

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

BEFORE

JUSTICE SUJOY PAUL

&

JUSTICE AMAR NATH (KESHARWANI)

CRIMINAL APPEAL NO. 257 OF 2016

BETWEEN :-

**SACHIN S/O RAMESH BINEKIYA,
AGED 29 YEARS R/O RAMNAGAR
NEW YARD, ITARSI TEHSIL ITARSI
DISTRICT HOSHANGABAD (M.P.)**

....APPELLANT

(BY SHRI SIDDHARTH DATT - ADVOCATE)

AND

**STATE OF MADHYA PRADESH
THROUGH P.S. ITARSI DISTRICT
HOSHANGABAD (M.P.)**

.....RESPONDENT

(BY SHRI ARVIND SINGH - GOVERNMENT ADVOCATE)

CRIMINAL APPEAL NO. 296 OF 2016

BETWEEN :-

**1. PAWAN S/O GAJENDRA MOURYA, ,
AGED ABOUT 30 YEARS R/O GANDHI
NAGAR, ITARSI TEHSIL ITARSI
DISTRICT HOSHANGABAD (M.P.)**

**2. MUKKU @ MUKUL S/O MAHESH
MOURYA, AGED ABOUT 33 YEARS
R/O G.R.P. COLONY ITARSI TEHSIL
ITARSI DISTRICT, HOSHANGABAD
(M.P.)**

3. ANKUR S/O ARVIND MEHTA, AGED ABOUT 27 YEARS R/O NEAR GURUNANAK DALL MILL ITARSI TEHSIL ITARSI DISTRICT HOSHANGABAD (M.P.)

....APPELLANT

(BY SHRI AJAY JAIN - ADVOCATE)

AND

STATE OF MADHYA PRADESH THROUGH P.S. ITARSI DISTRICT HOSHANGABAD (M.P.)

.....RESPONDENT

(BY SHRI ARVIND SINGH - GOVERNMENT ADVOCATE)

CRIMINAL APPEAL No. 309 OF 2016

BETWEEN :-

VIKRAM @ TAKKU@ VIKKI S/O GAJENDRA MOURYA, AGED ABOUT 29 YEARS R/O NEAR GANDHI NAGAR ITARSI TAHSIL ITARSI DISTRICT HOSHANGABAD (M.P.)

....APPELLANT

(BY SHRI AJAY JAIN -ADVOCATE)

AND

STATE OF MADHYA PRADESH THROUGH P.S. ITARSI DISTRICT HOSHANGABAD, (M.P.)

.....RESPONDENT

(BY SHRI ARVIND SINGH- GOVERNMENT ADVOCATE)

CRIMINAL APPEAL No. 356 OF 2016

BETWEEN :-

1. BABLU @ SADA S/O NARENDRA KEWAT, AGED 25 YEARS R/O NEAR BALAGI MANDIR ITARSI TAHSIL ITARSI DISTRICT HOSHANGABAD, (M.P.)

2. GHANSHYAM @ BHEDA S/O
 GOPAL PRASAD BASOD AGED 32
 YEARS R/O RAMNAGAR NEW YARD
 ITARSI TAHSIL ITARSI DISTRICT
 HOSHANGABAD (M.P.)

3. HITESH @ CHHOTA SANMI
 MEHRA S/O SANTOSH MEHRA AGED
 25 YEARS R/O GANDHI NAGAR
 ITARSI TEHSIL ITARSI DISTRICT
 HOSHANGABAD, (M.P.)

....APPELLANTS

(BY MS. ANITA KAITHWAS - ADVOCATE)

AND

STATE OF MADHYA PRADESH
 THROUGH P.S. ITARSI DISTRICT
 HOSHANGABAD, (M.P.)

