particular place cannot be disbelieved. The maxim *falsus in uno, falsus in omnibus*, is not applicable in India. In *Krishna Mochi* v. *State of Bihar*, it has been held thus: (SCC pp. 113-14, para 51)
>
> > "*51*. … 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* (false in one thing, false in everything) has not received general acceptance nor has this maxim come to occupy the status of the 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."
>
> **21.** In *Yogendra* v. *State of Rajasthan*, it has been ruled that: (SCC p. 404, para 13)
>
> > "*13*. … The court must assess the extent to which the deposition of a witness can be relied upon. The court must make every attempt to separate falsehoods from the truth, and it must only be in exceptional circumstances, when it is entirely impossible to separate the grain from the chaff, for the same are so inextricably intertwined, that the entire evidence of such a witness must be discarded."

(21) Thus, it is a well established principle of law that the maxim ***falsus in uno, falsus in omnibus*****,** has no application in India and the Courts must try to remove the grain from the chaff. If the evidence of the eyewitnesses is appreciated, then it would be clear that they are trustworthy and reliable witnesses, and they can be relied upon.

(22) Ramsumarani (P.W.1), Ramvaran (P.W.5), Vijay Singh (P.W.6), Kalavati (P.W.7) and Gaya Prasad (P.W.9) are the eye-witnesses.

(23) Ramsumarani (P.W.1) had not seen the entire incident, but she reached on the spot, after hearing the first gunshot fire. She has stated that when she came to the spot, she saw that the appellant No.1 Chatur Singh fired second gunshot causing injury on the jaw of the deceased Guddi Bai and thereafter, the appellant no.1 Chatur Singh ran away.

(24) Ramvaran (P.W.5), Vijay Singh (P.W.6), Kalavati (P.W.7) and Gaya Prasad (P.W.9) have witnessed the entire incident. These witnesses have tried to implicate other persons also, but none of them was arrayed as additional accused. As already pointed out that the maxim *Falsus in Uno Falsus in Omnibus* has no application in India, therefore, their evidence would be considered only in respect of the allegations made against the appellant no.1 Chatur Singh. All the witnesses have stated in one voice that the gunshot fired by appellant No.1 Chatur Singh had caused injury on the jaw of the deceased Guddi Bai. However, they further alleged that Shrikrishan, Harnam Singh and Surajrai also came their with guns and one gunshot was fired by Shrikrishan, causing injury on the fingers of the deceased Guddi Bai. The original version of the prosecution witnesses was that only the appellant no.1 Chatur Singh objected to putting loose earth on the disputed land and when it was replied by Vijay Singh that the said land belongs to them, then appellant no.1 Chatur Singh, went back, brought a 12 bore gun and fired two gunshots, whereas in the Court evidence, these witnesses have stated that one gunshot was fired by the appellant no.1 Chatur Singh, whereas second gunshot was fired by Shrikrishan causing injury on the fingers of the deceased Guddi Bai. Under these

circumstances, by ignoring the allegations made against others, if the evidence led by the prosecution is considered, then it would be clear that some dispute was going on between the parties, over the question of possession over the disputed land. The complainant Vijay was putting loose earth on the disputed land, which was objected by the appellant no.1 Chatur Singh, and thereafter, he came back along with 12 bore gun and fired gunshot causing fatal injury on the jaw of the deceased Guddi Bai.

(25) Now the next question would be that whether the second gunshot was also fired by the appellant no.1 Chatur Singh or not? None of the prosecution witnesses has stated that second gunshot was also fired by the appellant no.1 Chatur Singh. However, the police had recovered two fired empty cartridges from the spot and as per the F.S.L. Report, Ex.P.13, both the cartridges were fired from the 12 bore gun which were seized from the possession of the appellant no.1 Chatur Singh. Thus, it is clear that only one gun was used for firing both the gunshots, but since, none of the prosecution witnesses has stated that both the gunshots were fired by the appellant no.1 Chatur Singh, therefore, at this stage, it can be held that the gunshot fired by appellant no.1 Chatur Singh, had caused fatal injury on the jaw of the deceased Guddi Bai.

