IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

JUSTICE SUJOY PAUL

&

JUSTICE VIVEK JAIN

CRIMINAL APPEAL No. 200 of 2013

BETWEEN:-

SURAJPAL S/O RAGHUVAR RAJPUT, AGED ABOUT 22 YEARS, R/O VILLAGE ITAURA P.S. GAURIHAR DISTRICT CHHATARPUR (MADHYA PRADESH)

.....APPELLANT

(BY SHRI SAURABH SINGH - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH THROUGH P.S. GAURIHAR DISTRICT CHHATARPUR (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI YOGESH DHANDE - GOVERNMENT ADVOCATE)

Reserved on : 08/02/2024

Pronounced on : 17/02/2024

This appeal having been heard and reserved for judgment/order, coming on for pronouncement this day, ***Justice Vivek Jain*** *passed the following:-*

JUDGMENT

This appeal under section 374(2) of the Code of Criminal Procedure (for brevity "Cr.P.C.") has been filed by the appellant against the judgment of

conviction and order of sentence dated 09.01.2013 passed by the First Additional Sessions Judge, Chhatarpur in Sessions Trial No.189/2011, whereby appellant has been convicted for offence punishable under section 302 of Indian Penal Code (IPC) and sentenced to undergo Life Imprisonment and fine of Rs.2,000/-, under Section 25(1-B)(a) of the Arms Act and sentenced to undergo R.I for one year and fine of Rs.1,000/- and under Section 27 of Arms Act and sentenced to undergo Rigorous Imprisonment for 3 years and fine of Rs.1,000/-, with default stipulations.

2. The prosecution case in brief is that a *Dehati nalish* (Ex.P/1) was lodged on 20.03.2011 at 9:20 PM by Kamlesh (Pw-1). In the said *Dehati nalish* it was mentioned that on 20.03.2011 at about 9:00 PM, the complainant Kamlesh along with his younger brother Ramnarayaran and nephew Vinod were sitting on roof of their house and at that time the present appellant Surajpal fired one gun shot which hit Ramnarayan (deceased) in upper part of waiste (right side of lower chest) and the deceased Ramnarayan collapsed on the roof after giving a cry of distress ('guhar' in local dialect). The other persons present on the roof also gave cries of distress and then the present appellant fired 1-2 more gun shots and climbed down. The present appellant had climbed up the *Neem tree* to fire gun shots and when the complainant and other persons give calls of distress, then he climbed down the *Neem tree* and fled away. Co-accused persons Raghuwar, Gulal, Mangal, Angad, Mulayam Singh, Devraj, Haricharan and Asharam were standing on the ground below (these co-accused persons have been acquitted by the trial Court). When the co-accused persons saw the complainant party, then they started abusing the persons of complainant party and fired gun shots which fortunately did not hit any other person and then the co-accused persons fled away. First Information Report (Ex.P/35) was lodged

at 22:30 hours in the night on 20.03.2011 itself. The deceased was taken firstly to Primary Health Centre, Gaurihar from where he was referred to District Hospital, Chhatarpur but he was declared brought dead at District Hospital, Chhatarpur. The merg intimation (Ex.P/34) was registered at Chhatarpur on the basis of intimation received from District Hospital, Chhatarpur on 21.03.2011 at 03:45 in the morning.

3 . The medical examination of the deceased was carried out at PHC (Gaurihar) at 9:45 PM on 20.03.2011 and in the medical examination report (Ex.P/38), it has been recorded that there is a entry wound of gun shot injury measuring 2.2 x 2 cm on right side of chest. The margins of entry wounds are inverted with oozing of blood. The patient was found to be in very serious condition.

4. As per merg Intimation Report (Exhibit P-34), the deceased expired at 2:30 AM on 21.03.2011 and postmortem examination was conducted on 21.03.2011. The postmortem report is (Ex.P/40). As per the findings of postmortem report a gun shot entry wound was found between ninth and tenth ribs at posterior line. The entry wound had blackening around at measuring 6 cm. The margins of the entry wound were inverted. The other injury was a swelling in left side of chest beneath collar bone measuring 1x1 cm. Upon opening the said swelling one metal piece was found which was taken out and handed over to Police. The cause of death was stated to be gun shot injury.