.....RESPONDENT

(BY SHRI ARVIND SINGH - GOVERNMENT ADVOCATE)

CRIMINAL APPEAL No. 408 OF 2016

BETWEEN :-

SHANKAR MIHANI S/O KISHNA
 CHAND MIHANI, AGED 51 YEARS R/O
 NEAR BALAGI MANDIR ITARSI
 TAHSIL ITARSI DISTRICT
 HOSHANGABAD, (M.P.)

2. ANSHUL S/O MAHENDRA SEHGAL
 AGED 34 YEARS R/O NEAR BALAGI
 MANDIR ITARSI TAHSIL ITARSI
 DISTRICT HOSHANGABAD, (M.P.) .

....APPELLANTS

*(BY SHRI SURENDRA SINGH SR. ADVOCATE WITH SHRI ASHWANI
 DUBEY - ADVOCATE)*

AND

THE STATE OF MADHYA PRADESH
 THROUGH P.S. ITARSI DISTRICT
 HOSHANGABAD, (M.P.)

.....RESPONDENT

(BY SHRI ARVIND SINGH - GOVERNMENT ADVOCATE)

CRIMINAL APPEAL No. 709 OF 2016

BETWEEN :-

DEEPAK @ GOLU GAJRAJ S/O
 JAGDISH MEHTAR AGED ABOUT 34
 YEARS R/O GANDHI NAGAR ITARSI
 TAHSIL ITARSI DISTRICT
 HOSHANGABAD, (M.P.)

....APPELLANT

(BY SHRI R.S. YADAV - ADVOCATE)

AND

STATE OF MADHYA PRADESH
 THROUGH P.S. ITARSI DISTRICT
 HOSHANGABAD, (M.P.)

.....RESPONDENT

(BY SHRI ARVIND SINGH - GOVERNMENT ADVOCATE)

 Reserved on : 31/01/2023

Pronounced on : 03/02/2023

These Criminal Appeals having been heard and reserved for judgment, coming on for pronouncement this day, Justice Sujoy Paul pronounced the following :

JUDGMENT

These batch of appeals are filed challenging the common judgment passed in S.T. No. 169/2010 dated 05.01.2016 by learned Sessions Judge, Hoshangabad whereby out of 15 accused persons, 4 were acquitted and 11 were convicted for committing offences under

Sections 302 read with 149 and 201 of the IPC. The accused persons were convicted and sentenced by the trial Court as under -

| Sr. No. | Name of appellant | Conviction under Section | Sentence |
|---------|-----------------------------|---|--|
| 1. | Bablu @ Sada | 302/149 (on two counts for murdering Munnu @ Mrityunjay Upadhyay and Sachin Tiwari) | Life imprisonment with fine of Rs. 2,000/- and in default to undergo R.I. for three months (on each count) |
| 2. | Pawan Mourya | | |
| 3. | Mukku @ Mukul | | |
| 4. | Ankur Mehta | | |
| 5. | Anshul Sehgal | | |
| 6. | Shankar Mihani | 201 of IPC (on two counts) | R.I. for 7 years with fine of Rs. 2,000/- and in default to undergo R.I. for three months (on each count) |
| 7. | Sachin Binekia | | |
| 8. | Deepak @ Golu Gajraj | | |
| 9. | Ghanshaym @ Bheda | | |
| 10. | Tukku @ Vikram @ Vikki | | |
| 11. | Hitesh @ Chhota Sunni Mehra | | |

2. As per the case of prosecution, on 18.02.2010 near a marriage hall, at Itarsi, the main accused Shankar Mihani along with other accused persons pressurized Sachin Tiwari (deceased) to give an affidavit in favour of accused Anshul. The friend of Sachin namely