(26) Challenging the correctness of the evidence led by the prosecution, it is submitted by the Counsel for the appellants that Ram Prakash Shakya (P.W.4) has stated that he is the driver of S.H.O., and was going to the spot along with the S.H.O., and on the way, they noticed that the appellant no.1 Chatur Singh, was going on a motorcycle. The S.H.O. took him in his custody and thereafter, they reached on the spot. Gaya Prasad (P.W.9) has stated, that after the incident, he went to the police station and met with the police, when he was on his way to the police station. He also boarded the police jeep. While they were coming to the spot, they noticed that the appellant no.1 Chatur Singh was going on a motorcycle along with Arvind, son of Shriram, Advocate. After noticing the police party, the appellant no.1 Chatur Singh, tried to run away. He was taken into custody. It

was submitted by the counsel for the appellants, that the Dehati Nalishi was lodged on the spot, and since, the appellant no.1 Chatur Singh was caught even prior to lodging of the Dehati Nalishi, therefore, it is clear that the police was not aware of the fact that who had fired the gunshot, thus, it is clear that the police, on its own, had taken the appellant no.1 Chatur Singh, in its custody, and thereafter, the case was developed accordingly. Thus, in short, it is the submission of the counsel for the appellant, that in the present case, the police has not collected the evidence, but has created the evidence and, therefore, the entire case is liable to be thrown overboard.

(27) The submission made by the counsel for the appellants, appear to be very impressive, however, on deeper scrutiny, the same appears to be misconceived and is accordingly rejected for two reasons :-

Firstly, it is the version of the prosecution witnesses, that Gaya Prasad (P.W.9) is an eye-witness, having witnessed the entire incident. He went to the police station for lodging the FIR. However, in the meanwhile, the police had already received an information on wireless that one lady has been killed (Para 1 of R.K.Sharma [P.W.8]) and, therefore, the police was going to the spot. Gaya Prasad (P.W.9) met with the police party while he was coming to police station and, therefore, Gaya Prasad (P.W.9) boarded the police jeep and was coming to the spot in the police jeep, when it was noticed that the appellant no.1 Chatur Singh, was going on a motorcycle. Although none of the witnesses has stated specifically that Gaya Prasad (P.W.9) had informed the police that Chatur Singh is the person who has killed Guddi Bai, but it cannot be lost sight of fact, that Chatur Singh, must have informed the police about the incident. It is possible, that Gaya Prasad (P.W.9) might have told R.K. Sharma (P.W.8) that the person going on a motorcycle is the person who has killed the deceased and, therefore, the police must have taken the appellant no.1 Chatur Singh in its custody.

Another important aspect of the matter is that on the information given by the appellant no.1 Chatur Singh, Ex.P.6, the police had seized 12 bore gun from his possession vide

seizure memo Ex.P.7. The seized gun as well as the two fired empty cartridges which were found on the spot and seized vide seizure memo Ex.P.2 were sent for F.S.L. and as per the F.S.L. report, Ex.P.12, it was found that the fired empty cartridges, seized from the spot, were in fact, could have been fired from the seized 12 bore gun. Thus, it is clear that the gun seized from the possession of the appellant no.1 Chatur Singh was used for committing crime and thus, it is clear that it was the appellant no.1 Chatur Singh, who had fired the gun shots causing death of the deceased Guddi Bai.

(28) It was next contended by the counsel for the appellants, that as per the evidence of the Dr.J.S.Yadav (P.W.2), the direction of the gunshot was downwards. By referring to the evidence of Ratan Singh (P.W.3), it is submitted by the counsel for the appellants that since, the deceased was standing on a platform which is situated at a higher place then the place from where the gunshot is alleged to have been fired, therefore, it cannot be inferred that it was the appellant no.1 Chatur Singh, who had fired the gunshot. The submissions made by the counsel for the appellants cannot be accepted because the Ratan Singh (P.W.3) in para 10 has stated, that he had seen the deceased Guddi Bai lying on the platform. Thus, if the deceased Guddi Bai was lying on the platform in an injured condition, then it cannot be inferred that she was standing on the platform at the time of firing.