5. On the basis of statements recorded and material collected during the course of investigation by the police, the charge-sheet was filed before the Magistrate against the present appellant and other co-accused persons under Sections 147, 148, 149, 307 and 302 of IPC and Section 25/27 of Arms Act.

The case was committed to sessions and the Sessions Court framed charges against the present appellant under Section 148, 302 and 506-II of IPC and Sections 25 and 27 of Arms Act. The appellant denied the charges and claimed to be tried. After trial, the appellant has been convicted of charges and awarded sentence as mentioned in para 1 of the judgement. The co-accused persons have been acquitted by the trial Court.

6. Learned counsel for the appellant while pressing the case of the present appellant submits that the entire prosecution story is doubtful. It is stated by the learned counsel for the appellant that the prosecution version speaks about number of gun shots being fired by the accused person. Even the present appellant alone is alleged to have been fired 2-3 gun shots and other co-accused persons are stated to have fired some other gun shots. However, no bullets or spent cartridges were found from the spot. Learned counsel for the appellant further argues that even the trial Court has found the case against the co-accused persons to be false and acquitted the co-accused persons. Thus, on the legal principle of "falsus in uno falsus in omnibus", the case against the present appellant is also doubtful.

7. Learned counsel for the appellant further argues that the incident as projected by the prosecution that the deceased was sitting on the roof and the present appellant had climbed up the *Neem tree* which is at some distance from the roof and then fired gun shot, seems to be doubtful because there is blackening in the entry wound of the gun shot injury and in view of opinion of PW-12/Dr. M.K Prajapat and PW-16/ Dr. R.K Dhamaniya, such type of blackening would not come if the fire arm is fired from a distance of more than 3 feet. Both the doctors have given a clear opinion that if fire arm was shot from a distance of more than three feet, then such blackening would not come.

8. Learned counsel for the appellant has also argued that the source of light at the time of occurrence in doubt. It is argued that eye-witnesses have admitted that there was no electricity in the house where incident took place or in the neighborhood. The witness DW-1, who is Junior Engineer of Electricity Distribution Company has deposed that there is no street light in the village. Witnesses have said that there was electric bulb on pole. even the trial Court has found that there was street light in the village. Looking to deposition of DW-1 such a finding cannot be sustained and there is no source of light and thus the appellant has been falsely implicated in the incident.

9. Learned counsel for the appellant further submits that a country made fire arm alleged to have been recovered from the possession of the present appellant as well as the metal slug which was said to be fired from the said fire arm, both were sent to forensic laboratory. As per the forensic report (Ex.P/47), it was opined that the led slug has been fired from some 12 bore cartridge like the fire arm article A1 and A2 sent to the laboratory. However, the forensic laboratory by giving this ballistic report (Ex.P/47) has not given any opinion that the said slug has been actually fired from the fire arm alleged to be recovered from the preset appellant. thus, it is not established that the bullet was fired from the fire arm recovered from the present appellant.

10. The learned counsel for the appellant further submits that there are various inconsistencies in the eye-witness accounts. Some eye-witnesses have stated that the deceased was hit by fire arm when he was looking down from the parapet wall. While some other witnesses have stated that bullet hit him from crevice in the wall. The learned counsel for the appellant further submits that some witnesses have stated that the three persons were lying down on the roof

while some witnesses have stated that they were sitting on the roof. It is further argued that there are multiple discrepancies regarding location of the tree and distance of the tree from the roof. It is also argued that even the height of the room and height of the parapet wall have not been stated consistently by all the witnesses to be of same dimensions. Thus, it is submitted that the eye-witnesses have tried to justify the false story against the present appellant while cooking up false version, which is the reason for such glaring discrepancies between the account of eye-witnesses. Lastly, it is argued by learned counsel for the appellant that suspicion, however strong, cannot take the place of proof and the case has to be proved to the extent of 'must have' and not from the angle of 'might have'. It is also argued that where two views are possible then the view favouring the accused has to be followed. By referring to various contradiction and discrepancies in eye-witness accounts, it is argued that two views are indeed possible in the present case.

