**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

&

HON'BLE SHRI JUSTICE RAJEEV KUMAR SHRIVASTAVA

ON THE 31st OF Oct. 2022

CRIMINAL APPEAL NO. 825 of 2011

Between:-

KAPTAN SINGH, S/O SHRI GHORU SINGH YADAV, AGED 55 YEARS, OCCUPATION AGRICULTURIST, R/O- VILLAGE JADERUA PINTO PARK, POLICE STATION GOLA KA MANDIR, DISTRICT GWALIOR.

…....APPELLANT

(BY SHRI KTS TULSI, SENIOR ADVOCATE WITH SHRI A. FARAZ KHAN, SHRI R.K. SINGH, SHRI AJAY CHOUDHARY, SHRI SANJEEV BANSAL, SHRI AMRIT SINGH, SHRI ATUL GUPTA AND SHRI RAJMANI BANSAL - ADVOCATES)

AND

STATE OF MADHYA PRADESH THROUGH POLICE STATION GOLA KA MANDIR, DISTRICT – GWALIOR.

…....RESPONDENT

(BY SHRI C.P. SINGH – PANEL LAWYER)
(SHRI V.D. SHARMA WITH SHRI RAVINDRA DIXIT – ADVOCATES FOR COMPLAINANT)

CRIMINAL APPEAL NO. 840 of 2011

Between:-

MOHAR SINGH, S/O BABUSINGH YADAV, AGED- 42 YEARS, R/O- PINTO PARK, GAYATRI VIHAR JADERUAKALA GWALIOR MADHYA PRADESH.

…....APPELLANT

(BY SHRI KTS TULSI, SENIOR ADVOCATE WITH SHRI A. FARAZ KHAN, SHRI R.K. SINGH, SHRI AJAY CHOUDHARY, SHRI SANJEEV BANSAL, SHRI AMRIT SINGH, SHRI ATUL GUPTA AND SHRI RAJMANI BANSAL - ADVOCATES)

AND

STATE OF MADHYA PRADESH, THROUGH POLICE STATION GOLE KA MANDIR, DISTRICT GWALIOR MADHYA PRADESH.

…....RESPONDENT

(BY SHRI C.P. SINGH – PANEL LAWYER)
(SHRI V.D. SHARMA WITH SHRI RAVINDRA DIXIT – ADVOCATES FOR COMPLAINANT)

CRIMINAL APPEAL NO. 876 of 2011

Between:-

DINESH SINGH JAAT, S/O SHRI

GHANSHYAM SINGH JATT; AGE-28 YEARS; R/O- GRAM RATBAI, THANA BIJOLI, DISTRICT-GWALIOR (MADHYA PRADESH)

…….....APPELLANT

(BY SHRI KTS TULSI, SENIOR ADVOCATE WITH SHRI A. FARAZ KHAN, SHRI R.K. SINGH, SHRI AJAY CHOUDHARY, SHRI SANJEEV BANSAL, SHRI AMRIT SINGH, SHRI ATUL GUPTA AND SHRI RAJMANI BANSAL - ADVOCATES)

AND

STATE OF MADHYA PRADESH, THROUGH POLICE STATION GOLA KA MANDIR, DISTRICT GWALIOR (MADHYA PRADESH)

…….....RESPONDENT

(BY SHRI C.P. SINGH – PANEL LAWYER)
(SHRI V.D. SHARMA WITH SHRI RAVINDRA DIXIT – ADVOCATES FOR COMPLAINANT)

CRIMINAL APPEAL NO.1065 of 2013

Between:-

RUSTAM SINGH, S/O SITARAM YADAV, AGED 25 YEARS, R/O-VILLAGE JADERUA, DISTRICT-GWALIOR (MADHYA PRADESH).

…….....APPELLANT

(BY SHRI KTS TULSI, SENIOR ADVOCATE WITH SHRI A. FARAZ KHAN, SHRI R.K. SINGH, SHRI AJAY CHOUDHARY, SHRI

SANJEEV BANSAL, SHRI AMRIT SINGH AND SHRI RAJMANI BANSAL - ADVOCATES)
AND

THE STATE OF MADHYA PRADESH, POLICE STATION GOLE KA MANDIR, DISTRICT GWALIOR (MADHYA PRADESH)

…....RESPONDENT

(BY SHRI C.P. SINGH – PANEL LAWYER)
(SHRI V.D. SHARMA WITH SHRI RAVINDRA DIXIT – ADVOCATES FOR COMPLAINANT)

CRIMINAL APPEAL NO. 101 of 2014

Between:-

CHEEKU ALIAS SOHAN SINGH, S/O SHRI GHANSHYAM, AGED 33 YEARS, OCCUPATION – AGRICULTURIST, R/O VILLAGE BASODI, POLICE STATION BHITARWAR, DISTRICT GWALIOR (MADHYA PRADESH)

…....APPELLANT

(BY SHRI KTS TULSI, SENIOR ADVOCATE WITH SHRI A. FARAZ KHAN, SHRI R.K. SINGH, SHRI AJAY CHOUDHARY, SHRI SANJEEV BANSAL, SHRI AMRIT SINGH AND SHRI RAJMANI BANSAL - ADVOCATES)

AND

STATE OF MADHYA PRADESH, THROUGH POLICE STATION GOLE KA MANDIR, GWALIOR

….....RESPONDENT

(BY SHRI C.P. SINGH – PANEL LAWYER)
(SHRI V.D. SHARMA WITH SHRI RAVINDRA DIXIT – ADVOCATES FOR COMPLAINANT)

CRIMINAL APPEAL NO. 1016 of 2015

Between:-

BALLI ALIAS BALVEER SINGH, S/O SHRI SHIVCHARAN YADAV, AGED-32 YEARS, OCCUPATION-KASTKARI, R/O- VILLAGE JADERUA, DISTRICT- GWALIOR (MADHYA PRADESH).

….....APPELLANT

(BY SHRI KTS TULSI, SENIOR ADVOCATE WITH SHRI A. FARAZ KHAN, SHRI R.K. SINGH, SHRI AJAY CHOUDHARY, SHRI SANJEEV BANSAL, SHRI AMRIT SINGH AND SHRI RAJMANI BANSAL - ADVOCATES)

AND

STATE OF MADHYA PRADESH THROUGH POLICE STATION GOLA KA MANDIR, DISTRICT – GWALIOR (MADHYA PRADESH)

….....RESPONDENT

(BY SHRI C.P. SINGH – PANEL LAWYER)
(SHRI V.D. SHARMA WITH SHRI RAVINDRA DIXIT – ADVOCATES FOR COMPLAINANT)

CRIMINAL APPEAL NO. 122 of 2014

Between:-

THE STATE OF MADHYA PRADESH THROUGH POLICE STATION GOLA KA MANDIR, DISTRICT GWALIOR MADHYA PRADESH.

…….....APPELLANT

(BY SHRI C.P. SINGH – PANEL LAWYER)

AND

1. **SITARAM YADAV, S/O GYASIRAM YADAV, AGED 60 YEARS, RESIDENT OF VILLAGE JADERUA AT PRESENT OPPOSITE J.B. MANGHARAM KOTHI FACTORY GOLA KA MANDIR, GWALIOR MADHYA PRADESH.**

2. **MAHENDRA SINGH, S/O SITARAM YADAV, AGED 30 YEARS, R/O JADERUA, PINTO PARK, GWLIOR, MADHYA PRADESH.**

3. **CHEEKU ALIAS SOHAN SINGH, SON OF GHANSHYAM YADAV, AGED 25 YEARS, R/O VILLAGE BASODI, POLICE STATION BHITARWAR, AT PRESENT VILLAGE JADERUA PINTO PARK, GWALIOR, MADHYA PRADESH.**

4. **RUSTAM SINGH, S/O SITARAM YADAV, AGED 25 YEARS,**

5. **BALLI ALIAS BALVEER SINGH, S/O SHIVCHARAN YADAV, AGED 25 YEARS, BOTH RESIDENTS OF VILLAGE JADERUA, DISTRICT GWALIOR, MADHYA PRADESH.**

6. **DINESH SINGH JAT, S/O GHANSHYAM SINGH, AGED 38 YEARS, VILLAGE RATWAI, POLICE STATION BIJOLI, DISTRICT GWALIOR, MADHYA PRADESH.**

7. **GHANSHYAM SINGH, S/O MANOHAR SINGH YADAV, AGED 65 YEARS, R/O VILLAGE BASODI, POLICE STATION BHITARWAR, DISTRICT GWALIOR, MADHYA PRADESH. (DELETED AS PER COURT'S ORDER DATED 16/11/2016)**

8. **BALLU ALIAS BABLU YADAV, S/O SITOLI YADAV, AGED 25 YEARS, VILLAGE JADERUA, DISTRICT GWALIOR MADHYA PRADESH.**

9. **MOHAR SINGH, SON OF BABOOSINGH YADAV, AGED 42 YEARS, PINTO PARK GAYATRI BIHAR, JADERUA, DISTRICT GWALIOR, MADHYA PRADESH.**

10. **KAPTAN SINGH, S/O GHORUSINGH YADAV, AGED 55 YEARS, VILLAGE JADERUA POLICE STATION GOLA KA MANDIR, GWALIOR, MADHYA PRADESH.**

11. **AMAR SINGH, SON OF MAHARAJ SINGH YADAV, AGED 50 YEARS, RESIDENT OF SATYANARAYAN KA MOHALLA, GHASMANDI,**

GWALIOR, (MADHYA PRADESH)

……..RESPONDENTS

(BY SHRI KTS TULSI, SENIOR ADVOCATE WITH SHRI A. FARAZ KHAN, SHRI R.K. SINGH, SHRI AJAY CHOUDHARY, SHRI SANJEEV BANSAL, SHRI AMRIT SINGH, SHRI ATUL GUPTA, SHRI RAJMANI BANSAL AND SHRI AYUSH SAXENA - ADVOCATES)
(SHRI V.D. SHARMA WITH SHRI RAVINDRA DIXIT – ADVOCATES FOR COMPLAINANT)

Heard On : 8th of September 2022

Delivered On : 31st of October 2022

This appeal coming on for final hearing this day, ***Hon'ble Shri Justice G.S. Ahluwalia,*** *passed the following:*

JUDGMENT

1. Criminal Appeal Number **825/2011 (Kaptan Singh Vs. State of M.P.**), **Criminal Appeal No. 840/2011 (Mohar Singh Vs. State of M.P.), Criminal Appeal No. 876/2011 (Dinesh Jat Vs. State of M.P.), Criminal Appeal No. 101/2014 (Cheeku Vs. State of M.P.), Criminal Appeal No. 1016/2015 (Balli Vs. State of M.P.)** and **Criminal Appeal No. 1065/2013 (Rustam Vs. State of M.P.)** have been filed against the judgment dated 26-9-2011 passed by Ms. Shobha Porwal, 1st Additional Sessions Judge, Distt. Gwalior in S.T. No. 216/2007, by which the

following Appellants have been convicted and sentenced for the following offences :

S.No.	Appellant	Convicted under Section	Sentence
1	**Dinesh Jat**	302/149 IPC (3 Counts)	Life Imprisonment and fine of Rs. 15,000/- in default 1 year R.I. (3 counts)
		326/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.
		147,148 of IPC	No separate sentence for offence under Section 147 IPC 1 year R.I. for offence under Section 148 IPC
2	**Mohar Singh**	302/149 IPC (3 Counts)	Life Imprisonment and fine of Rs. 15,000/- in default 1 year R.I. (3 counts)
		326/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.
		147,148 of IPC	No separate sentence for offence under Section 147 IPC 1 year R.I. for offence under Section 148 IPC
3	**Kaptan Singh**	302/149 IPC (3 Counts)	Life Imprisonment and fine of Rs. 15,000/- in default 1 year R.I. (3 counts)
		326/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.

		147,148 of IPC	No separate sentence for offence under Section 147 IPC 1 year R.I. for offence under Section 148 IPC
4	**Rustam Singh**	302/149 IPC (3 Counts)	Life Imprisonment and fine of Rs. 15,000/- in default 1 year R.I. (3 counts)
		326/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.
		147,148 of IPC	No separate sentence for offence under Section 147 IPC 1 year R.I. for offence under Section 148 IPC
5	**Balli @ Balvir**	302/149 IPC (3 Counts)	Life Imprisonment and fine of Rs. 15,000/- in default 1 year R.I. (3 counts)
		326/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.
		147,148 of IPC	No separate sentence for offence under Section 147 IPC 1 year R.I. for offence under Section 148 IPC
6	**Cheeku @ Sohan Singh**	302/149 IPC (3 Counts)	Life Imprisonment and fine of Rs. 15,000/- in default 1 year R.I. (3 counts)
		326/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.

		147,148 of IPC	No separate sentence for offence under Section 147 IPC 1 year R.I. for offence under Section 148 IPC

All sentences shall run concurrently.

2. Out of the fine amount, an amount of Rs. 2 lac be paid to the widow of Sintu by way of compensation under Section 357 of Cr.P.C.

3. Criminal Appeal No. 122/2014 has been filed by the State against the acquittal of following accused persons for the following offences :

S.No	**Name of Respondents who have been acquitted for every offence**	**Acquitted under Section**
1	**Mahendra Singh**	302 of IPC
		307 of IPC
		120-B of IPC
		147 of IPC
		148 of IPC
		149 of IPC
2	**Sitaram**	302 of IPC
		307 of IPC
		120-B of IPC
		147 of IPC
		148 of IPC
		149 of IPC
3	**Amar Singh**	302/120-B of IPC
		307/120-B of IPC
4	**Ghanshyam**	302/120-B of IPC

		307/120-B of IPC
5	**Bablu @ Ballu**	302 of IPC
		307 of IPC
		120-B of IPC
		147 of IPC
		148 of IPC
		149 of IPC
	Appellants who have been acquitted for some offences	**Acquitted under Section**
1	**Mohar Singh**	307 of IPC
		120-B of IPC
2	**Kaptan Singh**	307 of IPC
		120-B of IPC
3	**Dinesh Singh Jat**	307 of IPC
		120-B of IPC
4	**Cheeku @ Sohan Singh**	307 of IPC
		120-B of IPC
		25 of Arms Act
		27 of Arms Act
5	**Balli @ Balveer Singh**	307 of IPC
		120-B of IPC
		25 of Arms Act
		27 of Arms Act
6	**Rustam Singh**	307 of IPC
		120-B of IPC
		25 of Arms Act
		27 of Arms Act

4. The facts necessary for disposal of present appeal in short are that the complainant Hariom lodged a Dehati Nalishi on 17-7-2006 at 1:00 A.M. in the night on the allegations that, Sughar Singh is his younger brother and was a Councilor from Ward No. 25, Jaderua. An enmity had developed between his family and the family of Rustam Singh Yadav on the question of elections. During the elections, Rustam Singh had fired at his brother and from thereafter, Rustam, Mahendra and their father Sitaram had shifted from the village and were hatching conspiracy for killing Sughar Singh. About 4-5 months back, Sughar Singh had come to know about the conspiracy hatched by Sitaram, Rustam and Mahendra, and accordingly, he had a dispute with Sitaram. Day before yesterday, Cheeku, Mohar Singh and Kallu had come to the house on a Cream colour Scorpio jeep and had collected information about Sughar Singh. This witness had warned Sughar Singh. At about 8:30 in the night, the complainant had gone towards Pinto Park and was standing near Bajrang Kirana Store. He heard the noise of gun shots and saw that gun shots were being fired on his Safari vehicle. Rustam, Mohar Singh, Kallu, Cheeku @ Mohan Singh, Balli son of Shivcharan came down from the cream coloured Scorpio. Cheeku, Balli and Kallu were having .315 bore guns, whereas Mohar Singh was having .12 bore and Rustam was having .315 mouzer. They started firing indiscriminately and attacked on his brother Sughar Singh as a result, Jagdish, the driver lost his life on the spot itself, whereas he took his brother to the hospital, where he was declared dead, Yuvraj is getting himself treated as he is injured and one more person namely Sintu has also died in shootout. 3-4 more persons were with Rustam Singh who had also deboarded from the vehicle and

were armed with firearms and had also fired. Thereafter, all the accused persons went away in their Scorpio vehicle. It was also alleged that this incident has been committed by Rustam Singh and his companions at the instigation of and in conspiracy with Sitaram Yadav, Mahendra Yadav. It was also stated that he would disclose the names of other unknown persons after collecting information in this regard.

5. On the basis of above mentioned Dehati Nalishi, the police registered the FIR for offence under Sections 302,307,147,148,149,129-B IPC and under Section 25-27 Arms Act against Rustam Singh, Mahendra Singh, Sitaram, Mohar Singh, Kallu, Cheeku @ Mohan Singh and Balli.

6. It is not out of place to mention here, that since, the incident took place on the public place which was just 1 ½ Km away from the Police Station Gola Ka Mandir, therefore, immediately after the shoot out, the police also reached on the spot after getting telephonic information which was reduced in Rojnamcha Sanha. They prepared the spot map. The injured Yuvraj was taken to hospital by his friends. The Safari car was also seized from the spot on 16-7-2006 itself and as many as 16 bullet marks were found on the front and right side of the vehicle. Blood stained pieces of flesh were found on the seats. One .315 bore rifle was also found in the jeep. The rifle was in a damaged condition due to gun shot. One Black wrist watch in damaged condition was also found which had stopped at 20:17. Blood stained earth from the place where Sughar Singh was lying, blood stained earth from the place where Sintu was lying, plain earth 2 empty cartridges of .315 bore, one empty brass cartridge, one live cartridge of .12 bore were also seized from the spot.

The dying declaration of Yuvraj was recorded by the Doctor. In the meanwhile, the deceased Sughar Singh was also taken to hospital, where he was declared dead. The dead body of Jagdish was also removed. The injured was operated upon in the night of 16-7-2006 itself.

7. After the FIR was registered, the police recorded the statements of witnesses. The statement of injured Yuvraj was recorded on 17-7-2006. The post-mortem of the dead bodies of Sughar Singh, Jagdish and Sintu was got done. The accused persons were arrested. Weapons of offence were seized from some of the accused persons. The police after completing the investigation filed charge sheet for offence under Sections 147,148,149,307,302,120-B of IPC and under Sections 25/27 of Arms Act.

8. It is not out of place to mention here that total 15 persons were made accused and charge sheet was filed against 10 persons namely Mahendra Singh, Sitaram, Dinesh Jat, Ghanshyam, Bablu @ Ballu, Kaptan Singh, Rustam, Balli @ Balveer, Cheeku @ Sohan Singh and Amar Singh. Mohar Singh was not charge sheeted on the ground that he was not present on the spot. However, the Magistrate took cognizance against Mohar Singh under Section 190 of Cr.P.C. The remaining accused persons, namely Dinesh Yadav, Maharaj Singh, Autar Singh, Kallu @ Kalyan were absconding. Maharaj Singh died whereas charge sheet was filed against Dinesh Yadav, Autar Singh and Kallu @ Kalyan after their arrest and they were tried separately. However, in the present trial, 11 accused persons, namely Mahendra Singh, Sitaram, Dinesh Jat, Ghanshyam, Bablu @ Ballu, Kaptan Singh, Rustam, Balli @ Balveer, Cheeku @ Sohan Singh,Mohar Singh, and Amar Singh were tried.

9. The Trial Court by order dated 24-7-2007 framed charges under Sections 302 for murder of Sughar Singh, Jagdish Kushwah and Sintu, under Section 307 for making an attempt to kill Yuvraj, under Section 120-B, 147,148,149 of IPC against Mahendra, Sitaram, Dinesh Jat, Bablu @ Ballu, Mohar Singh, and Kaptan Singh. Framed charges under Sections 302 for murder of Sughar Singh, Jagdish Kushwah and Sintu, under Section 307 for making an attempt to kill Yuvraj, under Section 120-B, 147,148,149 of IPC and 25/27 Arms Act against Rustam Singh, Balli @ Balveer, Cheeku @ Sohan Singh. The Trial Court also framed charges under Sections 302 read with Section 120-B of IPC (on 3 counts), 307 read with 120-B of IPC against Amar Singh and Ghanshyam.

10. The Appellants abjured their guilt and pleaded not guilty.

11. The prosecution examined Yuvraj (P.W.1), Dr. Jai Narayan Soni (P.W.2), Dr. Pushpendra Singh (P.W.3), Bhajju (P.W.4), Dr. Mahavir Prasad Barua (P.W.5), Hariom Yadav (P.W.6), Umesh Yadav (P.W.7), Mahesh Singh Kaurav (P.W.8), R.K. Jain (P.W.9), Raghvendra Singh (P.W.10), R.B. Sharma (P.W.11), Lal Singh (P.W. 11)[wrongly marked as P.W.11], Vrindavan Singh Yadav Kamaria (P.W.12), D.S. Sengar (P.W.13), Dr. Arun Kumar (P.W.14), Dinesh Singh Yadav (P.W.15), Ashok Bhadoriya (P.W. 16), Rajendra Kumar Agrawal (P.W.17), Muneesh (P.W.18), Dr. Nitin Prasad (P.W.19), and R.B. Sharma (P.W.20).

12. The accused examined Naresh Kumar Jain (D.W.1), Manish Kumar Shukla (D.W.2), Rahul Kumar Khare (D.W.3), Virendra Pratap Singh (D.W.4), Parmanand (D.W.5), G.L. Verma (D.W.6), and Ramesh Naresh Sharma (D.W.7).

13. The Trial Court by the impugned judgment, convicted the Appellants Dinesh Jat, Mohar Singh, Kaptan Singh, Rustam Singh, Cheeku @ Sohan Singh and Balli @ Balvir for the above mentioned offences and acquitted the remaining accused.

14. It is not out of place to mention here that one accused Dinesh Yadav was arrested at a later stage and accordingly, he was tried separately and by judgment dated 26-9-2011 he has been acquitted. Co-accused Ramautar and Kallu @ Kalyan were also arrested at a later stage and they were tried separately and have been acquitted by judgment dated 26-11-2021. The State of M.P. has also filed Cr.A. No. 181 of 2012 against the acquittal of Dinesh Yadav. Cr.A. No. 912 of 2011 has also been filed by the complainant against the acquittal of Dinesh Yadav. Since, Dinesh Yadav was tried in a separate trial and evidence was also recorded separately, therefore, in the light of judgment passed by Supreme Court in the case of **A.T. Mydeen Vs. The Asstt. Commissioner, Customs Department**, decided **on 31/10/2021** passed in **Cr.A. No. 1306 of 2021,** the evidence led in the case of present appellants cannot be read for co-accused Dinesh Yadav and vice versa. However, the appeals filed by the appellants as well as against acquittal of co-accused Dinesh Yadav and other co-accused persons have been heard simultaneously, but appeal against acquittal of Dinesh Yadav is being decided by separate judgments.

15. Challenging the judgment and sentence passed by the Court below, the Counsel for the Appellants Dinesh Jat, Mohar Singh, Kaptan Singh, Rustam Singh, Cheeku @ Sohan Singh and Balli @ Balveer submitted that Yuvraj Singh (P.W.1) is not a reliable witness. The

documents which forms the foundation for the conviction, suffers from serious defects. It is clear from various documents, that the complainant party had over implicated various accused persons at later stage. The Appellant Mohar Singh has proved his plea of alibi beyond reasonable doubt, but the Trial Court has rejected the same on flimsy grounds. It is further submitted that the entire prosecution story is based on the solitary evidence of Yuvraj Singh (P.W.1) and since he is not a reliable witness therefore, the case is based on circumstantial evidence and the prosecution has failed to prove the same beyond reasonable doubt. It is well established principle of law that when two views are possible, then the version favoring the accused should be accepted. The Counsel for the Appellants have relied upon judgments passed by Supreme Court in the case of **State of Maharashtra Vs. Tulshiram Bhanudas Kamble and others** reported in **(2007) 14 SCC 627, Kanakrajan Vs. State of Kerala** reported in **(2017) 13 SCC 597, Noor Aga Vs. State of Punjab** reported in **(2008) 16 SCC 417, Podyami Sukhada Vs. State of Madhya Pradesh** reported in **(2010) 12 SCC 142, Vijayee Singh Vs. State of Uttar Pradesh,** reported in **AIR 1990 SC 1459, Suresh & Anr. Vs. State of Haryana** reported in **(2018) 18 SCC 654, Vikramjit Singh Vs. State of Punjab** reported in **(2006) 12 SCC 306, Raghunath Vs. State of Haryana** reported in **2003 SCC (Cri) 326, Maqsoodan Vs. State of Uttar Pradesh** reported in **1983 SCC (Cri) 176, State of Gujarat Vs. Kalusinh @Harpal Sinh** reported in **AIR 2019 SC 2874, Balaji Gunthu Dhule** reported in **(2012) 11 SCC 685, Peer Singh Vs. State of Madhya Pradesh** reported in **AIR 2019 SC 1951, Mahavir Singh Vs. State of Madhya Pradesh** reported in **AIR 2016 SC 5231,**

Tahsildar Singh and another Vs. State of U.P. reported in **AIR 1959 SC 1012, Imrat Singh and others Vs. State of Madhya Pradesh,** reported in **AIR 2020 SC 1644, Kailash Gour and others Vs. state of Assam** reported in **2012 Cr.L.R. (SC)1, Shahid Khan Vs. State of Rajasthan** reported in **(2016) 4SCC 96, State of Madhya Pradesh Vs. Nande @ Nand kishore Singh** reported in **2018 Cr.L.R. (SC) 164, Maruti Rama Naik Vs. State of Maharashtra** reported in **2004 SCC (Cri) 958, Ashok Jayendra Sinh Vs. State of Gujarat** reported in **2019 Cr.L.R. (SC) 670, Sudarshan and another Vs. State of Maharashtra** reported in **2014 Cr.L.R. (SC) 660, Meharaj Singh Vs. State of U.P.** reported in **1994 SCC (Cri) 1390, AtmaRam and others Vs. State of Rajasthan** judgment **dated 11-4-2019** passed **in Cr.A. No. 656-657 of 2019, State of M.P. Vs. Ghudan** reported in **2005 SCC (Cri) 801,**

16. Counsel for the State submitted that Yuvraj Singh (P.W.1) is an injured eye-witness and thus, he enjoys a special status. It is clear from the various order-sheets of the Trial Court, that the main accused Rustam Singh was not appearing before the Trial Court from 22-11-2008 and ultimately his bail bonds were cancelled and arrest warrant was issued against him by the Trial Court on 20-1-2009. Rustam Singh surrendered himself on 19-6-2010. It is clear that on 12-9-2008, the Appellants moved an application under Section 311 of Cr.P.C. for recall of Yuvraj Singh (P.W.1) for further cross-examination and the said application was rejected. Thereafter, Cr.R No.679 of 2009 was filed and this Court by order dated 7-1-2010 permitted the prayer for recall of Yuvraj Singh (P.W.1) for further cross-examination. Only thereafter, Rustam Singh surrendered himself on 19-6-2010. It is submitted that in the light of the

order passed in Cr.R. No. 679 of 2009, the Trial Court by its order dated 22-1-2010, issued summons to Yuvraj Singh. The police was unable to serve Yuvraj Singh (P.W.1) as he was missing. On 9-4-2010, an application was filed by the Complainant alleging that Yuvraj Singh (P.W.1) is in the captivity of the Appellants and the police is not serving summons on him and is giving false report. Accordingly, the Trial Court by order dated 9-4-2010 directed that summons be served through I.G. Gwalior. Thereafter, the summon issued to Yuvraj Singh (P.W.1) was returned back with an endorsement that he doesnot reside at the given address. Thereafter, again on 12-5-2010, it was mentioned by the Trial Court, that the summons issued against Yuvraj Singh (P.W.1) has been returned back with an endorsement that his house is in an abandoned and dilapidated condition and he doesnot reside there. Again on 24-5-2010, a statement was made by S.H.O., Gola Ka Mandir, that the house of Yuvraj Singh (P.W.1) is in an abandoned and dilapidated condition and even whereabouts of his family members are not known. Again on 7-6-2010, arrest warrant was issued against Yuvraj Singh (P.W.1). On 15-6-2010, Yuvraj Singh (P.W.1) appeared before the Trial Court and at the request of the Public Prosecutor, he was not examined. Thereafter, on 19-6-2010, the Appellant Rustam Singh surrendered. On 14-7-2010, Yuvraj Singh (P.W.1) appeared, but his evidence was not recorded. Ultimately, Yuvraj Singh (P.W.1) was further cross-examined on 9-8-2010. Thus, it is clear that not only the Appellant Rustam Singh had absconded and surrendered just prior to the examination of Yuvraj Singh (P.W.1) but during this period, the police was unable to trace out Yuvraj Singh (P.W.1). Even the complainant party moved an application alleging that

Yuvraj Singh (P.W.1) is in the captivity of the accused persons. Thus, the somersault taken by Yuvraj Singh (P.W.1) in his further cross-examination, should be ignored. It is further submitted that not only the Appellant Mohar Singh had failed to prove his plea of alibi but no such plea was taken by him in his statement under Section 313 of Cr.P.C. The Counsel for the State relied upon **Khujji Vs. State of M.P.** reported in (**1991) 3 SCC 627.**

The Counsel for the State also challenged the acquittal of Mahendra Singh, Sitaram, Ghanshyam, Bablu @ Ballu, and Amar Singh. The Counsel for the State also challenged the acquittal of Rustam Singh, Kaptan Singh, Dinesh Jat, Ballli @ Balveer, Mohar Singh and Cheeku @ Sohan Singh for offence under Section 307/149 of IPC as well as under Section 25/27 of Arms Act. It is not out of place to mention here that the Trial Court has convicted the above-mentioned accused for offence under Section 326/149 of IPC. It is submitted that the Trial Court committed material illegality by acquitting the above mentioned accused persons for offence under Section 307/149 of IPC by holding that the injuries sustained by Yuvraj (P.W.1) were not dangerous to life. It is submitted that multiple gun shot injuries were sustained by Yuvraj (P.W.1). Yuvraj (P.W.1) has suffered paraplegia. Nature of injuries is not the decisive factor to make out an offence under Section 307 of IPC. The nature of injuries, nature of weapon, number of assaults, body part of the victim are some of the important aspects to find out the intention or knowledge on the part of the assailant. The Trial Court has wrongly acquitted the accused persons by holding that the injuries sustained by Yuvraj (P.W.1) were not dangerous to life.

14. It is submitted by the Counsel for the complainant, that not only Yuvraj Singh (P.W.1) is a reliable witness but even Hariom (P.W. 6) and Umesh Yadav (P.W.7) are also reliable witnesses, but the Trial Court has wrongly disbelieved them. The Trial Court has also wrongly disbelieved Bhajju (P.W.4) who is the witness of conspiracy. All the accused persons who were named in the FIR absconded immediately after the incident, which is indicative of their guilty mind. Mohar Singh and Dinesh Jat have failed to prove their plea of alibi. The Counsel for the complainant relied upon **Veer Singh Vs. State of U.P.** reported in **(2014) 2 SCC 455, Baleshwar Mahto Vs. State of Bihar** reported in **AIR 2017 SC 873, Radha Mohan Singh @ Lal Saheb and others Vs. State of U.P. and others** reported in **AIR 2006 SC 951, Vinod Kumar Vs. State of Punjab** reported in **(2015) 3 SCC 200, Rajesh Yadav Vs. State of U.P.** Judgment dated **4-2-2022** passed in **Cr.A. No.339-340 of 2014, Jaspal Singh @ Pali Vs. State of Punjab** reported in **AIR 1997 SC 322**.

15. Challenging the acquittal of respondents, similar grounds were raised by the Counsel for the parties.

16. Heard the learned Counsel for the parties.

17. Before adverting to the facts of the case, this Court would like to consider as to whether the death of Sughar Singh, Jagdish and Sintu was homicidal in nature or not?

18. Dr. Jai Narayan Soni (P.W.2) had conducted post-mortem of deceased Sughar Singh and found following injuries on his body :

<u>Ante-mortem injuries present over the body</u>

(a) Blast wound right side of neck 15 x 18 cm vertical blood vessels muscle, right clavicle,right 1st to 3rd ribs and lung right

lacerated. A deformed bullet and wad recovered from right side of 3rd thoracic vertebra;

(b) Gun shot entry wound below left mastoid 1 cm diameter. It extends below mandible after damaging lower border and extends exit out on lower margin of chin 1.5 x 1cm transverse;

(c) Gun Shot entry wound 1 cm in diameter, 6 cm below right shoulder tip. It extends right lung through 4th intercostal (illegible) heart and left lung and exit out 10 cm below posterior axilla line left side;

(d) Gun Shot entry wound left hand (Palmar aspect) through and through 4th metacarpal fractured. 2 1 cm vertical both side;

(e) Gutter wound superior aspect of right knee 5 x 7.5 cm transverse flapping interiorly;

(f) Gutter wound 6 x 4 cm left forearm lower third radius bone fractured into pieces at this site;

(g) Blast wound 36 cm below suprasternal 12x 8 cm vertical skin tags present on margin, loops of intestine (illegible) protruded through wound, a deformed bullet and wad recovered from wound and 6 cm right to midline lower costal border underneath skin;

(h) Gun shot entry wound two in number anteriorly one through big wound and another 4 cm left to main abdominal wound 2 cm in diameter.

Clothings and 3 wad and 5 fragments of deformed bullet and ball recovered sealed and handed over to P.S. concerned.