(29) It is further submitted by the Counsel for the appellants that Ratan Singh (P.W.3) has stated that he had lodged the FIR, whereas according to the prosecution story, the Dehati Nalishi, Ex.P.3, was lodged by Vijay Singh (P.W.6), therefore, the police has suppressed the original F.I.R. and there is nothing on record to show that the mandatory provision of Section 157 of Cr.P.C. was followed.

(30) It is undisputed that R.K. Sharma (P.W.8), after reaching on the spot, lodged the Dehati Nalishi, Ex.P.3, but also recorded the statements of the witnesses. Thus, where the witness is a rustic villager, then he may have misconstrued his statement under Section 161 of Cr.P.C. as First Information Report. R.K. Sharma (P.W.8) had stated in para 9 of his cross-examination

that the copy of the report was sent to the concerning Magistrate on 22-8-2005 itself, which was received by the Magistrate on the same day. However, this witness could not clarify the dispatch number but stated that the same is mentioned in the case diary. It is submitted by the counsel for the appellants, that no document was filed by the prosecution to prove the compliance of Section 157 of Cr.P.C., therefore, it must be inferred that the mandatory provision of Section 157 of Cr.P.C. was not complied with. The submission made by the counsel for the appellants cannot be accepted. It is well-established principle of law that non-compliance of provision of Section 157 of Cr.P.C., is not always fatal to the prosecution story. In the present case, no prayer was made by the defence, for production of the dispatch register or acknowledgment of receipt of copy of the report. Under this circumstance, it cannot be inferred that the provision of Section 157 of Cr.P.C. was not complied with. Even otherwise, the Supreme Court in the case of **Rattiram Vs. State of M.P.** Reported in **(2013) 12 SCC 216** has held as under :-

> ''**25.** We will be failing in our duty if we do not deal with the contention of Mr Khan that when there has been total non-compliance with Section 157 of the Code of Criminal Procedure, the trial is vitiated. On a perusal of the judgment of the learned trial Judge we notice that though such a stance had been feebly raised before the learned trial Judge, no question was put to the investigating officer in this regard in the cross-examination. The learned trial Judge has adverted to the same and opined, regard being had to the creditworthiness of the testimony on record that it could not be said that the FIR, Ext. P-7, was ante-dated or embellished. It is worth noting that such a contention was not raised before the High Court. Considering the facts and circumstances of the case, we are disposed to think that the finding recorded by the learned trial Judge cannot be found fault with. We may hasten to add that when there is delayed dispatch of the FIR, it is necessary on the part of the prosecution to give an explanation for the delay. We may further state that the purpose behind sending a copy of the FIR to the Magistrate concerned is to avoid any kind of suspicion being attached to the FIR.

> Such a suspicion may compel the court to record a finding that there was possibility of the FIR being ante-timed or ante-dated. The court may draw adverse inferences against the prosecution. However, if the court is convinced as regards the truthfulness of the prosecution version and trustworthiness of the witnesses, the same may not be regarded as detrimental to the prosecution case. It would depend on the facts and circumstances of the case. In the case at hand, on a detailed scrutiny of the evidence upon bestowing our anxious consideration, we find that the evidence cannot be thrown overboard as the version of the witnesses deserves credence as analysed before. Thus, this colossal complaint made by Mr Khan pales into insignificance and the submission is repelled.''

The Supreme Court in the case of **State of Rajasthan Vs. Daud Khan** reported in **(2016) 2 SCC 607** has held as under :-

> **''28.** It is no doubt true that one of the external checks against antedating or ante-timing an FIR is the time of its dispatch to the Magistrate or its receipt by the Magistrate. The dispatch of a copy of the FIR "forthwith" ensures that there is no manipulation or interpolation in the FIR [Sudarshan Vs. State of Maharashtra (2014) 12 SCC 312). If the prosecution is asked to give an explanation for the delay in the dispatch of a copy of the FIR, it ought to do so. [(1994) 5 SCC 188] However, if the court is convinced of the prosecution version's truthfulness and trustworthiness of the witnesses, the absence of an explanation may not be regarded as detrimental to the prosecution case. It would depend on the facts and circumstances of the case. [Rattiram Vs. State of M.P. (2013) 12 216].''