11. The learned counsel has placed reliance on the judgment of Hon'ble Supreme Court in the case of **Kalyan and Others Vs. State of U.P** reported in **(2001) 9 SCC 632** and in the case of **State of Punjab Vs. Ajaib Singh and Others** reported in **AIR 2004 SC 2466** and in the case of **State of U.P Vs. Shiv Kumar and Others** reported in **AIR 2005 SC 2992.** Learned counsel further submits that the appellant is in custody since 29.03.2011 and has undergone almost 13 years in custody for an offence for which he has been falsely implicated. Thus, it is prayed that the judgment in appeal may be set aside and the appellant be acquitted from the offence.

12. Per contra, learned Government Advocate has opposed the appeal and has vehemently defended the judgement passed by the trial Court. It is argued that the appellant has not been falsely implicated in the matter because

Dehalti nalish was lodged without any delay within 20 to 30 minutes of occurrence. The eye-witnesses have duly supported the prosecution version and there is nothing glaringly inconsistent in the versions of eye-witnesses of PW/1, PW/2 and PW/3. The learned State counsel has referred to paragraphs 31, 52 and 53 of the impugned judgment to defend the impugned judgement of conviction passed by the trial Court and it is submitted that the findings recorded by the trial Court are well reasoned and based on due appreciation of the material available on record. Learned Government Advocate further submits that no two views are possible in the matter and the appreciation of the evidence in the present matter leads to only one view which points to the guilt of the present appellant. Thus, it is submitted by the learned State counsel that the impugned judgement of conviction and sentence be confirmed and the present appeal may be dismissed.

13. Heard the learned counsel for the parties and perused the record.

14. Learned counsel for the appellant has argued that in view of the legal principle "falsus in uno falsus in omnibus", once it is proved that the prosecution version in relation to eight other co-accused persons was false and in view of attempt to implicate those persons falsely, the entire prosecution story should be discarded.

15. The legal principle "falsus in uno falsus in omnibus" is well established in law. However, the said principle is not applicable to criminal trial. In criminal trial a witness may be partly truthful and partly false in the evidence he gives to the Court. The role of each accused has to be seen in criminal case and the testimony of a witness cannot be disregarded in totality. In the case of **Ranjit Singh v. State of M.P., AIR 2011 SC 255**, the Hon'ble Supreme

Court has held as under:-

> "15. In Balaka Singh v. State of Punjab [(1975) 4 SCC 511 : 1975 SCC (Cri) 601 : AIR 1975 SC 1962] this Court observed as under : (SCC p. 517, para 8)
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> > "8. … It is true that, as laid down by this Court in Zwinglee Ariel v. State of M.P. [(1952) 2 SCC 560 : AIR 1954 SC 15 : 1954 Cri LJ 230] and other cases which have followed that case, the court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation the court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply."
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> 16. In Ugar Ahir v. State of Bihar [AIR 1965 SC 277 : (1965) 1 Cri LJ 256] this Court held as under : (AIR p. 279, para 6)
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> > "6. The maxim falsus in uno, falsus in omnibus (false in one thing, false in every thing) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest."
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> 17. A similar view was taken in Nathu Singh Yadav v. State of M.P. [(2002) 10 SCC 366 : 2003 SCC (Cri) 1461]
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> 18. The maxim has been explained by this Court in Jakki v. State [(2007) 9 SCC 589 : (2007) 3 SCC (Cri) 574] , observing : (SCC p. 591, para 8)
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> > "8. '51. … The maxim falsus in uno, falsus in omnibus … has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule

of caution. All that it amounts to is, that in such cases testimony may be disregarded, and not that it must be [discarded]. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence".' [Ed. : As observed in Krishna Mochi v. State of Bihar, (2002) 6 SCC 81, pp. 113-14, para 51.]"

19. It is well settled in law that the maxim falsus in uno, falsus in omnibus (false in one, false in all) does not apply in criminal cases in India, as a witness may be partly truthful and partly false in the evidence he gives to the court. (Vide Kulwinder Singh v. State of Punjab [(2007) 10 SCC 455 : (2008) 1 SCC (Cri) 51] , Ganesh v. State of Karnataka [(2008) 17 SCC 152 : (2010) 4 SCC (Cri) 474] , Jayaseelan v. State of T.N. [(2009) 12 SCC 275 : (2010) 1 SCC (Cri) 224] , Mani v. State [(2009) 12 SCC 288 : (2010) 1 SCC (Cri) 563] and Balraje v. State of Maharashtra [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] .)