Death was due to shock and hemorrhage as a result of multiple firearm injuries. Some are fired from contact (Short range) and some from distant shot. Death is homicidal in nature.

Duration of Death is within 6 hours to 24 hours since P.M. Examination.

The Post-mortem report is Ex. P.2.

19. Dr. Jai Narayan Soni (P.W.2) conducted post-mortem of the dead body of Jagdish and found following injuries :

Ante-mortem injuries present over the body :

(a) Gun shot entry wound present 4 cm above right sub costal region (flank) 2 cm in diameter having abrasion all around for 2 mm;

It extends after damaging 6th rib liver, lung heart and left side 4th ribs a big ball recovered from left side postero (illegible) at 4th rib level under skin and a wad in the liver;

(b) Blast wound right side of head 4 cm above the ear lacerated scalp skull bone fractured and brain lacerated in 15 x 13 cm area.

Clothings wad and balt (bullet) sealed and handed over to P.S. concerned;

Death was due to shock and hemorrhage as a result of firearm injury, firearm injury caused from contact shot on head and different shot on chest;

Nature of death is homicidal;

Duration of death is within 6 hours to 24 hours since P.M. Examination.

The post-mortem report is Ex. P. 4.

20. This witness was cross-examined. In cross-examination, he admitted that along with the dead bodies of Sughar Singh and Jagdish, neither any weapon, nor the copy of FIR were sent. Total 8 gun shot injuries were found on the body of Sughar Singh. Injuries no. 1 and 7 were blast injuries. Injuries no.1 and 7 could have been caused by .12 bore gun. Only one deformed bullet was found inside wound no.1. 30 pieces of deformed bullet were recovered from injury no. 7, but due to mistake, the description of entire pieces of bullet was not mentioned. If gun shot is fired from a very close range then blast injury can be caused. He admitted that blast injury can be caused only when the substance and gasses enter inside the body directly and then blasts inside the body. He was not in a position to say as to whether all the 8 injuries were caused by one firearm or by different firearms. Injuries no. 1 and 7 could have been caused by one firearm, whereas remaining injuries could have been caused by different firearms. Bolt would enter inside the body only when the gun shot is fired from a very close range or from a range of 4-5 ft.s. Except on injury no. 1 and 7, no burning, tattooing was found around any other injury. He clarified that the meaning of gutter wound is that entry and exit wound are parallel to each other. If a person is sitting in the car and gut shots are fired from three sides, and if the injured remains seated in the same posture, then gutter injuries can be caused. However,if the injured changes his position, then the injuries can be caused by gun shots fired from one direction. Injury no.8 could have been caused from behind, but thereafter clarified that it can be caused by gun shot fired from right side. Gun shot injury to Jagdish was also caused from a very

close range.

21. Dr. Pushpendra Singh (P.W. 3) conducted post-mortem of dead body of Sintu @ Raja Balmik and found following injuries on his body :

Ante-mortem injuries evident on body surface :

(a) Gun shot entry wound evident on back 8 cm below the 7th cervical vertebra and 8 cm below left to midline 1 cm in diameter margins inverted forming track forwardly anteriorly, a lacerated upper lobe of left lung pierced and blood vessels of neck and subcutaneous tissues and exit wound evident left to midline of neck above cervical in 3 x 2 cm size, margins everted.

No singing, blackening and tattooing;

contused margin and signs of bleeding evident.

Bundle of clothes as mentioned on page 3 packed and sealed and handed over to police constable.

Cause of death is hemorrhage and shock by firearm fired from distance range.

Duration of death within 6 to24 hours since P.M. Examination;

Nature of death is homicidal.

The post-mortem report is Ex. P.5.

22. Dr. Pushpendra Singh (P.W.3) was also cross-examined and in cross-examination, he could not disclose the distance from which the gun shot injury was caused, but clarified that it was beyond 3 ft.s. Looking to the entry and exit wound, the direction was upward.

23. Thus, this Court is of the considered opinion, that the prosecution has proved that the deaths of Sughar Singh, Jagdish and Sintu @ Raju Balmik were homicidal in nature.

24. The next question for consideration is that who committed the offence in question?

25. The arguments advanced by the Counsel for the parties can be categorized as under :

a. Whether Yuvraj (P.W.1) is a reliable witness

b. Whether Hariom (P.W.6) is a reliable witness

c. Whether Bhajju (P.W.4) is a reliable witness

d. Whether Umesh Yadav (P.W.7) is a reliable witness

e. Whether Appellant Mohar Singh and Dinesh Jat have proved their plea of alibi

f. Whether circumstances are proved against the Appellants

g. Whether some of the Appellants were over implicated by the witnesses

h. Conclusion with regard to Appellants Kaptan Singh, Rustam, Mohar Singh, Cheeku, Dinesh Jat and Balli @ Balveer

i. Criminal Appeal filed by State against Mahendra Singh, Sitaram, Ghanshyam and Amar Singh

j. Criminal Appeal No. 122/2014 filed by State against Acquittal of Bablu @ Ballu

k. Whether offence under Section 307 of IPC is made out

Appreciation of Evidence and Arguments

a. **Whether Yuvraj (P.W.1) is a reliable witness**

26. Yuvraj (P.W.1) is an injured witness. He was in the same four wheeler in which the deceased Sughar Singh was sitting and deceased Jagdish was driver. This witness was private security guard of deceased Sughar Singh.

27. Dr. Arun Kumar (P.W.14) had medically examined Yuvraj (P.W.1).

He has stated that on 16-7-2006, he was posted as consultant Doctor. On 16-7-2006, at about 9:30 P.M., he received a telephonic call from Sahara Hospital. Accordingly, he went there and medically examined Yuvraj (P.W.1). The injured had a gun shot injury in his abdomen and his condition was critical. This witness had operated the injured and had removed approximately 1 ½ liters of leaked blood. Since, there were multiple perforations in intestines, therefore, some part of intestine was also removed and intestines were repaired. The case sheet of the injured is Ex. P.41 which contains his handwritten notes. The case history of the injured is Ex. P.41A. This witness was cross-examined. In cross-examination, he admitted that Sahara Hospital is a private hospital and he was paid for his services. He did not find any pallet or bullet inside the abdomen. He stated that the injured was admitted by Duty Doctor Nitin Prasad and he was informed at 9:30 P.M. Whenever a patient is admitted in Sahara Hospital, then the entire record remains with the hospital. Before operating the patient, he had gone through his medical record. It is true that prior to operation, the patient was examined by Dr. Saxena. At the time of examination of injured, he was conscious but was in a confused state. He took the injured inside the Operation Theater at 11:45 P.M. and was taken out from the O.T. On 17-7-2006 at 2:30 A.M. [After 2:45 hours].

28. Dr. Mahavir Prasad Barua (P.W.5) had conducted the x-ray of the injured Yuvraj (P.W.1) and gave following report :

Chest PA

No bony injury of chest. Very fine (less than pinhead) metallic radio opaque multiple foreign body particles seen on the front

of neck. Upper ½ right chest and middle of left chest.

Left thigh AP

No bony injury of left femur. Radio opaque metallic foreign body particles seen in the left side of pelvis and outer side of middle of left thigh.

Left Forearm Ap/Lat

No bony injury left radius and ulna.

Right Forearm AP/Lat.

Fracture of head of 5th metacarpal bone of right hand with multiple radio opaque metallic foreign particles of different sizes around the whole length of right radius and ulna and right hand bones seen.

D/L. Spines AP

No bony injury D/L Spines

Multiple Metallic radio opaque foreign body particles of various sizes seen on both sides of abdomen from D1 to L4.

Pelvis AP

No bony injury pelvis

Multiple metallic radio opaque foreign body particles seen on left hip it, left thigh medial to lesser trachanter and left scrotum.

Abdomen A.P.

No bony injury of bones under view

Multiple Metallic radio opaque foreign body particles of various sizes seen on both side of abdomen from D10 to L4.

Impression

Fractures and gun shot injuries as mentioned above.

29. The X-ray report is Ex. P.7.

30. As per case sheet, Ex. P.41 A of Yuvraj (P.W.1), following injuries were found :

General condition conscious, oriented

weakness of both lower limb patient unable to move

(i) Gun shot wound with charring and abrasion around the wound site 3 cm lateral to midclavicular line about 4 cm above from trans-umbilical right side size 2 x 1.5 cm depth not ascertained.

(ii) Charring over epiglottis region with punctured wound 6-7 in number around in area and 15 cm diameter.

(iii) Small punctured wound over right side of chest and left side of upper abdomen with charring.

(iv) Lacerated wound 2 cm x 1 cm x 0.2cm over middle of shaft of penis

(v) Gun shot wound over anterio aspect and middle 1/3 of left thigh 2 x 1.5 cm x muscle deep multiple holes with charring over mid aspect of (illegible)

(vi) Lacerated wound Palmer aspect over palm starting in the (illegible)and ring finger upto mid palm about 4 x 1.5 x o.4 cm ;

(vii) Lacerated wound over medial aspect of middle (illegible) and right index 1 cm x0.5 cm a piece of metal found in the wound.

(viii) Lacerated wound over dorsal aspect of hand 2 in number over metacarpal phalanx joint crescent in shape 0.5x0.5x0.5

(ix) 2nd is 1 cm below and medial to 11st wound

(x) Lacerated wound over 4-5 in number over posterior aspect and patient is unable to extend middle and ring and litter finger neurological examination cannot be done due to pain

(xi) Lacerated wound 0.5 x 0.5x 0.7 cm over posterior aspect of right wound

(xii) abrasion 10 cm x r cm over anterior aspect of right wound

(xiii) Abrasion 2.5 x 1.5 cm over dorsal aspect of base

(xiv) Abrasion 4 cm x 3 cm over medial malleolus right

(xv) Deep abrasion 5 cm x 1 cm over left great toe

(xvi) Lacerated wound 2 cm x 0.8 cm x0.3cm over posterior aspect

(xvii) Multiple very small punctures over posterior aspect of lower arm, elbow joint and (illegible)

31. As per case sheet of Yuvraj (P.W.1), he was taken for operation at 11:45 P.M. and was taken out of Operation Theater on 17.6.2006 at 2:30 A.M. After the operation, his general condition was critical and he was under heavy medication.

32. Thus, it is clear that Yuvraj (P.W.1) had sustained multiple gun shot injuries in the incident. Thus, he is an injured eye-witness and enjoys a special status amongst the eye-witnesses as his presence on the spot is un-doubtful.

33. The Supreme Court in the case of **State of M.P. v. Mansingh,** reported in **(2003) 10 SCC 414** has held as under :

> **9.** The evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report, that does not wash away the effect of the evidence tendered by the injured witnesses PWs 4 and 7. Minor discrepancies do not corrode the

credibility of an otherwise acceptable evidence.....

34. The Supreme Court in the case of **Mohar v. State of U.P.,** reported in **(2002) 7 SCC 606** has held as under :

> 11. The testimony of an injured witness has its own efficacy and relevancy. The fact that the witness sustained injuries on his body would show that he was present at the place of occurrence and has seen the occurrence by himself. Convincing evidence would be required to discredit an injured witness. Similarly, every discrepancy in the statement of a witness cannot be treated as fatal. A discrepancy which does not affect the prosecution case materially cannot create any infirmity.....

35. The Supreme Court in the case of **M. Nageswara Reddy v. State of A.P.,** reported in **(2022) 5 SCC 791** has held as under :

> **19.** Having gone through the reasoning given by the High Court, we are of the opinion that the High Court has unnecessarily given weightage to some minor contradictions. The contradictions, if any, are not material contradictions which can affect the case of the prosecution as a whole. PW 6 was an injured eyewitness and therefore his presence ought not to have been doubted and being an injured eyewitness, as per the settled proposition of law laid down by this Court in catena of decisions, his deposition has a greater reliability and credibility.

36. The Supreme Court in the case of **Baleshwar Mahto v. State of Bihar,** reported in **(2017) 3 SCC 152** has held as under :

> **12.** Here, PW 7 is also an injured witness. When the eyewitness is also an injured person, due credence to his version needs to be accorded. On this aspect, we may refer to the following observations in *Abdul Sayeed* v. *State of M.P.* : (SCC pp. 271-72, paras 28-30)
>
> "*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. "Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh* v. *State of Bihar*, *Malkhan Singh* v. *State of U.P.*, *Machhi Singh* v. *State of Punjab*, *Appabhai* v. *State of Gujarat*, *Bonkya* v. *State of Maharashtra*, *Bhag Singh*, *Mohar* v. *State of U.P.* (SCC p. 606*b-c*), *Dinesh Kumar* v. *State of Rajasthan*, *Vishnu* v. *State of Rajasthan*, *Annareddy Sambasiva Reddy* v. *State of A.P.* and *Balraje* v. *State of Maharashtra*.]

29. While deciding this issue, a similar view was taken in *Jarnail Singh* v. *State of Punjab*, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under : (SCC pp. 726-27, paras 28-29)

'*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* 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* 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*). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.'

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, 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 therein."

37. The Supreme Court in the case of **State of Rajasthan v. Major Singh,** reported in **(1999) 9 SCC 106** has held as under :

4.....The High Court has further taken into consideration that the prosecution witnesses have not stated exactly whether the accused inflicted injuries by the sharp or blunt side of the weapon and, therefore, they have not explained how the deceased as well as the injured witness got incised injuries as well as contusions. In our view, in holding that the prosecution witnesses have not exactly stated whether the accused inflicted injury by the sharp or blunt side of the weapon, the High Court has ignored the reality of such occurrence. It would be practically impossible for any injured witness to exactly notice and memorise which accused was assaulting by the blunt side of the weapon and which accused was causing injuries by a sharp-edged weapon. Even if such statement is made, it may amount to an exaggeration because when a number of assailants are there, injuries are not inflicted in a manner which could be exactly noted by the witness. If one or two injuries are caused and if it is broad daylight, it is quite possible that some witnesses may be in a position to note it. But at about 8.30 p.m., when the witness herself was receiving injuries, it would not be possible to note and narrate whether the accused were causing injuries to her parents by the blunt or sharp side

> of the weapon. The other reason which is given by the High Court is that injured witness Jeet Kaur has not stated a single specific injury on a person which could be attributed to Ukar Singh or Kulwant Singh except by vaguely stating that they assaulted her parents and had also given gandasa blows to her and, therefore, it creates a good deal of suspicion regarding participation of Ukar Singh and Kulwant Singh in the incident. Here also the High Court ignored the fact that once the presence of Ukar Singh or Kulwant Singh is established at the scene of offence and their participation is alleged, there was no reason to doubt the evidence of the witness.

38. The Counsel for the Appellants has relied upon the judgment passed by Supreme Court in the case of **State of Maharashtra v. Tulshiram Bhanudas Kamble,** reported in **(2007) 14 SCC 627** has held as under :

> **29.** Each of the reasoning assigned by the High Court, in our opinion, is contrary to the well-settled legal principle. The witnesses examined on behalf of the prosecution, apart from being eyewitnesses, were injured witnesses. Their presence at the place of occurrence, therefore, cannot be doubted. Only because they were inimical to the respondents, the same by itself cannot be a ground to discard their evidence. Although in accepting the same, some amount of caution is required to be maintained.
>
> **30.** In *Ramashish Rai* v. *Jagdish Singh* this Court held: (SCC p. 501, para 7)
>
> > "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."

31. In *State of U.P.* v. *Kishan Chand* this Court observed: (SCC p. 632, para 9)

> "*9*. The submission of the counsel for the accused that the testimony of PWs cannot be acted upon as they are interested witnesses is to be noted only to be rejected. By now, it is well-settled principle of law that animosity is a double-edged sword. It cuts both sides. It could be a ground for false implication and it could also be a ground for assault. Just because the witnesses are related to the deceased would be no ground to discard their testimony, if otherwise their testimony inspires confidence. In the given facts of the present case, they are but natural witnesses. We have no reason to disbelieve their testimony. Similarly, being relatives, it would be their endeavour to see that the real culprits are punished and normally they would not implicate wrong persons in the crime, so as to allow the real culprits to escape unpunished."

32. In *Baitullah* v. *State of U.P.* this Court (at SCC pp. 514-15, para 20) noticed *Arjun* v. *State of Rajasthan* wherein it was observed: (*Arjun case*, SCC p. 192, para 9)

> "*9*. Learned counsel for the appellants first contended that there was long-standing enmity between the

complainant and some of the witnesses on one hand and the appellants on the other and some criminal proceedings between them were going on when the alleged incident took place and hence it was due to this enmity that the appellants were falsely implicated. It was also submitted that Bahori, PW 1 and Sat Pal Singh, PW 7 are also relatives of the deceased and other prosecution witnesses are also close associates and, therefore, there is possibility of false implication of the appellants in the crime in question. It is an admitted fact that the complainant and the appellants were on inimical terms and some criminal proceedings were pending between them even at the time when the occurrence took place. It is equally true that Bahori, PW 1 is the brother of the deceased and informant Sat Pal Singh, PW 7 is the son of the deceased. But we are not convinced by the aforesaid arguments that either on account of animosity or on account of relationship they did not divulge the truth but fabricated a false case against the appellants. It is needless to emphasise that enmity is a double-edged sword which can cut both ways. However, the fact remains that whether the prosecution witnesses are close relatives of the deceased victim or are on inimical terms with the deceased involved in the crime of murder, the witnesses are always interested to see that the real offenders of the crime are booked and they are not, in any case, expected to leave out the real culprits and rope in the innocent persons simply because of the enmity. It is, therefore, not a safe rule to reject their testimony merely on the ground that the complainant and the accused persons were on inimical terms. Similarly the evidence could not be rejected merely on the basis of relationship of the witnesses with the deceased. In such a situation it only puts the Court with the solemn duty to make a deeper probe and scrutinise the evidence with more than ordinary care which precaution has already been taken by the two courts below while analysing and accepting the evidence."

33. As regards enmity, it is well known that enmity is a double-

> edged weapon. It can be a ground for false implication, but it can also be a ground for correct implication.
>
> **34.** As regards the second ground for rejecting the evidence of these eyewitnesses given by the High Court, namely, that they have falsely implicated Laxman Shirsat @ Paparkar, this too, in our opinion was hardly a good ground for rejecting their evidence. It is well known that in India the doctrine of falsus in uno falsus in omnibus (false in one false in all) does not apply. The court can partly reject and partly accept the evidence of a witness, and it is not correct to say that merely because some part of the evidence is found to be false the entire evidence has to be rejected. (See *Krishna Mochi* v. *State of Bihar.*) If the court finds that out of several co-accused, one or more are falsely implicated, that does not necessarily mean that everyone was falsely implicated. Similarly, the third ground for rejecting the testimony of the four eyewitnesses, namely, that they have falsely stated that Suresh Sobaji had witnessed the incident, is in our opinion not a good ground for rejecting the prosecution version in toto.
>
> **35.** Thus, in our opinion, the High Court has rejected the evidence of the four eyewitnesses, three of whom were injured, on flimsy grounds.

39. Thus, from the judgment cited by the Counsel for the Appellants himself, it is clear that much weight is to be given to the evidence of injured witness and mere enmity cannot be a ground to discard his evidence, although it may require cautious appreciation of evidence of injured witness. Further the doctrine of *Falsus in uno Falsus in omnibus* has no application in India and enmity is a double-edged weapon and the Court can partially reject the evidence and can partially rely the same witness. Further, the evidence of a related witness cannot be rejected on the ground of relationship, but on the contrary why a witness would spare the real culprit?

40. Yuvraj (P.W.1) was brought in the Court on a stretcher as he was

completely unable to walk or move, but a note was appended by the Trial Court, that the witness is fit to speak and understand.

41. He has stated that on 16-6-2006, Sughar Singh had gone to Deendayal Police Outpost. He was a councilor and this witness used to remain with him. At about 7:00 P.M., they were in the police station and at about 8:00 P.M., they left the police station and were going towards Jaderua on their Safari vehicle. He was sitting on the middle row. They reached upto *Tanki Tiraha* Bhind Road. As soon as their vehicle moved ahead of *Tanki Tiraha*, at that time, Autar and Kaptan who were on motor cycle started moving ahead of them and were driving at a slow speed as a result the speed of the Safari car also came down. Kaptan was having .12 bore gun whereas Autar was having .315 bore gun. As soon as the vehicle reached near Maharajpura Factory road, the driver of Safari car blew horn for side. Autar gave a signal that he will be turning. At that time, one cream coloured Scorpio vehicle came by the side of vehicle of this witness. The Appellant Rustam was sitting on the front passenger seat and he shot Jagdish, the driver of Safari Car. Rustam Singh had fired from .315 bore mouzer as a result, Jagdish fell on the steering wheel. Thereafter, Rustam also fired at this witness which he sustained on his hand. Thereafter, the Appellants Mohar Singh, Cheeku Kallu, Bablu, Balli, Dinesh Yadav came down from the Scorpio vehicle and started firing at Safari car. This witness sustained injuries on his back, abdomen etc as a result he sustained fracture of his spinal cord. Mohar Singh was having .12 bore, Cheeku was having .315 bore mouzer, Kallu was having .315 bore mouzer, Balli was having .315 bore, Bablu was having .315 bore, Kaptan was having .12 bore, Autar was having .315

bore and Dinesh Yadav was having .12 bore arms. They started firing indiscriminately. Jagdish died on the spot. Sughar Singh also died on the spot and this witness was lying in the Safari car as he was unable to move. Thereafter, the miscreants went away. Thereafter, Mukesh, Hariom and Umesh came and took him out of the Safari vehicle. Mukesh and Umesh took him to Sahara Hospital on a motor cycle. Hariom stayed back with his brother Sughar Singh. Hariom had said that this witness should be shifted and he will be coming along with Sughar Singh. This incident took place at about 8-8:30 P.M. The lights were ON and therefore, he had identified the assailants in the light of the shops and halogen light. He had also identified them, because some of them are residents of Jaderua and Autar and Dinesh are residents of Ghasmandi and Dinesh Jat, who was driving Scorpio vehicle is resident of Ratwai village. Prior to the incident, i.e., about 1 ½ years back, companions of Rustam Singh had fired on Sughar Singh. About 1 year back i.e., on 17 November, Mohar Singh, Purushottam, Rustam and Cheeku had also fought with him and Mohar Singh had fired gun shots which caused injuries on his both legs. The accused present in the Court are the same persons who have committed the offence. He also stated that Doctor had enquired from him. The police had enquired on next day of incident, whereas Doctor had enquired on the day of incident itself. No body was there, when Doctor was inquiring from him. He had put his thumb impression also. On the date of incident, Sintu had also lost his life. He was not with the witness but was standing in a shop and got shot in firing. 2 days prior to incident, Hariom had warned Sughar Singh that Mohar Singh, Cheeku, Rustam, Sitaram, Mahendra and their relatives

namely Autar, Ghanshyam, Maharaj Singh are making plan for killing Sughar Singh. The deceased Sintu had gone to purchase medicines from the medical shop and he also sustained gun shot injury.

42. This witness was cross-examined and in cross-examination, he stated that the deceased Sughar Singh was known to him since, his childhood. Father of deceased Sughar Singh, namely Bhagwan Singh were two brothers namely Devi Singh and Ramswaroop. Vrindavan is the son of Devi Singh, whereas Jaiveer Singh is son of Ramswaroop. Jaiveer is detained in Central Jail Gwalior in connection with murder case. He admitted that Ramswaroop and other brothers of Jaiveer are absconding in the same case. Sughar Singh are three brothers namely Sughar Singh, Hariom and Ramveer. Mithya Devi is the sister of Sughar Singh and Umesh is the son of Mithya Devi. Umesh had taken him to the hospital. Although he is with Sughar Singh from childhood but for the last 1 ½ years he was spending more time with Sughar Singh. He admitted that he is having .315 bore gun and was doing the job of gunman of Sughar Singh. Mukesh is also the resident of Jaderua and he had taken him to the hospital. He admitted that earlier Sitaram was residing in Jaderua but thereafter, he shifted from there. Mahendra and Rustam are sons of Sitaram. After shifting from Jaderua, Sitaram and his son Mahendra started living in front of J.B. Mangaram factory. He admitted that the house of Sitaram is about 2 ½ -3 Kms. away from Mangaram Factory. He admitted that Rustam Singh had started residing in Ghasmandi which is 10-12 Km.s away from the place of incident. Sitaram has two brothers namely Bholu and Shivcharan. Balli is son of Shivcharan and his house is also 1 Km away from place of incident.

Kaptan Singh is son of Bholu whose house is 1-1 ½ Km.s away from the place of incident. The house of Balli is in front of the house of Hariom. Maharaj Singh is great grand father-in-law of Rustam Singh and is also an accused. Accused Amar Singh and Autar Singh are sons of Maharaj Singh. Dinesh Singh is son of Amar Singh who is also an accused. He admitted that earlier Mohar Singh was having .315 bore gun which was seized in an offence under Section 307 of IPC. He expressed his ignorance about the number of criminal cases which were registered against Sughar Singh. He admitted that in a previous election for councilor, one Vidhya Devi had contested the election and Vidhyaram Rajak was her representative. Vidhyaram Rajak was killed and Sughar Singh, Hakim Singh, Jaiveer Singh and Gautam were the accused. He admitted that Jaiveer is lodged in jail in connection with some other murder case. He expressed his ignorance as to whether Jaiveer is a witness in the present case or not? He admitted that earlier he had lodged a report against accused Cheeku, Rustam and Purushottam for offence under Section 307 of IPC in police station Gola ka Mandir and in that case, Sughar Singh and Dinesh were the eye-witnesses. He denied for want of knowledge that on 17-10-2005, Sarnam Singh, who is the brother of Mohar Singh had lodged a report against this witness,Sughar Singh, Dinesh and one unknown person. He denied that he was arrested by police along with Sughar Singh and Dinesh. He admitted that the accused had never contested an election against Sughar Singh. He denied for want of knowledge regarding any litigation between Sughar Singh, Hariom and the accused persons. He denied for want of knowledge that in report dated 17-10-2005, Ex. D.1 he had referred to property dispute.

He denied for want of knowledge that in his police statement, Ex. D.2 he had referred to property dispute. He on his own, claimed that since, he had suffered gun shot injuries in the said offence also, therefore, he was frightened. He denied that he is on inimical terms with Rustam Singh. Sughar Singh had not sustained any injury in the incident which took place on 17-10-2005. Deendayal Police Outpost is about 1/2-1 Km from the place of incident. He was with Sughar Singh from 7:00 A.M. Only Sughar Singh had arms license. At the time of incident, he was having rifle of Sughar Singh but admitted that he was not having any license. Sughar Singh had come out of the police post after 1 hour. He expressed his ignorance as to why in his police statement, Ex. D.3, the fact that they went to police outpost at about 7:00 P.M. and left outpost at 8:00 P.M. is not mentioned. He admitted that width of Pinto Park road is about 15-20 ft. Sughar Singh was sitting on front passenger seat whereas he was sitting in the middle row with rifle. He did not inform to Doctor that when they moved ahead of *Tanki Tiraha*, then Autar and Kaptan started moving in front of them at a slow speed. He also admitted that he had not informed the Doctor about the incident in detail. He was not in a position to tell the total number of Cream colour Scorpios in the city, but claimed that Jaiveer is having cream coloured Scorpio. He did not disclose to Doctor in his dying declaration, Ex. D.4 that Rustam had fired a gun shot from .315 bore gun which caused injury on his palm but clarified that he had informed that he was shot by Rustam. Thereafter, his cross-examination was deferred because of reference. **He was again cross-examined on 16-8-2007**. **From the order-sheet dated 16-8-2007, it is clear that on 16-8-2007 also, this witness was brought on**

stretcher. He also expressed that he donot recollect that he had replied to the Doctor that at present he doesnot want to say anything. He denied that he had informed that the incident took place at 8 P.M. **At this stage, it was noticed by the Court that the witness is under the influence of sedatives and was feeling difficulty therefore, he was asked as to whether he is in a position to depose or not. The witness stated that he is under great pain and is not in a position to depose, accordingly, the cross-examination was deferred. Thereafter, he was further cross-examined on 5-9-2007.**

43. In further cross-examination on 5-9-2007, he stated Jagdish was inside his vehicle when he suffered gun shot injury and the assailants were in another vehicle. At the time when Jagdish was shot, the vehicle was moving at a very slow speed. He also admitted that when he suffered gun shot injury on his palm, the assailant was also inside his vehicle. He also stated that as soon as Jagdish was shot, the vehicle came to a halt. Thereafter, the assailants came down from their vehicle. He admitted that he had not disclosed the father's name and address of Rustam. He also did not disclose to Doctor about the names and weapons of other accused persons. He could not count that how many gun shot injuries were sustained by him. However, he clarified that he suffered gun shot injury in his abdomen, palm, elbow, chest, head. The gun shots were fired from front and right side. Mohar Singh, Cheeku, Kallu, Balli and Rustam had fired from front. Rustam had also fired from right side. He denied that Rustam never got down from his vehicle. The first gunshot was fired from a distance of 4-5 ft. whereas the remaining gun shots were fired from a distance of 2-3 ft.s. The entire firing took

place within 1-1 ½ minutes. He could not state that how many gunshot injuries were sustained by Sughar Singh. He stated that he had disclosed to the police in his police statement, Ex. D.3 that he was taken to Sahara Hospital by Umesh and Mukesh but could not explain as to why the names of Umesh and Mukesh are not mentioned. He stated that he had disclosed to the police that Hariom had instructed to take this witness to hospital and he will follow with Sughar Singh, but could not explain as to why this fact is not mentioned in his police statement, Ex. D.3. **At this stage, this witness expressed that he is in great pain and requires rest of 5 minutes. Therefore, the cross-examination was deferred for 5 minutes.** He had not disclosed to the Doctor, Ex. D.4 that he had identified the assailants in the light of Halogen light and the lights of the shops. He had disclosed that the incident took place at 8-8:30 P.M. When he was being shifted to Motor cycle, he saw that Sintu was also lying on the ground. Sintu was lying at a distance of 25-30 ft.s from the vehicle. He had also come to know that three persons have lost their lives, thereafter, he clarified that there was no movement in their bodies. He denied that some unidentified persons had fired at them at 8:00 P.M. He denied that Mohar Singh had left Gwalior at 19:40 for Indore by Intercity Train. He denied that Naval Singh had gone to leave Mohar Singh at Railway station. He denied that Mohar Singh was travelling on birth no. 17 and 20 and his ticket was also checked by T.T.E, Manish Shukla. He admitted that after sustaining gun shot injuries he was not in a position to walk. At the time of incident, the vehicle of Hariom was not there. Since he was bleeding therefore, the cloths of the persons who had shifted him to hospital, must also have got stained with blood. After the firing, he

remained on the spot hardly for 2-3 minutes as Mukesh and Umesh had immediately come. Police had not come by the time he left for Hospital. Police had recorded his statements on the next day. He was operated upon. He regained his consciousness on the next day at about 10:00 A.M. He was kept in special ward and nobody was being allowed to come inside the ward without the permission of Doctor. He had not met Hariom on the next day of incident. He had not met Mukesh and Umesh on the next day also. He was all alone in the ward. His statement was recorded by T.I. Rajoria. He had no enmity with Sitaram and Mahendra but they had enmity with Sughar Singh. His house is at a distance of 1-1 ½ km away from place of incident. He denied that he was shifted by his brother Parmanand to hospital. About 2-3 days prior to incident, Hariom had warned Sughar Singh, but expressed his ignorance as to whether any report was lodged or not? He had suffered all the gun shot injuries in sitting posture. His statement was not recorded by the Doctor inside the operation theater. He denied that on 17-6-2006, he was again operated upon by Dr. T.C. Agrawal. He denied that on 17-6-2006, he was on Oxygen. He denied that the police had not recorded his statement on 17-6-2006. He denied that the assailants had covered their faces. He further clarified that today he has come along with his brother Parmanand. He could not explain the expenses of the hospital, but clarified that it was paid by his brother.

44. After examination of all the prosecution witnesses, the prosecution case was closed and the statements of accused persons under Section 313 of Cr.P.C. were recorded on 28-7-2009 and on the very same, the accused Cheeku and Balla filed an application under Section 311 of Cr.P.C. The

said application was rejected by the Trial Court by order dated 29-7-2009. Another application under Section 311 of Cr.P.C. was filed for recall of Yuvraj (P.W.1) which was rejected by order dated 26-8-2009. Cr.R. No. 679 of 2009 was filed before the High Court. By order dated 7-1-2010, the Criminal Revision was allowed and Yuvraj (P.W.1) was recalled. Accordingly, Yuvraj Singh (P.W.1) was recalled and was further cross-examined on 7-1-2010 and in further cross-examination, Yuvraj (P.W.1) took a complete somersault and claimed that since, he was under captivity of Hariom, therefore, his previous evidence was given under pressure. He also stated that he had also filed a private complaint on 14-8-2007 against Hariom, Ex. D.31 alleging that he was forced to depose against the accused persons and denied the presence of the accused persons on the spot. This witness was re-examined by the public prosecutor. In re-examination, he clarified that the complaint was filed by his Counsel. He expressed his ignorance about the stage of complaint and also expressed that he doesnot know that complaint has been dismissed. He admitted that he never disclosed to anybody that he had given his evidence under pressure. He admitted that he was given police protection but he did not disclose to police that he is under the pressure of Hariom. He also admitted that he had gone to Delhi for treatment and Hariom was not with him. He admitted that his cross-examination was deferred on two occasions, but he did not disclose to any body that he is deposing under the pressure of Hariom. He denied that after his evidence was over, he was pressurized by the accused persons. He admitted that the accused are the residents of same village and are influential persons.