The Supreme Court in the case of **Bhajan Singh Vs. State of Haryana** reported in **(2011) 7 SCC 421** has held as under :-

> **''24.** In *Shiv Ram* v. *State of U.P. [(1998) 1 SCC 149]* this Court considered the provisions of Section 157 CrPC, which require that the police officials would send a copy of the FIR to the Ilaqa Magistrate forthwith. The Court held that if there is a delay in forwarding the copy of the FIR to the Ilaqa Magistrate, that circumstance alone would not demolish the other credible evidence on record. It would only show how in such a serious crime, the

investigating agency was not careful and prompt as it ought to be.

25. In *Munshi Prasad* v. *State of Bihar [(2002) 1 SCC 351]* this Court considered this issue again and observed: (SCC pp. 365-66, para 13)

> "*13*. … While it is true that Section 157 of the Code makes it obligatory on the officer in charge of the police station to send a report of the information received to a Magistrate forthwith, but that does not mean and imply to denounce and discard an otherwise positive and trustworthy evidence on record. Technicality ought not to outweigh the course of justice—if the court is otherwise convinced and has come to a conclusion as regards the truthfulness of the prosecution case, mere delay, which can otherwise be ascribed to be reasonable, would not by itself demolish the prosecution case."

While deciding the said case, this Court placed relied upon its earlier judgments in *Pala Singh* v. *State of Punjab [(1972) 2 SCC 640]* and *State of Karnataka* v. *Moin Patel [(1996) 8 SCC 167]*.

26. In *Rajeevan* v. *State of Kerala [(2003) 3 SCC 355* this Court examined a case where there had been *inordinate delay* in sending the copy of the FIR to the Ilaqa Magistrate and held that unexplained inordinate delay may adversely affect the prosecution case. However, it would depend upon the facts of each case.

27. A similar view was reiterated in *Ramesh Baburao Devaskar* v. *State of Maharashtra [(2007) 13 SCC 501]* wherein there had been a delay of four days in sending the copy of the FIR to the Ilaqa Magistrate and no satisfactory explanation could be furnished for such inordinate delay. While deciding the said case, reliance had been placed on earlier judgments in *State of Rajasthan* v. *Teja Singh [(2001) 3 SCC 147]* and *Jagdish Murav* v. *State of U.P. [(2006) 12 SCC 626]* (See also *Sarwan Singh* v. *State of Punjab [(1976) 4 SCC 369]*; *State of U.P.* v. *Gokaran [1984 Supp SCC 482]*; *Gurdev Singh* v. *State of Punjab [(2003) 7 SCC 258]*; *State of Punjab* v. *Karnail Singh [(2003) 11 SCC 271]*; *State of J&K* v. *S. Mohan Singh [(2006) 9 SCC 272]*; *N.H. Muhammed Afras* v. *State of Kerala [(2008) 15 SCC 315]*; *Sarvesh Narain Shukla* v. *Daroga Singh [(2007) 13 SCC 360]* and *Arun Kumar Sharma* v. *State of Bihar [(2010) 1 SCC 108]*.)

28. Thus, from the above it is evident that the Criminal Procedure Code provides for internal and external checks: one of them being the receipt of a copy of the FIR by the Magistrate concerned. It serves the purpose that the FIR be not ante-timed or ante-dated. The Magistrate must be immediately informed of every serious offence so that he may be in a position to act under Section 159 CrPC, if so required. Section 159 CrPC empowers the Magistrate to hold the investigation or preliminary enquiry of the offence either himself or through the Magistrate subordinate to him. This is designed to keep the Magistrate informed of the investigation so as to enable him to control investigation and, if necessary, to give appropriate direction.

29. It is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or investigation is not fair and forthright. Every such delay is not fatal unless prejudice to the accused is shown. The expression "forthwith" mentioned therein does not mean that the prosecution is required to explain delay of every hour in sending the FIR to the Magistrate. In a given case, if number of dead and injured persons is very high, delay in dispatching the report is natural. Of course, the same is to be sent within reasonable time in the prevalent circumstances.