20. This position of law has been reiterated by this Court in Prem Singh v. State of Haryana [(2009) 14 SCC 494 : (2010) 1 SCC (Cri) 1423] wherein the Court clearly held as under : (SCC p. 498, para 14)

> "14. It is now a well-settled principle of law that the doctrine 'falsus in uno, falsus in omnibus' has no application in India."

21. In view of the above, the law can be summarised to the effect that the aforesaid legal maxim is not applicable in India and the court has to assess as to what extent the deposition of a witness can be relied upon. The court has to separate the falsehood from the truth and it is only in exceptional circumstances when it is not possible to separate the grain from the chaff because they are inextricably mixed up, that the whole evidence of such a witness can be discarded."

16. Thus, the judgment under appeal cannot be interfered with on the aspect of the prosecution version being found false against other co-accused persons.

17. The other ground which has been raised by the learned counsel for the appellant is the doubt as to source of light on the place of occurrence. The

incident is said to have occurred at around 9 pm in the night. The *Dehati Nalish* (Exhibit P-1) mentions that the accused persons were seen in electric light. The defence has seriously doubted the presence of electric light on the place of occurrence. Learned counsel for the appellant has referred to various discrepancies in the prosecution version as to source of light. The witness Kamlesh (PW-1) has stated in para 2 of his deposition that there was a light bulb in electricity pole opposite the house. In para 11 of his deposition he has admitted that in his house as well as in none of the neighboring houses, there is any electricity connection. Thus, this witness refers to a electricity bulb in electric pole placed as street light.

18. Looking to deposition of Rajkumar (PW-2) the same fact of electricity bulb on electricity pole is stated in para 2 and in para 5 he admits that in none of the houses in the locality there is electricity connection. Vinod (PW-3) also mentions in para 9 of his deposition that there is no electricity connection in the houses, but the Electricity Department has installed bulbs on electricity poles. Lal Singh (PW-4) has also admitted in para 4 of his deposition that neither in the house of the deceased nor in any other house in the locality there is any electricity connection.

19. The defence had examined Junior Engineer of Electricity Company as DW-1, this witness Shiv Kumar Singh has stated that there was no electricity in the village. In cross-examination a suggestion was given that there was one phase out of 3 persons coming out of the transformer and that is why the electricity company was treating it to be a village having no electricity because the transformer had failed technically as it was not giving out all the three phases. However, this witness in para 1 of his deposition has clearly deposed

that there is no street light in the village. This witness is not a private witness, but is a responsible Officer of the Stated owned Electricity Company that supplied electricity in a substantial part of State of Madhya Pradesh.

20. The trial Court has held the existence of light by considering the possibility that in rural area the villagers themselves might have installed bulbs on electricity poles. However, conviction of accused in criminal case cannot be based on mere presumption and possibilities. The guilt can be held to be proved only if it is proved beyond reasonable doubt and not merely on probabilities and possibilities. Thus, the source of light being in doubt, there is some doubt created over the prosecution version. The Hon'ble Supreme Court in the case of Nallabothu Ramulu v. State of A.P., (2014) 12 SCC 261, has held that the availability of light cannot be presumed. The following has been held therein:-

> "14. We shall examine the trial court's view on each salient aspect of the case and see whether it was perverse, warranting the High Court's interference. It must be borne in mind that the incident took place in the dead of night and in an area which was away from town. Admittedly, there were two factions in the village and the relations between the two factions were strained. In an earlier incident, PW 19 was attacked by the opposite group. Hence, the possibility of the witnesses trying to falsely implicate persons belonging to the rival group cannot be ruled out. Also important is the fact that according to the prosecution, 50 persons were involved in the brutal attack. In a case of this nature, availability of light for identification of the accused would assume great importance. The trial court meticulously scanned the evidence and opined that there was no sufficient light at the scene of offence to enable the witnesses to identify the accused. On a reading of evidence of witnesses and noticing some discrepancies, the trial court arrived at a finding that the story that the assault was witnessed by the witnesses in torchlight or tractor light is not acceptable. While coming to this conclusion, the trial court further noted that in the FIR, in the observation report and in the inquest report, there is no mention of availability of light.

