

**IN THE HIGH COURT OF MADHYA PRADESH
AT J A B A L P U R
BEFORE**

JUSTICE SUJOY PAUL

&

JUSTICE ACHAL KUMAR PALIWAL

CRIMINAL APPEAL No. 134 of 2013

BETWEEN:-

1. **DARA SINGH S/O HUKUM CHAND
GUJAR, AGED ABOUT 26 YEARS,
R/O VILLAGE DADIYA, TAHSIL
PIPARIYA, DISTRICT
HOSHANGABAD (M.P.)**
2. **PANCHAM @ GULAB SINGH S/O
HUKUM CHAND GUJAR, AGED
ABOUT 32 YEARS, R/O DADIYA,
TAHSIL PIPARIYA, DISTRICT
HOSHANGABAD (M.P.)**
3. **RAKESH @ NAATI BHAIYYA S/O
MEHERBAN SINGH GUJAR, AGED
ABOUT 25 YEARS, R/O DADIYA,
TAHSIL PIPARIYA, DISTRICT
HOSHANGABAD (M.P.)**
4. **SUNIL VERMA S/O DHANRAJ
VERMA, AGED ABOUT 33 YEARS,
R/O SILARI, TAHSIL PIPARIYA,
DISTRICT HOSHANGABAD (M.P.)**
5. **ROOPRAM @ JAGDISH S/O
MAKHAN SINGH GUJAR, AGED
ABOUT 31 YEARS, R/O PATHARI,
TAHSIL SOHAGPUR, DISTRICT
HOSHANGABAD (M.P.)**
6. **RAHUL S/O RAJU @ KHUMAN
SINGH GUJAR, AGED ABOUT 23
YEARS, R/O VILLAGE DADIYA,
TAHSIL PIPARIYA, DISTRICT
HOSHANGABAD (M.P.)**

.....APPELLANTS

**(BY SHRI A.K. JAIN - ADVOCATE FOR APPELLANTS NO.1, 2, 3, 5 AND 6)
(BY SHRI A.K. JAIN - ADVOCATE FOR APPELLANT NO.4 AS AMICUS
CURAIE)**

AND

**THE STATE OF MADHYA PRADESH
THROUGH: POLICE STATION,
PIPARIYA, DISTRICT,
HOSHANGABAD (M.P.)**

.....RESPONDENT

(BY SHRI A.N. GUPTA - GOVERNMENT ADVOCATE)

Reserved on : 19.07.2023
Pronounced on : 02.08.2023

This criminal appeal having been heard and reserved for judgment, coming on for pronouncement on this day, Justice Achal Kumar Paliwal pronounced the following:

J U D G M E N T

This is an appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 (in short “the Cr.P.C.”) against the judgment dated 11.01.2013 passed in Sessions Trial No.238/2008 by learned Additional Sessions Judge, Pipariya, District Hoshangabad, whereby the appellants were held guilty for commission of following offences and were sentenced as under:-

CONVICTION		SENTENCE		
Section	Act	Imprisonment	Fine	Imprisonment in default of payment of fine
302/149 (on two counts)	IPC	R.I. for life each.	Rs.500/- each.	R.I. for six months.
307/149	IPC	R.I. for 10 years each.	Rs.300/- each.	R.I. for three months.
148	IPC	R.I. for 3 years each.	Rs.200/- each.	R.I. for two months.

2. That, the case of the prosecution in brief is that one Sahab Van, a relative of the deceased, was incarcerated in the jail at Pipariya in a murder case. Bail was granted to him by the High Court. The two deceased, accompanied by Vinod (PW-2), Vinod (PW-4) and Pramod (PW-18), had gone to the Court at Pipariya on 20.06.2008 to furnish bail for Sahab Van. Bail was furnished and a release warrant obtained. At about 02:15 pm, the complainant party, accompanied by a Court Peon, with the release warrant started for the jail. Pratap Van and Sonu Van were seated on a motorcycle ridden by Vinod (PW-2) & Vinod (PW-4) was on a second motorcycle along with Pramod (PW-18). A Court Peon was on third motorcycle. When the complainant party reached near St. Joseph Convent School on the way to the jail, a Bolero Jeep dashed the motorcycle, on which the deceased & Vinod (PW-2) were seated, from behind. The motorcycle and its occupants fell on the ground & thereafter, appellants Dara Singh, Pancham, Rahul, Sunil, Rakesh get off the Bolero & at this time, appellant Jagdish also came on motorcycle and all of them fired at the deceased and Vinod (PW-2). As a result of this firing, Pratap Van and Sonu Van succumbed to their injuries on the spot. Vinod Singh Thakur (PW-2) sustained bullet injuries but survived the attack.

3. That, after the incident, Vinod (PW-2) was taken to CHC Pipariya for treatment & there, he lodged Dehati Nalishi (Ex.P-3) & Dehati marg intimation (Ex.P-2) & the same were scribed by investigating officer Mahendra Singh Meena. Dr. A.K.Agarwal conducted postmortem & prepared autopsy reports. Dr. A.K.Agarwal, Dr. Ravindra Gangrade & Dr. Rajesh Sharma treated injured Vinod (PW-2) & prepared medical reports. Investigating officer Mahendra Singh Meena conducted investigation & during investigation, he prepared Naksha Panchaynama, recorded statements of witnesses, effected various recoveries, including

recoveries from appellants in pursuance of their memorandums, sent recovered items for FSL/Ballistic examination & obtained FSL/Ballistic reports etc. After completion of investigation, charge sheet was filed in the court of JMFC Pipariya against appellants, including co-accused acquitted by the trial court & the case was received by sessions court after committal.

4. The trial court framed the charges against appellants Dara Singh & Rahul u/s 302 (two counts), 307, 148,149, 120-B of IPC, against appellants Pancham, Rakesh, Sunil & Rupram alias Jagdish u/s 302 (two counts), 307, 148,149, 120-B of IPC & u/s 25(1-B) (a), 27 Arms Act & against co-accused Rajendra & Ravi Kiran u/s 302 (two counts), 307, 120-B of IPC. The appellants/co-accused pleaded not guilty & they claimed to be tried for the offences they were charged with. To bring home the charge against the appellants, the prosecution examined in all 35 witnesses. The prosecution also brought on record documentary evidence through aforesaid witnesses. After completion of prosecution evidence, appellants were examined u/s 313 CrPC. The appellants pleaded total denial & stated that they have been falsely implicated. After evaluating the evidence that came on record, the learned Additional Sessions Judge vide judgment dated 11.01.2013, convicted the appellants for the offences u/s 302/149 (two counts), 307, 148 of IPC & sentenced them as mentioned above but acquitted appellants with respect to the remaining charges & also acquitted co-accused Ravi/Rajendra with respect to charges levelled against them.

Submissions of learned counsel for the appellants:-

5. Learned counsel for the appellants submits that the learned trial Judge has erred in holding that the appellants were involved in the incident in which Pratap Van and Sonu Van were murdered and Vinod

(PW-2) was injured. It is submitted that there is no legal evidence to connect the appellants with the above mentioned assault. The learned trial Judge erred in law in accepting the Dehati Nalishi (Ex.P/3) as the substantive piece of evidence. Vinod (PW-2) has stated in Court that he could not see his assailants and he did not lodge the report (Ex.P/2). In view of this matter, the report (Ex.P/2) loses all significance as the said report does not constitute substantive evidence. The learned trial Judge erred in accepting the evidence given by Manju (PW-14) and Virendra (PW-15) that the names of the assailants had been given to them by Vinod (PW-2). Vinod (PW-2) having denied the fact that he identified the assailants and that he gave out the names of the assailants to the above two witnesses. The evidence of Manju (PW14) and Virendra (PW15) amounts to hearsay evidence and as such is inadmissible.

6. That, the learned trial Judge erred in holding that Pramod (PW-18) had witnessed the assault. It is submitted that this witness was not present during the occurrence and that he was pressed into the service as an eye-witness two days after the murder. The above submission is based on the following facts and circumstances:-

- (a) He is a resident of Itarsi ie. at a distance of about 60 kilometers from Pipariya.
- (b) After the assault was over and the assailants had fled, he did not render any assistance to Vinod (PW-2) his bosom friend.
- (c) Even though he passed in front of the Court premises and the police station immediately after the occurrence, he did not lodge any report nor informed anybody regarding the incident.

- (d) He then went to Village Macha where he intimated the relatives of the deceased regarding the assault. Even here, he did not disclose the names of the assailants.
- (e) He returned to Pipariya with the brother of the deceased and went to the police station where he stayed for over one hour. Even here he did not disclose to the police that he was a witness or that the appellants were involved in the assault.
- (f) On 21.06.2008, he was present throughout the day with the police but he did not inform them that he was an eye witness.
- (g) It is only on 22.06.2008 that his case diary statement was recorded.
- (h) He is brother-in-law of deceased Pratap Van and could easily be introduced as an eye witness.
- (i) It is submitted that the conduct of this witness and his late disclosure conclusively establishes the fact that he has not witnessed the assault.

7. It is also urged that the names of prosecution witness Pramod Goswami (PW-18) and Vinod (PW-4) are not mentioned in Dehati Nalishi (Ex.P/2). There are various material contradictions and omissions in the testimony of prosecution witness Pramod that how many persons get off from the Bolero Vehicle and out of them, how many started firing. Whether Jagdish also arrived on the spot, therefore, learned trial Court has wrongly convicted the appellants on the basis of Pramod Goswami's testimony. As witness Pramod had himself not informed police that he had seen the incident, therefore, Investigating Officer would not be in the knowledge of that he has witnessed the incident. There is no independent

evidence to corroborate Pramod Goswami's testimony. The presence of Pramod Goswami at the time of incident is not proved.

8. In view of above, learned counsel for appellants relying upon **Alil Mollah vs. State of West Bengal reported in AIR 1996 SC 3471, Ramreddy Rajeshkhanna Reddy & another vs. State of Andhra Pradesh reported in AIR 2006 SC 1656, Gopal Singh and others vs. State of Madhya Pradesh reported in (2010) 6 SCC 407 and Shahid Khan vs. State of Rajasthan reported in AIR 2016 SC 1178** submits that prosecution witness Pramod Goswami is not an eye-witness & he is not reliable.

9. It is also contended that other eye witness Vinod (PW-2), Vinod (PW-4), Shiv Kumar (PW-13) and Pooran Lal (PW-28) are completely hostile. Seizure witnesses are completely hostile & recovery of fire arms etc. from appellants is not proved. It is also urged that from FSL report/ballistic report, it is not proved that arms allegedly recovery from the appellants have been used in the commission of crime. Broken parts found on the scene of incident have not been matched with the seized Bolero, therefore, it cannot be said that the broken parts found on the scene of incident, were part of seized vehicle. In the facts and circumstances of the case, law laid down in the case of **Khujji @ Surendra Tiwari Vs. State of M.P., AIR 1991 SC 1853 & Tofan Singh and another (2005 (1) MPLJ 413)** does not apply in the instant case. Learned trial Court did not properly appreciate the evidence of the prosecution. Therefore, the conviction and sentence imposed by the learned trial court is erroneous. Hence, the same deserves to be set aside & appellants be acquitted

Submissions of Learned Government Advocate:-

10. Learned Government Advocate has vehemently opposed the contentions made by the learned counsel for the appellants and has supported the impugned judgment and submitted that the trial Court has rightly convicted & sentenced the appellants, as above, hence, the appeal is liable to be dismissed. It is also submitted that Vinod (PW-2) has lodged Dehati Nalishi (Ex.P/3) immediately after the incident and within twenty minutes of the occurrence of incident and the name and role of all appellants have been mentioned therein. FIR has been lodged on the basis of above Dehati Nalishi. With respect to lodging of Dehati Nalishi, Investigating Officer Mahendra Singh Meena (PW-20) has supported the Dehati Nalishi (Ex.P/3) and Dehati Marg Intimation (Ex.P/2). It is correct that Mahesh Kumar Morya (PW-3), Vinod (PW-4) and Raman Khandelwal (PW-7) are hostile with respect to memo and recovery but they have admitted their signatures on respective memos/seizures memos. Investigating Officer Mahendra Singh Meena (PW-20) has proved concerned memos and recoveries. From ballistic report, it is clear that seized arms have been used for firing at deceased and seized arms have been found in working condition. From testimonies of Manju Goswami (PW-14) and Virendravan Goswami (PW-15), etc. it is clearly established that that there was previous rivalry between deceased's family and appellant's family, therefore, appellants have motive to commit the alleged crime. It is correct that almost all eye witnesses, except Pramod Goswami (PW-18), have turned hostile but they have supported the prosecution case in one way or the other.