Munnu @ Mritunjay opposed the same. Accused Anshul assaulted Munnu by means of fists and quarrel began from this incident. During altercation and exchange of heat, appellant Shankar Mihani directed other accused persons to take Munnu and Sachin to Azad Panja Crossing. Munnu and Sachin Tiwari were under the influence of liquor and therefore they could not resist much. All the accused persons took them on their foot to Azad Panja Crossing. Accused Golu Mehra brought motorcycle of Munnu @ Mritunjay to Azad Panja Chowk. At this place again Shanker Mihani pressurized Sachin to give an affidavit in favoaur of accused Anshul. Sachin Tiwari and Munnu did not succumb to such pressure. During heated altercation on this, all the accused persons by means of sharp weapons assaulted Sachin and Munnu. Munnu and Sachin died at Azad Panja Chowk. A person riding a horse i.e. Gullu (PW-8) had seen the said incident. Shankar Mihani directed other accused persons to bring that horse rider. Two accused persons tried to bring the said person but their effort could not fetch any result. Both the dead bodies were thrown in the field of Raja Patel. Accused Takku had removed the chain from the neck of Munnu and kept his purse with him.

Cr. A. No.408 of 2016 :

Contention of Appellant's Counsel :

3. The story of prosecution further shows that Munnu left his house on 18.02.2010 at around 7:30 PM but did not return back to his house situated at Gandhi Nagar crossing. The family members unsuccessfully tried to get information about him. Brother of Munnu, namely

Gyanendra Kishore Upadhyay lodged a missing person report on 19.02.2010 at Serial No. 20/10 in *Roznamcha Sanha* No. 1472. During search of Munnu, his brother came to know that friend of Munnu, Sachin Tiwari is also missing and did not return to his house. During the search of both of them, their dead bodies were found near *Boodhi Mata Mandir* road in the field of Rajesh Patel. The motorcycle of Munnu was also found nearby. The FIR was registered against unknown persons for committing offence under Section 302 read with 34 of IPC.

4. The investigation was initially conducted by A.S.I. Ramkumar Dhariya (PW-41). However, as submitted by learned Sr. counsel for the appellant, midway, on verbal direction of Superintendent of Police (SP), the investigation was handed over to A.S.I. Anil Bajpai (PW-40). He conducted the investigation with effect from 24th Feb., 2010. This new Investigating Officer Shri Bajpai recorded the statement of Manoj Rajwanshi (PW-6) and Gullu @ Gaya Prasad (PW-8). On the basis of statement of Manoj Rajwanshi (PW-6), a story of conspiracy inside Hoshangabad Jail was prepared. It is alleged that main accused Shankar Mihani was the mastermind of the conspiracy. However, co-accused Pawan Raj and Minta were acquitted by Court below. The conspiracy was allegedly over heard by Manoj Rajwanshi (PW-6). Total 44 prosecution witnesses entered the witness box and deposed their statements.

5. It is further pointed out that Shri Anil Bajpai (PW-40) recorded the statement of fourteen eye-witnesses. Yogesh @ Sanjay (PW-17) has

turned hostile. The Court below disbelieved the conspiracy theory based on the statement of Manoj (PW-6), is the next submission of learned Senior counsel and for this purpose he placed reliance on paras 74 and 75 of the impugned judgment. Shri Surendra Singh, learned Sr. counsel submits that PW-2, 3, 4, 9, 13, 15, 22, 23, 24, 30, 31, 32 and 34 turned hostile and did not support the story of the prosecution.

6. The conviction of appellant-Shankar Mihani and other appellants is mainly based on the statement of Gullu (PW-8) which as per finding of the Court below corroborated by statement of Devendra Singh Rajput (PW-3) recorded under Section 164 of Cr.P.C. and marked as Exhibit P-6.

7. The first submission of learned Senior counsel is that it is a case of blind murder of two persons. The prosecution evidence will show that murder must have taken place in the intervening night of 18-19.02.2010 after 2:30 O'clock. As per the story, Munnu and Sachin Tiwari were murdered at Azad Panja Chowk but no evidence whatsoever could be produced to show that any such incident had taken place at the said crossing. The blood stained shoes and blood was recovered from '*Muktidham*', which is evident from Site Map (Ex. P/18). The bodies were found at Raja Patel's field and site map regarding this part is Exhibit P/19.