45. Thus, it is clear that after this witness was recalled, he took a

somersault and tried to disown his previous evidence by alleging that it was given under the pressure of Hariom.

46. Now the next question for consideration is that whether the subsequent evidence which was recorded after his recall can be relied upon or not?

47. The cross-examination of Yuvraj (P.W.1) had concluded on 5-9-2007 and application for his recall was filed on 21-8-2009 i.e., after 2 years of conclusion of his cross-examination. Thereafter, he was recalled and further cross-examined on 9-8-2010, i.e., after 3 years of conclusion of his cross-examination. Thus, the question for consideration before this Court is that what would be the effect of such somersault taken by Yuvraj (P.W.1)?

48. The Supreme Court in the case of **Khujji @ Surendra Tiwari Vs. State of M.P.** reported in **AIR 1991 SC 1853** has held as under :

> 7.....His cross-examination commenced on 15th December, 1978. In his cross-examination he stated that the appellant Khujji and Gudda had their backs towards him and hence he could not see their faces while he could identify the remaining four persons. He stated that he had inferred that the other two persons were the appellant and Gudda. On the basis of this statement Mr. Lalit submitted that the evidence regarding the identity of the appellant is rendered highly doubtful and it would be hazardous to convict the appellant solely on the basis of identification by such a wavering witness. The High Court came to the conclusion and, in our opinion rightly, that during the one month period that elapsed since the recording of his examination-in-chief something transpired which made him shift his evidence on the question of identity to help the appellant. We are satisfied on a reading of his entire evidence that his statement in cross-examination on the question of identity of the appellant and his companion is a clear attempt to wriggle out of what he had stated earlier in his examination~in-

chief. Since the incident occurred at a public place, it is reasonable to infer that the street lights illuminated the place sufficiently to enable this witness to identify the assailants. We have, therefore, no hesitation in concluding that he had ample opportunity to identify the assailants of Gulab, his presence at the scene of occurrence is not unnatural nor is his statement that he had come to purchase vegetables unacceptable. We do not find any material contradictions in his evidence to doubt his testimony. He is a totally independent witness who had no cause to give false evidence against the appellant and his companions. We are, therefore, not impressed by the reasons which weighed with the trial Court for rejecting his evidence. We agree with the High Court that his evidence is acceptable regarding the time, place and manner of the incident as well as the identity of the assailants.

49. The Supreme Court in the case of **Radha Mohan Singh @ Lal Saheb and others Vs. State of U.P. and others** reported in **AIR 2006 SC 951** has held as under :

7. It is well settled that while hearing an appeal under Article 136 of the Constitution this Court will normally not enter into reappraisal or the review of evidence unless the trial court or the High Court is shown to have committed an error of law or procedure and the conclusions arrived at are perverse.The Court may interfere where on proved facts wrong inference of law is shown to have been drawn (See Duli Chand v. Delhi Administration (1975) 4 SCC 649; Mst. Dalbir Kaur and others v. State of Punjab (1976) 4 SCC 158 Ramanbhai Naranbhai Patel and others v. State of Gujarat (2000) 1 SCC 358 and Chandra Bihari Gautam and others v. State of Bihar, JT 2002 (4) SC 62). Though the legal position is quite clear still we have gone through the evidence on record in order to examine whether the findings recorded against the appellants suffer from any infirmity. The testimony of PW-1 Ganesh Singh, who is an injured witness, and PW-4 Ramji Singh clearly establishes the guilt of the accused. According to the case of the prosecution the incident took place shortly after sunset. The eye-witnesses have deposed that after the incident the

deceased-Hira Singh was carried on a cot to the 'bandh', which is on the outskirts of the village. As no conveyance was available, the first informant had to wait for quite some time and thereafter a tempo was arranged on which the deceased was taken to the district hospital where he was medically examined by PW-2 Dr. Siddiqui at 9.00 P.M. It has come in evidence that the village is at a distance of six miles from police station Kotwali, Ballia. The non- availability of any conveyance is quite natural as it was Holi festival. Even PW-3 Mohan Yadav fully supported the prosecution case in his examination-in-chief. In his cross-examination, which was recorded on the same date, he gave details of the weapons being carried by each of the accused and also the specific role played by them in assaulting the deceased and other injured persons. As his cross-examination could not be completed it was resumed on the next day and then he gave a statement that he could not see the incident on account of darkness. His testimony has been carefully examined by the learned Sessions Judge and also by two learned Judges of the High Court (Hon'ble K.K. Misra, J. and Hon'ble U.S. Tripathi, J.) and they have held that the witness, on account of pressure exerted upon him by the accused, tried to support them in his cross-examination on the next day. It has been further held that the statement of the witness, as recorded on the first day including his cross-examination, was truthful and reliable.It is well settled that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof. (See Bhagwan Singh v. State of Haryana, AIR 1976 SC 202; Rabinder Kumar Dey v. State of Orissa, AIR 1977 SC 170; Syed Akbar v. State of Karnataka AIR 1979 SC 1848 and Khujji @ Surendra Tiwari v. State of Madhya Pradesh, AIR 1991 SC 1853). The evidence on record clearly shows that the FIR of the incident was promptly lodged and the testimony of PW-1 Ganesh Singh, PW-4 Ramji Singh and also PW-3 Mohan Yadav finds complete corroboration from the medical evidence

on record. We find absolutely no reason to take a different view.

50. The Supreme Court in the case of **Vinod Kumar Vs. State of Punjab** reported in **(2015) 3 SCC 220** has held as under :

> **51.** It is necessary, though painful, to note that PW 7 was examined-in-chief on 30-9-1999 and was cross-examined on 25-5-2001, almost after 1 year and 8 months. The delay in said cross-examination, as we have stated earlier had given enough time for prevarication due to many a reason. A fair trial is to be fair both to the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial Judge could exhibit such laxity in granting so much time for cross-examination in a case of this nature. It would have been absolutely appropriate on the part of the learned trial Judge to finish the cross-examination on the day the said witness was examined. As is evident, for no reason whatsoever it was deferred and the cross-examination took place after 20 months. The witness had all the time in the world to be gained over. We have already opined that he was declared hostile and re-examined.
>
> **52.** It is settled in law that the testimony of a hostile witness can be relied upon by the prosecution as well as the defence. In re-examination by the Public Prosecutor, PW 7 has accepted about the correctness of his statement in the court on 13-9-1999. He has also accepted that he had not made any complaint to the Presiding Officer of the court in writing or verbally that the Inspector was threatening him to make a false statement in the court. It has also been accepted by him that he had given the statement in the court on account of fear of false implication by the Inspector. He has agreed to have signed his statement dated 13-9-1999 after going through and admitting it to be correct. It has come in the re-examination that PW 7 had not stated in his statement dated 13-9-1999 in the court that recovery of tainted money was not effected in his presence from the accused or that he had been told by the Inspector that amount has been recovered from the accused. He had also not stated in his said statement that the accused and witnesses were

taken to the Tehsil and it was there that he had signed all the memos.

Reading the evidence in entirety, PW 7's evidence cannot be brushed aside. The delay in cross-examination has resulted in his prevarication from the examination-in-chief. But, a significant one, his examination-in-chief and the re-examination impels us to accept the testimony that he had gone into the octroi post and had witnessed about the demand and acceptance of money by the accused. In his cross-examination he has stated that he had not gone with Baj Singh to the Vigilance Department at any time and no recovery was made in his presence. The said part of the testimony, in our considered view, does not commend acceptance in the backdrop of entire evidence in examination-in-chief and the re-examination.

* * * *

57. Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish for the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts:

57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics.

57.3. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the trial is conducted as per

law. If adjournments are granted in this manner it would tantamount to violation of the rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons.

57.4. In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial.

57.5. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute.

51. The Supreme Court in the case of **Rajesh Yadav Vs. State of U.P.** By judgment dated **4-2-2022** passed in **Cr.A.s No. 339-340 of 2014** has held as under :

22.On the law laid down in dealing with the testimony of a witness over an issue, we would like to place reliance on the decision of this Court in C. Muniappan v. State of T.N., (2010)

9 SCC 567:

"81. It is settled legal proposition that:

"6. … the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof." (Vide Bhagwan Singh v. State of Haryana, (1976) 1 SCC 389, Rabindra Kumar Dey v. State of Orissa, (1976) 4 SCC 233, Syad Akbar v. State of Karnataka, (1980) 1 SCC 30 and Khujji v. State of M.P., (1991) 3 SCC 627, SCC p. 635, para 6.)

82. In State of U.P. v. Ramesh Prasad Misra [(1996) 10 SCC 360: 1996 SCC (Cri) 1278] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in Balu Sonba Shinde v. State of Maharashtra [(2002) 7 SCC 543: 2003 SCC (Cri) 112], Gagan Kanojia v. State of Punjab [(2006) 13 SCC 516: (2008) 1 SCC (Cri) 109], Radha Mohan Singh v. State of U.P. [(2006) 2 SCC 450: (2006) 1 SCC (Cri) 661], Sarvesh Narain Shukla v. Daroga Singh [(2007) 13 SCC 360: (2009) 1 SCC (Cri) 188] and Subbu Singh v. State [(2009) 6 SCC 462: (2009) 2 SCC (Cri) 1106].

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

52. The Supreme Court in the case of **Gura Singh v. State of**

Rajasthan, reported in **(2001) 2 SCC 205** has held as under :

> **11.** There appears to be a misconception regarding the effect on the testimony of a witness declared hostile. It is a misconceived notion that merely because a witness is declared hostile his entire evidence should be excluded or rendered unworthy of consideration. This Court in *Bhagwan Singh* v. *State of Haryana* held that merely because the Court gave permission to the Public Prosecutor to cross-examine his own witness describing him as hostile witness does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base the conviction upon the testimony of such witness. In *Rabindra Kumar Dey* v. *State of Orissa* it was observed that by giving permission to cross-examine nothing adverse to the credit of the witness is decided and the witness does not become unreliable only by his declaration as hostile. Merely on this ground his whole testimony cannot be excluded from consideration. In a criminal trial where a prosecution witness is cross-examined and contradicted with the leave of the court by the party calling him for evidence cannot, as a matter of general rule, be treated as washed off the record altogether. It is for the court of fact to consider in each case whether as a result of such cross-examination and contradiction the witness stands discredited or can still be believed in regard to any part of his testimony. In appropriate cases the court can rely upon the part of testimony of such witness if that part of the deposition is found to be creditworthy.
>
> **12.** The terms "hostile", "adverse" or "unfavourable" witnesses are alien to the Indian Evidence Act. The terms "hostile witness", "adverse witness", "unfavourable witness", "unwilling witness" are all terms of English law. The rule of not permitting a party calling the witness to cross-examine are relaxed under the common law by evolving the terms "hostile witness and unfavourable witness". Under the common law a hostile witness is described as one who is not desirous of telling the truth at the instance of the party calling him and an unfavourable witness is one called by a party to prove a particular fact in issue or relevant to the issue who fails to prove such fact, or proves the opposite test. In India the right to

cross-examine the witnesses by the party calling him is governed by the provisions of the Indian Evidence Act, 1872. Section 142 requires that leading question cannot be put to the witness in examination-in-chief or in re-examination except with the permission of the court. The court can, however, permit leading question as to the matters which are introductory or undisputed or which have, in its opinion, already been sufficiently proved. Section 154 authorises the court in its discretion to permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. The courts are, therefore, under a legal obligation to exercise the discretion vesting in them in a judicious manner by proper application of mind and keeping in view the attending circumstances. Permission for cross-examination in terms of Section 154 of the Evidence Act cannot and should not be granted at the mere asking of the party calling the witness. Extensively dealing with the terms "hostile, adverse and unfavourable witnesses" and the object of the provisions of the Evidence Act this Court in *Sat Paul* v. *Delhi Admn.* held: (SCC pp. 741-43 & 745-46, paras 38-40 & 52)

> "*38*. To steer clear of the controversy over the meaning of the terms 'hostile' witness, 'adverse' witness, 'unfavourable' witness which had given rise to considerable difficulty and conflict of opinion in England, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that, in India, the grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared 'adverse' or 'hostile'. Whether it be the grant of permission under Section 142 to put leading questions, or the leave under Section 154 to ask questions which might be put in cross-examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the *discretion* of the court (see the observations of Sir Lawrence Jenkins in *Baikuntha Nath Chattorji* v. *Prasannamoyi Debya*. The discretion conferred by Section 154 on the court is unqualified and untrammelled, and is apart from any question of

'hostility'. It is to be liberally exercised whenever the court from the witnesses' demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in the order granting such permission, it is preferable to avoid the use of such expressions, such as 'declared hostile', 'declared unfavourable', the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English courts.

39. It is important to note that the English statute differs materially from the law contained in the Indian Evidence Act in regard to cross-examination and contradiction of his own witness by a party. Under the English law, a party is not permitted to impeach the credit of his own witness by general evidence of his bad character, shady antecedents or previous conviction. In India, this can be done with the consent of the court under Section 155. Under the English Act of 1865, a party calling the witness can 'cross-examine' and contradict a witness in respect of his previous inconsistent statements with the leave of the court, *only* when the court considers the witness to be 'adverse'. As already noticed, no such condition has been laid down in Sections 154 or 155 of the Indian Act and the grant of such leave has been left completely to the discretion of the court, the exercise of which is not fettered by or dependent upon the 'hostility' or 'adverseness' of the witness. In this respect, the Indian Evidence Act is in advance of the English law. The Criminal Law Revision Committee of England in its Eleventh Report, made recently, has recommended the adoption of a modernised version of Section 3 of the Criminal Procedure Act, 1865, allowing contradiction of both unfavourable and hostile witnesses by *other* evidence without leave of the court. The Report is,

> however, still in favour of retention of the prohibition on a party's impeaching his own witness by evidence of bad character.

40. The danger of importing, without due discernment, the principles enunciated in ancient English decisions, for interpreting and applying the Indian Evidence Act, has been pointed out in several authoritative pronouncements. In *Praphullakumar Sarkar* v. *Emperor* an eminent Chief Justice, Sir George Rankin cautioned, that

> 'when we are invited to hark back to dicta delivered by English Judges, however eminent, in the first half of the nineteenth century, it is necessary to be careful lest principles be introduced which the Indian Legislature did not see fit to enact'.

It was emphasised that these departures from English law 'were taken either to be improvements in themselves or calculated to work better under Indian conditions'.

* * *

> *52*. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stand thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto."

53. The Supreme Court in the case of **Bhajju v. State of M.P.,**

reported in **(2012) 4 SCC 327** has held as under :

> **35.** Now, we shall discuss the effect of hostile witnesses as well as the worth of the defence put forward on behalf of the appellant-accused. Normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded under Section 161 CrPC, the prosecutor, with the permission of the court, can pray to the court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the court then the witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witnesses, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief as well as the cross-examination of the said witness insofar as it supports the case of the prosecution.
>
> **36.** It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Evidence Act enables the court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party.
>
> **37.** The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. The courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence. It is also now a settled canon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution. These principles have been encompassed in the judgments of this Court in the following cases:

(*a*) *Koli Lakhmanbhai Chanabhai* v. *State of Gujarat*,
(*b*) *Prithi* v. *State of Haryana*,
(*c*) *Manu Sharma* v. *State (NCT of Delhi)* and
(*d*) *Ramkrushna* v. *State of Maharashtra*.

54. Thus, it is well established principle of law that merely because a witness has turned hostile, would not efface his entire evidence and the Court can rely on that part of the evidence of such hostile witness, which corroborates the prosecution or defence story.

55. We shall consider the facts which may indicate that the witness was subsequently won over by the accused party.

56. From the order-sheets of the Trial Court, it is clear that the main accused Rustam Singh was not appearing before the Trial Court from 22-11-2008 and ultimately his bail bonds were cancelled and arrest warrant was issued against him by the Trial Court on 20-1-2009. Rustam Singh surrendered himself on 19-6-2010. It is clear that on 21-8-2009, the Appellants moved an application under Section 311 of Cr.P.C. for recall of Yuvraj Singh (P.W.1) for further cross-examination and the said application was rejected. Thereafter, Cr.R No.679 of 2009 was filed and this Court by order dated 7-1-2010 permitted the prayer for recall of Yuvraj Singh (P.W.1) for further cross-examination. Only thereafter, Rustam Singh surrendered himself on 19-6-2010. It is submitted that in the light of the order passed in Cr.R. No. 679 of 2009, the Trial Court by its order dated 22-1-2010, issued summons against Yuvraj Singh. The police was unable to serve Yuvraj Singh (P.W.1) as he was missing. On 9-4-2010, an application was filed by the Complainant alleging that Yuvraj Singh (P.W.1) is in the captivity of the Appellants and the police is not serving summons on him and is giving false report. Accordingly, the

Trial Court by order dated 9-4-2010 directed that summons be served through I.G. Gwalior. Thereafter, the summon issued to Yuvraj Singh (P.W.1) was returned back with an endorsement that he doesnot reside at the given address. Thereafter, again on 12-5-2010, it was mentioned by the Trial Court, that the summons issued against Yuvraj Singh (P.W.1) has been returned back with an endorsement that his house is in an abandoned and dilapidated condition and he doesnot reside there. Again on 24-5-2010, a statement was made by S.H.O., Gola Ka Mandir, that the house of Yuvraj Singh (P.W.1) is in an abandoned and dilapidated condition and even whereabouts of his family members are not known. Again on 7-6-2010, arrest was issued against Yuvraj Singh (P.W.1). On 15-6-2010, Yuvraj Singh (P.W.1) appeared before the Trial Court and at the request of the Public Prosecutor, he was not examined. Thereafter, on 19-6-2010, the Appellant Rustam Singh surrendered. On 14-7-2010, Yuvraj Singh (P.W.1) appeared, but his evidence was not recorded. Ultimately, Yuvraj Singh (P.W.1) was further cross-examined on 9-8-2010. Thus, it is clear that not only the Appellant Rustam Singh had absconded and surrendered just prior to the examination of Yuvraj Singh (P.W.1) but during this period, the police was unable to trace out Yuvraj Singh (P.W.1). Even the complainant party moved an application alleging that Yuvraj Singh (P.W.1) is in the captivity of the accused persons.

57. Further, Yuvraj (P.W.1) has admitted in his re-examination by the Public Prosecutor, that after the incident, he was given the police protection of 1.4 guard and he did not disclose to them that he was under pressure of Hariom. Thereafter, he also admitted that he was taken to

Delhi for treatment and Hariom was not there. He also admitted that his examination in chief and cross-examination was recorded on different dates but he never complained to the Court, that he was under pressure of Hariom. Only after 2 years of his examination and cross-examination and that too when the statements of the accused were already recorded under Section 313 of Cr.P.C., the co-accused Sitaram filed an application for further cross-examination of this witness on the ground that in the Trial of co-accused Dinesh Yadav, Yuvraj (P.W.1) has turned hostile, therefore, it is necessary to recall him. However, it is clear that in the light of judgment passed by the Supreme Court in the case of **A.T. Mydeen (Supra),** the evidence led in the case of co-accused cannot be read against or in favor of other accused. Yuvraj (P.W.1) was further cross-examined after three years of his examination-in-chief and cross-examination. Thus, there is sufficient material available on record which suggests that lot of things took place after recording of his initial cross-examination which led to a situation where this witness Yuvraj (P.W.1) took a somersault and turned hostile.

58. It is submitted by the Counsel for the Appellants that the evidence of such a witness who is ready to change his version from time to time is not worth acceptance and therefore, the evidence of such a shaky witness should be discarded.

59. Considered the submissions made by the Counsel for the Appellants.

60. The latin maxim *Falsus in uno falsus in omnibus* has no application in India. The Courts must make every effort to find out the truth by removing grain from the chaff. If the earlier examination-in-

chief and cross-examination is considered in the light of the statement made by this witness to Doctor, Ex. D.4, then it is clear that in his statement, Ex. D.4, this witness had specifically stated that Rustam Singh fired gun shot and 8-10 more persons had fired. Thus, the immediate version of this witness was that firing was done by Appellant Rustam Singh and his 8-10 companions. Further it is clear from seizure of Safari Car, Ex. P.17, 16 gun shot marks were found on front and right side of the car. The glasses of the Safari car were broken due to gun shots. One .315 bore rifle was also found on the middle row of the Safari Car which also had a gun shot mark on its magzine and other parts. Further more, this witness had suffered multiple gun shot injuries and he was immediately shifted to hospital, where he was operated upon.

61. Thus, there is sufficient material available on record to suggest that the examination-in-chief and cross-examination of Yuvraj (P.W.1) which completed on 5-9-2007 was the truthful version and subsequent somersault taken by Yuvraj (P.W.1) on his further cross-examination, under the orders of High Court can be ignored as something must have transpired to compel this witness to take a different stand.

62. So far as the shaky nature of this witness is concerned, the said submission made by Shri K.T.S. Tulsi, Senior Advocate, cannot be accepted. The accused persons after pressurizing the witnesses cannot brand them as shaky witnesses. Further more, this Court has already come to a conclusion that the examination-in-chief and earlier cross-examination which was recorded upto 5-9-2007 is a truthful version, therefore, this witness cannot be termed as shaky witness, only because of the fact that he turned hostile after his further cross-examination.

63. Further more, the application for recall of this witness was filed by co-accused Sitaram. How Sitaram came to know that Yuvraj (P.W.1) also wants to change his stand in respect of the accused persons who were facing trial in the present case? It is well established principle of law that the evidence recorded in the case of one accused cannot be read in favor of another accused who was tried separately. This also clearly show that the Appellants were in touch with Yuvraj (P.W.1) and were aware of the fact that Yuvraj (P.W.1) would resile from his earlier version, in case if he is recalled.

64. The Counsel for the Appellants has relied upon the judgment passed by Supreme Court in the case of **Podyami Sukada v. State of M.P.,** reported in **(2010) 12 SCC 142** in which it has been held as under :

> **11.** As stated earlier, all the witnesses to the extra-judicial confession have been declared hostile by the prosecution. True it is that the evidence of the hostile witness is not altogether wiped out and remains admissible in evidence and there is no legal bar to base conviction on the basis of the testimony of hostile witness but as a rule of prudence, the court requires corroboration by other reliable evidence.....
>
> Evidentiary value of extra-judicial confession depends upon trustworthiness of the witness before whom confession is made. Law does not contemplate that the evidence of an extra-judicial confession should in all cases be corroborated. It is not an inflexible rule that in no case conviction can be based solely on extra-judicial confession. It is basically in the realm of appreciation of evidence and a question of fact to be decided in the facts and circumstances of each case.

65. From the plain reading of law laid down by Supreme Court in the case of **Podyami Sukada (Supra),** it is clear that where a witness is voluntarily changing his stand from time to time, then he can be branded and disbelieved as shaky witness. However, in the case of **Podyami**

Sukada (Supra), there was no situation like **Khujji (Supra), Vinod (Supra) or Rajesh (Supra).** It appears that the examination-in-chief and cross-examination in the case of **Podyami Sukada (Supra)** was done on the very same day, and he was continuously changing his version. Thus, where a witness was compelled to change his version by recalling him under Section 311 of Cr.P.C. or if his cross-examination is done after considerable long time, then in such a situation, a witness cannot be termed as shaky witness, and it becomes the onerous duty of the Court to find out the truth.

66. The Supreme Court in the case of **Ramesh v. State of Haryana,** reported in **(2017) 1 SCC 529** has held as under :

> **39.** We find that it is becoming a common phenomenon, almost a regular feature, that in criminal cases witnesses turn hostile. There could be various reasons for this behaviour or attitude of the witnesses. It is possible that when the statements of such witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 by the police during investigation, the investigating officer forced them to make such statements and, therefore, they resiled therefrom while deposing in the court and justifiably so. However, this is no longer the reason in most of the cases. This trend of witnesses turning hostile is due to various other factors. It may be fear of deposing against the accused/delinquent or political pressure or pressure of other family members or other such sociological factors. It is also possible that witnesses are corrupted with monetary considerations.
>
> **40.** In some of the judgments in past few years, this Court has commented upon such peculiar behaviour of witnesses turning hostile and we would like to quote from few such judgments. In *Krishna Mochi* v. *State of Bihar*, this Court observed as under: (SCC p. 104, para 31)
>
> "*31*. It is a matter of common experience that in recent times there has been a sharp decline of ethical values in

public life even in developed countries much less developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or their evidence is not found to be credible by courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political, economic or other powers including muscle power."

41. Likewise, in *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, this Court highlighted the problem with the following observations: (SCC pp. 396-98, paras 40-41)

"*40*. "Witnesses" as Bentham said: "are the eyes and ears of justice". Hence, the importance and primacy 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 the court 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.… Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of the State represented by their prosecuting agencies do not suffer.… 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 the ultimate truth presented before the court and justice triumphs and that the trial is not reduced to a mockery. …

> The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in court the witness could safely depose the truth without any fear of being haunted by those against whom he had deposed. Every State has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like caste, creed, religion, political belief or ideology. Every State is supposed to know these fundamental requirements and this needs no retaliation (sic repetition). We can only say this with regard to the criticism levelled against the State of Gujarat. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short "the TADA Act") have taken note of the reluctance shown by witnesses to depose against people with muscle power, money power or political power which has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before the courts mere mock trials as are usually seen in movies."

42. Likewise, in *Sakshi* v. *Union of India*, the menace of witnesses turning hostile was again described in the following words: (SCC pp. 544-45, para 32)

> "*32*. The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the

accused. Often the questions put in cross-examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused. It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the presiding officer of the court, who may put the same to the victim or witnesses in a language which is not embarrassing. There can hardly be any objection to the other suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and when required. The provisions of sub-section (2) of Section 327 CrPC should also apply in inquiry or trial of offences under Sections 354 and 377 IPC."

43. In *State* v. *Sanjeev Nanda*, the Court felt constrained in reiterating the growing disturbing trend: (SCC pp. 486-87, paras 99-101)

"*99*. Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law, thereby eroding people's faith in the system.

100. This Court in *State of U.P.* v. *Ramesh Prasad Misra* held that it is equally settled law that the evidence of a hostile witness could not be totally rejected, if spoken in favour of the prosecution or the accused, but it can be subjected to closest scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. In *K. Anbazhagan* v. *Supt. of Police*, this Court held that if a court finds that in the process the credit of the witness has not been completely shaken, he may after reading and

considering the evidence of the witness as a whole, with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be creditworthy and act upon it. This is exactly what was done in the instant case by both the trial court and the High Court and they found the accused guilty.

101. We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in *Manu Sharma* v. *State (NCT of Delhi)* and in *Zahira Habibullah Sheikh (5)* v. *State of Gujarat* had highlighted the glaring defects in the system like non-recording of the statements correctly by the police and the retraction of the statements by the prosecution witness due to intimidation, inducement and other methods of manipulation. Courts, however, cannot shut their eyes to the reality. If a witness becomes hostile to subvert the judicial process, the court shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal judicial system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 IPC imposes punishment for giving false evidence but is seldom invoked."

44. On the analysis of various cases, the following reasons can be discerned which make witnesses retracting their statements before the court and turning hostile:

(*i*) Threat/Intimidation.

(*ii*) Inducement by various means.

(*iii*) Use of muscle and money power by the accused.

(*iv*) Use of stock witnesses.

(*v*) Protracted trials.

(*vi*) Hassles faced by the witnesses during investigation and trial.

(*vii*) Non-existence of any clear-cut legislation to check hostility of witness.

45. Threat and intimidation has been one of the major causes for the hostility of witnesses. Bentham said: "*witnesses are the*

eyes and ears of justice". When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice delivery system. It is for this reason there has been a lot of discussion on witness protection and from various quarters demand is made for the State to play a definite role in coming out with witness protection programme, at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. A stern and emphatic message to this effect was given in *Zahira Habibullah case* as well.

46. Justifying the measures to be taken for witness protection to enable the witnesses to depose truthfully and without fear, Justice Malimath Committee Report on Reforms of Criminal Justice System, 2003 has remarked as under:

> "11.3. Another major problem is about safety of witnesses and their family members who face danger at different stages. They are often threatened and the seriousness of the threat depends upon the type of the case and the background of the accused and his family. Many times crucial witnesses are threatened or injured prior to their testifying in the court. If the witness is still not amenable he may even be murdered. In such situations the witness will not come forward to give evidence unless he is assured of protection or is guaranteed anonymity of some form of physical disguise. … Time has come for a comprehensive law being enacted for protection of the witness and members of his family."

47. Almost to similar effect are the observations of the Law Commission of India in its 198th Report, as can be seen from the following discussion therein:

> "The reason is not far to seek. In the case of victims of terrorism and sexual offences against women and juveniles, we are dealing with a section of society consisting of very vulnerable people, be they victims or witnesses. The victims and witnesses are under fear of or danger to their lives or lives of their relations or to their

property. It is obvious that in the case of serious offences under the Penal Code, 1860 and other special enactments, some of which we have referred to above, there are bound to be absolutely similar situations for victims and witnesses. While in the case of certain offences under special statutes such fear or danger to victims and witnesses may be more common and pronounced, in the case of victims and witnesses involved or concerned with some serious offences, fear may be no less important. Obviously, if the trial in the case of special offences is to be fair both to the accused as well as to the victims/witnesses, then there is no reason as to why it should not be equally fair in the case of other general offences of serious nature falling under the Penal Code, 1860. It is the fear or danger or rather the likelihood thereof that is common to both cases. That is why several general statutes in other countries provide for victim and witness protection."

48. Apart from the above, another significant reason for witnesses turning hostile may be what is described as "culture of compromise". Commenting upon such culture in rape trials, *Pratiksha Bakshi* has highlighted this problem in the following manner:

"During the trial, compromise acts as a tool in the hands of defence lawyers and the accused to pressurise complainants and victims to change their testimonies in a courtroom. Let us turn to a recent case from Agra wherein a young Dalit woman was gang-raped and the rapist let off on bail. The accused threatened to rape the victim again if she did not compromise. Nearly a year after she was raped, she committed suicide. While we find that the judgment records that the victim committed suicide following the pressure to compromise, the judgment does not criminalise the pressure to compromise as criminal intimidation of the victim and her family. The normalising function of the socio-legal category of compromise converts terror into a bargain in a context where there is no witness protection programme. This often accounts for why prosecution

witnesses routinely turn hostile by the time the case comes on trial, if the victim does not lose the will to live.

In other words, I have shown how legality is actually perceived as disruptive of sociality; in this instance, a sociality that is marked by caste based patriarchies, such that compromise is actively perceived, to put it in the words of a woman Judge of a District Court, as a mechanism for 'restoring social relations in society'."

49. In this regard, two articles by Daniela Berti delve into a sociological analysis of hostile witnesses, noting how village compromises (and possibly peer pressure) are a reason for witnesses turning hostile. In one of his articles, he writes:

"For reasons that cannot be explained here, even the people who initiate a legal case may change their minds later on and pursue non-official forms of compromise or adjustment. Ethnographic observations of the cases that do make it to the criminal courtroom thus provide insight into the kinds of tensions that arise between local society and the State judicial administration. These tensions are particularly palpable when witnesses deny before the Judge what they allegedly said to the police during preliminary investigations. At this very moment they often become hostile. Here I must point out that the problem of what in common law terminology is called "hostile witnesses" is, in fact, general in India and has provoked many a reaction from Judges and politicians, as well as countless debates in newspaper editorials. Although this problem assumes particular relevance at high-profile, well-publicised trials, where witnesses may be politically pressured or bribed, it is a recurring everyday situation with which Judges and prosecutors of any small district town are routinely faced. In many such cases, the hostile behaviour results from various dynamics that interfere with the trial's outcome — village or family solidarity, the sharing of the same illegal activity for which the accused has been incriminated (as in case of cannabis cultivation), political interests, family pressures, various forms of economic compensation, and so forth. Sometimes the witness becomes "hostile"

> simply because police records of his or her earlier testimony are plainly wrong. Judges themselves are well aware that the police do write false statements for the purpose of strengthening their cases. Though well known in judicial milieus, the dynamics just described have not yet been studied as they unfold over the course of a trial. My research suggests, however, that the witness's withdrawal from his or her previous statement is a crucial moment in the trial, one that clearly encapsulates the tensions arising between those involved in a trial and the court machinery itself."
>
> "In my fieldwork experiences, witnesses become "hostile" not only when they are directly implicated in a case filed by the police, but also when they are on the side of the plaintiff's party. During the often rather long period that elapses between the police investigation and the trial itself, I often observed, the party who has lodged the complaint (and who becomes the main witness) can irreparably compromise the case with the other party by means of compensation, threat or blackmail."

50. The present case appears to have been stung by "culture of compromise". Fortunately, statement of PW 4 in attempting to shield the accused Ramesh has been proved to be false in view of the records of PGIMS, Rohtak and, therefore, we held that the High Court was right in discarding his testimony.

67. Thus, it is clear that this Court by disbelieving the witnesses merely because they could not withstand the fear or pressure of the litigating parties, or accused, cannot encourage the culture of compromise. One must not forget that an offence is not against an individual but it is against the Society. Even as per Civil Procedure Code, the Trial Court before accepting an application filed under Order 23 Rule 3, has to satisfy itself that the Compromise has been arrived at voluntarily and by lawful agreement/compromise. Thus, viewed from any angle, the culture of compromise cannot be encouraged.