11. Learned government counsel also contends that prosecution witnesses Manju Goswami (PW-14) and Virendra Van Goswami (PW-15) have deposed that when Vinod (PW-2) was going to Bhopal for medical treatment, he informed them about the incident at Budni. Pramod

Goswami (PW-18) is an eye witness of the incident and he is reliable and trustworthy and he has proved prosecution story. He has also proved various recoveries and memos from appellants. His testimony is corroborated in material particulars from other evidence on record. No enmity between Investigating Officer Mahendra Singh Meena and appellants has been proved.

12. Learned Government counsel relying upon **Khujji V. State of Madhya Pradesh, AIR 1991 SC 1853 & Tofan Singh Vs. State of M.P., 2005 (1) MPLJ 412, Girja Prasad (Dead) by Lrs Vs. State of M.P., AIR 2007 SC 3107, Lakshmi and others Vs. State of U.P., (2002) 7 SCC 198 & Karamjeet Singh Vs. State, 2003 (5) SCC 291** submits that the evidence of hostile witness cannot be discarded in *toto*, testimony of police officer cannot be disbelieved simply on the ground that he is a police officer, non-recovery of crime weapons is not fatal to the prosecution, it is not possible to discard the testimony of the prosecution witness merely on account of a stray sentence appearing in the cross-examination. Learned trial court has rightly appreciated evidence on record. Hence, on above grounds, it is submitted that appellants' appeal is liable to be dismissed & the same be dismissed.

13. We have heard learned counsel for the parties and perused the record of the learned trial Court minutely.

Findings:-

14. Perusal of prosecution evidence reveals that prosecution case primarily rests on testimonies of eye witnesses/various recoveries/FSL/Ballistic report.

15. So far as oral testimonies/eye witnesses are concerned, prosecution has examined Vinod (PW-2), Vinod (PW-4), Shivkumar @ Trishul Wale Baba (PW-13), Pramod Goswami (PW-18), Pooranlal (PW-28) as eye

witnesses of the incident and Manju Goswami (PW-14), Virendra Van Goswami (PW-15), who are not eye-witnesses, but have deposed on the basis of information given to them by injured Vinod (PW-2).

16. In the instant case, from the evidence on record, it is not disputed that, Pratap Van and his son Sonu Van have died on account of gunshot injuries and prosecution witness Vinod (PW-2) has received gunshot injury in the same incident.

17. Perusal of depositions of injured/complainant Vinod (PW-2), Vinod (PW-4), Shivkumar @ Trishul Wale Baba (PW-13), Pooranlal (PW-28) show that they are completely hostile with respect to the main incident i.e. presence of appellants on the spot and that, they have fired and killed Pratap Van and Sonu Van and injured Vinod (PW-2) & they have also denied that they had told about the same to Police in their police statements and Vinod (PW-2) has also denied about lodging Dehati Nalishi (Ex.P/2), Marg intimation (Ex.P/3) & having given Police Statement (Ex.P/4).

18. So far as prosecution witness Smt. Manju Goswami (PW-14) and Virendra Van Goswami (PW-15) are concerned, it is apparent that they are not eye witness and they have not themselves witnessed the incident and they have deposed only on the basis of information given to them by Vinod (PW-2) in Budhni, when the witnesses were going to Pipariya from Mandideep and Vinod (PW-2) was going to Bhopal for medical treatment. Depositon of Vinod (PW-2) shows that he has nowhere stated in his deposition that in Budhni, he had informed above prosecution witness Smt. Manju Goswami (PW-14) and Virendra Van Goswami (PW-15) about the incident. Therefore, in view of above, testimonies of Manju Goswami (PW-14) and Virendra Van Goswami (PW-15) have not evidentiary value.

19. Perusal of impugned judgment shows that learned trial court has primarily convicted and sentenced appellants on the basis of testimony of Pramod Goswami (PW-18) and to some extent, recoveries from the appellants etc. along with FSL/Ballistics report.

20. From testimony of Pramod Goswami, it is apparent that he is a resident of Itarsi, which is about 90 kms. away from Pipariya. It is also apparent from his testimony that Veerendra Van, Sahab Van and deceased Pratap Van are his real brother-in-laws and he (witness) is married to their sister. Thus, witness is closely related to the deceased's family.

21. Before proceeding further and starting evaluation of testimony of Pramod Goswami (PW-18) & other evidence on record, we would like to refer parameters on which testimony of an eye witness/relative witness/hostile witnesses is to be evaluated.

Principles Regarding Evaluation of Evidence of Eye-Witnesses :-

22. Recently Hon'ble apex court in **Balu Sudam Khalde and another v. State of Maharashtra, AIR 2023 SC 1736** has laid down broad parameters with respect to appreciation of ocular evidence/evidence of an eye-witness, which are as follows:-

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

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

the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

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

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

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

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

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

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise.

The mental faculties therefore cannot be expected to be attuned to absorb the details.

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

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

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

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

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

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the

later statement is at variance with the former to some extent it would not be helpful to contradict that witness.”

[See: Bharwada Bhoginbhai Hirjibhai v. State of Gujarat-1983 Cri LJ 1096 : (AIR 1983 SC 753) Leela Ram v. State of Haryana - AIR 1995 SC 3717 and Tahsildar Singh v. State of UP-(AIR 1959 SC 1012)]

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

23. In Manjit Singh Vs State Of Punjab, 2013 AIR SCW 6049, Hon’ble apex court held that in our considered opinion, these kind of discrepancies are bound to occur when an occurrence of the present nature takes place and one cannot expect the witnesses to state with precision, needless to emphasize, on these counts, the prosecution version cannot be held to be unbelievable and it cannot be held that the prosecution has not been able to establish the charges beyond reasonable doubt. It is because judicial evaluation of the evidence has to be

appropriate regard being had to the totality of the facts and circumstances of the case and not on scrutiny in isolation and further the concept of proof beyond reasonable doubt cannot be made to appear totally unrealistic. In this context, we may profitably reproduce a passage from **Inder Singh v. State (Delhi Admn.), (1978) 4 SCC 161** :

“2. Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. If a case is proved too perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty men must be callously allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes. Judicial quest for perfect proof often accounts for police presentation of fool-proof concoction. Why fake up? Because the court asks for manufacture to make truth look true? No, we must be realistic.”

24. In **Mustak alias Kanio Ahmed Shaikh Vs. State of Gujrat, (2020) 7 SCC 237**, Hon’ble apex court held that the evidence of the witnesses have to be read as a whole. Words & sentences cannot be truncated & read in isolation.

25. In **Rakesh Vs. State of U.P., AIR 2021 SC 3233**, Hon’ble apex court has held that one is required to consider the entire evidence as a whole with the other evidence on record. Mere one sentence here or there & that too to the question asked by the defence in the cross-examination cannot be considered stand alone.

26. Hon'ble Apex Court in **State of U.P. Vs. Smt. Noorie alias Noor Jahan & Ors., 1996 SCC (Cr.) 945** has held as under:-

“.....While assessing and evaluating the evidence of eye witnesses the Court must adhere to two principles, namely whether in the circumstance of the case it was possible for the eye witness to be present at the scene and whether there is anything inherently improbable or unreliable.....”

Principles Regarding Evaluation of Evidence of Related/relative Witnesses:-

27. In the instant case, it is well established that there is subsisting bitter rivalry between deceased/their family and appellants/their family and prosecution witness Pramod Goswami is a close relative of deceased's family. Therefore, in this connection, it would be appropriate to refer following observations of Hon'ble Apex Court in ***Vahitha Vs. State of Tamil Nadu AIR, 2023 SC 1165***, which are as under :-

“...12.5. As regards the approach towards the appreciation of the evidence of closely related witnesses, in the case of Gangabhavani (supra), this Court has explained the principles as follows :-

15..... it is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinized 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 the case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (vide *Bhagaloo Lodh Vs. State of U.P.*) [(2011) 13 SCC 206]” (emphasis supplied)

28. In ***Ladha Shamji Dhanani Vs. State of Gujarat, AIR 1992 SC 956*** also Hon'ble Apex Court has held as under :-

“3.In a case of this nature the evidence of the interested witnesses has to be scrutinized with great care

and caution and should be examined in the light of the earliest report, the medical evidence and other surrounding circumstances..... Now coming to the evidence of PWs 2, 3 and 5, we have already stated that their evidence has to be scrutinized in the light of the earliest statement and with great care and caution. In this view of the matter, the contents of the first information report are of importance. No doubt, FIR is not substantive evidence but the same is of importance in appreciating the evidence of PW-2 the principal witness..... So far Accused Nos.18, 24 and 28 are concerned the part played by them is specifically mentioned in the first information report and that is the consistent version of PWs 2 to 5 throughout. The medical evidence also corroborates. Therefore, the case against them to that extent can safely be accepted.....

29. In *Paresh Kalyandas Bhavsar Vs. Sadiq Yakubhai Jamadar & Ors.*, AIR 1993 SC 1544, Hon'ble Apex Court has opined as follows:-

“6.....It is needless to say that mere interestedness is not a ground to reject the evidence of the eye witnesses..... However, it becomes necessary to scrutinize their evidence with great care and caution. Normally in a case of this nature the evidence of such witnesses is scrutinized in the light of the medical evidence, their previous statements, the earliest version put forward and other circumstances like the investigation being defective and also the effect of omissions or discrepancies, if any.....”

Principles Regarding Evaluation of Evidence of Hostile Witnesses:-

30. It is well established that if a witness is declared hostile, then, it is not that his whole evidence has to be disbelieved. In this connection, we may profitably refer to **Mohd. Naushad v. State (NCT of Delhi)**, 2023 SCC OnLine SC 784 (3-Judge Bench), wherein Hon'ble Apex Court has observed as under :-

“148-Further, in Hari V. The State of Uttar Pradesh, 2021 SCC OnLine 1131, (3-judge Bench), this court while reiterating the principles in appreciating the testimony of witness who turned hostile as under :-

“It is well settled that the evidence of prosecution witnesses cannot be rejected in toto merely because the prosecution choose to treat them as hostile and cross examined them. 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 that their version is found to be dependable on a careful scrutiny thereof. It is for the judge of fact to consider in each case whether as a result of such cross examination and contradictions, the witness stands 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 testimony which he finds to be creditworthy and act upon it.”

“149-In *Koli Lakjmanbhai Chanabhai V. State of Gujarat*, (1999) 8 SCC 624 (2-Judge Bench), this court held that it is settled law that evidence of hostile witness also can be relied upon to the extent to which it supports the prosecution version. Evidence of such witness cannot be treated as washed off the record. It remains admissible in the trial & there is no legal bar to base...conviction upon his testimony, if corroborated by other reliable evidence.[see also *Bhagwan Singh V. State of Haryana*, (1976) 1 SCC 389, (3-judge Bench) & *Sat Paul V. Delhi Administration*, (1976) 1 SCC 727 (2-judge Bench)].”

31. In *C. Muniappan v. State of T.N.*, (2010) 9 SCC 567, Hon’ble Apex Court has held as under :-

“81-It is settled legal proposition that:

‘6...the evidence of a prosecution witness can not be rejected in toto merely because the prosecution chose to treat him as hostile & cross-examined. The evidence of such witnesses can not 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.’

82. In *State of U.P. V. Ramesh Prasad Mishra*, (1996) 10 SCC 360, this court held that 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.....

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

32. So also, in **State of U.P. v. Chet Ram, (1989) 2 SCC 425**, it was held that if some portion of the statement of the hostile witness inspires confidence, it can be relied upon and the witness cannot be termed as wholly unreliable.

33. Further, in **Shatrughan v. State of Madhya Pradesh, 1993 Cri. LJ 120 (MP)**, it has been held that hostile witness is not necessarily a false witness.

34. Now, we will evaluate/appreciate/assess testimonies of Pramod Goswami (PW-18), injured/complainant Vinod (PW-2), Vinod (PW-4) & other evidence on record in the light of/on the anvil of parameters/principles laid down by Hon'ble Apex Court in aforesaid cases.