8. Learned Senior counsel submits that prosecution has miserably failed to show how the dead bodies were carried by appellants from Azad Panja Chowk to '*Muktidham*' and then to Raja Patel's field. Thus, the chain of events could not be established. It is also not proved

as to why appellants who allegedly assaulted the deceased persons at Azad Panja Chowk will take their bodies in the mid night to 'Muktidham' and from there to Raja Patel's field.

9. Learned Senior counsel submits that appellant – Shankar Mihani was falsely arraigned in various cases and his property were sought to be seized by the Government. Aggrieved, he filed M.Cr.C. No.10496 of 2005 and this court vide order dated 11.10.2006 (Ex.D-10) disapproved the said action of the Government. The said order of this Court was unsuccessfully challenged by the Government in a SLP, which came to be dismissed.

10. The whole investigation conducted by Shri Anil Bajpai (PW-40) is vitiated submits learned counsel for the appellant. He is SHO of a different Police Station. Since he was a 'yes-man' of concerned S.P., the investigation was midway handed over to him.

11. In order to bolster the submission that Sachin and Munnu were alive till 2:30 O'clock, attention of this Court is drawn on the statement of friend of deceased persons i.e. Sanjay Guryani (PW-12) who deposed that on 18.02.2010, he was sitting on a tea shop where Sanjay Guryani and Munnu came on a motorcycle. They stayed in the tea shop for about 30-45 minutes. Thereafter, Sanjay Guryani alongwith Munnu and Sachin went to his house in the motorcycle of Munnu. He further deposed that when he was dropped at his house by Sachin and Munnu it was around 11:30-11:45 in the night. Thus, it is clear that they were alive till 11:45.

12. For the same purpose, statement of Ram Kumar Dhariya (PW-41) was referred wherein the first I.O. interrogated Amol Upadhyay

(PW-14) on 20.02.2010 and recorded his statement under Section 161 of Cr.P.C. (Ex. D/5). As per this statement also, Sanjay Guryani stated that Munnu and Sachin dropped him to his house at around 11:15 at night. In para-39 of cross-examination, the I.O. admitted that Saroj informed him that Sachin Tiwari came to his house at around 11:30 in the night on 18.02.2010. Sachin was little upset at that time.

13. The statement of Ganesh Prasad Tiwari (PW-7) father of Sachin is relied upon to submit that on 18.02.2010 at around 11:30-11:45 in the night, Sachin's mother was talking to him on telephone. The mother was insisting him to come back and take the dinner. Sachin agreed to come back for dinner. Thereafter, Sachin came back and took his dinner. Upon receiving the phone of Munnu, Sachin left the house. His elder brother scolded him for leaving the house at the midst of the night. Sachin consumed food at around 11:45 P.M.

14. By placing heavy reliance on the statement of father of Sachin (PW-7) and friend of accused persons Amol (PW-14), it is submitted that a cumulative reading of these statements shows that the accused persons were alive till 11:45 on 18.02.2010. The aforesaid prosecution witnesses were not declared as hostile. Thus, there statements are binding on the prosecution. Reliance is placed on **Sarwan Singh v. State of Punjab, (2003) 1 SCC 240** and **Javed Masood v. State of Rajasthan, AIR 2010 SC 979** .

15. To elaborate and establish the tentative time of death, statement of Dr. Dinesh Yadav (PW-20) is relied upon wherein he submitted that during the autopsy, 100 m l. semi-digested food was found in the stomach of deceased Sachin Tiwari. It is submitted that as per this

deposition, the semi-digested food remains in the stomach upto 2-3:30 hrs. The autopsy was conducted by Dr. Dinesh Yadav (PW-20) on 19.02.2010 at around 10:00 am. This testimony shows that death had taken place much after the time which is shown by the prosecution. **1991 MPLJ 253 (Chhakki Vs. State of Madhya Pradesh)** is referred to strengthen this submission. In this judgment, it is held that the semi-digested food remains in stomach between 3-5 hours from the time of death.