68. From the above judgment, it is clear that merely because a witness has turned hostile, would not mean that his entire evidence shall stand wiped out, and there is no bar in convicting the accused on the basis of evidence of hostile witness. However, the evidence of a witness is in the realm of appreciation of evidence and question of fact is to be decided in the light of facts and circumstances of the case.

Whether there was any light at the place of incident and whether this witness could have identified the assailants

69. It is submitted by Shri K.T.S. Tulsi, Senior Advocate that there was load shedding from 19:55 to 20:10, and according to the statement made to Doctor, Ex. D.4, this witness had stated that the incident took place at 20:00, therefore, it is clear that there was no light on the spot, thus, it was not possible for this witness to identify the assailants.

70. Considered the submissions made by the Counsel for the Appellants.

71. In order to prove that there was load shedding from 19:55 till 20:10, the Counsel for the Appellants have relied upon the evidence of Rajendra Kumar Agrawal (P.W.17) who has proved that as per distribution register, Article 6, there was load shedding from 19:55 til 20:10.

72. Thus, it is clear from the evidence of Rajendra Kumar Agrawal (P.W.17), there was load shedding from 19:55 till 20:10 but now the question is that whether incident took place in between 19:55 and 20:10 or the incident took place after 20:10.

73. It is submitted by the Counsel for the Appellants that Yuvraj (P.W.1) in his statement to Doctor, Ex. D.4, had stated that the incident

took place at 8:00 P.M., therefore, there was no light as there was load shedding. Further, in the spot map, no source of light was shown by the investigating officer.

74. Considered the submissions made by the Counsel for the Appellants.

75. The statement of Yuvraj (P.W.1), Ex. D.4 reads as under :

आपका क्या नाम है	युवराज
पिता का नाम	छम्मन लाल
उम्र	34 वर्ष
कहां रहते हो	ग्राम जरेडुआ पिंटों पार्क के पीछे
आपको क्या हो गया	गोली लगी है
किसने मारी	रूस्तम यादव
और किसी ने मारी	साथ मे और लोग थे 8–10 लोग
कहां की घटना है	पिंटो पार्क के पास
कितने बजे की घटना हैं	टाइम तो पता नही 8 बजे होंगे
तुम्हे और कुछ कहना है	अभी तो कुछ नही बताना बस इतना ही
और कुछ कहना है	अभी नही

Before recording the above statement, the Doctor had given a certificate that "Doctor on duty certify that patient is fully conscious and oriented and able to make statement and no body around the patient to influence the statement.

76. Thus, from the above mentioned statement, Ex. D.4, it is clear that the injured Yuvraj (P.W.1) had not stated with certainty that the incident took place at 8:00 P.M., but he expressed that he doesnot know the exact time, but it might be 8:00 P.M. Thus, no conclusion can be drawn from the statement of Yuvraj (P.W.1), Ex. D.4, that the incident took place at 20:00.

77. Furthermore, the Appellants themselves have relied upon the Rojnamcha No. 908 of Police Station Gola Ka Mandir which was recorded at 80:30, Ex. D.13 in which it was mentioned that an information has been received that **firing is going on at Pinto Park and some persons have sustained injuries.** The use of words "Firing is going on", clearly means that when the firing started, some one informed the police station Gola Ka Mandir. Since, this rojnamcha sanha, Ex. D.13 has been relied upon by the Appellants themselves, therefore, it is clear that the firing must have taken place much after 20:10, therefore, it is clear that there was no load shedding at the time, when firing took place.

78. Further more, it is the case of the prosecution that Autar and Kaptan were on their motor cycle and were moving slowly in front of the vehicle of the deceased and thereafter, the remaining accused persons came on a Scorpio car. Thus, the vehicles had their headlights, and Yuvraj (P.W.1) has stated that the accused persons were known to him because not only they had enmity with Sughar Singh but they were also the resident of the same locality. Thus, it is clear that this witness had ample opportunity and sufficient light to identify the assailants. Thus, it is held that the incident took place after 20:10 and there was no load shedding at the time of incident and there was sufficient light on the spot. Further more, it is clear from the post-mortem report of Sughar Singh, Ex. P.2, few gunshots were fired from a very close range. Yuvraj (P.W.1) was already sitting inside the same vehicle. For firing at Sughar Singh, the assailants had come very close to the Safari vehicle. The assailants were already known to the witness, therefore, he had full opportunity to

identify the accused persons. Further the police statement of this witness was recorded on the next day, Ex. D.3, and in that statement, he had specifically stated about the source of light and had claimed that he had witnessed the incident in the Halogen light as well as the light of the shops.

Non-mention of names of other assailants in statement given to Doctor, Ex. D.4.

79. It is submitted by the Counsel for the Appellants that statement made by this witness to Doctor, Ex. D.4 is his earliest version and in that statement, he had not disclosed the names of any other assailant except Rustam Singh, therefore, an attempt was made by this witness to over implicate other accused persons.

80. Considered the submissions made by the Counsel for the Appellants.

81. The incident took place in between 20:10 and 20:30. Yuvraj (P.W.1) was admitted in the hospital at 21:05. It is clear from medical case sheet of this witness, that he was put on oxygen at 21:15. Doctor Arun Kumar (P.W.14) was informed about the patient at 21:30. The statement of this witness, Ex. D.4 was recorded by the Doctor at 23:35. The patient was taken for operation and his entry time in Operation Theater is 23:45 and was taken out of operation theater at 2:30 A.M. From the Medical case sheet, Ex. P. 41C, it is clear that immediately after his admission in the hospital, he was given various treatment including sedatives. Since, the witness was taken to operation theater immediately after the recording of his statement by the Doctor, Ex. D.4, therefore, it is clear that he was under heavy medication. Thus, at the time of recording

of statement, Ex. D.4 by the Doctor, it is clear that the patient was under immense pain as well as was under the effect of sedatives. Therefore, if he expressed that now he doesnot want to say anything more to the Doctor, then such a stand taken by this witness cannot be said to be an attempt to leave room for over implicating others. It is not the case of the Appellants, that the Appellants are unknown to Rustam Yadav. Rustam Yadav was specifically named in the statement, Ex. D.4. Number of gun shot marks were found on the Safari Car, as well as number of gun shots were suffered by the injured Yuvraj (P.W.1) and the deceased Sughar Singh, Jagdish and Sintu, thus, it is clear that heavy indiscriminate firing was done. Therefore, it is clear that number of accused persons were involved who were firing indiscriminately. Thus, non-mentioning of names of other assailants in statement, Ex. D.4 made to the Doctor cannot be said to unnatural under the facts and circumstances of the case.

82. Furthermore, all the accused persons were arrested at a later stage. Sitaram Yadav was arrested on 26-7-2006, Ex. P.21, Sohan Singh was arrested on 14-9-2006, Ex. P. 42, Rustam Singh was arrested on 14-9-2006, Ex. P.43, Mahendra Singh was arrested on 30-7-2006, Ex. P.43, Dinesh Singh Jat was arrested on 27-9-2006, Ex. P.45, Ghanshyam Singh was arrested on 6-10-2006, Ex. P.46, Bablu Yadav @ Ballu was arrested on 24-10-2006, Ex. P.47, Mohar Singh Yadav was arrested on 24-10-2006, Ex. P.48, Kaptan Singh was arrested on 7-6-2007, Ex. P.49, Amar Singh was arrested on 28-6-2007, Ex. P.52, Balli @ Balveer was arrested on 20-9-2006, Ex. P.34, Rustam Singh was arrested on 19-9-2006, Ex. P.30, Som Singh @ Sohan Singh was arrested on 14-9-2006 etc.

83. Thus, it is clear that after the incident, all the accused persons were

absconding. It is true that abscondence immediately after the incident by itself may not be indicative of their guilty mind, but if other circumstances prove their involvement in the incident, then their abscondence after the incident, becomes an incriminating circumstance. The Supreme Court in the case of **Kundula Bala Subrahmanyam v. State of A.P.,** reported in **(1993) 2 SCC 684** has held as under :

> 23.....No explanation, worth the name, much less a satisfactory explanation has been furnished by the Appellants about their absence from the village till they surrendered in the court in the face of such a gruesome 'tragedy'. Indeed, absconding by itself may not be a positive circumstance consistent only with the hypothesis of guilt of the accused because it is not unknown that even innocent persons may run away for fear of being falsely involved in a criminal case and arrested by the police, but coupled with the other circumstances which we have discussed above, the absconding of the Appellants assumes importance and significance. The prosecution has successfully established this circumstance also to connect the Appellants with the crime.

84. The Supreme Court in the case of **Sujit Biswas Vs. State of Assam** reported in **(2013) 12 SCC 406** has held as under :

> **22.** Whether the abscondence of an accused can be taken as a circumstance against him has been considered by this Court in *Bipin Kumar Mondal* v. *State of W.B.* wherein the Court observed: (SCC pp. 98-99, paras 27-28)
>
> "*27*. In *Matru* v. *State of U.P.* this Court repelled the submissions made by the State that as after commission of the offence the accused had been absconding, therefore, the inference can be drawn that he was a guilty person observing as under: (SCC p. 84, para 19)
>
> '*19*. The Appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act

of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. In the present case the Appellant was with Ram Chandra till the FIR was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence.'

* * *

28. Abscondence by a person against whom FIR has been lodged, having an apprehension of being apprehended by the police, cannot be said to be unnatural. Thus, in view of the above, we do not find any force in the submission made by Shri Bhattacharjee that mere absconding by the Appellant after commission of the crime and remaining untraceable for such a long time itself can establish his guilt. Absconding by itself is not conclusive either of guilt or of guilty conscience."

While deciding the said case, a large number of earlier judgments were also taken into consideration by the Court, including *Matru* and *State of M.P.* v. *Paltan Mallah*.

23. Thus, in a case of this nature, the mere abscondence of an accused does not lead to a firm conclusion of his guilty mind. An innocent man may also abscond in order to evade arrest, as in light of such a situation, such an action may be part of the natural conduct of the accused. Abscondence is in fact relevant evidence, but its evidentiary value depends upon the surrounding circumstances, and hence, the same must only be taken as a minor item in evidence for sustaining conviction. (See *Paramjeet Singh* v. *State of Uttarakhand* and *Sk. Yusuf* v. *State of W.B.*)

85. Furthermore, the police statement of Yuvraj (P.W.1) was recorded on the next day of incident i.e., 17-7-2006. From the medical case sheet,

Ex. P.41C, it is clear that on 17-7-2006, the general condition of the patient was critical. Immediately after the operation, the patient was found to be suffering from paraplegia. Steroids were being given. A detailed cross-examination of Yuvraj (P.W.1) was done and it was specifically stated by this witness, that after the operation, he was kept in a separate ward and nobody else was there. He had not met with Hariom. No body else had met him. Thus, it is clear that no body had met him after the operation and he was kept in an isolated ward and this witness was under heavy medication and had also suffered paraplegia, and for some time he must be under the effect of anesthesia. This Court is of the considered opinion, that there was no occasion for this witness to concoct a theory in order to falsely over-implicate any of the accused. In his police statement, Ex. D.3, this witness has specifically narrated the role played by Autar, Kaptan, Rustam, Mohar Singh, Cheeku, Ballu, Bablu, Balli, Dinesh Yadav and Dinesh Jat.

86. Thus, this Court is of the considered opinion, that the examination-in-chief as well as the cross-examination of Yuvraj (P.W.1) which was concluded on 5-9-2007 is trustworthy and is corroborated by other surrounding circumstances, therefore, his further cross-examination, done after his recall which was recorded after three years of his initial cross-examination will not efface the earlier version/evidence of this witness. Accordingly, he is held to be a reliable and trustworthy witness.

b. <u>Whether Hariom (P.W.6) is a reliable witness</u>

87. Hariom (P.W.6) is the complainant who had lodged the Dehati Nalishi, Ex. P.8. He is also the brother of the deceased Sughar Singh. The Trial Court has disbelieved this witness on the ground that the

prosecution has failed to prove that spot map, Ex. P.9 was prepared on his instruction. Thus, he was not an eye-witness. The Trial Court has also held that since, Yuvraj (P.W.1) in his further cross-examination, which was recorded after he was recalled, has denied the presence of this witness on the spot, therefore this witness is not reliable.

88. Thus, it is submitted by the Counsel for the Appellants that the Trial Court has disbelieved Hariom (P.W.6) by assigning sound reasons, If Hariom (P.W.6) was already present on the spot, then there was no reason for Muneesh Rajoria (P.W.18) not to record the Dehati Nalishi. Whereas it is submitted by the Counsel for the complainant and State that Hariom (P.W.6) has been wrongly disbelieved by the Trial Court and the evidence in its entirety should have been considered.

89. Considered the submissions made by the Counsel for the Parties.

90. Hariom (P.W.6) is the complainant who lodged the Dehati Nalishi, Ex. P.2 on 17-7-2006 at 01:00 A.M. in the night i.e., after 4 ½ hours of the incident.

91. In Dehati Nalishi, Ex. P.2, Hariom (P.W.6) had alleged that Sughar Singh was his younger brother and was a councilor from Ward No. 25 Jaderua. His family was having enmity with the family of Rustam Singh Yadav on election issues. During the elections also, Rustam Singh had fired at Sughar Singh and thereafter, Rustam, Mahendra and their father Sitaram had left their house. However, they were always hatching conspiracy for killing Sughar Singh. About 4-5 months back also, Sitaram, Rustam and Mahendra had planned for killing Sughar Singh. When Sughar Singh came to know, then a dispute also arose with Sitaram. Day before yesterday, Cheeku, Mohar Singh and Kallu had

come on their cream coloured Scorpio car to Jaderua and collected information about Sughar Singh. He had advised Sughar Singh to remain more vigilant. He had gone towards Pinto Park at about 8:00 to 8:30 P.M. He was standing near Bajrang Grocery shop. He heard the noise of gun shot fires. He saw that gun shots were being fired towards his vehicle. Rustam, Mohar Singh, Kallu, Cheeku @ Sohan Singh, Balli S/o Shiv Charan got down from cream coloured Scorpio. Cheeku, Balli and Kallu were having .315 bore gun, whereas Mohar Singh was having .12 bore gun and Rustam Singh was having .315 bore mouzer. They were firing indiscriminately. Accordingly Jagdish died on the spot whereas he took his brother Sughar Singh to hospital, where he was declared dead. Yuvraj is taking treatment in the hospital and one Sintu has also expired on the spot. Along with Rustam Singh, 3-4 more persons were also there who had also fired gun shots. Thereafter, all the assailants escaped from the spot on their vehicle. It was also alleged that the incident has been committed at the instigation of Sitaram and Mahendra Yadav.

92. This Dehati Nalishi, Ex. P.2 was lodged by Muneesh Rajoria (P.W. 18).

93. It is well established principle of law that the evidence as a whole should be considered and picking up one sentence from here and there is not the proper way of appreciation of evidence. The Court must not forget the ground realities, the situation at the time and immediately after the incident, the reactions of the witnesses which may differ from one person to another, etc. Minor omissions or contradictions not going to the root of the prosecution case should not be given undue importance, because minor variations in the evidence of witnesses are indicative of

fact that they are not giving parrot like evidence. There are bound to be some embellishments in the evidence of witnesses.

94. The Supreme Court in the case of **State of U.P. Vs. Krishna Master** reported in **(2010) 12 SCC 324** has held as under :

> **73.** Reading the evidence of the witness as a whole, this Court points that it has a ring of truth in it. There is nothing improbable if a brother approaches his injured brother and tries to know from him as to how he had received the injuries nor is it improbable that on enquiry being made the injured brother would not give reply/information sought from him. The assertion by witness Jhabbulal that after the incident was over he had gone near his injured brother and tried to know as to who were his assailants, whereupon his injured brother had replied that the appellants (*sic* respondents) had caused injuries to him, could not be effectively challenged during cross-examination of the witness nor could it be brought on record that because of the nature of the injuries received by Baburam he would not have survived even for a few minutes and must have died immediately on the receipt of the injuries.
>
> **74.** The net result of the above discussion is that the High Court has acquitted the respondents who were charged for commission of six murders in a casual and slipshod manner. The approach of the High Court in appreciating the evidence is not only contrary to the well-settled principles of appreciation of evidence but quite contrary to ground realities of life. The High Court has recorded reasons for acquittal of the respondents which are not borne out from the record and are quite contrary to the evidences adduced by the reliable eyewitnesses. The High Court was not justified in upsetting well-reasoned conviction of the respondents recorded by the trial court which after observing demeanour of the eyewitnesses had placed reliance on their testimony.
>
> **75.** The High Court has not taken into consideration the full text of the evidence adduced by the witnesses and picked up sentences here and there from the testimony of the witnesses to come to a particular purpose. For example, the High Court has not taken into consideration the whole testimony of DW 1

before coming to the conclusion that there was complete darkness in the village which prevented the eyewitnesses from witnessing the incident. The general impression this Court has gathered is that appreciation of evidence by the High Court is cursory and it has done injustice to the prosecution.

95. The Supreme Court in the case of **Achhar Singh v. State of H.P.,** reported in **(2021) 5 SCC 543** has held as under :

25. It is vehemently contended that the evidence of the prosecution witnesses is exaggerated and thus false. *Cambridge Dictionary* defines "exaggeration" as "the fact of making something larger, more important, better or worse than it really is". *Merriam-Webster* defines the term "exaggerate" as to "enlarge beyond bounds or the truth". The *Concise Oxford English Dictionary* defines it as "enlarged or altered beyond normal proportions". These expressions unambiguously suggest that the genesis of an "exaggerated statement" lies in a true fact, to which fictitious additions are made so as to make it more penetrative. Every exaggeration, therefore, has the ingredients of "truth". No exaggerated statement is possible without an element of truth. On the other hand, *Advanced Law Lexicon* defines "false" as "erroneous, untrue; opposite of correct, or true". *Concise Oxford English Dictionary* states that "false" is "wrong; not correct or true". Similar is the explanation in other dictionaries as well. There is, thus, a marked differentia between an "exaggerated version" and a "false version". An exaggerated statement contains both truth and falsity, whereas a false statement has no grain of truth in it (being the "opposite" of "true"). It is well said that to make a mountain out of a molehill, the molehill shall have to exist primarily. A court of law, being mindful of such distinction is duty-bound to disseminate "truth" from "falsehood" and sift the grain from the chaff in case of exaggerations. It is only in a case where the grain and the chaff are so inextricably intertwined that in their separation no real evidence survives, that the whole evidence can be discarded.

26. The learned State counsel has rightly relied on *Gangadhar Behera* to contend that even in cases where a major portion of the evidence is found deficient, if the residue is sufficient to

prove the guilt of the accused, conviction can be based on it. This Court in *Hari Chand* v. *State of Delhi* held that: (*Hari Chand case*, SCC pp. 124-25, para 24)

> "*24*. … So far as this contention is concerned it must be kept in view that *while appreciating the evidence of witnesses in a criminal trial especially in a case of eyewitnesses the maxim falsus in uno, falsus in omnibus cannot apply and the court has to make efforts to sift the grain from the chaff. It is of course true that when a witness is said to have exaggerated in his evidence at the stage of trial and has tried to involve many more accused and if that part of the evidence is not found acceptable the remaining part of evidence has to be scrutinised with care and the court must try to see whether the acceptable part of the evidence gets corroborated from other evidence on record so that the acceptable part can be safely relied upon*."
>
> (emphasis supplied)

27. There is no gainsaid that homicidal deaths cannot be left to *judicium dei*. The court in its quest to reach the truth ought to make earnest efforts to extract gold out of the heap of black sand. The solemn duty is to dig out the authenticity. It is only when the court, despite its best efforts, fails to reach a firm conclusion that the benefit of doubt is extended.

28. An eyewitness is always preferred to others. The statements of PW 1, PW 11 and PW 12 are, therefore, to be analysed accordingly, while being mindful of the difference between exaggeration and falsity. We find that the truth can be effortlessly extracted from their statements. The trial court apparently fell in grave error and overlooked the credible and consistent evidence while proceeding with a baseless premise that the exaggerated statements made by the eyewitnesses belie their version.

29. As regards the appellants' contention that an appellate court is not justified in reversing the trial court's judgment unless it was found to be "perverse", it is important to point out that in the instant case, the trial court being overwhelmed by many contradictions failed to identify and appreciate material admissible evidence against the appellants. The trial court

misdirected itself to wrong conclusions. Suffice it to cite *Babu* v. *State of Kerala* where this Court observed that: (SCC p. 196, para 12)

> "*12*. … While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. *The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law.*"
>
> (emphasis supplied)

30. There are numerous later decisions (including *Arulvelu* v. *State*, *Triveni Rubber & Plastics* v. *CCE* and *Basalingappa* v. *Mudibasappa*) where this Court has firmly held that a finding contrary to the evidence is "perverse". The finding of the trial court in ignorance of the relevant material on record was undoubtedly "perverse" and ripe for interference from the High Court.

31. While testing the "possibility" of the conclusion drawn by the trial court, it has to be kept in mind that neither is there a reason on record nor have the appellants led any defence evidence to suggest as to why Netar Singh (PW 1), his wife Meera Devi (PW 11) or his father Beli Ram (PW 12) would allow the real culprits to go scot-free and instead falsely implicate the appellants to settle scores on trivial issues. Rather, from the very beginning (FIR) till their last deposition, the complainant and other two injured/eyewitnesses have been consistently accusing Budhi Singh for committing murder of Swari Devi and Achhar Singh for grievously hurting Beli Ram. Their ocular version is duly corroborated by the medical evidence on record.

32. This Court in *Dalip Singh* v. *State of Punjab* opined that: (AIR p. 366, para 26)

> "*26*. … *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."
>
> (emphasis supplied)

This decision has been usually followed by this Court in various cases such as, *Mohd. Rojali Ali* v. *State of Assam*, *Laltu Ghosh* v. *State of W.B.*, *Khurshid Ahmed* v. *State of J&K* and *Shanmugam* v. *State*.

96. The Supreme Court in the case of **Bhagwan Jagannath Markad v. 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. 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. 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.

97. The Supreme Court in the case of **Mallikarjun v. State of Karnataka,** reported in **(2019) 8 SCC 359** has held as under :

13. While appreciating the evidence of a witness, the approach must be to assess whether the evidence of a witness read as a whole appears to be truthful. Once the impression is formed, it is necessary for the court to evaluate the evidence and the alleged discrepancies and then, to find out whether it is against the general tenor of the prosecution case. If the evidence of eyewitness is found to be credible and trustworthy, minor discrepancies which do not affect the core of the prosecution case, cannot be made a ground to doubt the trustworthiness of the witness.

14. Observing that minor discrepancies and inconsistent version do not necessarily demolish the prosecution case if it is otherwise found to be creditworthy, in *Bakhshish Singh* v. *State*

of Punjab, it was held as under: (SCC p. 198, paras 32-33)

"*32*. In *Sunil Kumar Sambhudayal Gupta* v. *State of Maharashtra* this Court observed as follows: (SCC p. 671, para 30)

'*30*. While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide *State* v. *Saravanan*.)'

33. … this Court in *Raj Kumar Singh* v. *State of Rajasthan* has observed as under: (SCC p. 740, para 43)

'*43*. … 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 case of the prosecution, must not prompt the court to reject the evidence thus provided, in its entirety. The irrelevant details which do not in any way corrode the credibility of a witness, cannot be labelled as omissions or contradictions. Therefore, the courts must be cautious and very particular in their exercise of appreciating evidence. *The approach to be adopted is, if the evidence of a witness is read in its entirety, and the same appears to have in it, a ring of truth, then it may become necessary for the court to scrutinise the evidence more particularly, keeping in mind the deficiencies, drawbacks and infirmities pointed out in the said evidence as a whole, and evaluate them separately, to determine whether the same are completely against the nature of the evidence provided by the witnesses, and whether the validity of such evidence is shaken by virtue of such evaluation, rendering it unworthy of belief.*'"

(emphasis supplied)

98. The Supreme Court in the case of **Sunil Kumar Sambhudayal**

Gupta (Dr.) v. State of Maharashtra, reported in **(2010) 13 SCC 657** has held as under :

> **30.** While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide *State* v. *Saravanan*.)
>
> **31.** Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and the other witness also makes material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. (Vide *State of Rajasthan* v. *Rajendra Singh*.)
>
> **32.** The discrepancies in the evidence of eyewitnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that the prosecution proved its case beyond reasonable doubt. (Vide *Mahendra Pratap Singh* v. *State of U.P.*)
>
> **33.** In case, the complainant in the FIR or the witness in his statement under Section 161 CrPC, has not disclosed certain facts but meets the prosecution case first time before the court, such version lacks credence and is liable to be discarded. (Vide *State* v. *Sait*.)

99. We shall now consider the evidence of this witness in the light of the principles laid down by the Supreme Court with regard to appreciation of evidence.

100. Muneesh Rajoria (P.W.18) is the investigating officer and has

prepared the spot map, Ex. P.9. This witness has stated that on 16-7-2006, he was posted as S.H.O., Police Station Gole Ka Mandir. He received an information that firing is going on in Pinto Park and various persons have got injured. Accordingly, the said information was noted down in Rojnamchasanha at 20:30 and left for the spot along with R.B. Sharma, A.S.I., Constable Raghvendra and Constable Mukesh. Deep Singh Sengar, S.I. was also instructed to come to the spot. He made arrangements for shifting the injured to the hospital. Jagdish, driver of the Safari car had already died in the car itself. The spot map, Ex. P.9 was prepared on the instructions of Hariom. The spot map, Ex. P.9 is in the handwriting of R.B. Sharma, (P.W.20). This witness was cross-examined on this issue. He admitted that he is not the eye-witness of the incident. The spot map, Ex. P.9 is in the handwriting of R.B. Sharma (P.W.20). He admitted that the spot map, Ex. P.9 was prepared on the instructions of Hariom (P.W.6). This witness clarified on his own that the signatures of Hariom (P.W.6) were not obtained on the spot map, Ex. P.9 for the reason that after disclosing the place of incident, Hariom (P.W.6) went to hospital along with Sughar Singh. He started making spot map, Ex. P.9 from 8:30-8:45 P.M. He clarified that 21:25 is the time of completion/preparation of spot map, Ex. P.9. He admitted that when he reached on the spot and started preparing the spot map, Ex. P.9, Hariom (P.W.6) was present on the spot and Sughar Singh, was also in the vehicle in the injured condition. When he reached on the spot, Jagdish, Sintu and Sughar Singh were on the spot. He denied that Jagdish, Sintu and Sughar Singh were already shifted to hospital, prior to his arrival on the spot. When he reached on the spot, he saw that Jagdish was lying on the driver

seat of Safari Car and was dead, whereas Sughar Singh was being taken out of the car. It was not known as to whether Sughar Singh was alive or dead. He admitted that in spot map, Ex. P.9, the names of all the three deceased persons namely Sughar Singh, Jagdish and Sintu are mentioned. He admitted that he had not mentioned in the case diary that when spot map Ex. P. 9 was under preparation, Hariom (P.W.6) had already left for hospital. He also admitted that he has not mentioned in the case diary, that therefore, he could not obtain the signatures of Hariom (P.W.6) on the spot map, Ex. P.9. As soon as he reached on the spot, Hariom (P.W.6) was there. He admitted that he took 5-7 minutes to reach to the spot. In spot map, Ex. 9 he has mentioned that Yuvraj (P.W.1) was found on the middle row in injured condition and his rifle was also there. The face of the Safari car was towards *Surya Temple* and rear was towards *Tanki Tiraha.* He denied that when he reached on the spot, Hariom (P.W.1) was not present on the spot. He denied that when he started preparing the spot map, Ex. P.9, Hariom (P.W.6) was not there. He denied that he had fraudulently prepared the spot map, Ex. P.9 at a later stage in the police station. In spot map, Ex. P.9, the names of assailants are not mentioned. The distance from which the gun shots were fired, is also not mentioned. He did not obtain the signatures of any panch witness on the spot map, Ex. P.9. He clarified that there is no column for obtaining signatures of any panch witness. The house of Hariom (P.W.6) is at about 1 Km from the place of incident. This witness went to Sahara hospital and thereafter to J.A. Hospital and since, he could not meet Hariom (P.W.6) at both the places, therefore, he went to the house of Hariom (P.W.6). At the time of preparation of spot map, Ex. P.9, Constable Raghvendra was also present.

101. R.B. Sharma (P.W.20) has stated that on 16-7-2006, he went to the spot on his own motor cycle. He admitted that police station is at a distance of 5-7 minutes. He admitted that spot map, Ex. P.9 is in his handwriting. The spot map, Ex. P.9 was dictated by Muneesh Rajoria (P.W.18). The spot map, Ex. P.9 was prepared by him at 21:20. Hariom had given information to the T.I., and thereafter, T.I. had instructed to this witness who in his turn, prepared the spot map.

102. Hariom (P.W.6) has stated in para 34 of his cross-examination, that spot map, Ex. P.9 was not prepared at 9:25 P.M. in his presence. In para 5 of his cross-examination, he stated that after recording of Dehati Nalishi, he was informed by Muneesh Rajoria (P.W.20) that he has prepared the spot map, Ex. P.9 and thus, he can verify the same and accordingly, he went to the spot at about 1:30-1:45 A.M. and saw the spot map, Ex. P.9.

103. Hariom (P.W.6) has stated in para 34 of his cross-examination, that he came back to his house at about 12:00 A.M. from J.A. Hospital, and Muneesh Rajoria (P.W.20) came to his house at about 12:45 A.M.

104. Thus, the only question is that whether Spot map, Ex. P.9 was prepared on the instructions of Hariom (P.W.6) and if so then why Dehati Nalishi was not recorded at that time itself and why Dehati Nalishi, Ex. P.2 was recorded at 1:00 A.M.?

105. As already observed in the previous paragraph, the Court must not forget the ground realities, the situation at the time and immediately after the incident, the reactions of the witnesses which may differ from one person to another.

106. It is the evidence of Hariom (P.W.6) that he had gone to Bajrang

Grocery shop and there he heard the noise of gun shots and then he saw that gun shots were being fired on his vehicle. Muneesh Rajoria (P.W.18) has stated that when he reached on the spot, Hariom (P.W.6) was present. The spot map, Ex. P.9 was prepared on the instructions of Hariom (P.W.6), but before the spot map, Ex. P.9 could be concluded, Hariom (P.W.6) had left for hospital along with his brother Sughar Singh. Thus, it is clear that after Muneesh Rajoria (P.W.18) reached on the spot, Hariom (P.W.6) was in the process of takingSughar Singh out of the Safari Car, and after informing Muneesh Rajoira (P.W.18), Hariom (P.W.6) went to J.A. Hospital along with the injured/deceased Sughar Singh and thus, the signatures of Hariom (P.W.6) could not be obtained on the spot map, Ex. P.9.

107. Now the question is that whether the spot map, Ex. P.9 contains any information which was within personal knowledge of Hariom (P.W.6) or the spot map, Ex. P.9, merely contains the description of situation which was visible to anybody including the investigating officer.

108. Spot map, Ex. P.9, merely contains the sketch of the spot which was visible to the investigating officer, Muneesh Rajoria (P.W.18) and it doesnot contain any description, which was in the personal knowledge of Hariom (P.W.6). The spot map, Ex. P.9 contains the situation prevailing on the spot. One car is shown on the road. Shops are shown on one side of the road. On the other side of the road, Panchayat Bhavan and temple are shown and one road is shown which is also known as C.P. Industries road. It is also mentioned in the spot map, Ex. P.9 that deceased Jagdish is in dead condition whereas injured Yuvraj and his rifle are on middle row. The accused persons had chased the Safari Car from the side of

Pinto Park Triangle and fired from place G and H. Empty cartridges have also been found at that place. Thus, except the information that the assailants had chased the victims from the side of Pinto Park Triangle and gun shots were fired from G and H, no other information is mentioned which could not have been noticed by the investigating officer, Muneesh Rajoria (P.W.18). This limited information regarding the manner in which offence was committed supports the evidence of Muneesh Rajoria (P.W.18) that Hariom (P.W.6) after informing him about the incident, left for hospital along with his brother Sughar Singh.

109. Further more, the conduct of Hariom (P.W.6) in rushing to the hospital along with injured/deceased Sughar Singh, cannot be said to be an unnatural act. The first attempt of every body would be to take the injured to hospital, as early as possible, so that the life of the injured can be saved. Hariom (P.W.6) is the real brother of deceased Sughar Singh. Thus, it was not expected from him that instead of taking his brother to hospital, he should have stayed back on the spot for completing the formalities specifically when it was not known to this witness that whether Sughar Singh has actually died or is alive.

110. However, it is submitted by the Counsel for the Appellants that when Hariom (P.W.6) has stated that spot map, Ex. P.9, was not prepared on his instructions then the evidence of Muneesh Rajoria (P.W.18) and R.B. Sharma (P.W.20) cannot be reconciled with the evidence of Hariom (P.W.6).