15. The High Court overturned the findings of the trial court on availability of light on the ground inter alia that witnesses were deposing 5½ years after the incident and there are bound to be some discrepancies in their evidence. The High Court also observed that at night, vehicles are not driven without lights. The High Court noted that the prosecution witnesses have stated that they knew the accused as they belonged to the opposite group and, therefore, it was possible for them to identify the accused. The High Court also noted that PW 1 was injured so he might not have mentioned about availability of light in Ext. P-1. Moreover, the witnesses have not identified all the accused. This gives credibility to their evidence. The High Court also noted that four torches were found at the scene of offence and, hence, there was sufficient light at the scene of offence. We feel that the High Court was not right in setting aside the trial court's reasonable view on availability of light. The fact that neither in the FIR nor in the observation report nor in the inquest report there is mention of availability of light, is important. By itself each of these circumstances may not be significant. But, taken with other facts, they assume importance.

16. The trial court rightly observed that assuming the prosecution witnesses had torches in their hands, they would not switch them on for fear of being spotted and subjected to attack. Besides, according to the prosecution, there were 50 accused. Some of them hurled bombs at the witnesses. Therefore, the attack must have resulted in smoke and dust rising in the air. In such a situation, it would not be possible for the prosecution witnesses to identify the assailants out of 50 persons, who, according to the prosecution, launched the attack. In any case, it would not be possible for the witnesses to note what role each accused played. The overt acts attributed by the witnesses to the accused must be, therefore, taken with a pinch of salt. All the accused were not known to the witnesses, because some witnesses stated that they would be able to identify them if they are shown to them. But even assuming they knew the accused and there was some light at the scene of offence, it does not appear that it was sufficient to enable the witnesses to identify the accused and note the overt act of each of them. Possibility of wrong identification cannot be ruled out. The view taken by the trial court on this aspect is a reasonably possible view. The High Court was wrong in disturbing it in an appeal against acquittal."

21. In the present case serious doubt being cast on availability of source of light, the identification of the present appellant as the person inflicting gunshot injury to the deceased comes under serious doubt.

22. The next issue raised by learned counsel for the appellant is that the gunshot injury was caused in some other manner, but not in the manner as projected by the prosecution. The learned counsel for the appellant has referred to cross-examination of Doctors (PW-12 and PW-16) and has stated that the appellant has taken the defence that the deceased himself was carrying the country made pistol with himself and while sitting or lying down, the said pistol got fired accidentally, which caused the gunshot injury from such a close range.

23. The MLC report duly mentions that there was blackening and burning on the margins of the entry wound of gunshot injury. The said Doctor (PW-12) has also opined that the injury cannot be caused in such manner, if the gun is fired from a distance of more than three feet. The same opinion is expressed by the other Doctor (PW-16), who has conducted autopsy on the body of the deceased. As per medical jurisprudence and Toxicology by H.W.V. Cox (Seventh Edition), it is mentioned that blackening is obtained from the distance of three feet with standard 12 bore gun and one foot with country made pistol. It is further mentioned that application of data of standard shot gun to calculate the distance of firing by country made pistol is misleading. In the present case, a country made 12 bore pistol is said to be recovered from the appellant vide seizure memo (Exhibit P-23) with one live cartridge. Thus, looking to the standard text on medical jurisprudence so also the evidence of Doctors, it is evident that gunshot must have been fired from a distance one feet and at the most three feet (even if, a standard shot gun of 12 bore was used).