16. The next submission is based on the 'site map' (Ex.P/18). 'B1' and 'B2' are the spots where blood was found whereas shoe of Munnu was found at spot 'S'. On the spot marked as 'T', sign of dragging with blood is mentioned. It is urged that this 'site map' was prepared by R.K. Dhariya (PW-41). The prosecution is totally silent as to how body of Munnu travelled from Azad Panja Chowk to cremation ground / '*Muktidham*'. No explanation or details were furnished as to how blood stains and shoe of Munnu were found at '*Muktidham*'. The entire chain right from Azad Panja Chowk to '*Muktidham*' and from '*Muktidham*' to Raja Patel's field where bodies were found was required to be established with utmost clarity. In absence thereof, the story cannot be believed. In the same line, the statement of Gyanendra (PW-5) (brother of deceased Munnu) is pointed out to show that he was unable to state as to how at a distance of half a kilometer from the dead bodies of Sachin and Munnu, shoe, handkerchief and motorcycle were found. The chronology of events shows that death of both Munnu and Sachin

had taken place some time after 2:30 O'Clock. No incident had taken place at Azad Panja Chowk.

17. The testimony of Devendra Singh Rajput (PW-3) is referred to show that he gave the statement under Section 164 of Cr.P.C. and this statement along with statement of Gullu @ Gaya Prasad (PW-8) became foundation for holding the appellant as guilty. Devendra Singh Rajput (PW-3) in para-10 of his statement admitted that after reading the News about murder of Sachin and Munnu, he was taken to Hoshangabad Court by the Police for recording his statement. Before recording statement in the said Court, S.I. Bajpai did not explain to him about the statement. However, in the next breath, he candidly deposed that he gave statement in the Court as tutored by the Police. At the time of recording of statement in the Court, the police personnel were standing on the door of the Court and were listening to the deposition and were keeping an eye on him. It is submitted that statement recorded under Section 164 of Cr.P.C. cannot be treated to be a piece of substantive evidence. This statement can be used for corroboration or contradiction during recording of statement of concerned witness in the Court. No conviction can be recorded on the basis of statement recorded under Section 164 of Cr.P.C. **AIR 1960 SC 490 (State of Delhi Vs. Shri Ram Lohia)** and **(2018) 9 SCC 614 (State of Karnataka Vs. P. Ravikumar alias Ravi and Ors.)** were referred to support the aforesaid contention. In addition, it is submitted that no oath was administered to Devendra Singh Rajput (PW-3) before recording his statement under Section 164 of Cr.P.C. (Ex.P/7). Thus,

looking from any angle, his statement under Section 164 Cr.P.C. cannot be used by the prosecution.

18. Shri Surendra Singh, learned Sr. counsel placed reliance on statement of first Investigating Officer Shri Dhariya (PW-41) wherein he deposed that during the investigation, no witness has deposed that he had seen/witnessed the incident at Azad Panja Chowk.

19. Reverting back to the prosecution story, learned Sr. counsel submits that both the murders had taken place at Azad Panja Chowk. Devendra Singh Rajput (PW-3) deposed that a quarrel had taken place near a place where marriage function was going on. From there, the assailants and Munnu and Sachin came to Azad Panja Chowk. No witness narrated that they went on any motorcycle. Thus, it is a big question as to how the motorcycle of deceased person reached the field of Raja Patel. Gyanendra Kishore (PW-5) clearly admitted that as per shortcut route, the distance between Azad Panja Chowk and Raja Patel's field is about 1-1.5 Km. Thus, prosecution was required to establish as to how the bodies of deceased persons and their motorcycle reached the field of Raja Patel. The attention on site map (Ex-P/19) is drawn to show that motorcycle was found on a spot marked as 'N'. At the cost of repetition, it is argued that no plausible explanation is given by the prosecution before the Court below which establishes a link between Azad Panja Chowk, '*Muktidham*' and field of Raja Patel.