111. Considered the submissions made by the Counsel for the Appellants.

112. Hariom (P.W.6) is right in deposing that spot map, Ex. P.9 was not

prepared on his information, because according to him the spot map, Ex. P.9 was not prepared in his presence, whereas the evidence of Muneesh Rajoria (P.W.18) is that after giving initial information, Hariom (P.W.6) went to hospital along with his injured brother Sughar Singh. Further from the spot map, Ex. P.9, it is clear that except the remark that the assailants came chasing from the side of Pinto Park and gun shots were fired from G and H, no other personal information is shown/mentioned in spot map, Ex. P.9. However, it is submitted by the Counsel for the Appellants that since R.B. Sharma (P.W.20) has stated in his evidence that at the time of preparation of spot map, Ex. P.9, Hariom (P.W.6) was informing Muneesh Rajoria (P.W.18) and on dictations of Muneesh Rajoria (P.W.18), R.B. Sharma (P.W.20) had prepared the spot map, Ex. P.9. Thus, it is clear that Hariom (P.W.6) was present on the spot till 21:25, but still no FIR was lodged, which clearly means that Hariom (P.W.6) had not witnessed the incident.

113. Considered the submissions made by the Counsel for the Appellants.

114. As already held, the evidence of natural witness may contain some element of embellishment. A witness in order to make his evidence more authentic and reliable, may exaggerate some part of his evidence. R.B. Sharma (P.W.20) in order to make spot map, Ex. P.9, more authentic may have exaggerated his evidence by deposing that the entire spot map, Ex. P.9 was prepared on the information which was being given by Hariom (P.W.6) to Muneesh Rajoria (P.W.18), but as already held that almost all the information contained in the spot map, Ex. P.6, is based on the situation which was seen by the investigating officer, Muneesh Rajoria

(P.W.18) himself.

115. Even otherwise, any detail/information mentioned in the spot map on the information given by a witness is hit by Section 162 of Cr.P.C. and can be used only for omission and contradiction purposes and only that part of spot map is admissible, which has been prepared by the investigating officer after watching on his own on the spot.

116. The Supreme Court in the case of **Tori Singh Vs. State of U.P.** reported in **(1962) 3 SCR 580** has held as under :

> **8.** This Court had occasion to consider the admissibility of a plan drawn to scale by a draftsman in which after ascertaining from the witnesses where exactly the assailants and the victims stood at the time of the commission of offence, the draftsman put down the places in the map, in *Santa Singh* v. *State of Punjab*. It was held that such a plan drawn to scale was admissible if the witnesses corroborated the statement of the draftsman that they showed him the places and would not be hit by Section 162 of the Code of Criminal Procedure. In that case there was another sketch prepared by the Sub-Inspector which was ruled out as inadmissible under Section 162. The sketch-map in the present case has been prepared by the Sub-Inspector and the place where the deceased was hit and also the places where the witnesses were at the time of the incident were obviously marked by him on the map on the basis of the statements made to him by the witnesses. In the circumstances these marks on the map based on the statements made to the Sub-Inspector are inadmissible under Section 162 of the Code of Criminal Procedure and cannot be used to found any argument as to the improbability of the deceased being hit on that part of the body where he was actually injured, if he was standing at the spot marked on the sketch-map.

117. The Supreme Court in the case of **Sant Kumar Vs. State of Haryana** reported in **(1974) 3 SCC 643** has held as under :

> 11.....It is clear that this site plan, which shows Mark No. 1 as the place of occurrence, is in consequence of a statement made

during investigation to the ASI by some witness whose name even has not been disclosed. Since the ASI had already registered the case under Section 154 of the Criminal Procedure Code, after obtaining the first information report from Suraj Bhan and proceeded to the spot in the course of investigation, any statement made by witnesses during the course of investigation would be hit by Section 162(1) of the Criminal Procedure Code, and inadmissible in evidence except for the purpose of contradiction of the witness when examined in Court either by the accused or by prosecution with the leave of Court. A plan prepared in the way done showing the place of occurrence cannot be admissible in law and no reliance can be placed on the place of occurrence as indicated therein....

118. The Supreme Court in the case of **State of Rajasthan Vs. Bhawani** reported in **(2003) 7 SCC 291** has held as under :

11...Many things mentioned in the site plan have been noted by the investigating officer on the basis of the statements given by the witnesses. Obviously, the place from where the accused entered the *nohara* and the place from where they resorted to firing is based upon the statement of the witnesses. These are clearly hit by Section 162 CrPC. What the investigating officer personally saw and noted alone would be admissible.....

119. The Supreme Court in the case of **Rameshwar Dayal Vs. State of U.P.** Reported in **(1978) 2 SCC 518** has held as under :

36.....In our opinion, the argument of the learned counsel is based on misconception of law laid down by this Court. What this Court has said is that the notes in question which are in the nature of a statement recorded by the Police Officer in the course of investigation would not be admissible. There can be no quarrel with this proposition. Note No. 4 in Ex. Ka-18 is not a note which is based on the information given to the Investigating Officer by the witnesses but is a memo of what he himself found and observed at the spot. Such a statement does not fall within the four corners of Section 162 CrPC. In fact, documents like the inquest reports, seizure lists or the site plans consist of two parts one of which is admissible and the other is inadmissible. That part of such documents which is

> based on the actual observation of the witness at the spot being direct evidence in the case is clearly admissible under Section 60 of the Evidence Act whereas the other part which is based on information given to the Investigating Officer or on the statement recorded by him in the course of investigation is inadmissible under Section 162 CrPC except for the limited purpose mentioned in that section. For these reasons, therefore, we are of the opinion that the decision cited by the counsel for the appellants has no application to this case.

120. Thus, this Court is of the considered opinion, the evidence of Hariom (P.W.6) cannot be rejected only the ground that when he was already present on the spot, then why Dehati Nalishi/FIR was not lodged by him.

121. The next ground for disbelieving Hariom (P.W.6) is that Yuvraj (P.W.1) after his recall has denied the presence of Hariom (P.W.6) in his further cross-examination. This Court has already held that the further cross-examination of Yuvraj (P.W.1) after his recall can at the most be treated as an evidence of a hostile witness and since, the earlier part of evidence of Yuvraj (P.W.1) has been found to be reliable as it is corroborated by other circumstances, therefore, this Court is of the considered opinion, that the presence of Hariom (P.W.6) on the spot cannot be doubted on the basis of somersault taken by Yuvraj (P.W.6) after his recall.

122. Thus, this Court is of the considered opinion, that Hariom (P.W.6) cannot be disbelieved on above mentioned grounds. However, whether his evidence inspires confidence or not, shall be considered in the following paragraphs.

123. It is next contended by the Counsel for the Appellants that since, Hariom (P.W.6) is a related witness and admittedly there was an enmity

between the parties, therefore, he should not be relied upon.

124. Considered the submissions made by the Counsel for the Appellants.

125. Hariom (P.W.6) is the real brother of the deceased. Admittedly, an old enmity was going on between the complainant and accused persons. But a witness cannot be disbelieved merely on the ground of enmity. Enmity is always a double edged weapon. On one hand, if it provides a motive to falsely implicate the accused, then on the other hand, it also provides motive for committing the offence. The Supreme Court in the case of **Kunwarpal v. State of Uttarakhand,** reported in **(2014) 16 SCC 560** has held as under :

> **16.** According to the complainant there was litigation between them and the accused persons leading to enmity. PW 3 Atmaram has also stated that there was litigation between them and it culminated in the occurrence. Animosity is a double-edged sword. While it can be a basis for false implication, it can also be a basis for the crime (*Ruli Ram* v. *State of Haryana* and *State of Punjab* v. *Sucha Singh*).….

126. The Supreme Court in the case of **State of U.P. v. Kishan Chand,** reported in **(2004) 7 SCC 629** has held as under :

> **9.** The submission of the counsel for the accused that the testimony of PWs cannot be acted upon as they are interested witnesses is to be noted only to be rejected. By now, it is well-settled principle of law that animosity is a double-edged sword. It cuts both sides. It could be a ground for false implication and it could also be a ground for assault. Just because the witnesses are related to the deceased would be no ground to discard their testimony, if otherwise their testimony inspires confidence.....

127. So far as the related witness is concerned, it is suffice to mention that Relationship alone cannot be a ground to disbelieve a witness. There

is a difference between a "Related witness" and "Interested witness".

128. The Supreme Court in the case of **Harbeer Singh v. Sheeshpal,** reported in **(2016) 16 SCC 418** has held as under :

> **19.** In *Darya Singh* v. *State of Punjab*, this Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities must be taken into account. This is what this Court said: (AIR p. 331, para 6)
>
> > "*6*. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. … But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence. … If the criminal court is satisfied that the witness who is related to the victim was not a chance witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised."
>
> **20.** However, we do not wish to emphasise that the corroboration by independent witnesses is an indispensable rule in cases where the prosecution is primarily based on the evidence of seemingly interested witnesses. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement.
>
> **21.** Further, in *Raghubir Singh* v. *State of U.P.*, it has been held that: (SCC p. 84, para 10)

> "*10*. … 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 to 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 spirits on both sides are running high has to be borne in mind."

129. The Supreme Court in the case of **Vijendra Singh v. State of U.P.,** reported in **(2017) 11 SCC 129** has held as under :

> **31.** In this regard reference to a passage from *Hari Obula Reddy* v. *State of A.P.* would be fruitful. In the said case, a three-Judge Bench has ruled that: (SCC pp. 683-84, para 13)
>
> "[it cannot] 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 the 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."
>
> It is worthy to note that there is a distinction between a witness who is related and an interested witness. A relative is a natural witness. The Court in *Kartik Malhar* v. *State of Bihar* has opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term "interested" postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason.

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

> **20.** The first contention relates to the credibility of PW 5

Srinivasan. It was said in this regard that he was a related witness being the elder brother of Veerappan and the son of Marudayi, both of whom were victims of the homicidal attack. It was also said that he was an interested witness since Veerappan (and therefore PW 5 Srinivasan) had some enmity with the appellants. It was said that for both reasons, his testimony lacks credibility.

21. What is the difference between a related witness and an interested witness? This has been brought out in *State of Rajasthan* v. *Kalki*. It was held that: (SCC p. 754, para 7)

> "*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'."

22. In light of the Constitution Bench decision in *State of Bihar* v. *Basawan Singh*, 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*, 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)

> "*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."

23. The wife of a deceased (as in *Kalki*), undoubtedly related to the victim, would be interested in seeing the accused person

punished—in fact, she would be the most interested in seeing the accused person punished. It can hardly be said that she is not an interested witness. The view expressed in *Kalki* is too narrow and generalised and needs a rethink.

24. For the time being, we are concerned with four categories of witnesses—a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorisation of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required.

25. In the present case, PW 5 Srinivasan is not only a related and interested witness, but also someone who has an enmity with the appellants. His evidence, therefore, needs to be scrutinised with great care and caution.

26. In *Dalip Singh* v. *State of Punjab* this Court observed, without any generalisation, that a related witness would ordinarily speak the truth, but in the case of an enmity there may be a tendency to drag in an innocent person as an accused —each case has to be considered on its own facts. This is what this Court had to say: (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 relation 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."

27. How the evidence of such a witness should be looked at was again considered in *Darya Singh* v. *State of Punjab*. This Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities taken into account. It was observed that where the witness shares the hostility of the victim against the assailant, it would be unlikely that he would not name the real assailant but would substitute the real assailant with the "enemy" of the victim. This is what this Court said: (AIR p. 331, para 6)

"*6.* There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. … [I]t may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice. The

> desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars."

28. More recently, in *Waman* v. *State of Maharashtra* this Court dealt with the case of a related witness (though not a witness inimical to the assailant) and while referring to and relying upon *Sarwan Singh* v. *State of Punjab*, *Balraje* v. *State of Maharashtra*, *Prahalad Patel* v. *State of M.P.*, *Israr* v. *State of U.P.*, *S. Sudershan Reddy* v. *State of A.P.*, *State of U.P.* v. *Naresh*, *Jarnail Singh* v. *State of Punjab* and *Vishnu* v. *State of Rajasthan* it was held: (*Waman case*, SCC p. 302, para 20)

> "*20.* It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care."

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

10)

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

131. The Supreme Court in the case of **Jodhan v. State of M.P.,** reported in **(2015) 11 SCC 52** has held as under :

24. First, we shall deal with the credibility of related witnesses. In *Dalip Singh* v. *State of Punjab*, 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*."

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.*, 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.

132. The Supreme Court in the case of **Yogesh Singh v. Mahabeer Singh,** reported in **(2017) 11 SCC 195** has held as under :

> **24.** On the issue of appreciation of evidence of interested witnesses, *Dalip Singh* v. *State of Punjab* 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*, 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.*, 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*, 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*, *State of U.P.* v. *Jagdeo*, *Bhagaloo Lodh* v. *State of U.P.*, *Dahari* v. *State of U.P.*, *Raju* v. *State of T.N.*, *Gangabhavani* v. *Rayapati Venkat Reddy* and *Jodhan* v. *State of M.P.*)

133. The Supreme Court in the case of **Rupinder Singh Sandhu v. State of Punjab**, reported in **(2018) 16 SCC 475** has held as under :

> 50. The fact that PWs 3 and 4 are related to the deceased Gurnam Singh is not in dispute. The existence of such relationship by itself does not render the evidence of PWs 3 and 4 untrustworthy. This Court has repeatedly held so and also held that the related witnesses are less likely to implicate innocent persons exonerating the real culprits.

134. The Supreme Court in the case of **Shamim Vs. State (NCT of Delhi)** reported in **(2018) 10 SCC 509** has held as under :

> 9. In a criminal trial, normally the evidence of the wife, husband, son or daughter of the deceased, is given great weightage on the principle that there is no reason for them not to speak the truth and shield the real culprit.....

135. The Supreme Court in the case of **Rizan v. State of Chhattisgarh**, reported in **(2003) 2 SCC 661** has held as under :

> **6.** We shall first deal with the contention regarding

interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

7. In Dalip Singh v. State of Punjab it has been laid down as under: (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 relation 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 generalization. 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."

8. The above decision has since been followed in Guli Chand v. State of Rajasthan in which Vadivelu Thevar v. State of Madras was also relied upon.

9. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh case in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking

through Vivian Bose, J. it was observed: (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' (AIR at p. 59). We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel."

10. Again in Masalti v. State of U.P. this Court observed: (AIR pp. 209-10, para 14)

> "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. … The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hardand-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

11. To the same effect is the decision in State of Punjab v. Jagir Singh and Lehna v. State of Haryana.

136. Why a "related witness" would spare the real culprit in order to falsely implicate some innocent person? There is a difference between "related witness" and "interested witness". "Interested witness" is a witness who is vitally interested in conviction of a person due to previous enmity. The "Interested witness" has been defined by the Supreme Court

in the case of **Mohd. Rojali Ali v. State of Assam,** reported in **(2019) 19 SCC 567** as under :

> **13**. As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an "interested" witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between "interested" and "related" witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see State of Rajasthan v. Kalki; Amit v. State of U.P.; and Gangabhavani v. Rayapati Venkat Reddy). Recently, this difference was reiterated in Ganapathi v. State of T.N., in the following terms, by referring to the three-Judge Bench decision in State of Rajasthan v. Kalki: (Ganapathi case, SCC p. 555, para 14)
>
> > "14. "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"."
>
> **14.** In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in Dalip Singh v. State of Punjab, wherein this Court 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."
>
> **15.** In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in Jayabalan v. State (UT of Pondicherry): (SCC p. 213, para 23)
>
> "23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

137. Since, Hariom (P.W.6) is a related witness and old enmity between the complainant and accused party is writ large, therefore, this Court would appreciate the evidence of Hariom (P.W.6) very minutely and would also look for corroboration.

138. Hariom (P.W.6) has identified Cheeku @ Sohan Singh, Ghanshyam, Dinesh Jat, Rustam Singh, Mohar Singh, Balli Yadav, Kaptan Singh, Bablu Yadav, Mahendra, Sitaram and Amar Singh in the dock. He has stated that on 16-7-2006, at about 8:30 P.M., he was standing near Bajrag Grocery Shop, Pinto Park. Firing took place. Firing was aimed at Sughar Singh who was sitting on the front passenger seat of the Safari car. The said Safari car was being driven by Jagdish. Yuvraj (P.W1) was also sitting in the same vehicle. Mohar Singh, Rustam, Cheeku, Balli, Kallu @ Kalyan Yadav, Ballu Yadav, Dinesh Yadav,

Kaptan and absconding accused Autar were firing gun shots. He thereafter clarified that even Dinesh Yadav is also absconding. Mohar Singh was having .12 bore gun, Kaptan was having .12 bore gun, Cheeku, Rustam Singh, Kalli, Bablu Yadav were having .315 bore rifles. Kallu @ Kalyan, Autar were having .315 bore gun whereas Dinesh Yadav was having .12 bore gun. He also clarified that Sitaram, Mahendra, Ghanshyam, and Amar Singh were not on spot. Accused Dinesh Jat was driving Scorpio vehicle. Apart from Rustam Singh who was sitting on the front passenger seat of Safari, Jagdish, the driver and Yuvraj (P.W.1) who were inside the Safari Car, Sintu who was purchasing medicine also sustained gun shot injuries. Mukesh and Umesh also reached on the spot. After the assailants left the place of incident, he went nearer to the Safari car and by that time, Umesh and Mukesh had also reached there. Yuvraj (P.W.1) who was groaning in pain was taken out from the vehicle. Umesh and Mukesh took him to hospital on a motor cycle. By that time, Jaiveer, and Narendra also reached on the spot. This witness and Jaiveer and Narendra took Sughar Singh to Sahara hospital, where he was declared dead, and then, Sughar Singh was taken to J.A. Hospital, where too he was declared dead. Thereafter, he came back to his house along with his cousin brother Mahendra. At about 1:00 A.M., in the night, the Town Inspector Muneesh Rajoria (P.W.18) came to his house and accordingly, Dehati Nalishi, Ex. P.8 was lodged. Thereafter, he was told that spot map, Ex. P.9 has already been prepared, and thus, this witness may verify the same and accordingly, he went to spot at about 1:30-1:45 P.M. and saw the spot map, Ex. P.9. On a query by the Court, he stated that Bajrang Grocery shop was opened at the time of incident and 5-6

customers were purchasing articles. He had also gone there to purchase goods. Safari car was coming from the side of Pinto Park Triangle. Only after hearing the noise of gun shot firing, he saw the Safari car. Prior to that he had no attention towards the Safari Car, Scorpio car (vehicle of the accused), accused and injured. This witness was cross-examined.

139. He stated that his house is at a distance of 1 Km from the spot. Ramveer, this witness and the deceased Sughar Singh are real brothers. Mahesh who took Yuvraj (P.W.1) to hospital is the son of his sister Mithya Devi. Matrimonial house of Mithya Devi is in village Barotha, which is approximately 45 Kms. away from the spot. Rajaram had lodged a FIR on 15-5-2000 against Sughar Singh, Jaiveer and two other persons for offence under Section 302 of IPC. He admitted that as per said FIR, Vidhyaram was killed. Vidhyaram was killed on the date of election for the post of Councilor. Thereafter, he clarified that the murder took place after the voting. Jaiveer is his cousin brother. A question was put to this witness that on the date of incident, Criminal Revision against the acquittal of Sughar Singh was pending or not, but he replied, he has no information about that, but Sughar Singh was acquitted. He admitted that Jaiveer is still lodged in jail in connection with said offence. A question was put to this witness as to whether any report was lodged by Rajaram against this witness that he was pressurizing the witnesses not to depose, then he clarified that Rajaram was returning after attending one birthday party and was under the influence of alcohol and had collided with the tractor as a result he sustained injuries and on the next day, he lodged a false report against him. He admitted that he and Jaiveer were convicted and were sentenced for 6 months. But clarified that they were

acquitted in appeal. He admitted that he is a property broker and Sughar Singh was also in business of sale and purchase of property. He admitted that Rustam Singh after firing at Sughar Singh on 4-11-2004, had shifted from Pinto Park. On 4-11-2004, Sughar Singh was going to fill up his nomination paper and at that time, the said incident had taken place. The murder of Sughar Singh took place on a public road. He expressed his ignorance as to where Sughar Singh had gone and from where he was returning back. He denied that at the time of incident, he was not standing near Bajrang Grocery shop. Yuvraj (P.W.1) is known to him since his childhood. Since, he had stated in his Dehati Nalishi, Ex. P.8 that Yuvraj (P.W.1) was taken to Sahara Hospital by Umesh and Mukesh, therefore, he did not think it proper to specifically say that Yuvraj (P.W.1) was also sitting in the Safari car. He denied that Mukesh and Umesh were not on the spot. He denied that Yuvraj (P.W.1) was not taken to the hospital by Mukesh and Umesh but he was taken by his brother Parmanand. He stated that although there was an old enmity but he had gone to purchase goods. He disowned his part of statement, Ex. D. 10, in which he had stated that because of old enmity, he had gone towards Pinto Park. He admitted that front side of the vehicle of Sughar Singh was facing Pinto Park and rear side was towards Bhind road. He admitted that his face was towards grocery shop, but denied that his back was towards the accused but claimed that they were facing each other. He denied that gun shots were fired from the rear side of the Safari car. He stated that gun shots were fired from front and driver side of the Safari Car. He disowned his part of statement, Ex. D.10 in which he had stated that gun shots were fired from the rear side of car. He admitted

that he has engaged Shri Pankaj Saxena, Advocate. The accused persons had not surrounded the Safari car from all the sides. Since, gun shots were being fired indiscriminately from two sides, therefore, it can also be described as surrounding the vehicle. He was not in a position to clarify that which gun shot fired by which person had caused injury to which deceased or injured. He admitted that Birla Hospital is at a distance of 5-7 minutes, but clarified that since, MLC is not done in the said hospital, therefore, they took Sughar Singh to Sahara Hospital. His intentions were to save Sughar Singh. While going back from J.A. Hospital, an idea did not occur to him that police be informed. He denied that since, he was not aware of the names of the assailants, therefore, he did not inform the police while coming back from J.A. Hospital. He denied that the incident did not take place at 8:30 P.M. He denied that unknown persons had fired at Sughar Singh, Jagdish, Sintu and Yuvraj. He denied that Mohar Singh had gone to Indore by Intercity Train. He admitted that earlier an offence was registered against him and Sughar Singh on the allegation of firing at Kaptan Singh. Except the election rivalry, he had no other enmity. He admitted that Sughar Singh had contested the election as a candidate of B.J.P. and at the time of incident, B.J.P. was the ruling party. After the death of Sughar Singh, this witness also contested the election of Councilor as a B.J.P. candidate and had won the election. He admitted that various Ministers and leaders of B.J.P. had visited his house. He could not explain as to why the fact of going to the shop of Bajrang for purchasing grocery is not mentioned in his Dehati Nalishi, Ex. P.8 and police statement, Ex. D.10. But also clarified that he donot recollect as to whether he had disclosed to the police or not? He also

could not explain as to why the fact that he went to the Safari car and Umesh and Mukesh also reached there is not mentioned in his Dehati Nalishi, Ex. P.8 and Police Statements Ex. D.10 and D.11. Police had not seized his blood stained cloths. He also clarified that he doesnot recollect as to whether he had informed the police that Narendra and Jaiveer also came to the spot, and from there, they took Sughar Singh to hospital, but admitted that this fact is not mentioned in his Dehati Nalishi, Ex. P.8 and police statements, Ex. D.10 and D.11. He took Sughar Singh on his private maruti car which is registered in the name of his cousin brother Jai Singh Yadav. He denied that Bhajju is his servant. He admitted that while stating Dehati Nalishi, Ex. P.8 he had not informed that Kaptan Singh, Bablu Yadav, Dinesh Yadav and Autar were also firing, but clarified that he was informed by Umesh and Yuvraj (P.W.1) in this regard. Umesh had informed at 2:00 A.M. in the same night. He claimed that he had disclosed the above mentioned names to the police on 19-7-2006, but the police informed that they will record his supplementary statement. He denied that Bablu and Kaptan were not on the spot. He denied that since,he had not seen them, therefore, it is mentioned in the Dehati Nalishi, Ex. P.8 and Police Statement, Ex. D.10 that gun shots were fired by unknown persons. On a specific question put by the defence that in Dehati Nalishi, Ex. P.8, this witness had claimed that 3-4 more persons came down from the car and also fired gun shots and similar police statement, Ex. D.10 was given by him, then he clarified that he had seen them from behind the car, therefore, only their heads were visible and their faces were not visible, thus, he had described them as unknown person. He had seen the assailants while they

were deboarding from Scorpio car and they also went away by the same car. He admitted that he had not personally seen Autar, Bablu, Dinesh and Kaptan. He further stated that he was informed by Yuvraj (P.W.1) and Umesh (P.W.7) that Dinesh Jat was driving the Scorpio car, therefore, his name was not disclosed in Dehati Nalishi, Ex. P.8 and Police Statement, Ex. D.10. He had seen that one more person was lying on the spot, but he was not aware of his name and came to know about his name only after he returned back from the hospital. Sintu was not known to him. He has not seen the dead body Sintu also. He had gone to purchase C.F.L. Light, Soyabeen Barri, and Pears Soap. Before he could purchase the goods, the incident took place. He denied that he had not gone to the shop of Bajrang. He also stated that Bablu, Kaptan, Rustam, Sitaram and Kallu belongs to one family and are active members of Congress party, therefore, there was an enmity. He denied that Dinesh Jat was not present on the spot and was admitted in District Hospital Datia. He admitted that Balli has .315 bore gun but could not explain as to whether the license is in the name of his brother Pancham or not? He had electoral enmity with Balli and there was a property dispute also. He had gone to Bajrang Shop on his private car and had parked near the Neem tree. There is an Electricity Transformer just opposite to the shop of Bajrang. Neem tree is not shown in spot map, Ex. P.9. He had seen the incident from the counter of Bajrang shop. After the assailants ran away from the spot, he went to the spot. Spot map, Ex. 9 was not prepared in his presence but it was shown to him immediately after the Dehati Nalishi, Ex. P.8 was lodged. He did not object to the fact that why his name has been mentioned as an informant for preparation of spot map,

Ex. P.9, as he thought that it might be the part of investigation. He denied that Sughar Singh was not taken out of the Safari car. He denied that Sughar Singh was lying on the ground in a dead condition. He stated that after taking out from the Safari Car, Sughar Singh was kept on the ground as a result lot of blood had accumulated there. He had informed Muneesh Rajoria (P.W.18) the place from where he had witnessed the incident. There is no tree in between Bajrang Grocery Shop and the place of incident. There is a Jamun tree in between Aarti Clinic and the spot and said tree is still there. It is true that Jamun tree is in front of Aarti Clinic and the Safari car had stopped in front of Sakhshi Medical shop and Yadav Clinic and some part of the Safari car was in front of Aarti Clinic. Shops have been rightly shown in the spot map, Ex. P.9. The assailants were standing at place G and H shown in the spot map, Ex. P.9. Scorpio vehicle was parked at the junction of C.P. Industry road. The accused persons had deboarded from the Scorpio vehicle and thereafter, the said vehicle had stopped at the junction of C.P. Industry road. Scorpio vehicle had not stopped by the side of Safari car. The Scorpio vehicle was ultimately parked about 35 ft.s away from the Safari car. First of all, Mohar Singh came down from the Scorpio vehicle and two persons had deboarded in the last. Since, they were on the western side of the Scorpio vehicle, therefore, he could not see their faces. He further stated that street poles are there on the spot. He clarified that investigating officer Muneesh Rajoria (P.W.18) had told him that photographs of the site have been taken and the street light is visible in that. Police Statement, Ex. D.10 was written immediately after the Dehati Nalishi, Ex. P. 8 was written. He had parked his car on the

southern side of shop no. 16. He denied that he was not present on the spot.

140. It is submitted by the Counsel for the Appellants that since, the place at which this witness was standing is not mentioned in the spot map, Ex. P.9, therefore, it is clear that he was not present on the spot.

141. Considered the submissions made by the Counsel for the Appellants.

142. As already pointed out, any description given in spot map, Ex. P.9 on the basis of information given by a witness would be hit by Section 162 of Cr.P.C. The spot map, Ex. P.9 was prepared by Muneesh Rajoriya (P.W.18) and he is not an eye-witness. Therefore, only whatever was noticed by him on his own would be admissible.

143. The Supreme Court in the case of **Jagdish Narain v. State of U.P.,** reported in **(1996) 8 SCC 199** has held as under :

> **9.** In responding to the next criticism of the trial court regarding the failure of the Investigating Officer to indicate in the site plan prepared by him the spot where from the shots were allegedly fired by the appellants and its resultant effect upon the investigation itself, the High Court observed that such failure did not detract from the truthfulness of the eyewitnesses and only amounted to an omission on the part of the Investigating Officer. In our opinion neither the criticism of the trial court nor the reason ascribed by the High Court in its rebuttal can be legally sustained. While preparing a site plan an Investigating Police Officer can certainly record what he sees and observes, for that will be direct and substantive evidence being based on his personal knowledge; but as, he was not obviously present when the incident took place, he has to derive knowledge as to when, where and how it happened from persons who had seen the incident. When a witness testifies about what he heard from somebody else it is ordinarily not admissible in evidence being hearsay, but if the person from

whom he heard is examined to give direct evidence within the meaning of Section 60 of the Evidence Act, 1872 the former's evidence would be admissible to corroborate the latter in accordance with Section 157 CrPC (*sic* Evidence Act). However such a statement made to a police officer, when he is investigating into an offence in accordance with Chapter XII of the Code of Criminal Procedure cannot be used to even corroborate the maker thereof in view of the embargo in Section 162(1) CrPC appearing in that chapter and can be used only to contradict him (the maker) in accordance with the proviso thereof, except in those cases where sub-section (2) of the section applies. That necessarily means that if in the site plan PW 6 had even shown the place from which the shots were allegedly fired after ascertaining the same from the eyewitnesses it could not have been admitted in evidence being hit by Section 162 CrPC. The law on this subject has been succinctly laid down by a three-Judge Bench of this Court in *Tori Singh* v. *State of U.P.* In that case it was contended on behalf of the appellant therein that if one looked at the sketch map, on which the place where the deceased was said to have been hit was marked, and compared it with the statements of the prosecution witnesses and the medical evidence, it would be extremely improbable for the injury which was received by the deceased to have been caused on that part of the body where it had been actually caused if the deceased was at the place marked on the map. In repelling the above contention this Court observed, inter alia:

> "… the mark on the sketch-map was put by the Sub-Inspector who was obviously not an eyewitness to the incident. He could only have put it there after taking the statements of the eyewitnesses. The marking of the spot on the sketch-map is really bringing on record the conclusion of the Sub-Inspector on the basis of the statements made by the witnesses to him. This in our opinion would not be admissible in view of the provisions of Section 162 of the Code of Criminal Procedure, for it is in effect nothing more than the statement of the Sub-Inspector that the eyewitnesses told him that the deceased was at such and such place at the

> time when he was hit. *The sketch-map would be admissible so far as it indicates all that the Sub-Inspector saw himself at the spot; but any mark put on the sketch-map based on the statements made by the witnesses to the Sub-Inspector would be inadmissible in view of the clear provisions of Section 162 of the Code of Criminal Procedure as it will be no more than a statement made to the police during investigation*."
>
> (emphasis supplied)

10. While on this point, it will be pertinent to mention that if in a given case the site plan is prepared by a draftsman — and not by the Investigating Officer — entries therein regarding the place from where shots were fired or other details derived from other witnesses would be admissible as corroborative evidence as has been observed by this Court in *Tori Singh case* in the following passage:

> "This Court had occasion to consider the admissibility of a plan drawn to scale by a draftsman in which after ascertaining from the witnesses where exactly the assailants and the victims stood at the time of the commission of offence, the draftsman put down the places in the map, in *Santa Singh* v. *State of Punjab*. *It was held that such a plan drawn to scale was admissible if the witnesses corroborated the statement of the draftsman that they showed him the places and would not be hit by Section 162 of the Code of Criminal Procedure*."
>
> (emphasis supplied)

144. Thus, it is clear that this witness had not personally seen Autar, Bablu, Dinesh Yadav, Kaptan and Dinesh Jat at the place of incident and has stated on the basis of information given by Yuvraj (P.W.1) and Umesh (P.W.7). From the Dehati Nalishi, Ex. P.8, it is clear that he personally saw Rustam, Mohar Singh, Kallu, Cheeku @ Sohan Singh, Balli, and also saw 3-4 more persons.