Pramod Goswami (PW-18)

35. To properly evaluate/appreciate/assess testimony of Pramod Goswami (PW-18) on merits, it would be appropriate to reproduce the relevant paras of his testimony, which are as under:-

मुख्य परीक्षण द्वारा श्री एन.के. हरदेनिया, एजीपी

“2. मैं ईटारसी रहता हूँ। मैं ज़ायवरी करता हूँ। लगभग डेढ़ साल पहले की बात है। मैं साहब वन को जानता हूँ। साहब वन मेरे साले लगते हैं। लगभग दो ढाई बजे की बात है। पचमढी रोड पर स्थित सेन्ट जौसफ स्कूल के पास की बात है। साहब वन एक मर्डर के केस में बंद था उसकी जमानत हुई थी जिसे छुड़ाने के लिए मैं आया था। साहब वन को छुड़ाने के लिए पिपरिया अदालत से मोटर साइकिलो से जा रहे थे दो मोटर साइकिले थी। एक मोटर साइकिल पर मेरे साथ विनोद था हम थोड़े से पीछे थे। आगे वाली मोटर साइकिल पर तीन लोग थे जिसे

विनोद पुरविया चला रहा था तथा प्रतापवन और सोनू वन बैठे थे। पीछे से एक बुलैरो आई और उस बुलैरो ने तीन बैठे हुए वाली मोटर साइकिल को पीछे से टक्कर मारी। तो वो लोग गिर गये तो टक्कर मारकर बुलैरो गाडी रूकी उसमे से दारा, राकेश, पंचम, राहुल, चार लोग उतरे और इन्ही लोगो ने प्रतापवन और सोनू वन के ऊपर गोलियों चलाना चालू कर दिया। गोली चल रही थी तो हम पीछे ही रूक गये। गोलिया चलकर ये गाडी में बैठकर आगे निकल गये। और इसके बाद में वापस हम दोनो आ गये आगे नहीं गये।

3. गोली चलाई थी तो क्या हुआ मुझे नहीं मालूम। बाद मे ँ टटनास्थल पर जगदीश मोटर साइकिल से आया था। जगदीश ने भी गोली चलाई थी। जगदीश ने भी प्रतापवन और सोनूवन के ऊपर गोली चलाई थी। दो दिन बाद पुलिस ने मेरे से पूछताछ की थी। मेरे बयान लिये थे। मैंने अभी जो बातें बताई हैं इसके अलावा पुलिस को और कुछ नहीं बताया था।

नोट- इसी स्तर पर अपर लोक अभियोजक श्री एन.के. हरदेनिया ने साक्षी को पक्ष विरोधी घोषित कर सूचक प्रश्न पूछने की अनुमति चाही गयी वाद विचार अनुमति दी गयी।

7. यह कहना सही है कि जब जमानत पर छुडाने के लिए जा रहे थे तो बुलैरो गाडी ने मोटर साइकिल से टक्कर मारी थी उस बुलैरो से उतरने वाला सुनील वर्मा आरोपी भी था। यह बात सही है कि सुनील वर्मा ने बुलैरो गाडी से उतरकर तीनों के ऊपर फायर किया था। यह कहना सही है कि हम आड़ लेकर खड़े होकर देख रहे थे। ऐसा नहीं हुआ कि विनोद पुरविया माछा का भागते दिखा था। स्वत कहा कि उसे खून निकल रहा था और वह मोके पर पड़ा था। यह कहना सही है कि फिर हमने जाकर देखा तो प्रताप और सोनू दोनो खत्म हो गये थे। यह कहना सही है कि सोनू के सीने और हाथ पैर में गोली लगने की चोट दिख रही थी और प्रताप को सीने मे गोली लगने की चोट दिख रही थी खून से लथपथ थे। विनोद पुरविया के हाथ मे गोली लगी थी वह भी खून से लथपथ था। यह कहना सही है कि मैंने पुलिस को बताया था कि विनोद ने बताया कि मैंने जमानत ली थी इतने में ही मुझे ढाढिया के गूजर ने गोली मार दी। यह सही है कि मैंने पुलिस को बताया था कि मैंने पूछा तो उसने बताया कि दारासिंह गूजर, पंचम गूजर, राकेश गूजर, राहुल गूजर और सुनील वर्मा द्वारा गोली चलाना बताया और भी लोगो का होना बताया था।

10. यह बात सही है कि पहले मैं मुख्य परीक्षण में भूल जाने के कारण उक्त बात नहीं बता पाया था।”

प्रतिपरीक्षण द्वारा श्री सुरेन्द्र सिंह अधिवक्ता वास्ते सभी आरोप. गण

“13. यह बात सही है कि साहब वन कत्ल के मामले में पिपरिया मे जेल में बंद थे। साहब वन का जमानत का आदेश जबलपुर से हुआ था। प्रतापवन ने मुझे यह बताया था कि साहब वन की जमानत हो गयी है जमानत भरने चलना है। प्रतापवन और मै इटारसी मे एक ही मोहल्ले

मे रहते थे मैं किराये से रहता हूँ। प्रतापवन का स्वयं का मकान है। इटारसी में प्रतापवन का मकान मेरे मकान से 5-7 मकान छोड़कर है।

14. 20 तारीख को मैं इटारसी से ट्रेन से आया था। मोटर साइकिल से नहीं आया था। मैं पिपरिया 12 बजे आया था। मैंने पिपरिया स्टेशन पर उतरकर प्रताप वन को फोन लगाया था तो उन्होंने बताया था कि हम अदालत में हैं वही आ जाओ। मैं मोबाईल फोन रखता हूँ। यह बात सही है कि प्रताप वन भी मोबाईल रखते थे। यह बात सही है कि बात चीत होने के बाद मैं कचहरी चला आया था। यह बात सही है कि कचहरी में मेरी मुलाकात विनोद ठाकुर, विनोद पुरविया प्रताप वन और सोनू वन से हुई थी। यह बात सही है कि विनोद पुरविया और विनोद ठाकुर माछी के रहने वाले हैं। मैं विनोद ठाकुर और विनोद पुरविया को अपने शादी के समय से अर्थात् 18 साल से जानता हूँ। पिपरिया अदालत में हम लोगों की तरफ से पैरवी कर रहे थे उन वकील साहब का नाम मुझे नहीं मालूम।

15. जमानत सेशन कोर्ट में भरी गयी थी। कोर्ट से रिहाई का आदेश चपरासी ने लिया था। यह बात सही है कि जब कोर्ट से जेल के लिए हम रवाना हुए थे तो वह चपरासी भी हमारे साथ था। यह बात सही है कि विनोद ठाकुर, सोनूवन, प्रतापवन एक मोटर साइकिल पर थे। मेरे साथ विनोद ठाकुर था। अब कहा कि मेरे साथ विनोद पुरविया था। न्यायालय का चपरासी तीसरी मोटर साइकिल पर था उसे एक अन्य लड़का चला रहा था। उस लड़के का नाम पुरुषोत्तम गिरी था। वह लड़का नगवाडे का रहने वाला है।

16. यह बात सही है कि हम लोग कचहरी से निकले और जेल जाने के लिए आगे दाये तरफ मुड़ गये थे। सबसे आगे चपरासी की मोटर साइकिल थी उसके पीछे सोनूवन वाली मोटर साइकिल थी। मैं पीछे पान खाने के लिए रुक गया था और दोनों मोटर साइकिल निकलने के बाद 5 मिनट बाद मे रवाना हुआ था। कोर्ट से निकलने के बाद पचमढी रोड पर दाहिने तरफ मुड़ने वाली जगह पर मैंने पान खाया था। यह बात सही है कि मैंने जहा पान खाया था वहा से घटनास्थल करीबन आधा कि.मी. दूर है। यह बात सही है जहा मैंने पान खाया था वहा से घटनास्थल नहीं दिखता है।

17. यह बात सही है कि मैं जब मोटर साइकिल से जा रहा था तो पीछे से बुलैरो गाड़ी आयी। जिस समय सोनूवन की मोटर साइकिल में टक्कर लगी है उस समय सोनू वन वाली मोटर साइकिल की स्पीड 30-35 की होनी चाहिए। टक्कर लगने के बाद सोनूवन की मोटर साइकिल से लोग जिधर खाली जमीन है उधर गिरे थे, बाये तरफ गिरे थे। जिस जगह जीप से मोटर साइकिल में टक्कर मारी थी उसके दो फलांग आगे बुलैरो गाड़ी रुकी थी। साक्षी ने कहा कि वह बुलैरो गाड़ी पहले वही रुक गयी थी बाद में कहा कि एक-दो फलांग दूर रुकी थी।

18. उस बुलैरो गाड़ी से 6 आदमी उतरे थे। ऐसा नहीं हुआ कि बुलैरो गाड़ी से चार लोग उतरे थे। मेरा इसी अदालत में कल भी बयान हुआ था। मैंने अदालत में कल बयान दिया था वह सच दिया था। मैंने

बयान मे कल संख्या चार आदमी उतरने की नहीं बताई थी। यदि मेरे पूर्व के बयान मे बुलैरो गाड़ी से चार आदमी उतरने की बात लिखी है वह सही लिखी है। बुलैरो गाड़ी से 5 लोग उतरे थे।

प्रश्न :- बुलैरो गाड़ी से 4 लोग उतरने वाली बात सही है कि 6 लोग उतरने वाली बात सही है ?

उत्तर:- 5 लोग उतरे थे।

19. यह कहना गलत है कि मैंने पहले जो चार लोग उतरने वाली बात बताई है वह गलत है। मुझे कल के बयान मे सुनील का नाम याद नहीं आया था इसलिए नहीं बताया था। मुझे कल के बयान मे याद नहीं आया था कि सुनील के हाथ मे कट्टा था और उसने गोली चलाई थी। मैंने कल ऐसा नहीं बताया था कि एक और आदमी था जिसका नाम भूल रहा हूँ। कल मैंने सुनील वर्मा की ओर इशारा करके ऐसा नहीं बताया था कि यह आदमी मौजूद था और इसने भी गोली चलाई थी। यह सही है कि आज जब सरकारी वकील साहब ने सुनील वर्मा जीप से उतरने हाथ में कट्टा होने और फायर करने वाली बात मेरे बयान से पढ़कर बताई थी जब मैंने हॉ मे उत्तर दिया था। स्वत कहा कि मुझे याद आ गया था। न्यायालय द्वारा नोट :-साक्षी का 22.04.2010 को मुख्य परीक्षण अपूर्ण रहा था।

20. जब बुलैरो ने मोटर साइकिल से टककर मारी थी तब मैं ँ ाबरा गया था। मैंने उस समय बचाओ-बचाओ दौड़ो दौड़ो की आवाज नहीं लगाई थी। जिस मोटर साइकिल पर मैं बैठा था उस मोटर साइकिल को विनोद चला रहा था और पीछे बैठा था। जिस जगह बुलैरो गाड़ी खड़ी हुई थी उससे मेरी मोटर साइकिल 8-10 फलांग इधर ही थी। मैं यह नहीं बता सका कि बुलैरो गाड़ी से जो आदमी उतरे थे उनमे से कौन किधर से उतरा था। यह भी नहीं बता सकता कि कौन आदमी क्या लिये हुए था। प्रताप वन को जमीन पर पड़े में गोली लगी थी सोनू भी वही पर पडा था। प्रताप वन को चार पाँच गोली लगी थी। सोनू को 7-8 गोली लगी थी। यह बात सही है कि ये दोनो गोली लगने के स्थान पर वही खत्म हो गये थे। दोनो लाशों के बीच मे 10-12 फिट का फासला था। मैंने विनोद ठाकुर को भागते नहीं देखा था पड़े हुए देखा था उसके हाथ से खून निकल रहा था।

23. मैं अंदाज से नहीं बता सकता कि घटना स्थल पर कितनी गोलिया चली थी। घटना के बाद हमलावर बुलैरो गाड़ी मे बैठकर पचमढी की ओर रवाना हो गये थे। इसके बाद मैं और विनोद ठाकुर मौके पर पहुचे जहाँ ये लोग पड़े हुए थे। मैंने प्रतापवन और सोनूवन को हिला. डुलाकर देखा था खत्म हो गये थे। उनके शरीर से बहुत खून नहीं निकल रहा था। जब मैंने सोनू वन, प्रतापवन को हिलाकर देखा था मेरे हाथों में खून लग गया था।

24. प्रतापवन से करीब 8-10 फिट के फासले पर विनोद पुरविया पडा हुआ था। मैंने जाकर विनोद से पूछा कि किसने गोली मारी है। फिर विनोद ने मारने वालो के नाम मुझे बताये थे। विनोद के शरीर से खून निकल रहा था। विनोद को गोली की चोट लगी थी।..... मैंने एवं विनोद ठाकुर ने विनोद पुरविया की चोटों पर पट्टी नहीं बाँधी

थी।मैं विनोद पुरविया को मोटर साइकिल पर बैठाकर सरकरी अस्पताल नहीं ले गया था। यह बात सही है कि विनोद पुरविया को मौके पर छोड़कर मैं और विनोद ठाकुर दोनो घटनास्थल के वापस कचहरी तरफ लौटे।मैं पिपरिया से माछा गया था। मेरे साथ विनोद ठाकुर भी था। मैं विनोद ठाकुर की मोटर साइकिल पर बैठकर ही माछा गया था।

26. मैं और विनोद ठाकुर माछा पहुचे वहा जाकर मैंने सास ससुर को खबर दी कि प्रताप और सोनू वन खत्म हो गये है।.....