20. Both the deceased persons were having criminal record. As per Ex. D/33 and D/34, against Munna and Sachin, 27 criminal cases were registered whereas Gullu (PW-8) was an accused in 32 cases.

21. The second Investigating Officer, Shri Anil Bajpai (PW/40) was posted in Police Station Kesla. He was not transferred to the Police Station under whose jurisdiction, incident had taken place but was given this job in specific so that he can satisfy the wish of the S.P. and the Government.

22. Shri Anil Bajpai (PW/40) joined investigation on 24th Feb, 2010 and sent for two witnesses Gullu (PW/8) and Manoj Rajvanshi (PW/6). Manoj Rajvanshi is the witness who has allegedly overheard the conspiracy theory in Hoshangabad jail. Rajvanshi admitted that 18 criminal cases were pending against him. Out of which he was acquitted in 16 cases. During cross examination, he further admitted that a criminal case was registered against him for throwing hand bomb in the shop of brother of main accused Shankar Mihani.

23. The identity of assailants were not known till 27.02.2010 which is evident by *Roznamcha* No. 2201 dated 27.02.2010. I.O. Ram Kumar Dhariya (PW/41) in his cross examination clearly admitted that till 27.02.2010 there was no clue about the assailants. Another *Roznamcha* of 27.02.2010 was relied upon wherein it is mentioned that statement of Gullu was recorded on 24.02.2010, it was clearly antedated which is impermissible in the light of Regulations 633 and 644 of M.P. Police Regulation (Regulation). Regulation 635 (b) makes it obligatory for

the prosecution to mention in daily general diary the names of witnesses examined by it during the investigation.

24. The statement of Anil Bajpai (PW-40) shows that the statement of Gullu (PW-8) under Section 161 of the Cr.P.C. (Ex.D/2) was recorded on 25/02/2010. However, there is no entry in the *Roznamcha* of 24th to 25th that any such statement was recorded on 25/02/2010. The entry is mentioned in *Roznamcha* dated 26/02/2010. This manipulation and inconsistency creates serious doubt on the prosecution story.

25. Gullu (PW-8) is a chance-witness and the story of prosecution shows that he is infact a planted witness. Gullu (PW-8) himself is facing various criminal cases and therefore, known to local police. He during his cross-examination deposed before the Court below that he has been bribed by Dayal Mihani, brother of main accused Shankar Mihani. Learned senior counsel submits that a serious offence under Section 214 of IPC was registered against Dayal Mihani. In RCT No.401222/2015 decided on 10/06/2021 (filed with I.A. No.12987/2022), the said prosecution story was not accepted and Dayal Mihani was acquitted by the Court. Thus, this story is of no help to the prosecution.

26. As per statement of Gullu (PW-8), he along with his mare went to village Sonasawari from his village namely Mehragaon. While returning from said marriage/Barat, he reached Azad Panja Chowk at about 11:30 in the night where he witnessed the incident. In the cross-

examination, he admitted that said Chowk is situated in a crowded area but no independent witness or person available there was examined. In para-9 of his statement, he mentioned the names of various persons who were present at Azad Panja Chowk at the time of incident. None of them were examined. Similarly, he admitted that in his statement recorded under Section 161 of Cr.P.C. there is an omission about taking Barat by him to Mehraon.

27. Thus, conduct of this witness is not natural. In Ex.D/2, he submitted that he at Azad Panja Chowk initially could not identify the deceased persons but when Shankar Mihani shouted and took their names, he could recognize them. However, in the opening para of his statement, he admitted that he knows both the parties namely deceased and assailants.

28. The statement of Gullu (PW-8) to the extent he stated that he had not seen any incident happening with Sachin is exhortation. There is inordinate delay of 7 days in recording his statement under Section 161 of Cr.P.C. He admitted that after witnessing the incident at Azad Panja Chowk, when he reached his house, he did not inform the family members regarding assault and names of persons being assaulted. Thus, his statement is not creditworthy.