145. Yuvraj (P.W.1) has specifically named Autar, Kaptan, Rustam,

Mohar Singh, Cheeku, Ballu @ Bablu, Balli, Dinesh Yadav, Dinesh Jat. Therefore, the evidence of Hariom (P.W.6) in respect of Ballu @ Bablu, Dinesh Jat, Dinesh Yadav, Kaptan and Autar Singh is corroborated by the evidence of Yuvraj (P.W.1). Thus, the evidence of Hariom (P.W.6) is trustworthy and can be relied upon to the extent it is corroborated by other evidence.

c. <u>Whether Bhajju (P.W.4) is a reliable witness</u>

146. Bhajju (P.W.4) is a witness of conspiracy. He has stated that he was working with Appellant Mohar Singh for the last 2 years. It was 3:00 P.M. Ghanshyam instructed him to leave him at *Dharamkanta (Weighing booth)* of Mohar Singh. Accordingly he took him to *Dharamkanta.* Mohar Singh was standing there. Thereafter, they were called inside the room. Sitaram, Mahendra, Maharaj Singh, Amar Singh, Dinesh, Balli, Rustam, Bablu, Kalyan and Dinesh Jat were standing and Cheeku was also sitting in the room. The accused persons were making plans for killing Sughar Singh and decided that Sughar Singh shall be killed by the next morning. Thereafter, all the accused persons went away. Sitaram told him to stay back. At 9:00 P.M. he came back to the house of Mohar Singh and then he came to know that three persons have been killed. About 1-1 ½ hours thereafter, police had come, but he went in hiding. For next 8 days, he was roaming around from here and there. Thereafter, Hariom (P.W.6) called him and then he narrated the entire incident of conspiracy to the police. Thus, this witness has claimed to have seen the conspiracy. However, the Trial Court has disbelieved this witness. Even the Counsel for the complainant could not satisfy this Court as to why Bhajju (P.W.4) maintained silence for 8-9 days and how

Hariom (P.W.6) came to know that Bhajju (P.W.4) had witnessed the conspiracy. After going through the evidence of Bhajju (P.W.4), this Court is satisfied that there is no explanation for delayed disclosure of conspiracy by this witness and there is nothing on record to show that how Hariom (P.W.6) came to know that Bhajju (P.W.4) had witnessed the conspiracy.

147. It is true that mere delay in recording of statement under Section 161 of Cr.P.C., by itself would not make the evidence of such witness vulnerable, and can be relied upon provided delay is properly explained. The Supreme Court in the case of **John Pandian v. State,** reported in **(2010) 14 SCC 129** has held as under :

> 44.....It is true that the criminal courts would expect the statements of the eyewitnesses to be recorded immediately or with least possible delay. The early recording of the statement gives credibility to the evidence of such witnesses. But then it is not an absolute rule of appreciation that where the statement is recorded late, the witness is a false witness or a trumped-up witness. That will depend upon the quality of the evidence of the witness.

148. If the evidence of Bhajju (P.W.4) and his explanation for not disclosing the fact of conspiracy to anybody is considered, then it is clear that on several occasions, this witness had come in close proximity with police, but still he did not disclose anything to anybody, and all of a sudden, he was called by Hariom (P.W.6) and only then he narrated the incident to Police. Even Hariom (P.W.6) has not clarified that from whom he came to know that Bhajju (P.W.4) is a witness of conspiracy. Thus, the Trial Court has rightly disbelieved this witness.

d. **Whether Umesh Yadav (P.W.7) is a reliable witness**

149. The Trial Court has disbelieved Umesh Yadav (P.W.7) mainly on

the ground that in the Dehati Nalishi, Ex. P.8, in police statement, Ex. D.10 of Hariom (P.W.6) and in evidence of Muneesh Rajoria (P.W.18), the presence of Umesh (P.W.7) is not mentioned.

150. Now the question for consideration is that whether non-mention of name of Umesh in Dehati Nalishi, Ex. P.8 would make him unreliable?

151. It is well established principle of law that names of all the witnesses are not required to be mentioned in the FIR. Mere non-mentioning of name of an eye-witness in the FIR would not make such a witness unreliable.

152. The Supreme Court in the case of **State of M.P. v. Mansingh,** reported in **(2003) 10 SCC 414** has held as under :

> **10.** One of the circumstances highlighted by the High Court to discard the evidence of PW 8 is non-mention of his name in the FIR. As stated by this Court in *Chittar Lal* v. *State of Rajasthan* evidence of the person whose name did not figure in the FIR as a witness does not perforce become suspect. There can be no hard-and-fast rule that the names of all witnesses, more particularly eyewitnesses, should be indicated in the FIR. As was observed by this Court in *Shri Bhagwan* v. *State of Rajasthan* mere non-mention of the name of an eyewitness does not render the prosecution version fragile.

153. The Supreme Court in the case of **Nirpal Singh v. State of Haryana,** reported in **(1977) 2 SCC 131** has held as under :

> 10.....Counsel for the appellants vehemently contended that as the name of Rattan Singh was not mentioned in the first information report, although the eyewitnesses Sadhu Ram and Inder Kaur have categorically stated that another Rattan Singh of Siria was present at the occurrence, the Court should hold that Rattan Singh is a made-up witness. To begin with, this is essentially a question of fact which was fully noticed by the two courts of fact and in spite of that the courts of fact have believed the evidence of PW 22 Rattan Singh. Secondly, the

mere fact that his name was not given in the FIR, though of some relevance, would not be sufficient by itself to entail rejection of the testimony of this witness. We must realise that five persons had been killed and the informant Sadhu Ram must have been stunned and stupefied at the ghastly murders that took place in his presence and had picked up sufficient courage to run to the Police Station to lodge the FIR. It may be that in view of that agitated mental condition he may have omitted to mention the name of Rattan Singh. The mere fact that Rattan Singh s/o Siri, Ram is not mentioned in the FIR does not establish that Rattan Singh PW 22 could not have seen the occurrence. It is possible that both these persons may have witnessed the occurrence and the informant mentioned the name of one and not the other. Other comments were also made against Rattan Singh which have been considered by both the trial court and the High Court. Both the courts have held that the evidence of this witness inspires confidence. Strong reliance was placed on the conduct of the witness in not reporting to the police officer immediately when he came to the spot. The witness was, according to the findings of the Sessions Judge and the High Court, an independent one and was not at all connected with the litigations between the appellants and the deceased. He, therefore, must have disclosed the version before the police only when he was asked to do so, because he had no interest in the matter at all. For these reasons, we do not see any reason to take a view different from the one taken by the Courts below regarding the credibility of this witness.

(Underline supplied)

154. The Supreme Court in the case of **Dhirajbhai Gorakhbhai Nayak v. State of Gujarat,** reported in **(2003) 9 SCC 322** has held as under :

7. Coming to the plea that the name of PW 3 does not appear in the first information report, it has to be noted that death took place, according to medical records, at about 4.45 a.m. and the first information report was lodged at about 5.15 a.m. In other words, the first information report was lodged almost immediately after the occurrence. As observed by this Court in *Shri Bhagwan* v. *State of Rajasthan* the mental condition of the

person who has just seen a close relative, the bread earner lose his life cannot be lost sight of. The psychic trauma cannot be ignored. Merely because PW 3's name did not figure in the first information report, that is not a suspicious circumstance. Evidence of PWs 1 and 3 has been analysed by both the trial court and the High Court minutely and found to be credible and cogent. Nothing infirm therein could be shown to weaken their acceptability and reliability. The trial court and the High Court were justified in placing reliance thereon.

155. The Supreme Court in the case of **Dilip Premnarayan Tiwari v. State of Maharashtra,** reported in **(2010) 1 SCC 775** has held as under :

26. Though in his evidence Balan (PW 1) insisted that he had also told the names of Dilip (A-1), Manoj (A-3) and Sunil (A-2), the names of Manoj and Sunil are not to be found in the FIR. Though there was a reference that Dilip (A-1) was accompanying three other associates, the witness was specific in asserting that from the spot of occurrence he did not go directly to the dispensary but went to the police station first.

27. The further significant thing about the FIR is that there is no reference to the death of Abhayraj who had also lost his life. It is slightly unusual that though this witness as per his admission knew Abhayraj, there is no reference to the name of Abhayraj in the FIR. Shri Gaurav Agrawal, learned counsel tried to take advantage of this and pointed out that the name of Manoj (A-3) was not to be found in the FIR and that advantage must go to Manoj on that account. It is also seen that the witness had also failed to speak about the body of Abhayraj. In our opinion, though the omission of names of Manoj and Sunil is significant, much importance cannot be given to this omission. The FIR was after all given by a person who had seen the body of his young son having been brutally murdered. He had also seen the dead body of his brother-in-law and had also come to know that the other three members of the family of Krishnan were also seriously injured in the incident. The witness is bound to be excited and some scope would have to be given to the mental state of the witness at that time. The significance of this omission will be considered when we individually consider the case of each accused. The trial court

> as well as the High Court have not attached much importance to this omission and rightly so.

156. In the present case, the Court must not lose sight of the fact that indiscriminate firing was done and more than 16 gun shot marks were found on the Safari Car, whereas multiple gun shots were sustained by the deceased persons and injured Yuvraj (P.W.1). The deceased Sughar Singh was a sitting councilor. The manner in which the offence was committed must have certainly sent a wave of panic in the society. Three persons lost their lives and one person was seriously injured. Hariom (P.W.6) is the real brother of deceased Sughar Singh. Multiple gun shot injuries were found on the dead body of Sughar Singh and some of them were caused from a very-very close range. Lot of persons must be visiting the house of Hariom (P.W.6). Hariom (P.W.6) had taken his brother Sughar Singh to Sahara Hospital and thereafter to J.A. Hospital. His mental condition can be presumed. The Dehati Nalishi, Ex. P.8 and his police statement, Ex. D.10 were recorded in the same night. Undisputedly, the injured Yuvraj (P.W.1) was immediately shifted to Sahara Hospital.

157. Further more, the basic idea behind lodging of FIR is to give information regarding cognizable offence. The Dehati Nalishi, P.W.8 contains all major allegations. FIR is not an encyclopedia and each and every minute detail is not required to be mentioned. The Supreme Court in the case of **Satpal v. State of Haryana,** reported in **(2018) 6 SCC 610** has held as under :

> 7.....An FIR is not to be read as an encyclopedia requiring every minute detail of the occurrence to be mentioned therein. The absence of any mention in it with regard to the previous altercation, or the presence of the milk can, cannot affect its

veracity so as to doubt the entire case of the prosecution.....

158. The Supreme Court in the case of **S. Sudershan Reddy v. State of A.P.,** reported in **(2006) 10 SCC 163** has held as under :

> 18....It is well settled that the FIR is not an encyclopaedia of the facts concerning the crime merely because the minutest details of occurrence were not mentioned in the FIR the same cannot make the prosecution case doubtful. It is not necessary that the minutest details should be stated in the FIR. It is sufficient if a broad picture is presented and the FIR contains the broad features. For lodging the FIR, in a criminal case and more particularly in a murder case, the stress must be on prompt lodging of the FIR.....

159. The Supreme Court in the case of **Subhash Kumar v. State of Uttarakhand,** reported in **(2009) 6 SCC 641** has held as under :

> **12.** FIR as is well known is not to be treated to be as an encyclopaedia. Although the effect of a statement made in the FIR at the earliest point of time should be given primacy, it would not probably be proper to accept that all the particulars in regard to commission of offence must be furnished in detail.

160. Thus, a witness cannot be disbelieved merely on the ground that his name is not mentioned in the FIR or police statement, Ex. D.10. Further more, the witnesses had witnessed the incident from different places. While lodging FIR, the witness was expected to disclose the manner in which offence was committed and only that much of information was crucial. Who shifted the injured to the hospital was not an important information and if such a minute detail was not mentioned in the FIR, then the witness cannot be disbelieved.

161. Similarly, Muneesh Rajoria (P.W.18) has not stated that he had made any arrangement of sending Yuvraj (P.W.1) to hospital. Under these circumstances, Umesh (P.W.7) cannot be disbelieved. Hence, he was wrongly disbelieved by the Trial Court.

162. Umesh (P.W.7) has stated that on 16-7-2007 he was working in Hina Bread Factory. He was returning back from factory and was standing under the tree and was talking to Mukesh. In the halogen street light, he saw the Safari car of his maternal uncle Sughar Singh. Autar and Kaptan Singh who were carrying .12 bore and .315 bore guns were moving ahead on their motor cycle. When Safari Car gave a horn for side, then Kaptan Singh gave a signal for turning. At that time, one cream coloured Scorpio car came from behind and Rustam Singh was sitting on the front passenger seat. As soon as the Scorpio car came by the side of Safari Car, Rustam Singh fired a gun shot causing injury to the driver of the Safari Car. Thereafter, Mohar Singh, Cheeku, Kallu, Balli, Dinesh Yadav, and Bablu came down from the Scorpio car. Mohar Singh was having his gun, Kallu was having .315 bore gun, Balli, Bablu and Dinesh Yadav were also having .315 bore guns. Thereafter, Mohar Singh, Cheeku, Balli, Rustam, Kallu started firing at the vehicle from its front side. Dinesh Jat who was driving Scorpio, parked the vehicle after few distance from Safari car. He and Mukesh took shelter behind the tree. He also saw Kaptan Singh, Autar, Dinesh Yadav and Bablu Yadav firing gun shots from the side of vehicle also. Thereafter, they escaped from the spot on Scorpio car and motor cycle. After the assailants left the place of incident, he and Mukesh went near to the Safari Car. Hariom also reached there. Yuvraj (P.W.1) was groaning in the car. Sughar Singh was lying in the car. Hariom instructed him to take Yuvraj to Sahara Hospital and thereafter, he and Mukesh took Yuvraj (P.W.1) to Sahara Hospital on their motorcycle. Yuvraj (P.W.1) was admitted in the hospital. He further stated that he is residing in the house of Hariom.

This witness was cross-examined.

163. In cross-examination, he stated that although he is the resident of village Barotha, but he was staying in the house of Hariom (P.W.1) and was using his motorcycle. Prahlad Tulani is the owner of Hina Bread Factory. He was serving in the factory for the last 6-7 months prior to the date of incident. His shift was from 8:15 in the morning till 8:15 in the night. He was Chowkidar in the factory. Mukesh is not related to him. The entire incident took place within 1-1 ½ minute. He had seen the accused getting down from the Scorpio car. The driver of Scorpio car had parked the vehicle on the road which is in between Temple and Mishra Grocery Shop. He denied that he and Mukesh were not on the spot. He denied that he is giving evidence after due deliberations. They had merely shifted the injured Yuvraj (P.W.1) to the hospital. Parmanand, the brother of Yuvraj (P.W.1) had also come and remaining formalities were completed by him. He had stayed in Sahara Hospital for 20-25 minutes and thereafter went to J.A. Hospital. He was informed by some persons that Sughar Singh has been taken to J.A. Hospital, therefore, he went there. He stated that about 100-200 labourers work in Hina Bread Factory. Pawan Sharma and Ashok Sharma are two managers working in the said factory. He took about 15 minutes to reach to Sahara Hospital. Yuvraj (P.W.1) was taken by the Doctors inside the hospital, whereas he was standing in the room. Parmanand reached there after 10-15 minutes.

164. This witness was cross-examined in detail, but nothing could be elicited from his evidence which may make his evidence unreliable. It is submitted that since, this witness is a close relative of the deceased, therefore, he is an interested witness. The incident took place on the

public road, but no independent witness was examined by the Police.

165. Considered the submissions made by the Counsel for the Appellants.

166. This Court has already considered the difference between related witness and interested witness. Thus, the evidence of this witness is subject to minute scrutiny.

167. So far as non-examination of independent witnesses is concerned, it is suffice to mention here that now a days, independent witnesses are hesitant to come forward for various reasons. They are apprehensive of picking up enmity with the accused persons. They are apprehensive of appearing before the investigating officer and thereafter before the Court. Further three persons were killed on the main road by indiscriminate firing on a vehicle. The Appellants themselves have given suggestion to the witnesses, that on the next day, the market was kept closed in protest. The panic in the society can be inferred. When a situation is surcharged with tension then it cannot be expected from an independent witness to come forward and depose in the matter. The Supreme Court in the case of **Mahesh v. State of Maharashtra,** reported in **(2008) 13 SCC 271** has held as under :

> **55.** As regards non-examination of the independent witnesses who probably witnessed the occurrence on the roadside, suffice it to say that testimony of PW Sanjay, an eyewitness, who received injuries in the occurrence, if found to be trustworthy of belief, cannot be discarded merely for non-examination of the independent witnesses. The High Court has held in its judgment and, in our view, rightly that the reasons given by the learned trial Judge for discarding and disbelieving the testimony of PWs 4, 5, 6 and 8 were wholly unreasonable, untenable and perverse. The occurrence of the incident, as noticed earlier, is not in serious dispute. PW Prakash Deshkar

has also admitted that he had lodged complaint to the police about the incident on the basis of which FIR came to be registered and this witness has supported in his deposition the contents of the complaint to some extent. It is well settled that in such cases many a times, independent witnesses do not come forward to depose in favour of the prosecution. There are many reasons that persons sometimes are not inclined to become witnesses in the case for a variety of reasons. It is well settled that merely because the witnesses examined by the prosecution are relatives of the victim, that fact by itself will not be sufficient to discard and discredit the evidence of the relative witnesses, if otherwise they are found to be truthful witnesses and rule of caution is that the evidence of the relative witnesses has to be reliable evidence which has to be accepted after deep and thorough scrutiny.

168. The Supreme Court in the case of **Nagarjit Ahir v. State of Bihar,** reported in **(2005) 10 SCC 369** has held as under :

12. It was then submitted that in spite of the fact that a large number of persons had assembled at the bank of the river at the time of occurrence, the witnesses examined are only those who are members of the family of the deceased or in some manner connected with him. We cannot lose sight of the fact that four of such witnesses are injured witnesses and, therefore, in the absence of strong reasons, we cannot discard their testimony. The fact that they are related to the deceased is the reason why they were attacked by the appellants. Moreover, in such situations though many people may have seen the occurrence, it may not be possible for the prosecution to examine each one of them. In fact, there is evidence on record to suggest that when the occurrence took place, people started running helter-skelter. In such a situation it would be indeed difficult to find out the other persons who had witnessed the occurrence. In any event, we have the evidence of as many as 7 witnesses, 4 of them injured, whose evidence has been found to be reliable by the courts below, and we find no reason to take a different view.

169. The Supreme Court in the case of **State of A.P. v. S. Rayappa,** reported in **(2006) 4 SCC 512** has held as under :

> **8.** Regarding non-examination of an independent witness PW 9 K. Bhupal Singh, the investigating officer stated that on that day he went to the place of incident and inquired about the witness but none came forward to reveal about the case due to fear. He has also stated that due to double murder in the town in a single day there was terror in public and he imposed Section 144. In such a situation surcharged with tension and fear psychosis it is not expected of any witness to come and depose about the incident even though they may have seen. Non-examination of independent witnesses, in such a situation, would be no ground to discard the otherwise creditworthy testimony of PW 1 and PW 2, which inspires confidence.

170. The Supreme Court in the case of **Sadhu Saran Singh v. State of U.P.,** reported in **(2016) 4 SCC 357** has held as under :

> 29. As far as the non-examination of any other independent witness is concerned, there is no doubt that the prosecution has not been able to produce any independent witness. But, the prosecution case cannot be doubted on this ground alone. In these days, civilised people are generally insensitive to come forward to give any statement in respect of any criminal offence. Unless it is inevitable, people normally keep away from the court as they find it distressing and stressful. Though this kind of human behaviour is indeed unfortunate, but it is a normal phenomena. We cannot ignore this handicap of the investigating agency in discharging their duty. We cannot derail the entire case on the mere ground of absence of independent witness as long as the evidence of the eyewitness, though interested, is trustworthy.

171. The Counsel for the Appellants have relied upon the judgment passed by the Supreme Court in the case of **Kanakarajan Vs. State of Kerala** reported in **(2017) 13 SCC 597** in which it has been held as under :

> **19.** We feel that non-examination of credible independent witnesses in this case is very much fatal to the prosecution's case. Particularly when it is their own case that there were

> several shops and houses in the vicinity and several people were present. It is not necessary that in each and every case on the ground of non-examination of independent witnesses the case of the prosecution has to be brushed aside; if the evidence of prosecution witnesses is consistent, cogent and corroborated by other evidence it can be safely relied upon, but it is not so in the case at hand.....

172. Further, the Counsel for the Appellants has relied upon the judgment passed by the Supreme Court in the case of **Noor Aga Vs. State of Punjab** reported in **(2008) 16 SCC 417** in which the Supreme Court has held as under :

> **110.** It is accepted that when the appellant allegedly opted for being searched by a Magistrate or a gazetted officer, Kuldip Singh called K.K. Gupta, Superintendent, Customs (PW 2) and independent witnesses Mohinder Singh and Yusaf. Whereas K.K. Gupta was examined as PW 2, the said Mohinder Singh and Yusaf were not examined by the prosecution. There is nothing on record to show why they could not be produced. Their status in life or location had also not been stated. It is also not known as to why only the said two witnesses were sent for. The fact remains that they had not been examined. Although examination of independent witnesses in all situations may not be imperative, if they were material, in terms of Section 114(*e*) of the Evidence Act, an adverse inference could be drawn.
>
> **111.** In a case of this nature, where there are a large number of discrepancies, the appellant has been gravely prejudiced by their non-examination. It is true that what matters is the quality of the evidence and not the quantity thereof but in a case of this nature where procedural safeguards were required to be strictly complied with, it is for the prosecution to explain why the material witnesses had not been examined. The matter might have been different if the evidence of the investigating officer who recovered the material objects was found to be convincing. The statement of the investigating officer is wholly unsubstantiated. There is nothing on record to show that the said witnesses had turned hostile. Examination of the

> independent witnesses was all the more necessary inasmuch as there exist a large number of discrepancies in the statement of official witnesses in regard to search and seizure of which we may now take note.

173. Thus, it is clear that non-examination of Independent witnesses cannot be said to be always fatal to the prosecution case and the facts and circumstances of each and every case are to be considered. In the present case, the independent witness Urmila did not appear inspite of service of bailable warrants. It is also not out of place to mention here that during trial Rustam, Cheeku and Ghanshyam had jumped bail and thus, it is clear that there must be fear in the mind of the independent witnesses, therefore, they did not appear. It is not a case, where no independent witnesses were cited at all by the prosecution, but if the independent witnesses are not ready to come before the Court for deposing in the matter, then the entire prosecution case cannot be thrown overboard. When the prosecution evidence has been held to be reliable and trustworthy, then such evidence cannot be rejected merely on the ground of non-examination of independent witnesses.

174. It is further submitted by the Counsel of the Appellants that it is claim of Umesh Yadav (P.W.7) that he and Mukesh had taken the injured Yuvraj (P.W.1) to Sahara Hospital, whereas Parmanand (D.W.5) who is the brother of Yuvraj (P.W.1) had taken him to the hospital, therefore, is clear that Umesh Yadav (P.W.7) was not on the spot.

175. Considered the submissions made by the Counsel for the Appellants.

176. This Court has already come to a conclusion that after the examination-in-chief and the cross-examination of Yuvraj (P.W.1) was

completed, some thing transpired and accordingly, application was filed for recall of Yuvraj (P.W.1). After he was recalled, he took a somersault and claimed that earlier examination-in-chief and cross-examination was given under the pressure of Hariom (P.W.6). Subsequent, cross-examination of Yuvraj (P.W.1) has already been rejected/disbelieved by the Court. Since, Parmanand is the real brother of Yuvraj (P.W.1), then it is clear that he also must have been won over by the Appellants, therefore, no much sanctity can be attached to the evidence of Parmanand (D.W.5), although the defence witness should also be appreciated like any other prosecution witness.

177. Thus, we cannot disbelieve the prosecution evidence only on the ground that independent witnesses were not examined. Thus, it is held that Umesh Yadav (P.W.7) is also a reliable witness.

Whether Appellant Mohar Singh and Dinesh Jat have proved their plea of alibi

Mohar Singh

178. Plea of alibi literally means "elsewhere" but not at the scene of occurrence. Therefore, it has to be proved with certainty by leading cogent evidence. However, false plea of alibi will not relieve the prosecution from establishing its case.

179. Before considering the evidence led by Mohar Singh in support of his plea of alibi, this Court would like to consider the law governing the field.

180. The Supreme Court in the case of **Subhash Chand v. State of Rajasthan,**reported in **(2002) 1 SCC 702** has held as under :

> **21.** Literal meaning of alibi is "elsewhere". In law this term is used to express that defence in a criminal prosecution, where

> the party-accused, in order to prove that he could not have committed the crime charged against him, offers evidence that he was in a different place at that time. The plea taken should be capable of meaning that having regard to the time and place when and where he is alleged to have committed the offence, he could not have been present. The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. (See *The Law Lexicon*, P. Ramanatha Aiyar, 2nd Edn., p. 87.) Denial by an accused of an assertion made by his employer that the accused was on leave of absence from duty on the date of offence does not, by any stretch of reasoning or logic, amount to pleading alibi.

181. The Supreme Court in the case of **Babudas v. State of M.P.,** reported in **(2003) 9 SCC 86** has held as under :

> **4**.....Therefore, on such doubtful recoveries, a presumption as to the guilt of the accused cannot be drawn. We agree with the learned counsel for the respondent State that in a case of circumstantial evidence, a false alibi set up by the accused would be a link in the chain of circumstances as held by this Court in the case of *Mani Kumar Thapa* but then it cannot be the sole link or the sole circumstance based on which a conviction could be passed.....

182. The Supreme Court in the case of **Jitender Kumar v. State of Haryana,** reported in **(2012) 6 SCC 204** has held as under :

> **71.** Once PW 10 and PW 11 are believed and their statements are found to be trustworthy, as rightly dealt with by the courts below, then the plea of abili raised by the accused loses its significance. The burden of establishing the plea of alibi lay upon the appellants and the appellants have failed to bring on record any such evidence which would, even by reasonable probability, establish their plea of alibi. The plea of alibi in fact is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence and in the house which was the home of their relatives. (Ref. *Sk. Sattar* v. *State of Maharashtra*.)

183. The Supreme Court in the case of **Om Prakash v. State of Rajasthan,** reported in **(2012) 5 SCC 201** has held as under :

> **32.** Drawing a parallel between the plea of minority and the plea of alibi, it may be worthwhile to state that it is not uncommon to come across criminal cases wherein an accused makes an effort to take shelter under the plea of alibi which has to be raised at the first instance but has to be subjected to strict proof of evidence by the court trying the offence and cannot be allowed lightly in spite of lack of evidence merely with the aid of salutary principle that an innocent man may not have to suffer injustice by recording an order of conviction in spite of his plea of alibi.

184. The Supreme Court in the case of **Jumni v. State of Haryana,** reported in **(2014) 11 SCC 355** has held as under :

> **19.** On a consideration of the material before us, what strikes us as a little odd is that insofar as Prem Chand and Raj Bala are concerned, both the trial Judge and the High Court have given us the impression that they proceeded on the basis that these two accused persons are required to prove their innocence. In fact it is for the prosecution to prove their guilt and that seems to have been lost in the consideration of the case.
>
> **20.** It is no doubt true that when an alibi is set up, the burden is on the accused to lend credence to the defence put up by him or her. However, the approach of the court should not be such as to pick holes in the case of the accused person. The defence evidence has to be tested like any other testimony, always keeping in mind that a person is presumed innocent until he or she is found guilty.
>
> **21.** Explaining the essence of a plea of alibi, it was observed in *Dudh Nath Pandey* v. *State of U.P.* that: (SCC p. 173, para 19)
>
> "*19*. … The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. The plea can therefore succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed."

This was more elaborately explained in *Binay Kumar Singh* v. *State of Bihar* in the following words: (SCC p. 293, para 22)

> "*22*. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant."

Illustration (*a*) given under Section 11 of the Evidence Act is then partially reproduced in the decision, but it is fully reproduced below:

> "(*a*) The question is whether *A* committed a crime at Calcutta on a certain day. The fact that, on that day, *A* was at Lahore is relevant.
>
> The fact that, near the time when the crime was committed, *A* was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant."

22. This Court then went on to say: (*Binay Kumar Singh case*, SCC p. 293, para 23)

> "*23*. The Latin word alibi means 'elsewhere' and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to

believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi."

This view was reiterated in *Jayantibhai Bhenkarbhai* v. *State of Gujarat*

23. On the standard of proof, it was held in *Mohinder Singh* v. *State* that the standard of proof required in regard to a plea of alibi must be the same as the standard applied to the prosecution evidence and in both cases it should be a reasonable standard. *Dudh Nath Pandey* goes a step further and seeks to bury the ghost of disbelief that shadows alibi witnesses, in the following words: (*Dudh Nath case*, SCC p. 173, para 19)

"*19*. … Defence witnesses are entitled to equal treatment with those of the prosecution. And, courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses."

185. The Supreme Court in the case of **Sk. Sattar v. State of Maharashtra,** reported in **(2010) 8 SCC 430** has held as under :

35. Undoubtedly, the burden of establishing the plea of alibi lay upon the appellant. The appellant herein has miserably failed to bring on record any facts or circumstances which would make the plea of his absence even probable, let alone, being proved beyond reasonable doubt. The plea of alibi had to be proved with absolute certainty so as to completely exclude the possibility of the presence of the appellant in the rented premises at the relevant time. When a plea of alibi is raised by an accused it is for the accused to establish the said plea by positive evidence which has not been led in the present case.

We may also notice here at this stage the proposition of law laid down in *Gurpreet Singh* v. *State of Haryana* as follows: (SCC p. 27, para 20)

> "*20*. … This plea of alibi stands disbelieved by both the courts and since the plea of alibi is a question of fact and since both the courts concurrently found that fact against the appellant, the accused, this Court in our view, cannot on an appeal by special leave go behind the abovenoted concurrent finding of fact."

36. But it is also correct that, even though the plea of alibi of the appellant is not established, it was for the prosecution to prove the case against the appellant. To this extent, the submission of the learned counsel for the appellant was correct. The failure of the plea of alibi would not necessarily lead to the success of the prosecution case which has to be independently proved by the prosecution beyond reasonable doubt. Being aware of the aforesaid principle of law, the trial court as also the High Court examined the circumstantial evidence to exclude the possibility of the innocence of the appellant.

186. The Supreme Court in the case of **Vijay Pal v. State (Govt. of NCT of Delhi),** reported in **(2015) 4 SCC 749** has held as under :

> 25. At this juncture, we think it apt to deal with the plea of alibi that has been put forth by the appellant. As is demonstrable, the trial court has discarded the plea of alibi. When a plea of alibi is taken by an accused, burden is upon him to establish the same by positive evidence after onus as regards presence on the spot is established by the prosecution.....

187. The Supreme Court in the case of **Binay Kumar Singh Vs. State of Bihar** reported in **AIR 1997 SC 322** has held as under :

> **21**. We must bear in mind that alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in S. 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (A) given under the provision is worth reproducing in this context:The Supreme Court in the

case of **Binay Kumar Singh Vs. State of Bihar** reported in **AIR 1997 SC 322** has held as under :

> "The question is whether A committed a crime at Calcutta on a certain date: the fact that on that date, A was at Labore is relevant."

22. The Latin word alibi means " elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused had adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the Court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the Court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions (vide Dudh Nath Pandey v. State of Uttar Pradesh, (1981) 2 SCC 166 : (AIR 1981 1 SC 911); State of Maharashtra v. Narisingrao Gangaram Pimple, AIR 1984 SC 63).

188. A Division Bench of this Court in the case of **Radhe Vs. State of M.P.** by judgment **dated 13-7-2022** passed in **Criminal Appeal No. 259/2012** has held as under :

> (24) It is settled principle of law that plea of alibi is used as a shield of defence and never as a weapon of offence by accused. It is a basic law that in a criminal case in which the accused is alleged to have committed murder of another person; the burden lies on the prosecution to prove that the accused was present at the scene of occurrence and has 19 participated in the crime. But, once prosecution succeeds in discharging the burden, it is incumbent on the accused who adopts plea of alibi to prove it with absolute certainty so as to exclude possibility of his presence at the place of occurrence. When presence of accused at the scene of occurrence has been successfully and satisfactorily proved by the prosecution through reliable and cogent evidence, then normally the Court would be slow to believe any counter-evidence to the effect that the appellant was elsewhere when the occurrence was happened.

189. The Counsel for the Appellants has relied upon the judgment passed by the Supreme Court in the case of **Vijayee Singh Vs. State of Uttar Pradesh** reported in **AIR 1990 SC 1459** in which it has been held as under :

> **33**. The general burden of establishing the guilt of accused is always on the prosecution and it never shifts. Even in respect of the cases covered by S. 105 the prosecution is not absolved of its duty of discharging the burden. The accused may raise a plea of exception either by pleading the same specifically or by relying on the probabilities and circumstances obtaining in the case. He may adduce the evidence in support of his plea directly or rely on the prosecution case itself or, as stated above, he can indirectly introduce such circumstances by way of cross-examination and also rely on the probabilities and the other circumstances. Then the initial presumption against the accused regarding the non-existence of the circumstances in

> favour of his plea gets displaced and on an examination of the material if a reasonable doubt arises the benefit of it should go to accused. The accused can also discharge the burden under Sec. 105 by preponderance of probabilities in favour of his plea. In case of general exceptions, special exceptions, provisos contained in the Penal Code or in any law defining the offence, the Court, after due consideration of the evidence in the light of the above principles, if satisfied, would stale, in the first instance, as to which exception the accused is entitled to then see whether he would be entitled for a complete acquittal of the offence charged or would be liable for a lesser offence and convict him accordingly.

190. Although, the Counsel for the Appellants has submitted that even in case where plea of alibi has been taken, the burden on the accused is merely to create a doubt in the mind of the Court, but it is sufficient to mention that in the case of **Vijayee (Supra)** the Supreme Court was dealing with a case, where right of private defence was pleaded by the accused. However, the Counsel for the Appellants is right in submitting that the initial burden to prove the guilt of the accused shall always remain on the prosecution and even the false plea of alibi may not be a strong circumstance to establish the guilt of the accused.

191. We shall now consider the defence of alibi taken by Mohar Singh in the light of the above mentioned law laid down by Supreme Court.