27.यह कहना गलत है कि मैंने कोई घटना नहीं देखी है। यह कहना गलत है कि चूकि मैं रिश्तेदार हूँ इसलिए झूठी गवाही दे रहा हूँ।”

36. Now we will assess/evaluate/appreciate testimony of Pramod Goswami (PW-18) on merits, including grounds on which appellants have challenged/tried to impeach his reliability/trustworthiness.

A-(i) Presence of witness Pramod Goswami at the Scene of incident During Occurrence:-

37. So far as presence of witness Pramod Goswami at alleged date, time and place of incident is concerned, learned counsel for appellants has strenuously contended that presence of witness Pramod Goswami at the scene of incident is not proved at all, i.e. it is not proved that he is an eye-witness & his above submission is primarily based on the grounds, namely, non-mentioning of his name in Dehati Nalishi (Ex.P/2), immediately non-disclosure of factum of his having seen the incident to any one, including to police & non-reporting of matter to police, did not take injured Vinod (PW-2) to hospital & instead, leaving him at the scene of incident & delay in recording his police statement. We will examine & discuss them one by one. But before that, we would first discuss general evidence/reason for presence of witness etc.

38. Therefore, with respect to reliability/credibility/trustworthiness of prosecution witness Pramod Goswami, foremost question for consideration is whether presence of prosecution witness Pramod

Goswami is established at the place of occurrence during incident. In this context, it is also important to discuss as to why above witness Pramod came to Pipariya and where did he come in Pipariya and from there, where did he went.

39. A cumulative reading of deposition of Pramod Goswami in examination-in-chief/cross-examination/suggestions given to the witness on behalf of appellants during his cross-examination, as reproduced in the preceding paras, would reveal that deceased Pratap Van had told him that Sahab Van's bail has been allowed. Therefore, they have to go for furnishing the bail, thereupon, the witness came to Pipariya and reached in the Civil Court, Pipariya and there, he met Vinod (PW-4), Pratap Van and Sonu Van and from there, they went to jail and present incident had occurred while this witness was going to jail. In this Court's opinion, Pramod Goswami's deposition, reproduced as above, categorically proves and establishes his presence, along with reason for the same, at the scene of incident.

40. With respect to presence of Pramod Goswami (PW-18) at the scene of incident during occurrence, it would be appropriate to reproduce relevant paras of **PW-4 Vinod's** testimony which are as under:-

मुख्य परीक्षण द्वारा श्री एन.के. हरदेनिया, एजीपी

"1. लगभग 17-18 माह पहले की बात है। सवा दो बजे दिन की बात है। सेंट जौसफ स्कूल पचमढी रोड पिपरिया की बात है। ग्राम माछा का रहने वाला साहब वन पिपरिया जेल मे था जिस की रिहाई कराने के लिये जा रहे थे। प्रतापवन और सोनू वन और विनोद पुरविया वल्द घनश्याम पुरविया एक मोटर सायकल पर बैठे जा रहे थे रिहाई के लिये। मैं और प्रमोद ईटारसी वाला एक मोटर सायकल पर बैठकर साहबवन की रिहाई के लिये ही जा रहे थे। हमारी मोटर सायकल की हवा निकल गई और हम लोग पी.डब्ल्यू.डी. रोड़ पर भी पहुंच नहीं पाये यह लोग तीन लोग एक मोटर सायकल पर आगे निकल गये थे। जब हम लोग

सेंट जौसफ स्कूल के पास पांच मिनट बाद पहुंचे तो देखा कि सोनू और प्रताप वन दोनों खत्म हो गये थे।

नोट—इसी स्तर पर अपर लोक अभियोजक श्री हरदेनिया ने साक्षी को पक्ष विरोधी घोषित कर सूचक प्रश्न पूछने की अनुमति चाही, प्रकरण में पेश दस्तावेज एवं अभिलेख के अवलोकन उपरांत अनुमति प्रदान की गई :-

14.यह बात सही है कि घटना होने के पांच मिनट बाद मोके पर पहुंच गये थे। जिस मोटर साइकिल की हवा निकली थी उसी से मोके पर गये थे। मोटर साइकिल में हवा नहीं भरवाई थी। उसी हवा निकली मोटर साइकिल से ही घटना स्थल पर गये थे।”

41. Perusal of cross examination of Vinod (PW-4) shows that on above point, he has not been cross examined at all and his above testimony has remained unchallenged in the cross- examination. Thus, with respect to presence, Pramod Goswami's testimony is also corroborated by testimony of Vinod (PW-4), reproduced as above. Prosecution witness Vinod (PW-2) has stated in his examination-in-chief that Sahab Van, resident of Village Macha was lodged in Pipariya Jail, for whose release, they were going. As per Vinod (PW-4), Pratap Van, Sonu Van and Vinod-PW-2 were going on one motorcycle for getting Sahab Van released. He (witness) and Pramod (PW-18), resident of Itarsi, were going on other motorcycle for release of Sahab Van. Thus, from depositions of Pramod Goswami, Vinod (PW-2) & Vinod (PW-4), presence of Pramod Goswami at the scene of incident, along with reason for the same, is clearly established.

42. Now question arises that, if Vinod (PW-4) was going to jail along with Pramod, Vinod (PW-2) & deceased persons, then, why he could not witness the incident. As per Vinod (PW-4), his motorcycle got deflated and they could not even reach PWD road and three persons on one motorcycle had gone ahead. When after five minutes, they (witness &

Pramod) reached near St. Joseph School, they saw that Sonu and Pratap had died and at some distance, Vinod (PW-2) was lying injured. After seeing that much, he left Pramod there and left for his house. But on behalf of appellants, no such suggestion has been given to Pramod Goswami during his cross-examination that the motorcycle, on which he was sitting and which was being ridden by Vinod (PW-4), had got deflated, therefore, deceased's motorcycle had gone ahead and they reached at the place of incident after five minutes.

43. With respect to PW-4 Vinod's above testimony, especially, with respect to his motorcycle getting deflated, his testimony in para no.14 is of utmost important, wherein, he has deposed that it is correct that he reached at the site five minutes after the occurrence. They went on the same motorcycle which had got deflated. They have not filled air in the motorcycle and have reached at the place of incident on the deflated motorcycle. In this court's opinion, it is highly improbable and unnatural that two persons would ride deflated motorcycle and Vinod (PW-4) has nowhere stated that they got information about the incident, therefore, both of them, he and witness Pramod had ridden deflated motorcycle to reach the place of the incident at the earliest.

44. Thus, the reason stated by Vinod (PW-4) in his deposition for not being able to witness the incident does not appear probable & in the facts & circumstances of the case, it is not proved that on account of reason, as stated by Vinod (PW-4) in his deposition, he could not witness the actual happening of the incident.

45. Further, perusal of site map (Ex.P-33) prepared by investigating officer Mahendra Singh Meena (PW-20) shows that the road, where incident occurred, is a straight one and there are no turnings/curves. Further, in the instant case, incident has occurred during broad day light.

46. Thus, in view of above, we are of the considered opinion that presence of Pramod Goswami (PW-18) at the place of incident during occurrence, along with reason for the same, is completely established.

47. It is correct that in para 23, witness Pramod Goswami has stated that after incident, assailants left towards Pachmadi in Bolero Jeep. Thereafter, he and Vinod (PW-4) reached at the site, where these persons were lying. In para 24, this witness has stated that he enquired with Vinod as to who had shot. Thereafter, Vinod had told him names of assailants. On the basis of Pramod's above testimony, learned counsel for appellants has submitted that if witness had himself witnessed the incident, then, there was no reason/occasion for him to enquire with Vinod as to who had shot. Therefore, it shows that the witness has not actually seen the incident, that's why, he enquired about the same with Vinod.

48. With respect to learned counsel's above submission, it is noticeable that presence of witness Pramod at the scene of incident is categorically proved and incident is of broad day light. Road i.e. scene of incident, is a straight one. Further cross-examination of Pramod shows that no specific suggestion has been given to him during his cross-examination that he actually did not /could not witness the incident, that's why, he enquired with Vinod about the assailants. Witness Pramod has clearly identified appellants in his testimony and on above point, his testimony has not been challenged in his cross-examination and no suggestion has been given to him during his cross-examination that at the time of incident, he could not see/identify the assailants. Further, as held in **Rakesh (supra)**, **Karamjeet Singh (supra) & Mustak alias Kanio Ahmed Shaikh (supra)**, testimony of a witness has to read /assessed as a whole & it can not be discarded merely on account of a stray sentence appearing in the cross-examination. Hence, in this Court's opinion, Pramod's testimony in

paras 23 and 24 as above, does not prove/establish that he did not actually witness the incident.

A-(ii) Non-mentioning of name of witness Pramod Goswami in Dehati Nalishi (Ex.P/3):-

49. So far as non-mentioning of name of witness Pramod Goswami in Dehati Nalishi (Ex.P/3) is concerned, it is correct that Vinod (PW-2), Smt. Manju Goswami (PW-14) and Virendra Van Goswami (PW-15) are completely silent about the presence of witness Pramod Goswami & Vinod (PW-4) at the time of incident and name of Pramod Goswami (PW-18) & Vinod (PW-4) are also not mentioned in the Dehati Marg intimation (Ex.P/2) and Dehati Nalishi (Ex.P/3) as an eye-witness, which have been lodged immediately after the incident.

50. The effect of non-mentioning of name of eye-witness in FIR has been dealt by Hon'ble Apex Court in *Satnam Singh Vs. State of Rajasthan, 2000 (1) SCC 662* and therein Hon'ble Apex Court has opined as under:-

“5.It is to be noticed that though PW-4 lodged the FIR immediately after the occurrence but the names of the three eye witnesses PWs, 5, 6 and 8 had not been mentioned therein. But that would not by itself impeach the credibility of the three eye witnesses.....”

51. In *Sahab Singh Vs. State of Rajasthan, AIR 1997 SC 945* Hon'ble Apex Court has held as under:-

“Learned counsel for the appellants contended that the two courts ought not to have placed reliance on the evidence of Pushpa (PW-4) for the simple reason that her name was not even spelled in the FIR which was furnished by none other than Bhim Singh, the brother of deceased. True, the name of Pushpa is not mentioned in the First information report.----- Even that apart, if Bhim Singh had chosen not to mention the name of his sister-in-law being a lady, the testimony of Pushpa

is not liable to be thrown over board on that reason alone. We bear in mind the fact that despite this drawback her testimony was believed by the trial Court and the High Court. We were taken through the evidence of PW-4 (Pushpa) and we too are not disinclined to discard her evidence merely because Bhim Singh did not mention her name in the FIR.”

52. Therefore in view of law laid down by Hon'ble apex court in aforesaid cases, coupled with the fact that in the instant case presence of Pramod Goswami & Vinod (PW-4), along with reason for the same, is completely proved, in this court's opinion, non-mentioning of names of witness Pramod Goswami/Vinod (PW-4) in Dehati Nalishi (Ex.P/3)/Dehati Marg intimation (Ex.P/2) is also inconsequential.

53. Therefore, evidence of Vinod (PW-4) and Pramod Goswami (PW-18) can not be legally discarded solely on the ground of non-mentioning of their names in Dehati Marg intimation (Ex.P/2) and Dehati Nalishi (Ex.P/3).

A-(iii) Conduct of Witness Pramod:-

54. If we go through the testimony of witness Pramod Goswami, especially paras 3, 24, 25, 26 and 27, it is evident that he neither reported the matter to the police nor he, otherwise, informed Police etc. about the incident, but from his testimony, it is clear that immediately after the incident, he had gone to village Machha and informed his mother-in-law and father-in-law that Pratap and Sonu are no more and he also informed his wife about the incident. Further, Dehati Marg intimation (Ex.P/2) and Dehati Nalishi (Ex.P/3) show that they have been lodged immediately after the incident, therefore, there was no occasion/necessity for Pramod Goswami to lodge the report about the incident. Therefore, it can not be said that witness Pramod Goswami did not inform any one immediately after the incident.