29. The statement of Sanjay Guryani (PW-12) is relied upon to submit that in the funeral of Munnu and Sachin held on 19/02/2010, Gullu was present whereas Gullu deposed that he was not present in the said funeral. Thus, Gullu is not a creditworthy witness.

30. Investigating Officer Ram Kumar Dhariya (PW-41) categorically deposed that Azad Pnaja Chowk does not come on the way/route

between Mehragaon and Sonasawri. He candidly stated that Azad Panja Chowk does not come between Mehragaon and Sonasawri regardless of shortcut or taking a long route. This witness clearly stated that Gullu was present at the time of inquest and wanted his name to be included as a witness in '*Lash Panchnama*'. This solitary chance-witness Gullu (PW-8) is wholly unreliable submits learned Senior Advocate with the aid of **AIR 2018 SC 4045 (Suresh and another v. State of Haryana)**. His abnormal conduct and behavior shows that he did not inform about the incident to family members and villagers and therefore, this witness is of no assistance to the prosecution. For the same purpose, **AIR 2006 SC 1656 (Ramreddy Rajesh Khanna Reddy @ Anr. Vs. State of Andhra Pradesh)** is relied upon to bolster the submission that when this witness was present at the time of inquest, there is no justification in not informing the police about the incident witnessed by him.

31. Learned Senior Advocate also cited **AIR 1996 SC 3471 Sudip Mazumdar vs. State of Madhya Pradesh, 2010(6) SCC 407 Gopal Singh and others vs. State of Madhya Pradesh, AIR 2016 SC1178 Shahid Khan vs. State of Rajasthan and AIR 2019 SC 3714 Balwan Singh vs. State of Chhattisgarh** to canvass the point that the inordinate delay in recording the statement under Section 161 of Cr.P.C. will certainly cause a dent on the prosecution story. Thus, statement of Gullu (PW-8) is wholly unbelievable.

32. Para-29 of the impugned judgment shows that the Court below has convicted the appellant on the basis of suspicion. Most of the

witnesses have turned hostile. Gullu (PW-8) a solitary witness was planted by the prosecution and in fact he has not seen the incident.

Cr. A. No.296 of 2016 and Cr.A. No.309 of 2016 :

33. Shri Ajay K. Jain, learned counsel for the appellants-Pawan, Mukku @ Mukul, Ankur and Takku @ Vikram urged that the prosecution was initiated against fifteen accused persons. Accused Nos.4, 11, 13 and 15 were acquitted. Dhanraj (accused no. 11) was found to be in jail on the date of incident and, therefore, the Court below while acquitting him has given a specific finding in this regard in Para-38 of the judgment. Shri Jain submits that thirteen prosecution witnesses turned hostile. He borrowed the argument of learned Senior counsel Shri Surendra Singh and in addition submits that Gullu (PW-8) has not clearly deposed as to which accused person present in the Court was known to him by face and which are those, who are known to him by name. In his statement recorded under Section 161 of Cr.P.C. (Ex.D-2), Gullu (PW-8) took only two names of accused persons namely Shankar Mihani and Anshul Sahgal. Same is the case with his statement recorded under Section 164 of Cr.P.C. (Ex.D-3).

34. Section 39 of Cr.P.C. makes it obligatory for every citizen to inform about the offence to the Police. Gullu (PW-8) did not disclose the said incident to the Police for a long time. The delay of seven days in recording the statement under Section 161 of Cr.P.C. makes the prosecution story weak, shallow and unbelievable.

35. It is submitted that from Mukku @ Mukul blood stained clothes and *Gupti* were recovered and human blood was found on the *Gupti*. In the knife and clothes recovered from Ankur Mehta, human blood was

found and same is in the knife recovered from Takku. However, no 'motive' could be established by prosecution as to why accused persons will murder the deceased persons.