30. However, unexplained inordinate delay in sending the copy of FIR to the Magistrate may affect the prosecution case adversely. An adverse inference may be drawn against the prosecution when there are circumstances from which an inference can be drawn that there were chances of manipulation in the FIR by falsely roping in the accused persons after due deliberations. Delay provides legitimate basis for suspicion of the FIR, as it affords sufficient time to the prosecution to introduce improvements and embellishments. Thus, a delay in dispatch of the FIR by itself is not a circumstance which can throw out the prosecution's case in its entirety, particularly when the prosecution furnishes a cogent explanation for the delay in dispatch of the report or prosecution case itself is proved by leading unimpeachable evidence.''

(31) Since, the evidence of R.K. Sharma (P.W.8) was not further challenged by the defence by seeking a direction under Section 91 of Cr.P.C. for production of the documents, and there is nothing on record, which may falsify the claim of R.K.Sharma (P.W.8) that the copy of the report was sent to the concerning Magistrate, it is held that the submission with regard to non-compliance of Section 157 of Cr.P.C. cannot be accepted and hence rejected. Even otherwise, where the case is based on direct and trustworthy evidence, therefore, the case cannot be thrown overboard.

(32) It is next contended by the counsel for the appellants that since, a civil dispute was going on between the parties, and the complainant party was trying to encroach upon the disputed land by putting loose earth, which was objected by the appellant No.1 Chatur Singh, under this circumstance, a single gunshot fired by the appellant no.1 Chatur Singh would fall under Section 304 Part I of I.P.C. and the appellant no.1 Chatur Singh has already undergone the jail sentence of more than 11 years as he is in jail from 23-8-2005 i.e., from the date of his arrest. To buttress his contentions, the counsel for the appellant no.1 Chatur Singh has relied upon the judgment of Supreme Court, passed in the cases of **Surendra Singh @ Bittu Vs. State of Uttaranchal** reported in **AIR 2006 SC 1920**, **Bunnilal Choudhary Vs. State of Bihar** reported in **AIR 2006 SC 253** and **Gurpal Singh Vs. State of Punjab** reported in **2017 (2) MPLJ (Criminal) 1.**

(33) The Supreme Court in the case of **Rampal Singh Vs. State of U.P.** reported in **(2012) 8 SCC 289** has held as under :-

> ''**22.**Thus, where the act committed is done with the clear intention to kill the other person, it will be a murder within the meaning of Section 300 of the Code and punishable under Section 302 of the Code but where the act is done on grave and sudden provocation which is not sought or voluntarily provoked by the offender himself, the offence would fall under the Exceptions to Section 300 of the Code and is punishable under Section 304 of the Code. Another fine tool which would help in determining such matters is the extent of

brutality or cruelty with which such an offence is committed.''

The Supreme Court in the case of **Nankaunoo Vs. State of U.P.** Reported in **(2016) 3 SCC 317** has held as under :-

> **''11.** Intention is different from motive. It is the intention with which the act is done that makes a difference in arriving at a conclusion whether the offence is culpable homicide or murder. The third clause of Section 300 IPC consists of two parts. Under the first part it must be proved that there was an intention to inflict the injury that is present and under the second part it must be proved that the injury was sufficient in the ordinary course of nature to cause death. Considering clause Thirdly of Section 300 IPC and reiterating the principles stated in *Virsa Singh case [AIR 1958 SC 465]*, in *Jai Prakash* v. *State (Delhi Admn. [(1991) 2 SCC 32]*, para 12, this Court held as under: (SCC p. 41)
>
> "**12.** Referring to these observations, Division Bench of this Court in *Jagrup Singh case [(1981) 3 SCC 616]*, observed thus: (SCC p. 620, para 7)
>
> > '*7*. … These observations of Vivian Bose, J. have become locus classicus. The test laid down in *Virsa Singh case [AIR 1958 SC 465]*, for the applicability of clause Thirdly is now ingrained in our legal system and has become part of the rule of law.'
>
> The Division Bench also further held that the decision in *Virsa Singh case* has throughout been followed as laying down the guiding principles. In both these cases it is clearly laid down that the prosecution must prove (1) that the body injury is present, (2) that the injury is sufficient in the ordinary course of nature to cause death, (3) that the accused intended to inflict that particular injury, that is to say it was not accidental or unintentional or that some other kind of injury was intended. In other words clause Thirdly consists of two parts. The first part is that there was an intention to inflict the injury that is found to be present and the second part that the said injury is sufficient to cause death in the ordinary course of nature. Under the first part the prosecution has to prove from the given facts and circumstances that the intention of the accused was to cause that particular injury. Whereas under the second part whether it was sufficient to cause death, is an objective enquiry and it is a matter of inference or deduction from the