192. The Appellant Mohar Singh has relied upon the charge sheet/final report dated 12-12-2006, Ex. D.14 which was submitted by S.H.O., Police Station Jhansi Road, Gwalior before the Court of J.M.F.C., Gwalior to the effect that the Appellant Mohar Singh was formally arrested on 24-10-2006 and on that date, he informed that he was not present on the spot and in fact, he had gone to Indore by Intercity train and his Railway Ticket is kept in the house of his relative Prem Singh

Yadav which were seized. It was verified from the Railway Department, and it was found that the Appellant Mohar Singh had travelled to Indore by Intercity Train on 16-7-2006, therefore, he was not present on the spot and accordingly, no charge sheet was filed against him. It is further submitted that Naresh Kumar Jain, had also given an affidavit that on 16-7-2006, he had given Rs. 10,000/- to Mohar Singh at Shivpuri Railway Station, Ex. D. 16. Affidavit of Naval Singh Sikarwar was also filed to the effect that he had gone to Gwalior Railway Station to leave the Appellant Mohar Singh, Ex. D.17. The Railway Ticket is Ex. D. 18. Report regarding timing of departure of Intercity Train, received from Railway Department is Ex. D.20. The application form for reservation is Ex. P.49. The reservation chart is Ex. D. 21. Report received from Railway Department is Ex. D.22. The ID proof of Mohar Singh is Ex. D.24 and Railway concession certificate is Ex. D.25.

193. The Appellant Mohar Singh has examined Manish Kumar Shukla (D.W.2) to prove that he had travelled in Intercity Train on 16-7-2006. Manish Kumar Shukla (D.W. 2) was posted as T.T.E., Railway Department. He has stated that on 16-7-2006, Intercity Train had departed from Gwalior Railway Station at 7:40 P.M. He had checked the Railway Ticket, Ex. D.18. The ticket was checked inside the train. This ticket is of handicapped category. The reservation chart is Ex. D.23. According to reservation chart, the name of M.S. Yadav is mentioned against seat no. 17 and name of Dinesh Singh is mentioned against seat no. 20. He had checked the ID, Ex.D.24 and concession certificate, Ex. D.25. Thereafter, he clarified that he had not checked I.D. Ex. D.24 and had merely checked concession certificate, Ex. D.25. He also stated that

he cannot recollect as to whether he had matched the photograph on the concession certificate with the Appellant Mohar Singh or not? This witness was cross-examined.

194. In cross-examination, he admitted that the residential address of Mohar Singh Yadav in application for reservation, Ex. P.49 is mentioned as Mohar Singh Yadav, 28-A, Subhash Nagar, Gwalior. Date is mentioned as 16-7-2006. Whereas in the concession certificate, Ex. D.25, the address of Mohar Singh is mentioned as Pinto Park, Jaderua, Near Surya Mandir. Thus, there is a difference between the addresses mentioned on Ex. P.49 and Ex. D.25. He further stated that some times, they check the ticket even before the departure of train. He could not recollect as to whether he had already checked the ticket on the railway station itself or not? He clearly admitted that today he cannot identify the passenger. He cannot identify the Appellant Mohar Singh.

195. Thus, it is clear that this witness was not in a position to identify the Appellant, therefore, a doubt is created as to whether M.S. Yadav who had travelled on 16-7-2006 was the Appellant Mohar Singh or not?

196. From the Railway Ticket, Ex. D. 18, it is clear that the said ticket was issued for two persons and its No. was 43991398. From the reservation chart, Ex. D.21, it is clear that the name of co-passenger was Dinesh Singh. Therefore, under these circumstances, Dinesh was an important witness to disclose as to whether Mohar Singh Yadav had actually travelled or not? But for the reasons best known to the Appellant Mohar Singh, Dinesh Singh has not been examined.

197. Naresh Kumar Jain (D.W.1) has stated that at the relevant time, he was working in Jai Mahavir Swami Primary Up-Bhandar Sahkari Samiti

and was staying as a tenant in the house of Jagdish Sharma, Sidheshwar Colony. On 16-7-2006, he received a telephonic call from Mohar Singh that he is in need of Rs.10,000/-, therefore, he went to Shivpuri Railway Station and gave Rs. 10,000/- to Mohar Singh who was travelling in Intercity Train. He had also given his affidavit, Ex. D.16. This witness was cross-examined. He claimed that he was a private employee of Society. He could not give the details of office bearers of the society. He could not produce any document to show that he was an employee of the society. He claimed that his monthly salary was Rs. 5,000/- and was also in possession of entire money of Society. He denied that he is the resident of Ishagarh. He clarified that although his birth is of Ishagarh but he resides in Gwalior.

198. It is clear from the evidence of this witness, he failed to prove that he was an employee of Society. He claims to have paid Rs. 10,000/- to Mohar Singh on 16-7-2006, whereas his monthly salary was only Rs. 5,000/-. He also claimed that he had given the money out of the account of Society. Although it is his evidence, that he had various money transactions with Mohar Singh, but it is really surprising that when his monthly salary was only Rs. 5,000/-, then how he can have various money transactions with Mohar Singh? Further, it is the case of this witness, he had given Rs.10,000/- by misappropriating the money of the Society, but he did not clarify that on what date, he returned the amount to the Society. He did not clarify that upto which date, he had worked in the Society. It is also the case of the Appellant Mohar Singh that Naval Singh Sikarwar had left him at the Railway Station Gwalior. Then why Mohar Singh was not carrying money with him ?

199. Thus, the evidence of Naresh Kumar Jain (D.W.1), to the effect that he had given Rs. 10,000/- to Mohar Singh at Shivpuri Railway Station is false and cannot be relied upon.

200. The Appellant Mohar Singh has not examined Naval Singh Sikarwar as his defence witness.

201. Further more, in the application for reservation, Ex. P.49, the address of the Appellant Mohar Singh is mentioned as "Mohar Singh Yadav, 28-A, Subhash Nagar, Gwalior", whereas in the concession certificate, Ex. D. 25 and ID proof, Ex. D.24, the address of Appellant Mohar Singh is mentioned as "Pinto Park, Jaderua, Near Surya Mandir, Gwalior". Even in the arrest memo,Ex. P.48 the address of Mohar Singh is mentioned as "Surya Vihar Colony, Pinto Park, Gwalior".

202. Further in the reservation chart, Ex. D.21, the name of passenger is mentioned as M.S. Yadav and ticket no. is mentioned as 3032, whereas according to Railway Ticket, Ex. D.18, the ticket No. is 43991398.

203. Further more, according to Mohar Singh, he went to Indore by Intercity Train, but has not examined any witness to show that at which place, he had stayed in Indore. The Appellant Mohar Singh has also not disclosed the reasons for going to Indore.

204. Above all, the Appellant Mohar Singh did not raise any such plea in his statement under Section 313 of Cr.P.C.

205. The Supreme Court in the case of **Phula Singh v. State of H.P.,** reported in **(2014) 4 SCC 9** has held as under :

> **10.** We do not find any force in the submission advanced by Shri D.K. Garg that it is the prosecution which has to establish each and every fact and the accused has a right only to maintain silence.
>
> **11.** The accused has a duty to furnish an explanation in his

> statement under Section 313 CrPC regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 CrPC is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law. (Vide *Ramnaresh* v. *State of Chhattisgarh*, *Munish Mubar* v. *State of Haryana* and *Raj Kumar Singh* v. *State of Rajasthan*.)

206. The Supreme Court in the case of **Edmund S. Lyngdoh v. State of Meghalaya,** reported in **(2016) 15 SCC 572** has held as under :

> **21.** Where the accused gives evasive answers in his cross-examination under Section 313 CrPC, an adverse inference can be drawn against him. But such inference cannot be a substitute for the evidence which the prosecution must adduce to bring home the offence of the accused. The statement under Section 313 CrPC is not evidence. In *Bishnu Prasad Sinha* v. *State of Assam*, this Court held that conviction of the accused cannot be based merely on his statement recorded under Section 313 CrPC which cannot be regarded as evidence. It is only the stand or version of the accused by way of explanation explaining the incriminating evidence/circumstances appearing against him. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to other evidence led by the prosecution. The statements made under Section 313 CrPC must be considered not in isolation but in conjunction with the other prosecution evidence.

207. Thus, this Court is of the considered opinion, that the Appellant Mohar Singh has failed to prove his plea of alibi.

Appellant Dinesh Jat

208. The Appellant Dinesh Jat had also taken the plea of alibi and examined G.L. Verma (D.W.6). He has stated that he was working as

Medical Officer, Distt. Hospital, Datia. He had examined Dinesh Jat on 15-7-2006, 16-7-2006 and 17-7-2006 for stomach ache and vomiting. Dinesh Jat was never hospitalized. The OPD prescription is Ex. D.36. In cross-examination, he admitted that Dinesh Jat is not the resident of Datia. He was also unable to disclose the address of Dinesh Jat. However, he claimed that Dinesh Jat was brought by Satish Shivhare. However, it is clear from the prescription, Ex D.37, there is no mention of name of Satish Shivhare. Further more, initially date 17-7 was mentioned as 17-12 and thereafter, month "12" was scored out and it was made "7". How, Dr. G.L. Verma (D.W.6) can write the month as "12", if he was continuously preparing prescription in the month of July? The mention of month "12" which was subsequently scored out in order to make "7", clearly shows that this prescription was not prepared in the month of July. Furthermore, this witness has admitted that an O.P.D. register is maintained at the hospital level. However, the said OPD register was not produced. He also admitted that on 15,16 and 17-7-2006, the patient never remained in front of him for the entire period. He also admitted that he generally examine 250-300 patients per day but admitted that he doesnot remember their names. He also admitted that he did not advise for ultra sound or x-ray.

209. Dinesh Jat was not the resident of Datia and therefore, there was no need for him to get himself examined in Distt. Hospital, Datia for continuous three days. Furthermore, Dinesh Jat never remained admitted in the said hospital. Datia is approximately 75 Kms. away from Gwalior. The incident in question took place on 16-7-2006 at 20:30. Therefore, it cannot be said that the presence of Dinesh Jat at the place of incident was

impossible. Furthermore, Dinesh Jat was not suffering from any serious ailment.

210. Thus, it is held that the Appellant Dinesh Jat also failed to prove his plea of alibi.

Whether circumstances are proved against the Appellants

Seizure of Scorpio and weapons

211. A cream coloured Scorpio vehicle was seized on 17-7-2006 at about 8 A.M. from the house of Mohar Singh.

212. On 15-9-2006, 4 rounds of live .315 bore cartridges, 2 empty cartridges of .315 bore, one arms license in the name of Ghanshyam were seized from the house of Appellant Cheeku @ Sohan Singh, Ex. P.25.

213. On 20-9-2006, one .315 bore single shot *Adhiya* was seized from the possession of Appellant Cheeku @ Sohan Singh vide seizure memo Ex. P.27.

214. On 15-9-2006, 3 rounds of live .315 bore cartridges, 2 empty cartridges of .315 bore were seized from the possession of Rustam Singh vide seizure memo Ex. P.29.

215. On 20-9-2006, one .315 bore single shot was seized from the possession of Rustam Singh vide seizure memo Ex. P.31.

216. On 29-6-2006, on .315 bore single shot gun was seized from the possession of Balli @ Balveer vide seizure memo Ex. P.33.

217. On 18-7-2006, vide seizure memo Ex. P.44, two front seat covers of Safari car of the deceased Sughar Singh, front passenger seat cover and a towel having blood stains and hairs of deceased Sughar Singh and two gun shot holes, six pieces of bullet from the front passenger seat, white seat covers of middle row containing the blood of Yuvraj, three

pieces of bullets recovered from the right gate of the vehicle, broken pieces of glass lying in the vehicle were seized.

218. On 8-6-2007, on the memorandum of Kaptan Singh, one .12 bore gun was seized from the shop of Chetram Jain, along with license vide seizure memo Ex. P.51.

219. The Seized articles were sent to F.S.L. Sagar for forensic examination.

220. It is submitted by the Counsel for the Appellants that in order to prove circumstantial evidence, the prosecution must prove each and every chain, thereby leaving no room for doubt that it was the accused only who had committed the offence.

221. Considered the submissions made by the Counsel for the Appellants.

222. .315 bore single shot gun was seized from the possession of Balli @ Balveer, one .12 bore gun was seized from Chetram on the information given by Kaptan Singh, .315 bore single shot was seized from Rustam Singh, .315 bore *Adhiya* was seized from the possession of Cheeku @ Sohan Singh.

223. The Supreme Court in the case of **Suresh v. State of Haryana,** reported in **(2018) 18 SCC 654** has held as under :

> **32.** After having appreciated the evidence of certain crucial witnesses, we would like to clarify at the outset that this is a case of circumstantial evidence. Jurisprudentially the meaning of circumstantial evidence has never been settled. Although we may not require a detailed analysis of the jurisprudential dichotomy which exists as to what amounts to "circumstantial evidence", we may indicate certain precedents and legal literature have given a definite shape for the aforesaid term. In Thomas Starkie: A Practical Treatise on the Law of Evidence,

and Digest of Proofs, in Civil and Criminal Proceedings (Vol. I, 4th Edn., 1876), it is said that:

> "In criminal cases, proof that the party-accused was influenced by a strong motive of interest to commit the offence proved to have been committed, although exceedingly weak and inconclusive in itself, and although it be a circumstance which ought never to operate in proof of the corpus delicti, yet when that has once been established aliunde, it is a circumstance to be considered in conjunction with others which plainly tend to implicate the accused."

33. Sir Fitz James Stephen, while writing his Introduction to Indian Evidence Act, 1872, writes as under:

> Facts relevant to the issue are facts from the existence of which inferences as to the existence of the facts in issue may be drawn.
>
> A fact is relevant to another fact when the existence of the one can be shown to be the cause or one of the causes, or the effect or one of the effects, of existence of the other, or when the existence of the one, either alone or together with other facts, renders the existence of the other highly probable, or improbable, according to the common course of events.

34. Wharton's Criminal Evidence (1955):

> "In prosecutions for homicide, as in criminal prosecutions generally, evidence to show motive is competent and considerable latitude is allowed in its introduction. When proof has been made of the corpus delicti, all facts and circumstances that tend to show motive on the part of the accused are relevant."

35. Peacock v. R., expounded the circumstantial evidence to mean:

> Whether the fact, or that body of facts which is called the 'case' is capable of bearing a particular inference, is for the court, and unless it is so capable, the court's duty is to withhold it from the jury, as a single fact or as a case. But when the case is undoubtedly capable of the inference of guilt, albeit some other inference or theory

be possible, it is for the jury, properly directed, and for them alone, to say not merely whether it carries a strong probability of guilt, but whether the inference exists actually and clearly, and so completely overcomes all other inferences or hypotheses, as to leave no reasonable doubt of guilt in their minds.

(emphasis supplied)

36. In Anant Chintaman Lagu v. State of Bombay, this Court defined "circumstantial evidence": (AIR p. 523, para 68)

68. Circumstantial evidence in this context means, a combination of facts creating a network through which there is no escape for the accused, because the facts taken as a whole do not admit of any inference but of his guilt."

37. In line with the aforesaid definition, this Court in a catena of cases has expounded the test of "complete chain link theory" for the prosecution to prove a case beyond reasonable doubt based on the circumstantial evidence. In Hanumant v. State of M.P. [hereinafter referred as "Hanumant case" for brevity], this Court explained one of the possible ways to prove a case based on circumstantial evidence, in the following manner: (AIR pp. 345-46, para 10)

"10. … 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."

38. It was for the first time that this Court formulated a test concerning circumstantial evidence. Subsequently, the aforesaid test was applied on multiple occasions by this Court in Deonandan Mishra v. State of Bihar and Govinda Reddy v. State of Mysore.

39. In Charan Singh v. State of U.P., this Court expounded the proposition laid down in Hanumant Singh, and observed as under: (AIR p. 522, para 5)

> "5. It is well established 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 the circumstances so established should be consistent only with the hypothesis of the guilt of the accused person; that is, the circumstances should be of such a nature as to reasonably exclude every hypothesis but the one proposed to be proved. To put it in other words, the chain of evidence must be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused person."
>
> (emphasis supplied)

We may note that this Court for the first time explained the general test applicable for evaluating circumstantial evidence and brought in the concept of "completion of chain of evidence".

41. The aforesaid tests are aptly referred as Panchsheel of proof in Circumstantial Cases (refer to Prakash v. State of Rajasthan). The expectation is that the prosecution case should reflect careful portrayal of the factual circumstances and inferences thereof and their compatibility with a singular hypothesis wherein all the intermediate facts and the case itself are proved beyond reasonable doubt.

42. Circumstantial evidence are those facts, which the court may infer further. There is a stark contrast between direct evidence and circumstantial evidence. In cases of circumstantial evidence, the courts are called upon to make inferences from the available evidence, which may lead to the accused's guilt. In majority of cases, the inference of guilt is usually drawn by establishing the case from its initiation to the point of commission wherein each factual link is ultimately based on evidence of a fact or an inference thereof. Therefore, the courts have to identify the facts in the first place so as to fit the case within the parameters of "chain link theory" and then see whether the case is made out beyond reasonable doubt. In India we have for a long time followed the "chain link theory" since Hanumant case, which of course needs to be followed herein also.

224. The Supreme Court in the case of **Sharad Birdhichand Sarda v. State of Maharashtra,** reported in **(1984) 4 SCC 116** has held as under :

> **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* where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]
>
> "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.

225. The present case is based on direct evidence of injured eye-witness Yuvraj (P.W.1), eye-witness and complainant Hariom (P.W.6) and eye-witness Umesh (P.W.7). Where direct ocular evidence is trustworthy, then circumstantial evidence would merely corroborate the direct evidence. Under these circumstances, the recovery of weapons from Rustam, Kaptan Singh, Cheeku @ Sohan Singh and Balli @ Balveer also corroborates the direct evidence of Yuvraj (P.W.1), Hariom (P.W.6) and Umesh (P.W.7).

Whether some of the Appellants were over implicated by the witnesses

Delayed FIR

226. It is submitted by the Counsel for the Appellants that the complainant party has implicated various accused persons as per their ill-designs. In Dehati Nalishi, Ex. P.8, Hariom (P.W.6) had named only 5 assailants namely Rustam, Mohar Singh, Kallu, Cheeku @ Sohan Singh and Balli @ Balveer and alleged that 3-4 more persons were also there who were firing gun shots. The names of Sitaram and Mahendra were mentioned as conspirators. Thereafter, in his police statement, Ex. D.10 recorded on 17-7-2006 itself, only same 5 persons were named and it was also alleged that 3-4 persons were also firing. Thereafter, Hariom (P.W.6) in his police statement, Ex. D.11 introduced Maharaj Singh, Amar Singh, Ghanshyam, Dinesh Jat, Dinesh Yadav, Kaptan Singh and Autar Singh also. Police Statement of Yuvraj (P.W.1) was recorded on 17-7-2006, and names of Autar, Kaptan, Mohar Singh, Cheeku @ Sohan Singh, Kallu @ Kalyan, Bablu @ Ballu, Balli @ Balveer, Dinesh Jat, Dinesh Yadav were also introduced apart from Rustam Singh who was

already named in his statement, Ex. D.4. Thus, it is clear that since, the complainant party has developed the story falsely in order to implicate innocent persons, therefore, it is clear that the prosecution witnesses are not reliable.

227. Considered the submissions made by the Counsel for the Appellants.

228. The Latin Maxim *Falsus in uno Falsus in omnibus* has no application in India. The Supreme Court in the case of **Shakila Abdul Gafar Khan v. 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.*)
>
> **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.* and *Ugar Ahir* v. *State of Bihar.*) 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.* and *Balaka Singh* v. *State of Punjab*.) As observed by this Court in *State of Rajasthan* v. *Kalki* 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*, *Gangadhar Behera* v. *State of Orissa* and *Rizan* v. *State of Chhattisgarh*.

229. This Court has already considered the evidence of the prosecution witnesses in detail. Therefore, by applying the principle of removing the grain from chaff, the entire evidence of prosecution witnesses cannot be rejected and a part of evidence of prosecution witnesses, which inspires confidence of the Court shall be relied upon.

Whether investigation had started before recording of FIR and whether the investigation is bad on that ground or not?

230. It is submitted by the Counsel for the Appellants that it is clear that spot map, Ex. P.9 and seizure of articles from the spot vide seizure memos, Ex. P. 16, P.17, P.18 was done much prior to registration of FIR, therefore, the investigation is bad in law.

231. Considered the submissions made by the Counsel for the Appellants.

232. It is true that Dehati Nalishi, Ex. P.8 was recorded at 1:00 A.M. on 17-7-2006, whereas the spot map was prepared 16-7-2006 and various articles were seized from the spot on 16-7-2006 itself. Now the question for consideration is that whether the preparation of spot map and seizure of cartridges, Safari Car, rifle from the Safari Car, seizure of blood stained seat covers of Safari car etc is bad in law or not?

233. Muneesh Rajoria (P.W.18) has stated that he received a telephonic information that firing is going on at Pinto Park and several persons have sustained injuries and accordingly after recording said information in Rojnamchasanha No. 908 at 20:30, he rushed to the spot along with police personals. Thus, it is clear that the telephonic information received by Muneesh Rajoria (P.W.18) was cryptic one. However, one thing is clear that the police reached on the spot, after receiving an information of commission of cognizable offence.

234. The incident had taken place on the public street, where number of persons had died and some had sustained injuries. Further more, the deceased Sughar Singh was a sitting Councilor, therefore, the situation on the spot can be presumed. The Appellants themselves had given suggestion to the witnesses, that on the next day, the entire market was closed in protest. Under these circumstances, if the investigating officer

Muneesh Rajoria (P.W.18) decided to protect the spot by making seizure of fired cartridges, damaged Safari Car, Rifle which was lying inside the Safari Car, Live cartridges from the spot, etc. as well as to prepare the spot map, Ex. P.8, then it cannot be said that the said act of the investigating officer was in complete disregard to the Criminal Law. The police had already received an information and any thing done in order to collect the evidence from the public street, then it would not nullify that part of the investigation. It cannot be said that the police was not having any complaint/information about commission of cognizable offence.

235. The Supreme Court in the case of **Sambhu Das @ Bijoy Das and another Vs. State of Assam** reported in **AIR 2010 SC 3300** has held as under :

> **20**. Section 157 of the Code says that if, from the information received or otherwise an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered to investigate, he shall forthwith send a report of the same to the Magistrate concerned and proceed in person to the spot to investigate the facts and circumstances of the case, if he does not send a report to the Magistrate, that does not mean that his proceedings to the spot, is not for investigation. In order to bring such proceedings within the ambit of investigation, it is not necessary that a formal registration of the case should have been made before proceeding to the spot. It is enough that he has some information to afford him reason even to suspect the commission of a cognizable offence. Any step taken by him pursuant to such information, towards detection etc., of the said offence, would be part of investigation under the Code.
>
> **21**. In Maha Singh v. State (Delhi Administration), [(1976) 1 SCC 644] : (AIR 1976 SC 449), this court considered a case in which police officer arranged a raid after recording a complaint, but before sending it for registration of the case. It was held in that case that "the moment the Inspector had

> recorded a complaint with a view to take action to track the offender, whose name was not even known at that stage, and proceeded to achieve the object, visited the locality, questioned the accused, searched his person, seized the note and other documents, turns the entire process into investigation under the Code.
>
> **22**. In State of U.P. v. Bhagwant Kishore, [AIR 1964 SC 221], this court stated that "Though ordinarily investigation is undertaken on information received by a police officer, the receipt of information is not a condition precedent for investigation."
>
> **23**. The principles now well settled is that when information regarding a cognizable offence is furnished to the police that information will be regarded as the FIR and all enquiries held by the police subsequent thereto would be treated as investigation, even though the formal registration of the FIR takes place only later.

236. Thus, the police had information with regard to commission of cognizable offence. Further more, the police had merely tried to save the evidence which was available on the spot. Thus, it cannot be said that preparation of spot map, Ex. P.8 and seizure of articles from the spot by seizure memos Ex. P.16, P.17 and P.18 are vitiated. Even the investigation would not stand vitiated on this ground.

Conclusion with regard to Appellants Kaptan Singh, Rustam, Mohar Singh, Cheeku, Dinesh Jat and Balli @ Balveer

237. It is submitted by the Counsel for the Appellants that the Supreme Court in the case of **Vikramjit Singh @ Vicky (Supra)** has held as under :

> **27.** We have noticed hereinbefore that both the learned Sessions Judge as also the High Court proceeded to compare the probabilities of two views. It is now beyond any cavil that where two views of a story appear to be probable, the one that was contended by the accused should be accepted. (See *K.*

Gopal Reddy v. *State of A.P.*, *Sharad Birdhichand Sarda* v. *State of Maharashtra*, *Tota Singh* v. *State of Punjab*, *Divakar Neelkantha Hegde* v. *State of Karnataka*, *State of Orissa* v. *Babaji Charan Mohanty* and *Hem Raj* v. *State of Haryana*.)

238. Considered the submissions made by the Counsel for the Appellants.

239. This Court has already considered the evidence led by the prosecution as well as the accused persons. The evidence of Yuvraj (P.W.1), Hariom (P.W.6) and Umesh (P.W.7) has been found to be reliable. When the prosecution case is based on direct evidence and the same has been found to be reliable, and the plea of ablibi, false implication, etc are found to be unreliable, then it cannot be said that there are two possible views. Only when two views are possible, then the one contended by the accused should be accepted, but not otherwise.

Rustam Singh

240. Yuvraj (P.W.1) in his statement, Ex. D.4, which was made to Dr. Nitin Prasad, had specifically stated that Rustam Singh fired the first gun shot. Yuvraj (P.W.1) in his police statement, Ex. D.3 recorded on 17-7-2006 has also specifically named Rustam. Yuvraj (P.W.1) has also specifically alleged in his Court evidence against Rustam. Hariom (P.W.6) in his Dehati Nalishi, Ex. P.1, police statement, Ex. D.10, Ex. D.11 and in his Court evidence, has also specifically alleged against Rustam Singh. Similarly, Umesh (P.W.7) has also specifically alleged against Rustam. Thus, all the prosecution witnesses have specifically alleged against the Appellant Rustam and have assigned the same role. Apart from that, as per FSL report, EC4, EC5 are two .315 bore fired cartridges which were seized from Rustam Singh on 15-9-2006. They

were compared with broken pieces of bullets seized from the spot, they were found to be similar. Thus, the guilt of Rustam Singh is proved beyond reasonable doubt.

Kaptan Singh

241. Kaptan Singh was named by Yuvraj (P.W.1) in his police statement, Ex. D.3 as well as in his Court evidence. Similarly, Kaptan Singh was named by Hariom (P.W.6) in his police statement, Ex. D.11 and Court evidence. Name of Kaptan Singh was disclosed to Hariom (P.W.6) by Yuvraj (P.W.1) and Umesh (P.W.7). Umesh (P.W.7) has also alleged Kaptan Singh. The Appellant Kaptan Singh was allegedly carrying .12 bore gun which was also seized on his information from Chetram. Pieces of .12 bore cartridges were also recovered from the body of the deceased Sughar Singh. Thus, the guilt of Kaptan Singh is proved beyond reasonable doubt.

Cheeku @ Sohan Singh

242. Cheeku @ Sohan Singh was named by Yuvraj (P.W.1) in his police statement, Ex. D.3 as well as in his Court evidence. Cheeku @ Sohan Singh was also named by Hariom (P.W.6) in his Dehati Nalishi, Ex. P.8, Police Statement, Ex. D.10, Police Statement, Ex. D.11 and Court evidence. Umesh (P.W.7) has also specifically named Cheeku @ Sohan Singh. .315 bore single shot pistol was seized from the possession of Cheeku @ Sohan Singh, which was marked as A3 as per FSL report. The said firearm was found to be used as per the FSL report. Thus, the guilt of Cheeku @ Sohan Singh is also proved beyond reasonable doubt.

Dinesh Jat

243. Dinesh Jat was named by Yuvraj (P.W.1) in his police statement,

Ex. D.3 as well as in his Court evidence. Hariom (P.W.6) has stated against Dinesh Jat in his police statement, Ex. D.11 as well as in his Court evidence although, the name of Dinesh Jat was disclosed by Hariom (P.W.6) on the information given by Yuvraj (P.W.1) and Umesh (P.W.7). Umesh (P.W.7) has also alleged against Dinesh Jat. Dinesh Jat was driving the Scorpio car. Thus, his guilt is proved beyond reasonable doubt.

Balli @ Balveer

244. Balli @ Balveer was named by Yuvraj (P.W.1) in his police statement, Ex. D.3 as well as in his Court evidence. Balli @ Balveer was also named by Hariom (P.W.6) in his Dehati Nalishi, Ex. P.8, Police Statement, Ex. D.10, Police Statement, Ex. D.11 and Court evidence. Umesh (P.W.7) has also specifically named Balli @ Balveer. Single Shot gun was seized from the possession of Balli @ Balveer. Empty cartridges were also seized from Balli @ Balveer. As per F.S.L. report, the empty cartridges were fired from the gun seized from the possession of Balli @ Balveer. Therefore, the guilt of Balli @ Balveer is proved beyond reasonable doubt.

Mohar Singh

245. Mohar Singh was named by Yuvraj (P.W.1) in his police statement, Ex. D.3 as well as in his Court evidence. Mohar Singh was also named by Hariom (P.W.6) in his Dehati Nalishi, Ex. P.8, Police Statement, Ex. D.10, Police Statement, Ex. D.11 and Court evidence. Umesh (P.W.7) has also specifically named Mohar Singh. Mohar Singh has also failed to prove his plea of alibi. Thus, the guilt of Mohar Singh is proved beyond reasonable doubt.

246. Accordingly, it is held that Rustam Singh, Kaptan Singh, Mohar Singh, Cheeku @ Sohan Singh, Balli @ Balveer and Dinesh Jat have been rightly convicted by the Trial Court for offence under Section 302/149 (3 counts), 147 and 148 of IPC.

Criminal Appeal No. 122 of 2014 filed by State against acquittal of Mahendra Singh, Sitaram, Ghanshyam, and Amar Singh.

247. Before considering the arguments advanced in an appeal against acquittal, this Court would like to consider the law governing the scope of interference in an appeal against acquittal.

248. The Supreme Court in the case of **State (Delhi Admn.) v. Laxman Kumar,** reported in **(1985) 4 SCC 476** has held as under :

> 45.....Mr Singh has pleaded forcefully that we should not interfere with the judgment of acquittal as it is based on a reasonable view of the matter merely by reappreciating the evidence. The scope of an appeal against acquittal and the scope of this Court's jurisdiction in such a matter are well settled. The preponderance of judicial opinion in this Court is that there is no difference between an appeal against conviction and an appeal against acquittal except that when dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set on the materials on record, the acquittal may not be interfered with.....

249. The Supreme Court in the case of **Jaisingh v. State of Karnataka,** reported in **(2007) 10 SCC 788** has held as under :

> **2.** It has been argued by Mr Sushil Kumar, the learned counsel for the accused-appellants that the trial court had acquitted the accused on a minute appreciation of the evidence and arrived at conclusions clearly possible on that evidence and in this circumstance the High Court was not justified in reversing the

> acquittal. He has submitted that though the jurisdiction of the High Court in an appeal against acquittal was as wide and unfettered as in the case of a conviction appeal yet the presumption that an accused was innocent until proved guilty was further strengthened when the trial court made an order of acquittal and in this view of the matter extra care and caution was required if the acquittal was to be reversed. He has in this connection placed reliance on the judgment in *Chandrappa* v. *State of Karnataka*.
>
> * * * *
>
> **4.** We have considered the arguments advanced by the learned counsel. From a perusal of the judgment in *Chandrappa case* we observe that though the powers of the High Court in an acquittal appeal are not circumscribed and are clearly unfettered, the situation under which they should be resorted to have been spelt out. The broad principle is that the presumption of innocence is strengthened if an accused is acquitted by the trial court and that a reversal of the trial court's judgment should be made in cases where the view taken was not possible on the evidence or perverse with the broad understanding that if two views were possible, the one taken by the trial court in favour of the accused should be retained.

250. The Supreme Court in the case of **Anil Kumar v. State of U.P.,** reported in **(2004) 13 SCC 257** has held as under :

> **9.** There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. 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 where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See *Bhagwan Singh* v. *State of M.P.*) 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 and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra*, *Ramesh Babulal Doshi* v. *State of Gujarat*, *Jaswant Singh* v. *State of Haryana*, *Raj Kishore Jha* v. *State of Bihar*, *State of Punjab* v. *Karnail Singh*, *State of Punjab* v. *Phola Singh* and *Suchand Pal* v. *Phani Pal*.

251. The Supreme Court in the case of **Sethu Madhavan Nair v. State of Kerala,** reported in **(1975) 3 SCC 150** has held as under :

14. In an appeal under Section 417 of the Code of Criminal Procedure against an order of acquittal, the High Court 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 view 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 real and reasonable 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 High Court should also take into account the reasons given by the court below in support of its order of acquittal and must express its reasons in the judgment which lead it to hold that the acquittal is not justified. Further, if two conclusions can be based upon the

evidence on record, the High Court should not disturb the finding of acquittal recorded by the trial court. It would follow as a corollary from that that if the view taken by the trial court in acquitting the accused is not unreasonable, the occasion for the reversal of that view would not arise.