55. It is correct that witness Pramod Goswami did not take injured Vinod (PW-2) to hospital for treatment from the scene of incident. But perusal of Pramod's testimony shows that in his cross-examination, no explanation has been sought from him on above point.

56. Further, with respect to above, we would like to refer certain pronouncements of Hon'ble Apex Court. In *Appabhai Vs. State of Gujarat AIR 1988 SC 696*, Hon'ble Apex Court has held as under:-

“**11**.....The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner. In *Rana Ptatap Vs. State of Haryana (1983) 3 SCC 327*, O. Chinnappa Reddy J. speaking for this Court succinctly set out what might be the behavior of different persons witnessing the same incident. The learned Judge observed (at P. 330) (of SCC):

“ **6.** Every person who witness a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot, Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witnesses on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.”

“**12.**There may be some of the reactions. There may be still more. Even a man of prowess may become pusillanimous by witnessing a serious crime.....”

57. In **Surendra Kumar Vs. State of Uttar Pradesh AIR 2021 SC 2342**,

Hon'ble Apex Court observed as follows :-

“18.....The reaction of witnesses who see violent crime can vary from person to person and to expect a frightened witness to react in a particular manner would be wholly irrational. Equally dangerous would be the approach of the Courts to reach certain conclusion based on their understanding of how a person should react and to draw an adverse inference when the reaction is different from what the Court expected.....”

Approving the above view, S.B. Sinha J., in **Dinesh Borthakur Vs. State of Assam, AIR 2008 SC 2205**, succinctly explained how guilt should not be inferred because of a particular type of reaction by an individual. The relevant parts are extracted below: -

“47. No hard-and-fast rule having any universal application with regard to the reaction of a person in a given circumstance can, thus, be laid down. One person may lose equilibrium and balance of mind, but, another may remain a silent spectator till he is able to reconcile himself and then react in his own way.....”

58. In the instant case, it has also to be kept in mind that there was bitter subsisting rivalry between deceased's family & appellants' family & witness Pramod is closely related to deceased's family i.e. he is brother-in-law of one of the deceased & in the incident, witness' brother-in-law & brother-in-law's son were murdered in broad day light on account of prior enmity between the parties. Therefore, if we examine the conduct of witness Pramod in the factual backdrop of the case & in the light of above pronouncements, in our considered view, in the facts & circumstances of the case, there is nothing unnatural in witness going straight to his father-in-law & mother-in-law to inform them about the incident & not informing immediately police/other persons & not taking

injured Vinod (PW-2) to hospital for treatment. Further, in the instant case, witness has informed his father-in-law & mother-in-law & his wife about the incident immediately after the occurrence.

59. In the case of **Alil Mollah** (supra), witness did not tell anyone about occurrence, even to his co-employees, though next day he went at work place. He did not gave any explanation about his silence. He was examined belatedly by the Police. There was no corroboration to his testimony from independent source. In the case of **Gopal Singh** (supra), witness rushed to the village but had still not conveyed the information about the incident to his parents and others present there and had chosen to disappear for a couple of hours on the specious and unacceptable plea that he feared for his own safety. In view of discussion in the foregoing paras, on account of factual difference, principles laid down in **Alil Mollah** (supra) & **Gopal Singh** (supra) do not apply to facts of instant case.

A-(iv) Delay in Recording Statement of Witness:-

60. In the instant case, incident occurred on 20.06.2008 and witness Pramod Goswami's statement (Ex. D/2) under Section 161 of Cr.P.C. has been recorded on 22.06.2018. Investigating Officer, Mahendra Singh Meena, who had recorded Pramod Goswami's police statement (Ex.D/2), has deposed in para 22 of his cross-examination that he neither recorded Pramod Goswami's statement on 20.06.2008 nor on 21.06.2008. It is correct that Pramod Goswami did not report the matter to Thana on 20.06.2008. Witness voluntarily states that he can not tell about the information, possibly, the person giving information on phone may be Pramod Goswami. It is correct that this witness had not told him on 20.06.2008/21.06.2008 that he had witnessed the incident.

61. Now the question arises whether on the ground of delay in recording his police statement under Section 161 of Cr.P.C. etc., his whole testimony has to be discarded and the witness has to be termed as wholly unreliable. It is well settled that a witness' testimony can not be rejected solely on the ground of delay in recording his police statement.

62. In this connection, we may gainfully refer to para 26 of **V.K. Mishra Vs. State of Uttarakhand, (2015) 9 SCC 603** , which reads as under:-

“26. It cannot be held as a rule of universal application that the testimony of a witness becomes unreliable merely because there is delay in examination of a particular witness. In Sunil Kumar & Anr. vs. State of Rajasthan, (2005) 9 SCC 283, it was held that the question of delay in examining a witness during investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a core of witness to falsely support the prosecution case.”

63. In **Sidhartha Vashist Vs. State (NCT of Delhi) AIR 2010 SC 2352**, Hon'ble Apex Court has observed as under :-

“153(4). Delay in recording the statement of the witnesses do not necessarily discredit their testimonies. The court may rely on such testimonies if they are cogent and credible.”

64. In **Ramesh Laxman Gavli Vs. State of M.P. & Ors. AIR 1999 SC 3759**, Hon'ble Apex Court has held as under :-

“6. This delay in examining the two witnesses ipso facto cannot be a ground to discard their testimony, more so, when in the cross-examination of witnesses, nothing tangible had been brought out to impeach their testimony.....”

65. From discussion in the forgoing paras and conclusions drawn by this Court, it is clearly established that witness Pramod Goswami was

present during incident at the place of occurrence and he had seen the incident. Therefore, it cannot be said that he has been inserted as an eye-witness later on. In this connection, we may also refer para-1 of this witness's testimony in which he has not recognized all the accused persons in the Court but has only recognized appellants and deposed that he does not recognize accused Ravi and Rajendra present in the Court.

66. In the case of **Shahid Khan (supra)**, statements of witnesses under Section 161 of Cr.P.C. were recorded after three days of occurrence and no explanation was furnished for the same. In **Ramreddy (supra)**, solitary eye-witness was examined by the police after two days. In this court's opinion, in view of discussion in the foregoing paras, on account of factual difference, decisions of **Shahid Khan (supra) & Ramreddy (supra)** do not help appellants. Therefore, in this Court's opinion, prosecution witness Pramod Goswami's testimony can not be discarded solely on the ground of delay in recording his police statement.

B-Contradictions and Omissions :-

67. So far as contradictions and omissions in Pramod's Court statement and his Police statement (Ex.P-38) are concerned, paras 2,3,7,18,19,20,21 and 22 of Pramod's testimony shows that there are some contradictions/omissions with respect to as to how many persons get off from the Bolero Jeep/deceased were shot, while they were standing or while they were lying on the road and whether the witness has seen Vinod (PW-2) fleeing. The witness has admitted that he did not tell Police in his Ex.D-2's statement that he was riding with Vinod (PW-4) and was going to Jail with him for the purpose of bail but this fact is mentioned in witness' statement Ex.D/2. With respect to above, it has to be kept in mind that a witnesses testimony has to be read/assessed as a whole and not on the basis of stray sentences/in isolation.

68. Again in the instant case, incident has occurred on 20.6.2008 whereas this witness has been examined nearly after two years on 22.4.2010/23.4.2010. In this Court's opinion, if deposition of Pramod is read/assessed as a whole, with other evidence on record, then, contradictions/omissions etc. as referred above, are not material one and on the basis of above, it cannot be said that Pramod is not reliable/trustworthy.

Whether there is any evidence on record to corroborate Pramod Goswami's testimony:-

69. Testimony of Vinod (PW-4) corroborates prosecution witness Pramod Goswami's presence at the place of occurrence during the incident and reason for his presence is also clearly proved from testimony of Vinod (PW-4) itself, which has been discussed in preceding paras in detail and on that point Pramod Goswami's testimony has substantially remained un-crossed and unchallenged in his cross-examination on behalf of the appellants.

70. As per testimony of Pramod Goswami, motorcycle ridden by deceased was hit from behind by a Bolero and Vinod (PW-2), who was riding the said motorcycle has also deposed that his motorcycle was hit from behind, though, he has stated that he could not see what hit his motorcycle from behind.

(i)- Dehati Nalishi (Ex.P-3)/Dehati Marg Intimation (Ex.P/2):-

71. Perusal of PW-2 Vinod's testimony shows that he has denied lodging Dehati Marg Intimation (Ex.P-2)/Dehati Nalishi (Ex.P-3) whereas Investigating Officer Mahendra Singh Meena (PW-20) has deposed that it is not correct that injured/complainant Vinod (PW-2) had

not told about names of any accused in Dehati Marg Intimation (Ex.P-2)/Dehati Nalishi (Ex.P-3). It is wrong to say that injured/complainant Vinod (PW-2) had not lodged any report against any accused.

72. Therefore, in view of Vinod (PW-2) and Investigating Officer Mahendra Singh Meena's above testimonies, question arises whether Dehati Marg Intimation/Dehati Nalishi have been lodged by Vinod (PW-2), if not, then, how they were lodged/who lodged them/who narrated the facts mentioned therein.

73. Evidently, complainant Vinod (PW-2) was himself injured in the incident. In this context, first question that arises for consideration is where above Dehati Marg Intimation/Dehati Nalishi have been written and where, for the first time, injured/complainant Vinod (PW-2) was taken for treatment after the incident.

74. It is evident from testimony of Investigating Officer Mahendra Singh Meena and Dehati Marg Intimation/Dehati Nalishi that above reports have been written in Community Health Centre, Pipariya. Therefore, question arises whether after the incident, complainant/injured Vinod (PW-2) was first taken to Community Health Centre, Pipariya for treatment. Complainant Vinod (PW-2) has deposed in his cross-examination that he does not remember today that whether after the incident, he was taken to Pipariya Hospital and whether he was treated there and he also does not remember whether he was referred to Hoshangabad from Pipariya Hospital. He also does not know whether Dr. A.K. Agrawal treated him in Pipariya. Thus, this witness has not clearly denied that after the incident, he was not taken to Pipariya Hospital and he was not treated there at all.

75. Depositions of Dr. A. Agarwal, Dr. Ravindre Gargade (PW-22) & Dr. Rajesh Sharma (PW-27) and their reports Ex.P/41, Ex.P/54 Ex.P/56

show that after the incident, injured/complainant Vinod was first taken to C.H.C. Pipariya for treatment and from there, he was referred to District Hospital, Hoshangabad and from District Hospital Hoshangabad, he was referred to Bhopal and in Bhopal, he was treated at Narmada Trauma Centre. Investigating Officer Mahendra Singh Meena has denied the suggestion given to him during his cross-examination on behalf of appellants that complainant Vinod (PW-2) was not treated in Pipariya Hospital. Thus, from above, it is clearly established and proved that immediately after the incident, the injured/complainant Vinod (PW-2) was taken to C.H.C. Pipariya for treatment and from there, he was referred to District Hospital Hoshangabad and from there, he was referred to Bhopal.

76. Deposition of injured/complainant Vinod (PW-2) shows that he has stated in his deposition that he became unconscious at the scene of incident and recovered consciousness only in Narmada Trauma Centre, Bhopal. Perusal of testimonies of Dr. A.K. Agrawal (PW-19), Dr. Ravindra Gangrade (PW-22), Dr. Rajesh Sharma (PW-27) and M.L.C. (Ex.P/41, 54, 56) clearly show that at the time of admission in C.H.C. Pipariya/Pipariya Hospital, injured/complainant Vinod was conscious. & he was also conscious when he was admitted in District Hospital Hoshangabad and Narmada Trauma Centre, Bhopal and from above, it does not transpires that injured/complainant Vinod was unconscious when he was admitted in Pipariya Hospital and he was unconscious in District Hospital Hoshangabad and he gained consciousness only in Bhopal. Again, cross-examination of Dr. A.K. Agrawal shows that no suggestion on behalf of appellants has been given to the witness that when complainant Vinod (PW-2) was admitted in Pipariya Hospital, he was unconsciousness. Investigating Officer has stated his cross-examination

that it is not correct that complainant Vinod was brought to Pipariya Hospital in unconscious state. It is not correct that he gained consciousness in Bhopal Hospital. But no such specific suggestion has been given to Dr. A.K. Agrawal (PW-19), Dr. Ravindra Gangrade (PW-22), Dr. Rajesh Sharma (PW-27) during their cross- examination.