> particulars of the injury. The language of clause Thirdly of Section 300 speaks of intention at two places and in each the sequence is to be established by the prosecution before the case can fall in that clause. The 'intention' and 'knowledge' of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances. The framers of the Code designedly used the words 'intention' and 'knowledge' and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue. Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to 'knowledge', 'intention' requires something more than the mere foresight of the consequences, namely, the purposeful doing of a thing to achieve a particular end."

The Supreme Court in the case of **Vijay Ram Krishan Gaikwad Vs. State of Maharashtra** reported in **(2012) 11 SCC 592** has held as under :-

> **''8.** Having said that and keeping in view the fact that the appellant used a knife and chose the abdomen of the deceased for inflicting the injury as also keeping in view the nature of the injury itself which was sufficient in the ordinary course to cause death, it is a case that would squarely fall within Part I of Section 304 IPC. We may in this regard refer to the following passage from the decision of this Court in *Jai Prakash* v. *State (Delhi Admn.)*: (SCC p. 43, para 13)
>
> > "*13*. … when a person commits an act, he is presumed to expect the natural consequences. But from the mere fact that the injury caused is sufficient in the ordinary course of nature to cause death it does not necessarily follow that the offender intended to cause the injury of that nature. However, the presumption arises that he intended to cause that particular injury. In such a situation the

> court has to ascertain whether the facts and circumstances in the case are such as to rebut the presumption and such facts and circumstances cannot be laid down in an abstract rule and they will vary from case to case. However, as pointed out in *Virsa Singh case* the weapon used, the degree of force released in wielding it, the antecedent relations of the parties, the manner in which the attack was made that is to say sudden or premeditated, whether the injury was inflicted during a struggle or grappling, the number of injuries inflicted and their nature and the part of the body where the injury was inflicted are some of the relevant factors. These and other factors which may arise in a case have to be considered and if on a totality of these circumstances a doubt arises as to the nature of the offence, the benefit has to go to the accused. In some cases, an explanation may be there by the accused like exercise of right of private defence or the circumstances also may indicate the same. Likewise there may be circumstances in some cases which attract the first exception. In such cases different considerations arise and the court has to decide whether the accused is entitled to the benefit of the exception, though the prosecution established that one or the other clauses of Section 300 IPC is attracted."

(34) If the facts of this case are considered, then it would be clear that Vijay Singh (P.W.6) has admitted in para 10 of his evidence, that a dispute with regard to the platform, was going on between him and the accused party. He had filed a suit which he lost, however, it was claimed by him, that the appeal was decided in his favor. A specific suggestion was given that in fact Vijay Singh (P.W.6) had lost the appeal also, which was denied by him. However, he admitted that he has not placed the copy of the judgment passed by the Appellate Court, on record. Ramsumarani (P.W.1) has also admitted the litigation between the parties. Thus, it is clear that a dispute was going on between the parties, and Vijay Singh (P.W.6) had instituted a suit against the accused party. Under these circumstance, if the facts are considered, then it would be clear that a dispute is going on

between the parties and in spite of that, Vijay Singh (P.W.6) was putting loose earth on the disputed land, which was objected by the appellant no.1 Chatur Singh. Chatur Singh brought a 12 bore gun and fired a gunshot causing injury on the jaw of the deceased Guddi Bai. Under these circumstance, it can be safely held that the offence under Section 302 of I.P.C.can be converted into an offence under Section 304 Part I of I.P.C.