24. When this is considered in juxtaposition to evidence of the present

case, it is seen that Rajendra Singh Baghel (PW-18) is police official, who has prepared the spot map (Exhibit P-2). In para 6 of his deposition, he stated that there was a platform 10 feet from the house and about 4-5 feet from the margin of the platform, there was a Neem tree. Thus, the distance of Neem tree from the house, where the deceased was sitting on the roof is about 14 to 15 feet. This witness in para 7 of his deposition further mentioned that Kamlesh (PW-1) and Rajkumar (PW-2) were not roof, but in the courtyard below, which is about 30 feet from the place of incident. Thus, this witness doubts the presence the PW-1 and PW-2 on the place of occurrence. When faced with this, learned Government Advocate for the State has stated that the witness PW-3 is star witness and he has duly proved the incident. This witness in para 5 mentions the height of platform on which Neem tree is planted as knee high, which cannot be more than 2 feet or so. He has also mentioned that the appellant was one hand below lintel level of the roof. In rural parlance one hand may translate to about 2 feet. He has also deposed that there was a parapet wall of length of his entire arm. Thus, looking to the distances shown by PW-18 and PW-3, the appellant cannot be said to be at a distance of 1 to 3 feet from the deceased. Even looking to the evidence of PW-1 and PW-2, who are stated to be eye witnesses by the prosecution, it is seen that in para 9 of his deposition PW-1 states that the appellant was at Neem tree at a location, which was 5 to 6 feet below the roof level. PW-2 in para 6 states that when the first gunshot was heard, he was in courtyard below and he climbed on the roof upon hearing the second gunshot. However, firing of only one gunshot has been established in the case. Thus, the medical evidence in the present belies the incident in the present case to have occurred in the manner as projected by the prosecution.

25. The prosecution has also relied vehemently on the slug fired by a 12 bore weapon being found inside the body of the deceased. However, looking to the ballistic report on record as Exhibit P-47, it is seen that the ballistic expert has not compared the said slug with the country made pistol said to be recovered from the present appellant. The ballistic expert has only given to the opinion that it is part of some 12 bore cartridge fired from some 12 bore fire arm like the pistol recovered from the appellant. Thus, the pistol said to be recovered from the appellant only cited as an example of gun from which said slug has been fired. In view of this finding of the ballistic report, serious doubt is created in the matter in connecting the said slug of lead metal found in the body of the deceased with the present appellant. Thus, the ballistic report also creates serious doubt on the prosecution version, as this report does not connect the slug found in body of deceased to the country made pistol recovered from the appellant in a conclusive manner.

26. The eye witness accounts otherwise also have various discrepancies. PW-1 has stated in para 2 that he was sitting with the deceased and PW-3 on the lintel level of the roof. PW-2 was in the courtyard below and was not on the roof when shot was fired. On the other hand PW-3 in para 1 of his deposition states that he was lying down on the roof with PW-1 and the deceased. Apart from this, PW-1 has stated that the deceased was hit by bullet, when he was sitting. On the other hand, PW-3 has stated that after hearing some abusive language, the deceased had stood up and was looking at the ground below. At that time, he was hit by gunshot. Not only this, there are serious discrepancies in the height of parapet wall and the location of Neem tree. Lal Singh (PW-4) has stated that if someone sits on the roof than his neck does not go up the parapet level. He has stated that the branches of Neem tree were 10 feet above

the roof level. PW-1 in para 9 stated to the courtyard that the appellant was at 5 to 6 below the roof in the Neem tree.

27. The prosecution version also comes in serious doubt because 5 to 6 rounds are said to be fired during the incident in night. However, the police failed to recover any other bullet from the spot, apart from the only metal slug found in the body of the deceased. Not a single spent cartridge was recovered from the spot. Even the cartridge, from which the metal slug causing death of the deceased was fired, has not been recovered from the spot. This creates a serious gap in the prosecution version. The specific defence has been taken that it was the case of accidental firing by the country made weapon carried by the deceased himself, which got fired while the deceased was sitting or lying while carrying the weapon on his person.

28. The Hon'ble Supreme Court in the case of **Digamber Vaishnav v. State of Chhattisgarh, (2019) 4 SCC 522** has held as under:-

> "14. One of the fundamental principles of criminal jurisprudence is undeniably that the burden of proof squarely rests on the prosecution and that the general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculpate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional circumstance, if other circumstances unfailingly point to the guilt.
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> 15. This Court in Jaharlal Das v. State of Orissa [Jaharlal Das v. State of Orissa, (1991) 3 SCC 27 : 1991 SCC (Cri) 527] , has held that even if the offence is a shocking one, the gravity of offence cannot by itself overweigh as far as legal proof is concerned. In cases depending highly upon the circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of legal proof. The court has to be watchful and ensure that the

conjecture and suspicion do not take the place of legal proof. The court must satisfy itself that various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused."