77. Thus, from the evidence on record, it is not proved that when injured/complainant Vinod (PW-2) was brought and admitted in C.H.C. Pipariya/Pipariya Hospital, he was unconscious and he gained consciousness only in Bhopal.

78. So far as PW-2 complainant Vinod's signature on Dehati Marg Intimation/Dehati Nalishi are concerned, Vinod (PW-2) has admitted his A to A signature on Dehati Marg Intimation (Ex.P/2)/Dehati Nalishi (Ex.P/3). But he has stated in his cross-examination that it is correct that whatever documents he had signed, he had signed them in Bhopal. It is correct that when he was admitted in Bhopal, then, *Thanedar* came and got his signature but Investigating Officer Mahendra Singh Meena had denied the suggestion given to him during his cross-examination that he took PW-2 complainant Vinod's signature on Dehati Marg Intimation (Ex.P/2)/Dehati Nalishi (Ex.P/3) in Bhopal. From discussion in the preceding paras, it is clear that injured/complainant Vinod (PW-2) was in conscious state in Pipariya Hospital and it is not proved that he was unconscious in Pipariya Hospital, District Hospital Hoshangabad and he gained consciousness only in Bhopal. Therefore, PW-2 injured Vinod's above testimony does not appear to be correct that he signed above documents in Bhopal. Further, para 10 of cross-examination of injured/complainant Vinod (PW-2) shows that on behalf of appellants, no specific suggestion with respect to A to A signature on Dehati Marg

Intimation (Ex.P/2)/Dehati Nalishi (Ex.P/3), has been given to the witness that he signed Ex.P/2 and Ex.P/3 in Bhopal and not in Pipariya Hospital.

79. In this connection, it is also important to note as to when Investigating Officer Mahendra singh Meena reached C.H.C. Pipariya. Dr. A.K. Agrawal has stated in para 22 of his cross-examination that it is correct that when Sanjay Tiwari brought injured Vinod (PW-2), he had come to know that it is a medico-legal case, therefore, he immediately informed through telephone and after some time Police personnel came. It is correct that after he had treated injured Vinod (PW-2) and prepared M.L.C., Police had inquired with Vinod. Thus, from above, it is clear that after injured/complainant Vinod (PW-2) was admitted in Pipariya Hospital, Police had come there and had inquired with injured/complainant Vinod (PW-2).

80. So far as time of incident is concerned, as per Vinod (PW-2), the incident took place at about 2/2.15 in the afternoon during day time. In Dehati Marg Intimation (Ex.P/2)/Dehati Nalishi (Ex.P/3) also, time 2.15 afternoon is mentioned as time of incident and therein, time of lodging the same is mentioned as 15.35/15.45. Dr. A.K. Agrawal (PW-19) has stated in his examination-in-chief and cross-examination that injured Vinod (PW-2) was brought to Hospital at 3.30 p.m. in the afternoon. Thus, in view of Dr.A.K. Agrawal's above testimony, a question arises that if injured/complainant Vinod (PW-2) was brought to Hospital at 3.30 afternoon, then, how Dehati Marg Intimation (Ex.P/2)/Dehati Nalishi (Ex.P/3) could have been lodged at 15.35/15.45. If we go through M.L.C. report (Ex.P/41) prepared by Dr. A.K. Agrawal with respect to above injured/complainant Vinod (PW-2), then, it appears that the time 3.30 p.m. mentioned in above report appears to be the time of preparing above M.L.C. and not time of admission. Further, testimony of Investigating

Officer Mahendra Singh Meena (PW-20) reveals that he has not been cross-examined on above point and no explanation has been sought from him during his cross-examination that if injured Vinod (PW-2) was brought to Hospital at 3.30 p.m. in the afternoon, then, how he had lodged Dehati Marg Intimation (Ex.P/2)/Dehati Nalishi (Ex.P/3) at 15.35/15.45 in the Hospital.

81. Further with respect to above, it is also important to discuss as to when offence/marg was registered on the basis of above reports. Investigating Officer Mahendra Singh Meena (PW-20) has stated in his examination-in-chief that he had sent Dehati Nalishi (Ex.P/3)/ Dehati Marg Intimation (Ex.P/2) for original registration through Constable accompanying him to the *Thana*. Head Constable Madhusudan Pandey (PW-6) has deposed that on 20.6.2008, he was posted as Head Constable at Police Station Pipariya and on above date *Thana* In-charge Mahendra Singh Meena had sent Dehati Nalishi (Ex.P/3)/ Dehati Marg Intimation (Ex.P/2) for original registration to him and on the basis of Dehati Nalishi, he had registered Crime No.413/2008 dated 20.8.2008 and scribed F.I.R. (Ex.P/25). Similarly, on the basis of Marg No.0/2008, he registered original Marg No.57/08 Ex.P/26. This, witness has admitted in cross-examination that he did not get signature of concerned Constable, who brought relevant Dehati Nalishi/Dehati Marg Intimation, on F.I.R. (Ex.P/25) and marg intimation (Ex.P/26). Perusal of F.I.R. (Ex.P/25) & marg intimation (Ex.P/26) show that they have been registered on 20.6.2008 at 15.15/15.20.

82. Head Constable Madhusudan Pandey (PW-6) has stated in his cross-examination that it is not correct that he had registered Ex.P/25 on 21.6.2008. Perusal of PW-6 Head Constable Madhusudan Pandey's deposition shows that during his cross-examination, no specific

suggestion has been given to the witness that he did not receive Dehati Nalishi (Ex.P/3) and Dehati Marg Intimation (Ex.P/2) on 20.6.2008. Again, perusal of Investigating Officer Mahendra Singh Meena's testimony shows that during his cross-examination, no specific suggestion has been given to him that he did not send Dehati Nalishi (Ex.P/3) and Dehati Marg Intimation (Ex.P/2) to Police Station Pipariya on 20.6.2008. Again overall testimony of Investigating Officer Mahendra Singh Meena reveals that during his cross-examination, no suggestion has been given to the witness that he did not write Dehati Nalishi (Ex.P/3) and Dehati Marg Intimation (Ex.P/2) on 20.6.2008 at the time and place mentioned therein and the same had been prepared later on. Thus, it is not the defence of appellants that the Dehati Nalishi (Ex.P/3) and Dehati Marg Intimation (Ex.P/2) reports are ante dated/ante time. Thus, on the basis of Dehati Nalishi (Ex.P/3) and Dehati Marg Intimation (Ex.P/2), F.I.R. and marg intimation have been registered immediately.

83. So far as intimation to J.M.F.C. is concerned, as per Investigating Officer Mahendra Singh Meena, JMFC was intimated as per law and intimation with respect thereof is Ex.P/53. This witness has stated in his cross-examination that it is correct that information relating to Ex.P/53 was received by the Court on 21.6.2008 from *Thana* whereas incident occurred on 20.4.2008. The witness voluntarily states that the reason thereof is that the information was received in *Thana* at 15.15 and the Court *Moharrir*, who takes documents from Thana to Court, leaves for court before 3 p.m., that's why information could not reach Court on that day. It is not correct that the reason for delay in sending the information is that he lodged F.I.R. on its own volition. But no such suggestion has been given to Head Constable Madhusudan Pandey (PW-6), who had lodged F.I.R. (Ex.P/25).

84. Further, if we go through the overall evidence adduced by the prosecution, especially evidence of injured/complainant Vinod (PW-2), Dr. A.K. Agrawal (PW-19) and Investigating Officer Mahendra Singh Meena (PW-20), then, at the time of writing of above reports Dehati Nalishi (Ex.P/3) and Dehati Marg Intimation (Ex.P/2), presence of any family members/relatives of deceased is not proved and it is also not proved from evidence on record that relatives/family members of deceased have dictated/narrated facts mentioned in Dehati Nalishi (Ex.P/3) and Dehati Marg Intimation (Ex.P/2) & it is also evident from cross-examination of prosecution witnesses that during cross-examination, no such suggestion has been given to any prosecution witness.

85. Further with respect to above, question arises that if facts mentioned in Dehati Nalishi (Ex.P/3) and Dehati Marg Intimation (Ex.P/2) were not narrated by injured-complainant Vinod (PW-2)/family members/relatives of deceased, at the time of writing of above reports by Investigating Officer Mahendra Singh Meena in C.H.C. Pipariya on 20.6.2008 at 15.35/15.45, then, how/at whose instance, above facts have been mentioned and how the Investigating Officer came to about facts mentioned in above Dehati Nalishi (Ex.P/3) and Dehati Marg Intimation (Ex.P/2) reports.

86. Perusal of testimonies of injured Vinod (PW-2) and Investigating Officer Mahendra Singh Meena show that with respect to above, no suggestion has been given to above witnesses, especially Investigating Officer Mahendra Singh Meena that if facts mentioned in Dehati Nalishi (Ex.P/3) and Dehati Marg Intimation (Ex.P/2) were not narrated/told by Vinod (PW-2), then, how the witness Investigating Officer Mahendra Singh Meena came to know about the same and mentioned them in above

reports. Certainly, in this Court's opinion, facts mentioned in Dehati Nalishi (Ex.P/3) and Dehati Marg Intimation (Ex.P/2) cannot be in the personal knowledge of Investigating Officer Mahendra Singh Meena, especially, when the reports have been lodged immediately after the incident.

87. With respect to above, it would be appropriate to refer relevant paras of Vinod (PW-2), wherein certain introductory facts have been stated & which have not been challenged in his cross-examination. Relevant paras of **PW-2 Vinod's** deposition are as under :-

मुख्य परीक्षण

1- मैं हाजिर अदालत अभियुक्तगण को नहीं जानता हूँ। लगभग डेढ़ साल पहले की बात है। दिन में लगभग 2:00 बजे की बाद की बात है। सैन्ट जोसेफ स्कूल के पास पचमढी रोड की बात है। मैं माछा से मोटर साइकिल से आया था। प्रतापवन और मैं दोनों लोग मोटर साइकिल से आये थे। हम माछा गाँव से लगभग 10 बजे मोटर साइकिल से चले थे। हम लोग साहब वन की जमानत के लिये आये थे। अदालत में आये थे।

2- अदालत में हम लोग बैठे रहे पुकार हुई और जमानत हुई। जमानत मे रूके वही भरवाई। मेरी खुद की बही पर जमानत ली थी और वही भरवाई थी फिर मैं उसके बाद बाहर आया तो प्रतापवन और सोनू वन दोनों खड़े थे और उन्होंने कहा कि जेल चले। मैं गाडी चला रहा था और गाडी के पीछे प्रतापवन और सोनू वन बैठे गये। हम लोग मोटर साइकिल से सैन्ट जोसेफ स्कूल के लगभग पहुंचे। पीछे से मोटर साइकिल में टक्कर लगी। मुझे दिखाई नहीं दिया किस चीज की टक्कर लगी। टक्कर लगने से हम फिक गये।
नोट:- इसी समय अपर लोक अभियोजक श्री एन के हरदेनिया ने साक्षी को पक्ष विरोधी घोषित कर सूचक प्रश्न पूछने की अनुमति चाही वाद विचार अनुमति दी गयी।

5- यह कहना सही है कि मैं गाँव (माछा) से जिस मोटर साइकिल से आया था वह मोटर साइकिल सुजुकी कंपनी की थी और उसका नंबर एम.पी.-05-8057 है। यह कहना सही है कि साहबवन की रिहाई करवाने के लिए हम लोग जेल मोटर साइकिल से जा रहे थे यह कहना सही है कि मैं मोटर साइकिल चला रहा था और प्रतापवन बीच में तथा पीछे सोनूवन बैठा था।.....