252. The Supreme Court in the case of **Mathai Methews v. State of Maharashtra,** reported in **(1970) 3 SCC 772** has held as under :

5. It is now well-settled that the power of an appellate court to review evidence in appeals against acquittals is as extensive as its power in appeals against convictions. It is also well-settled that before an appellate court can set aside an order of acquittal, it must carefully consider the reasons given by the trial court in support of its order and must give its own reasons to reject those reasons. If a finding reached by the 'trial Judge cannot be said to be a unreasonable finding then the appellate court should not disturb that finding even if it is possible to reach a different conclusion on the basis of the material on record. It should bear in mind the presumption of innocence of the accused and the fact that the Trial Judge had the advantage of seeing and hearing the witnesses. In brief, the appellate court should not disturb an order of acquittal except on very cogent grounds. On an examination of the entire material on record we have come to the conclusion that the High Court was not justified in setting aside the order of the trial court.

253. The Supreme Court in the case of **Suchand Pal v. Phani Pal,** reported in **(2003) 11 SCC 527** has held as under :

8. The respective stands need careful consideration. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. 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 where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See *Bhagwan Singh* v. *State of M.P.*) 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 and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra*, *Ramesh Babulal Doshi* v. *State of Gujarat*, *Jaswant Singh* v. *State of Haryana*, *Raj Kishore Jha* v. *State of Bihar*, *State of Punjab* v. *Karnail Singh* and *State of Punjab* v. *Phola Singh*.

254. As a judgment of acquittal is in favor of the accused, then a presumption of his innocence can be drawn, however, while considering the appeal against acquittal, the High Court exercises the same power which are exercised while considering the appeal against conviction. However, the golden thread is that if two views are possible, then while deciding the appeal against acquittal, the Court should not disturb the view which was taken by the Trial Court in favor of the accused. The judgment of acquittal can be reversed only when it is based on perverse findings.

255. Therefore, this Court would consider the facts of the case in the light of law as mentioned above.

256. **Ghanshyam** has expired during the pendency of the appeal and accordingly by order dated 29-11-2016, his name was deleted and appeal

filed against the acquittal of Ghanshyam was dismissed as abated.

257. So far as the acquittal of **Sitaram, Mahendra Singh,** and **Amar Singh** is concerned, they were primarily tried on the basis of evidence of Bhajju (P.W.4). The allegations against these three accused persons was that they were involved in conspiracy. This Court has already disbelieved the evidence of Bhajju (P.W.4). Therefore, there is no other admissible evidence against Sitaram, Mahendra Singh and Amar Singh. The Trial Court has rightly rejected the evidence of the witnesses to the effect that two days prior to the incident, Hariom (P.W.6) had warned Sughar Singh that Rustam Singh are looking for killing him. This Court has already rejected the evidence of Bhajju (P.W. 4). There is no other convincing evidence to prove the conspiracy. Accordingly, their acquittal by the Trial Court is **maintained.**

Criminal Appeal No. 122/2014 filed by State against Acquittal of Bablu @ Ballu

258. The Trial Court has acquitted Bablu @ Ballu by ignoring the evidence of Yuvraj (P.W.1), Hariom (P.W.6) and Umesh (P.W.7).

259. It appears that no separate reason has been assigned by the Trial Court for acquitting Bablu @ Ballu. The Trial Court has convicted only those accused either from whom some firearm was seized, or was driving the vehicle or has failed to prove his plea of alibi. The Trial Court failed to see that non-recovery of weapon of offence cannot be a criteria for acquitting an accused.

260. The Supreme Court in the case of **Rakesh Vs. State of U.P.** reported in **(2021) 7 SCC 188** has held as under :

> **12.** Now so far as the submission on behalf of the accused that as per the ballistic report the bullet found does not match with

> the firearm/gun recovered and therefore the use of gun as alleged is doubtful and therefore benefit of doubt must be given to the accused is concerned, the aforesaid cannot be accepted. At the most, it can be said that the gun recovered by the police from the accused may not have been used for killing and therefore the recovery of the actual weapon used for killing can be ignored and it is to be treated as if there is no recovery at all. For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non.....

261. The Supreme Court in the case of **Gulab Vs. State of U.P.** by order **dated 9-12-2021** passed in **Cr.A. No. 81/2021** has held as under :

> **17.** The deceased had sustained a gun-shot 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.....

262. The Supreme Court in the case of **Krishna Gope v. State of Bihar,** reported in **(2003) 10 SCC 45** has held as under :

> **8.** Learned counsel further pointed out that the country-made firearm alleged to have been used by the appellant was not recovered by the police and the same was not sent to the police station. The learned counsel submitted that the investigation was not properly done and that the appellant is entitled to the benefit of doubt. In our view, this plea is not tenable. The house of the appellant was searched immediately after the incident, but the police could not recover the weapon of offence from his house. It appears that the appellant had succeeded in concealing the weapon before the police could search his house. In our opinion, the fact of non-recovery of the weapon from the house of the appellant does not enure to his benefit.

263. Thus, non-recovery of weapon of offence would not make the direct ocular evidence vulnerable. The Trial Court failed to consider that the role of Bablu @ Ballu has been specifically established by the prosecution by examining the eye-witnesses as well as injured witness.

264. If the evidence led by prosecution is considered in the light of the

reasons assigned by the Trial Court, then it is clear that the Trial Court has completely ignored the ocular evidence of even injured eye-witness Yuvraj (P.W.1).

265. It appears that the Trial Court has passed the judgment in a most casual manner, a gave a complete go by to the basic requirements of writing a judgment. It is not out of place to mention here that the Counsel for the Respondent/Bablu @ Ballu had given written arguments on 11-9-2022 i.e., after the hearing was concluded and in that written arguments, it has been contended as under :

> 4.4 No principle of law emerges from the judgment of trial court. Howsoever, hard one may try, such a principle doesnot emerge. The only conclusion that can be drawn from the judgment of the trial court is that the conviction as well as the acquittal of the accused persons has been the result of a whim or fancy of the trial court. The trial court seems to have convicted those accused against whom there is no evidence and **acquitted those without assigning any reason.** Once certain accused were acquitted of the charge under Section 120B IPC, trial court had no option but to examine the individual acts allegedly performed by the accused persons as collective responsibility cease to be an available option.

266. The Trial Court after having relying upon the evidence of Yuvraj (P.W.1) should not have ignored the evidence of atleast Yuvraj (P.W.1) but even that was not done. Even the role assigned to Bablu @ Ballu was not considered separately, and conveniently clubbed his case with the case of other acquitted co-accused persons, against whom the allegations were that of conspiracy. Since, the Presiding Judge has already retired, therefore, no direction is being given for any action on administrative side, however, the Registrar General is expected to look into the matter and if think necessary then, may issue necessary

instructions to the Trial Courts that while deciding the Trial, they must give separate findings with regard to individual accused after considering his role, and should not club the case of accused persons, where different roles are assigned to them.

267. Thus, the acquittal of **Bablu @ Ballu** by the Trial Court cannot be **upheld.** Accordingly, his acquittal is **set aside**.

268. **He is held guilty of committing offence under Section 302/149 (on three counts for murder of Sughar Singh, Jagdish and Sintu), 147 and 148, of IPC.**

Whether offence under Section 307 of IPC is made out ?

269. Yuvraj (P.W.1) is an injured eye-witness. The injuries sustained by him have already been reproduced in the previous paragraphs. He was sitting in the same vehicle, in which the deceased Sughar Singh was also sitting. Yuvraj (P.W.1) sustained multiple gun shot injuries. Even from the evidence of Yuvraj (P.W.1) it is clear that some times he was brought on stretcher and some times, his cross-examination was deferred because of the fact that not only the witness was found to be in pains but was also found to be under the influence of sedatives. Yuvraj (P.W.1) had suffered paraplegia. However, the Trial Court has acquitted the accused persons for offence under Section 307 of IPC only on the ground that the injuries sustained by Yuvraj (P.W.1) were not dangerous to life and therefore accused namely Rustam Singh, Kaptan Singh, Mohar Singh, Dinesh Jat, Cheeku @ Sohan Singh and Balli @ Balveer were convicted under Section 326/149 of IPC.

270. The only question for consideration is that in order to prove the guilt of an accused for offence under Section 307 of IPC, whether the

injury should be dangerous to life or not?

271. The Supreme Court in the case of **State of M.P. Vs. Kanha** reported in **(2019) 3 SCC 605** has held as under :

> **10.** Several judgments of this Court have interpreted Section 307 of the Penal Code. In *State of Maharashtra* v. *Balram Bama Patil*, this Court held that it is not necessary that a bodily injury sufficient under normal circumstances to cause death should have been inflicted: (SCC p. 32, para 9)
>
> "*9*. … To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. *The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted*. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."
>
> (emphasis supplied)
>
> This position in law was followed by subsequent Benches of this Court.
>
> **11.** In *State of M.P.* v. *Saleem*, this Court held thus: (SCC pp. 559-60, para 13)
>
> "*13*. It is sufficient to justify a conviction under Section

307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. *The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt*."

(emphasis supplied)

12. In *Jage Ram* v. *State of Haryana*, this Court held that to establish the commission of an offence under Section 307, it is not essential that a fatal injury capable of causing death should have been inflicted: (SCC p. 370, para 12)

"*12*. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (*i*) the intention to commit murder; and (*ii*) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc."

13. The above judgments of this Court lead us to the conclusion that proof of grievous or life-threatening hurt is not a sine qua non for the offence under Section 307 of the Penal Code. The intention of the accused can be ascertained from the

actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.

272. The Supreme Court in the case of **State of M.P. v. Saleem,** reported in **(2005) 5 SCC 554** has held as under :

> **11.** It is to be noted that the alleged offences are of very serious nature. Section 307 relates to attempt to murder. It reads as follows:
>
> > "307. Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned."
>
> **12.** To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

> **13.** It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.
>
> **14.** This position was highlighted in *State of Maharashtra* v. *Balram Bama Patil*, *Girija Shankar* v. *State of U.P.* and *R. Prakash* v. *State of Karnataka*.
>
> **15.** In *Sarju Prasad* v. *State of Bihar* it was observed in para 6 that mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not by itself sufficient to take the act out of the purview of Section 307.
>
> **16.** Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury.

273. Considering the manner in which offence was committed and multiple gun shot injuries caused to Yuvraj (P.W.1), it is held that the acquittal of Appellants Mohar Singh, Kaptan Singh, Rustam Singh, Cheeku @ Sohan Singh, Balli @ Balveer and Dinesh Jat for offence under Section 307/149 of IPC **cannot be upheld.**

274. Hence, the acquittal of Mohar Singh, Kaptan Singh, Rustam Singh, Cheeku @ Sohan Singh, Balli @ Balveer and Dinesh Jat **for offence under Section 326/149 of IPC is hereby set aside** and they are **convicted under Section 307/149 of IPC.**

275. Similarly, **Bablu @ Ballu** is also convicted under Section **307/149.**

Whether acquittal of Appellants Rustam Singh, Balli @ Balveer and Cheeku @ Sohan Singh for offence under Section 25/27 of Arms Act is in accordance with law ?

276. The Trial Court in para 115 of its judgment has dealt with the question of charge under Section 25/27 of Arms Act and has held that it is clear from the plain reading of charge that it was not framed properly and there is no mention of any notification. What was violated has also not been clarified properly. The Trial Court has also held that the prosecution has not produced any specific evidence in this regard, although arms were recovered from the possession of Rustam Singh, Balli @ Balveer and Cheeku @ Sohan Singh.

Section 25 and 27 of Arms Act read as under :

> **25. Punishment for certain offences**.—(1) Whoever—
> (*a*) manufactures, obtains, procures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for the sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of Section 5; or
> (*b*) shortens the barrel of a firearm or converts an imitation firearm into a firearm or convert from any category of firearms mentioned in the Arms Rules, 2016 into any other category of firearms in contravention of Section 6; or
> (*c*) * * *
> (*d*) brings into, or takes out of, India, any arms or ammunition of any class or description in contravention of Section 11,
> shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.
> (1-A) Whoever acquires, has in his possession or carries

any prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to fourteen years and shall also be liable to fine:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(1-AB) Whoever, by using force, takes the firearm from the police or armed forces shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

(1-AA) Whoever manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer or has in his possession for sale, transfer, conversion, repair, test or proof, any prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

(1-AAA)] Whoever has in contravention of a notification issued under Section 24-A in his possession or in contravention of a notification issued under Section 24-B carries or otherwise has in his possession, any arms or ammunition shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also be liable to fine.

(1-B) Whoever—

(*a*) acquires, has in his possession or carries any firearm or ammunition in contravention of Section 3; or

(*b*) acquires, has in his possession or carries in any place specified by notification under Section 4 any arms of such class or description as had been specified in that notification in contravention of that section; or

(*c*) sells or transfers any firearm which does not bear the

name of the maker, manufacturer's number or other identification mark stamped or otherwise shown thereon as required by sub-section (2) of Section 8 or does any act in contravention of sub-section (1) of that section; or

(*d*) being a person to whom sub-clause (*ii*) or sub-clause (*iii*) of clause (*a*) of sub-section (1) of Section 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section; or

(*e*) sells or transfers, or converts, repairs, tests or proves any firearm or ammunition in contravention of clause (*b*) of sub-section (1) of Section 9; or

(*f*) brings into, or takes out of, India, any arms or ammunition in contravention of Section 10; or

(*g*) transports any arms or ammunition in contravention of Section 12; or

(*h*) fails to deposit arms or ammunition as required by sub-section (2) of Section 3, or sub-section (1) of Section 21; or

(*i*) being a manufacturer of, or dealer in, arms or ammunition, fails, on being required to do so by rules made under Section 44, to maintain a record or account or to make therein all such entries as are required by such rules or intentionally makes a false entry therein or prevents or obstructs the inspection of such record or account or the making of copies of entries therefrom or prevents or obstructs the entry into any premises or other place where arms or ammunition are or is manufactured or kept or intentionally fails to exhibit or conceals such arms or ammunition or refuses to point out where the same are or is manufactured or kept,

shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to five years and shall also be liable to fine and shall also be liable to fine:

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than two year.(1-C) Notwithstanding anything contained in sub-

section (1-B), whoever commits an offence punishable under that sub-section in any disturbed area shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation.—For the purposes of this sub-section, "disturbed area" means any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order, and includes any areas specified by notification under Section 24-A or Section 24-B.

(2) Whoever being a person to whom sub-clause (*i*) of clause (*a*) of sub-section (1) of Section 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(3) Whoever sells or transfers any firearm, ammunition or other arms—

(*i*) without informing the district magistrate having jurisdiction or the officer in charge of the nearest police station, of the intended sale or transfer of that firearm, ammunition or other arms; or

(*ii*) before the expiration of the period of forty-five days from the date of giving such information to such district magistrate or the officer in charge of the police station,

in contravention of the provisions of clause (*a*) or clause (*b*) of the proviso to sub-section (2) of Section 5, shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to five hundred rupees, or with both.

(4) Whoever fails to deliver-up a licence when so required by the licensing authority under sub-section (1) of Section 17 for the purpose of varying the conditions specified in the licence or fails to surrender a licence to the appropriate authority under sub-section (10) of that section on its suspension or revocation shall be

punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to five hundred rupees, or with both.

(5) Whoever, when required under Section 19 to give his name and address, refuses to give such name and address or gives a name or address which subsequently transpires to be false shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to two hundred rupees, or with both.

(6) If any member of an organised crime syndicate or any person on its behalf has at any time has in his possession or carries any arms or ammunition in contravention of any provision of Chapter II shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

(7) Whoever on behalf of a member of an organised crime syndicate or a person on its behalf,—

(*i*) manufactures, obtains, procures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer, conversion, repair, test or proof, any arms or ammunition in contravention of Section 5; or

(*ii*) shortens the barrel of a firearm or converts an imitation firearm into a firearm or converts from any category of firearms mentioned in the Arms Rules, 2016 into any other category of firearms in contravention of Section 6; or

(*iii*) brings into, or takes out of India, any arms or ammunition of any class or description in contravention of Section 11,

shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

Explanation.—For the purposes of sub-sections (6) and (7),—

(*a*) ”organised crime” means any continuing unlawful activity by any person, singly or collectively, either as a

member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any person;

(*b*) ”organised crime syndicate” means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime.

Whoever involves in or aids in the illicit trafficking of firearms and ammunition in contravention of Sections 3, 5, 6, 7 and 11 shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

Explanation.—For the purposes of this sub-section, “illicit trafficking” means the import, export, acquisition, sale, delivery, movement or transfer of firearms and ammunition into, from or within the territory of India, if the firearms and ammunition are not marked in accordance with the provisions of this Act or are being trafficked in contravention of the provisions of this Act including smuggled firearms of foreign make or prohibited arms and prohibited ammunition.

(9) Whoever uses firearm in a rash or negligent manner or in celebratory gunfire so as to endanger human life or personal safety of others shall be punishable with an imprisonment for a term which may extend to two years, or with fine which may extend to rupees one lakh, or with both.

Explanation.—For the purposes of this sub-section, “celebratory gunfire” means the practice of using firearm in public gatherings, religious places, marriage parties or other functions to fire ammunition.

27. Punishment for using arms, etc.—(1) Whoever uses any arms or ammunition in contravention of Section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to

> seven years and shall also be liable to fine.
>
> (2) Whoever uses any prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.
>
> (3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of Section 7 and such use or act results in the death of any other person, shall be punishable with imprisonment for life, or death and shall also be liable to fine.

277. This Court as well as the Trial Court have come to a conclusion that not only Fire arms were seized from the possession of Rustam Singh, Cheeku @ Sohan Singh and Balli @ Balveer, but the injuries were caused by fire arms only. Thus, the observation made by the Trial Court, that although firearms were seized but the prosecution has not produced any convincing evidence is beyond reconciliation. Once the seizure of firearms and their use is established, then nothing more was required to be proved provided the sanction for prosecution was properly granted. The Trial Court has not commented upon the sanction which was granted for prosecution.

278. R.K. Jain (P.W.9) had granted sanction for prosecution. He has stated that in the year 2006, he was posted as Additional District Magistrate. The police had produced the case diary of crime no. 339/2006 along with application for prosecution and arms and ammunition. On .315 bore single barrel gun with one .315 bore cartridge which was seized from Rustam Singh, one .315 bore single barrel *Adhiya* with one live cartridge, and two empty cartridges which were seized from Cheeku @ Sohan Singh and one .315 bore single barrel gun which was seized from Balli @ Balveer were produced before him. After going

through the police case diary as well as the above mentioned weapons, he was satisfied that the accused persons were in possession of the same without any license. Accordingly, sanction for prosecution, Ex P.11 was granted.

279. Thus, it is clear that the prosecution has examined the authority which had granted sanction for prosecution. Even during the course arguments, the sanction for prosecution, Ex. P.11 was not challenged by the Appellants. Thus, it is clear that sanction for prosecution was validly granted.

280. So far as the vagueness of the charges, as pointed out by the Trial Court is concerned, the said observation is also not in accordance with law. None of the Appellant has claimed that the charge was vague or because of vagueness, any prejudice was caused to him. In the charges, it was specifically mentioned that Rustam Singh, Balli @ Balveer and Cheeku @ Sohan Singh were in possession of illegal firearms and were not having any license and the said weapons were used for committing offence, therefore, their act is punishable under Section 25 and 27 of Arms Act. In the considered opinion of this Court, there were sufficient ingredients in the charges framed by the Trial Court to communicate to the accused about the allegations on which they were to be tried. Further more, in absence of any complaint with regard to any prejudice caused to them, the Trial Court should not have held that since, any notification is not mentioned, therefore, the charges were vague, specifically when it has already come to a conclusion, that not only illegal firearms were seized from their possession, but all the injuries were caused by fire arms.

281. The Supreme Court in the case of **Santosh Kumari v. State of**

J&K, reported in **(2011) 9 SCC 234** has held as under :

> **15.** The provisions relating to framing of charge against the accused before the trial commences, are contained in the Code of Criminal Procedure, 1989 (1933 AD) which is applicable to the State of Jammu and Kashmir. The statute requires that every charge framed under the said Code should state the offence with which the accused is charged and if the law which creates the offence gives it any specific name, the offence should also be described in the charge by that name only. The statute further requires that the law and section of the law against which the offence is said to have been committed has to be mentioned in the charge. It is a fundamental principle of criminal law that the accused should be informed with certainty and accuracy the exact nature of the charge brought against him. The object of the statement of particulars to be mentioned in the charge is to enable the accused person to know the substantive charge he will have to meet and to be ready for it before the evidence is given. The extent of the particulars necessary to be given in the charge depends upon the facts and the circumstances of each case.
>
> **16.** It is well-settled law that in drawing up a charge, all verbiage should be avoided. However, a charge should be precise in its scope and particular in its details. The charge has to contain such particulars as to the time and place of the alleged offence and the person against whom it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged. One of the requirements of law is that when the nature of the case is such that the particulars mentioned in the charge do not give the accused sufficient notice of the matter with which he is charged, the charge should contain such particulars of the manner in which the alleged offence was committed as would be sufficient for that purpose. If *A* is accused of the murder of *B* at a given time and place, the charge need not state the manner in which *A* murdered *B*.
>
> **17.** Like all procedural laws, the Code of Criminal Procedure is devised to subserve the ends of justice and not to frustrate them by mere technicalities. It regards some of its provisions as vital but others not, and a breach of the latter is a curable

irregularity unless the accused is prejudiced thereby. It places errors in the charge, or even a total absence of a charge in the curable class. That is why we have provisions like Sections 215 and 464 in the Code of Criminal Procedure, 1973.

The object of the charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction. If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the framing of the charge is not invalidated. The essential part of this part of law is not any technical formula of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for. Sections 34, 114 and 149 IPC provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and as explained by a five-Judge Constitution Bench of this Court in *Willie (William) Slaney* v. *State of M.P.* SCR at p. 1189, the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable.

282. The Supreme Court in the case of **Chandra Prakash v. State of Rajasthan,** reported in **(2014) 8 SCC 340** has held as under :

68. The next aspect which needs to be adverted to is non-framing of specific charge. On a perusal of the record, we find that the learned trial Judge has framed the charges specifically by putting the charges to the accused. The purpose of framing of charges is that the accused should be informed with certainty and accuracy of the charge brought against him. There should not be vagueness. The accused must know the scope and particulars in detail. In this context, we may refer to decision in *Santosh Kumari* v. *State of J&K*, wherein it has been held as follows: (SCC pp. 239-40, paras 17-18)

"*17*. Like all procedural laws, the Code of Criminal Procedure is devised to subserve the ends of justice and not to frustrate them by mere technicalities. It regards some of its provisions as vital but others not, and a breach of the latter is a curable irregularity unless the accused is prejudiced thereby. It places errors in the charge, or even a total absence of a charge in the

curable class. That is why we have provisions like Sections 215 and 464 in the Code of Criminal Procedure, 1973.

18. The object of the charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction. If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the framing of the charge is not invalidated. The essential part of this part of law is not any technical formula of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for. Sections 34, 114 and 149 IPC provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and as explained by a five-Judge Constitution Bench of this Court in *Willie (William) Slaney* v. *State of M.P.*, SCR at p. 1189, the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable."

69. In *K. Prema S. Rao* v. *Yadla Srinivasa Rao*, this Court opined that though the charge specifically under Section 306 IPC was not framed, yet all the ingredients constituting the offence were mentioned in the statement of charges. In that context, a three-Judge Bench of this Court ruled that mere omission or defect in framing of charge does not disable the criminal court from convicting the accused for the offence which is found to have been proved on the evidence on record. The said principle has been reiterated in *Dalbir Singh* v. *State of U.P.*, *State of U.P.* v. *Paras Nath Singh* and *Annareddy Sambasiva Reddy* v. *State of A.P.*

283. No other argument is advanced by the Counsel for the parties.

Conclusion

284. Thus, the acquittal of Rustam Singh, Cheeku @ Sohan Singh and Balli @ Balveer for offence under Section 25/27 of Arms Act, is **hereby set aside** and they are held guilty of committing offence under Section 25(1-B)(a) and 27 of Arms Act.

285. Accordingly, the Appellants **Kaptan Singh, Mohar Singh, Cheeku @ Sohan Singh, Balli @ Balveer, Dinesh Jat, Rustam Singh and Bablu @ Ballu** are held guilty of offence under Sections 147,148,302/149 (on three counts) and under Section 307/149 of IPC.

286. Appellants **Cheeku @ Sohan Singh, Balli @ Balveer** and **Rustam Singh** are also held guilty of offence under Sections 25(1-B)(a) and 27 of Arms Act.

287. Accordingly, sentence awarded by the Trial Court to Appellants **Rustam Singh, Balli @ Balveer Singh, Cheeku @ Sohan Singh, Mohar Singh** and **Kaptan Singh** for offence under Sections 302/149 of IPC (On three counts) and under Section 148 of IPC is hereby **affirmed.**

288. However, hearing of case is deferred for hearing the Counsel for the Appellants **Rustam Singh, Balli @ Balveer Singh, Cheeku @ Sohan Singh, Mohar Singh** and **Kaptan Singh** on the question of sentence for offence under Section 307/149 as well as for hearing the Counsel for Appellants **Rustam Singh, Balli @ Balveer Singh** and **Cheeku @ Sohan Singh** on the question of sentence for offence under Sections 25(1-B)(a) and 27 of Arms Act.

289. Similarly, the hearing of the case is deferred for hearing the Counsel for the Respondent **Bablu @ Ballu** on the question of sentence for offence under Sections 302/149, 307/149, and 148 of IPC.

(G.S. AHLUWALIA)
JUDGE

(RAJEEV KUMAR SHRIVASTAVA)
JUDGE

Later on :

278. Heard the Counsel for the Appellants, State Counsel and Counsel for the Respondent Bablu @ Ballu on the question of sentence.

279. It is submitted by the Counsel for the State that the manner in which the offence was committed which resulted in death of three persons, had sent a shock wave in the society, and therefore, the respondent should be awarded death sentence, but fairly conceded that the similarly situated 6 co-accused persons were awarded Life Sentence by the Trial Court, and no appeal for enhancement of their sentence was filed. Further more, the Counsel for the State also could not point out that how the role played by the respondent Bablu @ Ballu was distinguishable from the case of Rustam Singh, Balli @ Balveer Singh, Cheeku @ Sohan Singh, Mohar Singh and Kaptan Singh who were awarded Life Sentence by the Trial Court.

280. Since, the Counsel for the State could not point out that how the case in hand would fall within the category of rarest of rare and further in absence of any distinction in the role played by the respondent Bablu @ Ballu and other convicted accused persons, the following sentence is awarded to the respondent Bablu @ Ballu :

Under Section 302/149 of IPC on three counts	Life Imprisonment and fine of Rs. 15,000/- in default 1 year R.I. (3 counts)
307/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.
147/148 of IPC	No separate sentence for offence under Section 147 IPC 1 year R.I. for offence under Section 148 IPC

All sentences shall run concurrently.

281. **In addition to the sentence** awarded to the Appellants Rustam

Singh, Mohar Singh, Dinesh Singh Jat, Cheeku @ Sohan Singh, Balli @ Balveer, and Kaptan Singh for offence under Sections 302/149 (on three counts) and under Section 148 of IPC, the Appellants Rustam Singh, Mohar Singh, Dinesh Singh Jat, Cheeku @ Sohan Singh, Balli @ Balveer and Kaptan Singh are also awarded following sentence for the offences mentioned below :

S.No.	**Name of Appellant**	**Conviction**	**Sentence**
1	Rustam Singh	307/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.
		25(1-B)(a) of Arms Act	2 years R.I. and fine of Rs. 5,000/- in default 3 months R.I.
		27 of Arms Act	7 years R.I. and fine of Rs. 10,000/- in default 6 months R.I.
2	Balli @ Balveer	307/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.
		25(1-B)(a) of Arms Act	2 years R.I. and fine of Rs. 5,000/- in default 3 months R.I.
		27 of Arms Act	7 years R.I. and fine of Rs. 10,000/- in default 6 months R.I.
3	Cheeku @ Sohan Singh	307/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.
		25(1-B)(a) of Arms Act	2 years R.I. and fine of Rs. 5,000/- in default 3 months R.I.
		27 of Arms Act	7 years R.I. and fine of Rs.

			10,000/- in default 6 months R.I.
4	Mohar Singh	307/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.
5	Dinesh Singh Jat	307/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.
6	Kaptan Singh	307/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.

Thus, for the sake of convenience, the consolidated chart of offences committed by Appellants and Respondent Bablu @ Ballu and the sentences awarded to them is as under :

S.No.	**Appellant**	**Conviction**	**Sentence**
1	Rustam Singh	Under Section 302/149 of IPC on three counts	Life Imprisonment and fine of Rs. 15,000/- in default 1 year R.I. (3 counts)
		307/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.
		147/148 of IPC	No separate sentence for offence under Section 147 IPC 1 year R.I. for offence under Section 148 IPC
		25(1-B)(a) of Arms Act	2 years R.I. and fine of Rs. 5,000/- in default 3 months R.I.
		27 of Arms Act	7 years R.I. and fine of Rs. 10,000/- in default 6 months R.I.
2	Balli @ Balveer Singh	Under Section 302/149 of IPC on three counts	Life Imprisonment and fine of Rs. 15,000/- in default 1 year R.I. (3 counts)
		307/149 IPC	5 years R.I. and fine of Rs. 1,000/-

			in default 1 month R.I.
		147/148 of IPC	No separate sentence for offence under Section 147 IPC 1 year R.I. for offence under Section 148 IPC
		25(1-B)(a) of Arms Act	2 years R.I. and fine of Rs. 5,000/- in default 3 months R.I.
		27 of Arms Act	7 years R.I. and fine of Rs. 10,000/- in default 6 months R.I.
3	Cheeku @ Sohan Singh	Under Section 302/149 of IPC on three counts	Life Imprisonment and fine of Rs. 15,000/- in default 1 year R.I. (3 counts)
		307/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.
		147/148 of IPC	No separate sentence for offence under Section 147 IPC 1 year R.I. for offence under Section 148 IPC
		25(1-B)(a) of Arms Act	2 years R.I. and fine of Rs. 5,000/- in default 3 months R.I.
		27 of Arms Act	7 years R.I. and fine of Rs. 10,000/- in default 6 months R.I.
4	Mohar Singh	Under Section 302/149 of IPC on three counts	Life Imprisonment and fine of Rs. 15,000/- in default 1 year R.I. (3 counts)
		307/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.
		147/148 of IPC	No separate sentence for offence under Section 147 IPC 1 year R.I. for offence under Section 148 IPC
5	Dinesh Singh Jat	Under Section 302/149 of IPC on three counts	Life Imprisonment and fine of Rs. 15,000/- in default 1 year R.I. (3 counts)

		307/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.
		147/148 of IPC	No separate sentence for offence under Section 147 IPC 1 year R.I. for offence under Section 148 IPC
6	Kaptan Singh	Under Section 302/149 of IPC on three counts	Life Imprisonment and fine of Rs. 15,000/- in default 1 year R.I. (3 counts)
		307/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.
		147/148 of IPC	No separate sentence for offence under Section 147 IPC 1 year R.I. for offence under Section 148 IPC
7	Bablu @ Ballu	Under Section 302/149 of IPC on three counts	Life Imprisonment and fine of Rs. 15,000/- in default 1 year R.I. (3 counts)
		307/149 IPC	5 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.
		147/148 of IPC	No separate sentence for offence under Section 147 IPC 1 year R.I. for offence under Section 148 IPC

All sentences shall run concurrently. As directed by the Trial Court, an amount of Rs. 2 Lacs be paid to the widow of Sintu by way of compensation under Section 357 of Cr.P.C.

282. The Appellant Mohar Singh is on bail. His bail bonds are hereby cancelled. He is directed to immediately surrender before the Trial Court for undergoing the remaining jail sentence.

283. Other Appellants namely Rustam Singh, Dinesh Singh Jat, Balli @ Balveer, Cheeku @ Sohan Singh and Kaptan Singh are in jail. They shall

undergo the remaining jail sentence.

284. The bail bonds furnished by Respondent Bablu @ Ballu are hereby cancelled, and he is directed to immediately surrender before the Trial Court for undergoing the remaining jail sentence.

285. Let a copy of this judgment be immediately supplied to the Appellants, free of costs.

286. The registry is directed to return the record of the Trial Court along with copy of this judgment for necessary information and compliance.

287. The **Cr.A. No. 122/2014** filed by the State against the acquittal of Sitaram, Mahendra Singh and Amar Singh is hereby **Dismissed,** but against the acquittal of Bablu @ Ballu, Kaptan Singh, Mohar Singh, Dinesh Jat, Cheeku @ Sohan Singh, Balli @ Balveer, and Rustam Singh it is hereby **Allowed.** The Cr. A.s Number 825/2011 (Kaptan Singh Vs. State of M.P.), 840/2011 (Mohar Singh Vs. State of M.P.), 876/2011 (Dinesh Jat Vs. State of M.P.), 101/2014 (Cheeku Vs. State of M.P.), 1016/2015 (Balli Vs. State of M.P.) and 1065/2013 (Rustam Vs. State of M.P.) are hereby **Dismissed.**

(G.S. AHLUWALIA)
JUDGE

(RAJEEV KUMAR SHRIVASTAVA)
JUDGE