29. The Hon'ble Supreme Court in the case of **Subhash v. State of U.P., (2022) 6 SCC 592** has held that contradictions of fundamental nature that go to roof of prosecution case cannot be ignored. The following has been held therein:-

> "19. The entire case of the prosecution, as noticed earlier, was that all the accused who were alleged to be wielding country-made pistols had fired upon the deceased. This case of the prosecution is substantially diluted in the cross-examination of PW 1 as well as in the cross-examination of PW 2. Significantly, the post-mortem report indicates only one firearm injury, which is not consistent with the case of the prosecution that all the accused had fired upon the deceased. That apart, the post-mortem report indicates one injury on the neck of the deceased which again is inconsistent with the deposition of PW 1 and PW 2 that both Shiv Dayal armed with a farsa and Gyanvati (A-6) who was allegedly armed with a knife had assaulted the deceased on the neck.
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> 20. On this state of the record, we are of the considered view that the presence of both PW 1 and PW 2 at the spot is gravely in doubt. There are material contradictions in the evidence of both PW 1 and PW 2, which ought to have been, but have not been noticed either by the learned Sessions Judge or by the High Court. The High Court was of the view that the contradictions which have been pointed out by the defence are of a minor nature. Having evaluated the evidence, we are unable to sustain that conclusion given that the contradictions were of fundamental nature which go to the root of the case of the prosecution. It is true that the prosecution was not obligated to examine every witness who is alleged to have been present at the site or the scene of the offence, yet in the context of the facts as they have emerged before this Court, the failure to examine Chetram, who was the father of the deceased and was allegedly sitting in close proximity, assumes significance."

30. The Hon'ble Supreme Court in the case of **Kailash Gour v. State of**

Assam, (2012) 2 SCC 34 has held as under:-

> "39. It is one of the fundamental principles of criminal jurisprudence that an accused is presumed to be innocent till he is proved to be guilty. It is equally well settled that suspicion howsoever strong can never take the place of proof. There is indeed a long distance between the accused "may have committed the offence" and "must have committed the offence" which must be traversed by the prosecution by adducing reliable and cogent evidence. Presumption of innocence has been recognised as a human right which cannot be wished away. See Narendra Singh v. State of M.P. [(2004) 10 SCC 699 : 2004 SCC (Cri) 1893] and Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra [(2005) 5 SCC 294 : 2005 SCC (Cri) 1057].
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> 40. To the same effect is the decision of this Court in S. Ganesan v. Rama Raghuraman [(2011) 2 SCC 83 : (2011) 1 SCC (Cri) 607] where this Court observed:-
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> > "39. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India."
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> The above views were reiterated by this Court in State of U.P. v. Naresh [(2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216]."

31. Further, it is settled position of law that where two views are possible then view pointing to the innocence of the accused should be adopted. (See:- Kalyan v. State of U.P., (2001) 9 SCC 632 and Kali Ram v. State of H.P., (1973) 2 SCC 808).

32. The impugned judgment of conviction of present appellant, when tested on the anvil of the aforesaid factual backdrop and the standard of proof required in criminal trial to hold the accused guilty of offence, cannot be given stamp of approval.

33. Consequently, the judgment under appeal dated 09.01.2013 passed in S.T. No. 189/2011 is modified. Appellant is acquitted of offence under Section 302 of the I.P.C. by giving benefit of doubt. As a natural consequence, as use

of weapon is not established; he stands acquitted of offence under Section 27 of the Arms Act. However, as there is recovery of country made pistol from the possession of present appellant, his conviction under Section 25 (1-B) (a) of the Arms Act is upheld.

34. The appellant has already undergone much more than the sentence of one year awarded under Section 25 (1-B) (a) of Arms Act.

35. Resultantly, the appeal is partly allowed in the above terms. If presence of appellant in custody is not required in any other matter, he may be released forthwith.

36. The appeal is **partly allowed** to the extent indicated above.

(SUJOY PAUL)
JUDGE

(VIVEK JAIN)
JUDGE

Prar