7- मैंने अपनी जमानत लगवाकर के साहब वन की जमानत

करवाई थी मैं जमानतदार था। साहब वन ग्राम माछा में मेरे पड़ोस में रहते थे और पड़ोसी होने के कारण उनको जानता थां यह बात सही है कि मैं जमानतदार था और जमानत के कागजात मैंने भरे थे। यह कहना सही है कि जीसाहब के मर्डर के केश में साहब वन बंद था जिसकी जमानत करवाई थी। मुझसे जमानत के लिए प्रतापवन ने कहा था तथा प्रतापवन का लड़का सोनू वन था।

8— मुझे आज ध्यान नहीं है कि टक्कर लगने के बाद मुझे इलाज के लिए पिपरिया लाया गया और जहां मेरा ईलाज हुआ था मुझे यह ध्यान नहीं है कि पिपरिया अस्पताल से मुझे होशंगाबाद रिफर किया गया था। मुझे इस बात की कोई खबर नहीं है कि पिपरिया में मेरा ईलाज अग्रवाल डॉक्टर ने किया था। यह कहना सही है कि पचमढी रोड पर जिस टक्कर की मैं बात कर रहा हूँ वह टक्कर दोपहर लगभग सवा दो बजे हुई थी। मुझे इस बात की कोई खबर नहीं है और कोई होश नहीं है कि मैंने प्रतापवन और सोनूवन की मृत्यु की सूचना सी.एच.सी. पिपरिया में 2:45 मिनट पर दिन में दर्ज करवाई थी। मुझे होश नहीं थी कि मैंने ऐसी कोई मृत्यु की सूचना देहाती मार्ग इस आशय का लिखवाया था कि स्कूल के सामने पीछे से दारा सिंह गूजर ढाहिया ने जीप से टक्कर मारकर हमें गिरा दिया तथा जीप से दारा सिंह, पंचम, राकेश, राहुल, सुनील एवं अन्य तथा मोटर साइकिल से आये दो व्यक्तियों द्वारा हम पर बन्दूक एवं कटटे से गोली बरसाई और गोली लगने से प्रतापवन और लडका सोनू वन की मृत्यु हो गयी लाश घटना स्थल पर पड़ी है। यह कहना गलत है कि उसी देहाती मार्ग की सूचना प्रपी 2 पर मैंने सूचना देने के बाद हस्ताक्षर किये थे। यह कहना गलत है कि उक्त हस्ताक्षर मैंने पिपरिया सी.एच.सी. अस्पताल में 2:45 पर सूचना देने के बाद किये थे।”

प्रतिपरीक्षण द्वारा श्री जगत सिंह अधिवक्ता वास्ते आरोपीगण राजेन्द्र के अलावा

“10.रिहाई आदेश न्यायालय का चपरासी लेकर जा रहा था।”

88. Thus, above introductory facts, stated by Vinod (PW-2) in his examination-in-chief, have not been challenged in his cross-examination. He has neither been contradicted with respect to above facts with reference to Dehati Nalishi (Ex.P/3)/Dehati Marg Intimation (Ex.P/2) and his police statement (Ex.D/2) nor any suggestion has been given to him in his cross-examination that he did not tell above facts to police. Perusal of PW-2 Vinod's testimony shows that with respect to Dehati Nalishi

(Ex.P/3) and Dehati Marg Intimation (Ex.P/2) reports, he has *resiled* only with reference to identity of assailants. Dr. Rajesh Sharma (PW-27), who had examined injured Vinod (PW-2) on 20.6.2008 in Narmada Trauma Center, Bhopal, has stated in his examination-in-chief that he was told that on 20.6.208 at 2.10 p.m. during day time, at Pachmadi Road, Pipariya, some known persons have shot & injured him and this is also mentioned in his report Ex.P/56. Though, this witness has admitted in his cross-examination, that, it is correct that injured did not name any person/persons who had shot him. Thus, it is evident from testimony of Dr. Rajesh Sharma and his report Ex.P-56 that some known persons have shot Vinod (PW-2) but witness Vinod (PW-2) has not clarified, that, if he was not shot by the appellants, then, who shot him, i.e. the name of assailants.

(ii)-Corroborative value of Dehati Nalishi (Ex.P/3) and Dehati Marg Intimation (Ex.P/2):-

89. It is correct that generally a FIR can only be used for the purposes of corroborating or contradicting the person who lodges it. In the instant case, complainant Vinod (PW-2) has denied lodging Dehati Nalishi (Ex.P/3) and Dehati Marg Intimation (Ex.P/2). Therefore, question arises as to whether above reports can be put to any use/can be utilised for any purpose, whatsoever, in the instant case. In this context, we would like to refer certain decisions of Hon'ble Apex Court.

90. With respect to the facts & evidence of the case, as narrated & discussed in the foregoing paras, it would be appropriate to refer law laid down in and facts of **Khujji alias Surendra Tiwari Vs. State of M.P. AIR 1991 SC 1853 (Three Judge bench)**, which are as follow:-

“3. The First Information Report, Ex.P-3, was lodged by PW-4 Ramesh immediately after the incident and the same was recorded by the Investigation Officer PW-13

Ramjisingh at about 09:15p.m. In the said first information report PW-4 gave the details regarding the incident and furnished the names of all the six assailants..... Before the trial court PW 4 Ramesh, who had lodged the first information report, tried to disown it. He was declared hostile as he expressed his inability to identify the accused persons as the assailants of the deceased Gulab. PW 3, the Rickshaw Puller, while narrating the incident expressed a similar inability and he too was treated as hostile and cross-examined by the Public Prosecutor.....”

“6..... In the present case the evidence of the aforesaid two eye-witnesses was challenged by the prosecution in cross-examination because they refused to name the accused in the dock as the assailants of the deceased. We are in agreement with the submission of the learned counsel for the State that the trial Court made no effort to scrutinize the evidence of these two witnesses even in regard to the factum of the incident. On a careful consideration of their evidence it becomes crystal clear that PW- 4 had accompanied the deceased in PW 3's rickshaw to the place of incident. In the incident that occurred at the location pointed out by the prosecution, PW 4 sustained an injury. His presence in the company of the deceased at the place of occurrence, therefore, cannot be doubted. Immediately after the incident within less than an hour thereof PW 4 went to the police station and lodged the first information report. It is true that the first information report is not substantive evidence but the fact remains that immediately after the incident and before there was any extraneous intervention PW 4 went to the police station and narrated the incident. The first information report is a detailed document and it is not possible to believe that the investigating officer imagined those details and prepared the document Exh. P 3. The detailed narration about the incident in the first information report goes to show that the subsequent attempt of PW 4 to disown the document, while admitting his signature thereon, is a shift for reasons best known to PW 4. We are, therefore, not prepared to

accept the criticism that the version regarding the incident is the result of some fertile thinking on the part Of the investigating officer. We are satisfied, beyond any manner of doubt, that PW 4 had gone to the police station and had lodged the first information report. To the extent he has been contradicted with the facts stated in the first information report shows that he has tried to resile from his earlier version regarding the incident.....The only area where they have not supported the prosecution and have resiled from their earlier statements is regarding the identity of the assailants. We will deal with that part of the evidence a little later.....”

91. In this connection, we may also refer to observations in **Awdesh and Ors. Vs. State of U.P. AIR 1995 SC 375**, which are as follows :-

“**5.....**These witnesses have supported the prosecution case as disclosed in the First Information Report within one and half hours of the occurrence.....”

“**7.....**PW-1 and PW-3 were admittedly injured and had sustained several injuries, which was proved by the doctor, who examined their injuries. As such, their presence cannot be disputed at the time of the occurrence. The First Information Report having been lodged within one and half hours of the occurrence, supports and corroborate to a great extent, the version disclosed by prosecution witnesses in Court.”

92. In **Abdul Gani & Ors. Vs. State of Madhya Pradesh AIR 1954 SC 31(Four Judge bench)**, Hon’ble Apex Court has observed as under:

“**13.....**So far as we have been able to see, the first information report has not been used as substantive evidence in the case at all by the High Court but has been used only to corroborate the statements of the eyewitnesses. It is not possible to accept the suggestion that because this report was not as full as it could have been, it should be ignored altogether. There is no warrant for doing so.-----”

93. In this context, we may also refer para 3 of *Ladha Shamji Dhanani (supra)*. Further, perusal of facts & evidence of present case & that of *Khujji (supra)* reveal that they are almost identical. Thus, from above pronouncements, it is evident that FIR being earliest version of prosecution, can be used to test the veracity/reliability/trustworthiness of prosecution witnesses. In this context, it has also to be kept in mind that generally in a criminal case, prosecution is required to prove its case as disclosed in the FIR. Therefore, if we examine evidence of Pramod Goswami (PW-18) with reference to/in the light of prosecution version, as disclosed in Dehati Nalishi (Ex.P/3) and Dehati Marg Intimation (Ex.P/2), then, it is apparent that evidence of Pramod Goswami (PW-18) is consistent with the prosecution version, as disclosed in Dehati Nalishi (Ex.P/3) and Dehati Marg Intimation (Ex.P/2). Hence, above also corroborates testimony of Pramod Goswami (PW-18) in material particulars.

(iii)-Motive/Enmity:-

94. From testimonies of Vinod (PW-2), Vinod (PW-4), Smt. Manju Goswami (PW-14), Pramod Goswami (PW-18), Virendra Van Goswami (PW-15), it is evident that Pratap Van, Sahab Van, Virendra Van Goswami etc. are real brothers and on the date of incident, Sahab Van, Umrao, Bharat, Ummi Kori etc. were lodged in Pipariya Jail in connection with murder of G Sahab and from the testimonies of above witnesses, it is also clearly established that prior to the present incident, there was bitter rivalry/enmity between the deceased's family and appellants' family and this enmity was subsisting on the date of incident. Further, from depositions of Smt. Manju Goswami and Virendra Van Goswami, it is also apparent that prior to the present incident, appellant Rakesh Patel, along with his other associates, had threatened Smt. Manju Goswami etc.

not to side with Umrao etc. Thus, appellants have clear motive to commit the instant offence.

(iv)-Various recoveries:-

(i) Recovery from the place of incident:-

95. From testimony of Investigating officer Mahendra Singh Meena and seizure memo Ex. P/28, recovery of Blue Color Motorcycle bearing registration No. MP-05-MB-8057 in damaged condition, one live yellow metal cartridge, 12 bore empty cartridge, pieces of broken white color number plate, one piece having written on it 'BA' and pieces of red glass of indicator and pieces of fiber part etc. is clearly proved, though, witnesses of above seizure Mahesh Kumar Morya (PW-3) and Shivkumar (PW-13) are completely hostile. In this Court's opinion, it is immaterial because, on above point, Mahendra Singh Meena's testimony has not been challenged at all during his cross-examination on behalf of appellants.

(ii) Seizure of bullets etc. extracted from the deceased's body.

96. From testimonies of Dr. A.K. Agrawal (PW-19), Rajesh Soni (PW-12), Gautam (PW-8), Madhu Sudan Pandey (PW-6), Raj Kumar (PW-5), post mortem Ex. P/42 & P/43 and Recovery Memo Ex. P/24, it is clearly proved that bullets etc. extracted from the body of deceased persons, have been seized vide seizure memo Ex.P/24.

(iii) Recoveries from appellants:-

97. As per Investigating Officer Mahendra Singh Meena, he interrogated accused Dara Singh in the presence of witnesses and he told that gun was snatched by Pancham and after leaving Bolero in village Nandwara, he has concealed vehicle's key in the room of his house and he will get it recover. Thereupon, he prepared memorandum Ex. P/7. The witness further deposes that accused Dara Singh took out Bolero's Key

from his house and presented before the witnesses and he recovered the same vide seizure memo Ex.P/15.

98. As per Investigating Officer Mahendra Singh Meena, he interrogated accused Pancham in the presence of witnesses and he told that he has concealed gun in the bedroom of his house and he will get it recover. Thereupon, he prepared his memorandum Ex. P/8. The witness further deposes that he recovered 12 bore two barrel gun, after accused Pancham presented the same from the said place vide seizure memo Ex. P/14 in the presence of witnesses.

99. As per Investigating Officer Mahendra Singh Meena, he interrogated accused Rakesh in the presence of witnesses and he told that he has concealed katta (country made pistol) inside the room of his house and he will get it recovered. Thereupon, he prepared memorandum Ex. P/9. The witness further deposes that accused Rakesh had presented katta (country made pistol) having magazine, after taking it out from inside room of his house and he recovered the same vide recovery memo Ex. P/16.

100. As per the Investigating Officer Mahendra Singh Meena, he interrogated accused Sunil in the presence of witnesses and he told that he has kept katta (country made pistol) and three live 315 bore cartridges in a room of Kamlesh Gujar's under construction house situated near Pachmadi Naka, Pipariya and he will get it recover. Thereupon he prepared memorandum Ex. P/10. The witness further states that he recovered a katta (country made pistol) and three live 315 bore cartridges from the place as described in accused Sunil's memorandum vide recovery memo Ex. P/12.

101. As per the Investigating Officer Mahendra Singh Meena, he interrogated accused Jagdish in the presence of witnesses and he told that

he has concealed Katta (country made pistol) underneath the seat of Pulsar motorcycle and he has parked the same secretly by the site of Kamlesh Gujar's new under construction house near Pachmadi Naka and he will get it recover. Thereupon, he prepared memorandum Ex. P/12. The witness further deposes that he recovered a katta (country made pistol) along with six rounds from the place as described in Jagdish's memorandum vide recovery memo Ex. P/13.