(35) Accordingly, the appellant no.1 Chatur Singh, is acquitted of the charge under Section 302 of I.P.C. and is convicted under Section 304 Part I of I.P.C.

The conviction of the appellant no.1 Chatur Singh, for offence under Section 25(1-B)(a) read with Section 3 of Arms Act and under Section 27 of Arms Act, awarded by the Trial Court is hereby maintained.

(36) So far as the appellant no.2 Sahab Singh is concerned, he has been convicted by the Trial Court for offence under Section 30 of Arms Act, as he was holding the licence of 12 bore gun which was used for committing offence. As the seizure and use of weapon has been proved by the prosecution beyond any reasonable doubt, therefore, the conviction of the appellant no.2 Sahab Singh for offence under Section 30 of Arms Act is upheld.

(37) So far as the question of sentence is concerned, it is submitted by the counsel for the appellant no.1 Chatur Singh that he is in jail from 23-8-2005 and has already undergone the actual jail sentence of more than 11 years and the period already undergone by the appellant no.1 Chatur Singh, would serve the ends of justice.

(38) Considered the submissions made by the counsel for the appellant no.1 Chatur Singh. From the record, it is clear that the appellant no.1 Chatur Singh was arrested on 23-8-2005 and he was never granted bail, either during trial, or during this appeal (Except temporary bail on certain occasions). Thus, the appellant no.1 Chatur Singh, is sentenced to the rigorous imprisonment of 11 years and a fine of Rs.100/- with default imprisonment of simple imprisonment of one month. The sentence of rigorous imprisonment of one year and a fine of Rs.100/- with default

imprisonment for offence under Section 25(1-B)(a) read with Section 3 of Arms Act and sentence of rigorous imprisonment of one year and a fine of Rs.100/- with default imprisonment for offence under Section 27 of Arms Act, awarded by the Trial Court are maintained. All the sentences are directed to run concurrently.

(39) So far as the sentence awarded to the appellant no.2 Sahab Singh is concerned, minimum sentence has not been provided for offence under Section 30 of Arms Act. The Trial Court has awarded the maximum jail sentence of 6 months RI with fine of Rs.200/-with default imprisonment of simple imprisonment of one month. It is submitted by the Counsel for the appellant no.2 that a lenient view may be adopted and since, jail sentence is not mandatory, therefore, he may be punished with fine only. He was on bail during trial as well as during the pendency of this appeal and he has not misused the same. Considered the submission made by the Counsel for the appellant no.2 Sahab Singh.

(40) As already held that the litigation was going on between the parties, over the question of platform,and Vijay Singh (P.W.6) has failed to prove that he had won the case instituted by him, and since, Vijay Singh (P.W.6) and Guddi Bai were putting loose earth on the disputed land which was objected by the appellant no.1 Chatur Singh, and when Vijay Singh (P.W.6) replied that he is putting the earth on his own land, then the appellant no.1 Chatur Singh went back to his house, which is situated quite nearer to the house of Vijay Singh (P.W. 6) and fired one gunshot, therefore, under these circumstances, this Court is of the considered opinion, that award of jail sentence is not essential and the ends of justice would serve, if the appellant no.2 Sahab Singh is punished with fine only. Accordingly, the jail sentence of 6 months RI and fine of Rs.200/- with default sentence awarded to appellant no.2 Sahab Singh is set aside and the appellant no.2 Sahab Singh is punished with fine of Rs.2,000/-. In case of non-payment of fine amount, the

appellant no.2 Sahab Singh shall undergo the simple imprisonment of one month.

(41) The appellant no.1 Chatur Singh, is in jail. He may be released on completion of his jail sentence, if not required in any other case. The appellant no.2 Sahab Singh is on bail. His bail bond and surety bonds stand discharged.

(42) The judgment and sentence dated 28-3-2007, passed by VIIth Additional Sessions Judge (Fast Track Court), Gohad, Distt. Bhind in Sessions Trial No.217/2005, is hereby affirmed **subject to above mentioned modifications.**

(43) The appeal is **allowed** to the extent mentioned above.

(S.A. Dharmadhikari)
Judge

(G.S. Ahluwalia)
Judge

MKB