102. Pramod Goswami is a witness of above memorandums and seizures and he has deposed identically but another witness of memo and seizure Vinod (PW/4) has not supported the prosecution on above points.

103. Now the question arises whether from evidence on record above recoveries are proved. Perusal of cross-examination of Investigating Officer Mahendra Singh Meena shows that in his cross-examination, he has admitted that on seizure memos Ex. P/12 Ex. P/13, Ex. P/14, Ex. P/15, Ex. P/16, no specimen seal is affixed but he has deposed that it is wrong to say that he had not sealed above firearms on the spot, that's why, no specimen seal is affixed on above seizure memos. Perusal of above seizure memos reveal that therein, it is clearly mentioned that recovered items have been sealed. Further, Investigating Officer Mahendra Singh Meena has deposed that he had sent seized articles to FSL for examination vide draft Ex. P/52. FSL draft Ex. P/52 shows that firearms have been sent in various sealed packets. Further, FSL report Ex. P/65 and Ballistic report Ex. P/66 shows that articles, including firearms, sent for examination, were found in sealed condition and on being checked, seal was found matching with the specimen seal. Again Ex. P/64, which is a letter from FSL Sagar to SP, Hoshangabad (Narmadapuram), it is mentioned that articles are being sent after sealing them, along with original seal and residues. In view of above, in this

court's opinion, non affixing of specimen seal on seizure memos is not of much consequence.

104. Perusal of testimonies of prosecution witness Pramod Goswami and Investigating Officer Mahendra Singh Meena on the point of memorandum/seizure, reveal that they have been extensively cross-examined on behalf of appellants on above points but nothing substantial has come out in their cross-examination which would show that they are not reliable on above points. There is nothing in their cross-examination which would cast doubt on their testimonies on the point. Therefore, in this court's opinion, from testimonies of Pramod Goswami and Investigating Officer Mahendra Singh Meena, recovery of above articles from above appellants, in pursuance of memorandums prepared on the basis of information provided by the appellants, is clearly proved.

(V)-Ballistic Report:-

105. Testimony of Arun Kumar, Head constable (PW/11) and his report Ex. P/32, along with Ballistic report (Ex. P/66) shows that 12 bore gun, country made pistol & 315 bore katta were found in working condition but firing pin of one country made *Katta* was found broken and above firing pin on being replaced, shot could be fired from the said *Katta*.

106. Now, the question arises whether bullets/cartridges found on the scene of incident and/or recovered from body of deceased persons were fired or could have been fired from above firearms seized from appellants. In this respect, it would be appropriate to refer relevant opinion of Ballistic expert as described in report Ex.P/66, which is as follows:-

अभिमत

“प्रदर्श ए-1 देशी निर्मित एक नाली पिस्तोल है, जिसे 8 m.m./0.315” बोर कारतूसो को फायर करने के लिए बनाया गया है।

प्रदर्श ए-2 देशी निर्मित सेमी आटोमेटिक पिस्तोल है जिसे 7.65 m.m. सेमी रिम्ड कारतूसो को फायर करने के लिए बनाया गया है। प्रदर्श ए-3 देशी निर्मित रिवाल्वर है जिसे 0.32" बोर रिम्ड (रिवाल्वर) कारतूसो को फायर करने के लिये बनाया गया है। वर्तमान स्थिति में प्रदर्श ए-3 रिवाल्वर की फायरिंग पिन टुटी हुई व छोटी पाई गई जिससे इससे इस स्थिति में कारतूस फायर करना फिर भी प्रदर्श ए-3 में दूसरी सही फायरिंग पिन लगाकर इससे कारप्रदर्श ए-4 फ़ैक्ट्री निर्मित दो नाली बारह बोर बन्दूक है। प्रदर्श ए-1, प्रदर्श ए-2 एवं प्रदर्श ए-4 तीनों फायर आर्म्स चालू हालत में पाये गये। प्रदर्श ए-1 से प्रदर्श ए-4 सभी चारों फायर आर्म्स की बैरलों में इनसे पूर्व में फायर किये जाने के अवशेषों की उपस्थिति पाई गई किन्तु वैज्ञानिक निश्चितता के साथ यह बता पाना संभव नहीं है कि, इनसे अंतिम बार फायर किये जाने की समयावधियाँ क्या रही होगी।

प्रदर्श ईसी-1 बारह बोर का चला हुआ खाली कारतूस है। इसकी परक्शन केप पंचर पाई गई। इस पर कम्पेरीजन माइक्रोस्कोप के द्वारा टेस्ट फायर कारतूसोटीसीआरए-4 एवं टीसीएलए-4 के साथ निर्णायक मिलान करने हेतु फायरिंग पिन, बीच फेस के पर्याप्त निशान उपलब्ध नहीं पाये गये तथा अन्य निशान भी निर्णायक मिलान हेतु उपलब्ध नहीं पाये गये। अतः यहाँ यह बता पाना संभव नहीं है कि, प्रदर्श ईसी-1 बारह बोर बन्दूक प्रदर्श ए-4 से फायर हुआ है अथवा नहीं।

प्रदर्श एलआर-1 से एलआर-3 तीन जीवित रायफल कारतूस हैं। जिनमें दो 0.300" बोर के रिमलेस एवं एक 0.315" / 8 m.m. रिम्ड कारतूस हैं। इन्हे देशी निर्मित पिस्तोल प्रदर्श ए-1 से फायर किया जा सकता है।

प्रदर्श ईबी-1 राऊण्ड नोज कापर जैकेटेड आंशिक विकृत बुलेट है। यह किसी 7.65 सेमी रिम लेस कारतूस की फायर हुई राऊण्ड नोज कापर जैकेटेड बुलेट है। इस पर पाये गये बेरल मार्कस का मिलान कम्पेरीजन माइक्रोस्कोप के द्वारा टेस्ट फायर बुलेट प्रदर्श टीबीए-2 के साथ करने पर, प्रदर्श ईबी-1 व टीबीए-2 के बेरल मार्कस आपस में एक-समान पाये गये। अतः बुलेट प्रदर्श ईबी-1 पिस्तोल प्रदर्श ए-2 से फायर हुई है।

प्रदर्श डब्ल्यू-1 से डब्ल्यू-4 चार वेड है। इनमें दो प्लास्टिक एयर कुशन वेड हैं। ये सभी किन्ही फायर हुये बारह बोर कारतूसो जैसे प्रदर्श ईसी-1 के फायर हुये वेड है। ये किसी बारह बोर फायर आर्म जैसे प्रदर्श ए-4 से फायर हुये हैं।

प्रदर्श सी-1 शर्ट व प्रदर्श सी-2 बनियान पर पाये गये चिन्हित
छेद एच-1 गनशाट छिद्र हैं एवं ये छिद्र कापर जैकेटेड बुलेट जैसे
प्रदर्श ईबी-1 से हुये हैं।.....

107. Thus, above Ballistic report reveals that residues of firing in the past have been found in the barrels of all the above 4 firearms, which have been recovered within three days of the incident from appellant Sunil, Jagdish, Pancham & Rakesh,. It is also evident from above report that Bullet E B-1, extracted from the body of deceased Pratap Van, has been fired from pistol recovered from appellant Rakesh.

108. Perusal of appellants' examination under Section 313 of Cr.P.C. reveal that when Ballistic report Ex.P/66 was put to appellants during their above examination, answer to question No.249 shows that they have only stated that false report has been prepared and nothing more.

109. Thus, above recoveries, coupled with above Ballistic report, also support/corroborate prosecution story/prosecution witness Pramod Goswami's testimony in material particulars.

(vi)- Appellants' examination u/s 313 of CrPC:-

110. Perusal of appellants' examination u/s 313 of CrPC reveal that, when incriminating circumstances appearing in the evidence were put to appellants in their examination u/s 313 of CrPC, then, they have only stated that “ do not know/it is wrong/have been falsely implicated/he is innocent/witness depose falsely on account of enmity” & no specific defence has been taken by the appellants & they have not specifically explained the incriminating circumstances.

111. Perusal of testimonies of prosecution witnesses reveal that during their cross-examination, no suggestion has been given to any of the prosecution witnesses that if, appellants/anyone of them were not present at alleged date time and place of occurrence, then, where they were and

this fact has also not been explained by appellants in their examination under Section 313 of Cr.P.C. Therefore, above also corroborates testimony of Pramod Goswami (PW-18).

(vii)- Recovery of Bolero:-

112. So far as recovery of Bolero is concerned, ASI, S.N. Kaurav (PW-17) has deposed that during investigation, he reached village Nandwada and recovered therefrom silver color Bolero bearing registration No. MP-05-BA-0133 in the presence of witness Raj and Rameshwar vide recovery memo Ex. P/40. Witnesses to above recoveries Raj (PW-23) and Rameshwar are completely hostile and have not supported the prosecution on above point. Now the question arises whether from testimony of S.N. Kaurav recovery of Bolero is proved or not. Testimony of S.N. Kaurav shows that he has nowhere stated in his deposition the specific place from where he recovered above Bolero in village Nandwada. Further, he has also not stated in his testimony that from whose possession he recovered Bolero or whether it was lying in *lavarish* condition.

113. In seizure memo Ex. P/40, name of Ghasiram is mentioned in column-5, from whom the said recovery is stated to have been effected but S.N. Kaurav has not stated in his deposition that he recovered Bolero from Ghasiram. Prosecution has not examined Ghasiram as prosecution witness. There is no signature of Ghasiram on above seizure memo. Therefore, in this Court's opinion, recovery of Bolero vide seizure memo Ex. P/40 is not proved. Again, the broken pieces of number plate etc. found on the scene of incident have not been matched with above sized Bolero. Therefore, it cannot be said that the broken pieces of number plate etc. found on the scene of incident are of above seized Bolero. From

this point also, recovery of above vehicle does not help prosecution in any way.

Final Conclusions:-

114. Thus, to sum up, from evidence on record, presence of prosecution witness Pramod Goswami (PW-18) is categorically established and proved at the place of incident during occurrence and it is also proved that he has witnessed the happening of incident. On above point, his testimony gets corroborated from deposition of Vinod (PW-4) in material particulars. There are no such material contradictions / omissions / discrepancies between witness Pramod Goswami's court testimony & his police statement (Ex.D/2) that go to the root of the case & make the witness unreliable. There is nothing inherently improbable or unreliable in the evidence of Pramod Goswami (PW-18). Further, it is also evident that Pramod's testimony is wholly consistent with the prosecution version as disclosed in the dehati nalishi (Ex.P/3)/dehati marg intimation (Ex.P/2) lodged immediately after the incident. Besides, testimony of Pramod Goswami (PW-18) is also corroborated from recoveries of firearms from appellants and Ballistic report. In the instant case, it is also clearly established that on the date of incident, there was subsisting bitter rivalry between deceased's family and appellants' family and on account of that, appellants have clear motive to commit the instant offence. From the evidence on record, it is not proved at all neither it is otherwise shown that deceased/deceased's family had any rivalry with some other persons. Appellants' examination u/s 313 of CrPC also corroborates testimony of Pramod Goswami (PW-18).

115. Therefore, in view of discussion & evaluation of evidence on record in the foregoing paras, we are of the considered view that prosecution witness Pramod Goswami (PW-18) is a reliable and

trustworthy eye-witness, who has witnessed the incident and his evidence stands corroborated in material particulars from other evidence on record.

116. In view of discussion in the foregoing paras and analysis/appreciation of evidence on record, we are of the considered opinion that learned trial court has appreciated the evidence on record appropriately and as per settled principles of law & there is no illegality or perversity in the findings recorded by the trial court. The view taken by the learned trial court is plausible one. Therefore, we are of the opinion that no interference is required regarding conviction and sentence of appellants by the learned trial court. Resultantly, this criminal appeal is **dismissed**. The impugned judgment dated 11.01.2013 passed in Sessions Trial No.238/2008 by learned Additional Sessions Judge, Pipariya, District Hoshangabad, is hereby affirmed.

117. Appellant No.4-**Sunil Verma** is absconding. Hence, learned trial court is directed to take necessary steps to ensure his presence for serving remaining jail sentence.

118. A copy of this judgment be sent forthwith to Additional Sessions Judge, Pipariya, District Hoshangabad & to concerned jail for information and compliance.

(SUJOY PAUL)
JUDGE

(ACHAL KUMAR PALIWAL)
JUDGE