36. In the statement recorded under Section 313 of Cr.P.C., the appellants were not confronted with incriminating material/report relating to availability of human blood on clothes/weapons. In absence thereof, the said incriminating materials cannot form basis for conviction.

37. It is submitted that even assuming that on clothes/weapon, human blood was found, in absence of establishing that said human blood was of the victims, the finding of FSL is of no use to the prosecution. Reliance is placed on **JT 1987 (2) SC 193 (Ziyathuge Moosa Vs. Mavadigothi Mohammad and anr.), 2003 SCC (Cri) 1965 (State of Rajasthan Vs. Raja Ram), (2008) 1 SCC (Cri) 733 (Sattatiya alias Satish Rajanna Kartalla Vs. State of Maharashtra), AIR 2021 SC 4031 (Madhav Vs. State of Madhya Pradesh)**. Thus, the origin and recovery of blood is not established with necessary clarity. Hence, the appellants deserve to be exonerated.

Cr.A. No.257 of 2016 :

38. Shri Siddharth Datt, learned counsel for the appellant borrowed the argument of Shri Surendra Singh, learned Senior Counsel and further urged that from this appellant through Ex. P-70 and Ex. P-71 'gupti' and clothes were recovered. Para-53 of judgment shows that human blood was found on both the material. However, no grouping of blood had taken place to establish that human blood so found was of

the deceased persons. The appellant was not confronted with the FSL report relating to availability of human blood while recording his statement under Section 313 of Cr.P.C.

39. Two seizure witnesses namely Rajendra Mudgal (PW-11) and Investigating Officer (PW-42) have narrated two different stories about spot of recovery of '*Gupti*'. Rajendra Mudgal (PW-11) stated that it was recovered behind the house of this appellant whereas I.O. deposed that it was recovered from the house near a wall where T.V. was mounted.

Cr.A. No.356 of 2016 :

40. Ms. Anita Kaithwas, learned counsel for appellants (Bablu @ Sada, Ghanshyam @ Bheda and Hitesh @ Chhota Sanni Mehra) urged that she is borrowing the argument of learned Senior counsel and urged that in her case also the weapons and clothes recovered from appellants were having human blood stains. However, no blood grouping/matching was done. There is no iota of material to show that the human blood on clothes / weapons were matched with that of deceased persons. Gullu (PW-8) did not take the name of present appellants.

Cr.A. No.709 of 2016 :

41. Shri Ravi Shankar Yadav, learned counsel for appellant borrowed the argument of Shri Ajay Jain and Shri Siddharth Datt and urged that a '*Baka*' and clothes were recovered in which human blood was found. No blood grouping was done. Appellant was not confronted with

adverse material. Rajendra Mudgal (PW-11) did not identify him. Thus, prosecution story is hollow and without substance.

Stand of Prosecution :

42. Shri Arvind Singh, learned G.A. submits that Court below has rightly found existence of 'motive' and finding in this regard is given with sufficient details in Para-41 of the impugned judgment. *Dehati Nalisi* (Ex.P/164) and *Dehati Marg Intimation* (Ex.P/165) were relied upon which were proved by I.O. Mr. Ram Kumar Dhariya (PW-41). This shows that incident indeed had taken place in the intervening night of 18-19.02.2010. Gullu (PW-8) in his statements recorded under Sections 161 and 164 of Cr.P.C. and in his Court's statement narrated similar story. Devendra Singh Rajput's testimony is clear that a quarrel began near a marriage function at around 11 O'clock in the night. Although, this witness turned hostile, yet his statement shows that incident had taken place. Gullu (PW-8) rightly deposed that incident had taken place at Azad Panja Chowk between 11:30 to 12 O'clock on 18.02.2010.

43. F.I.R. No.459/2010 was recorded against Shankar Mihani for giving threat which was marked as Ex.P/31.

44. It is argued that if incident had taken place on a street, a passer-by will be the natural witness and hence Gullu (PW-8) cannot be treated as 'chance witness'. Reliance is placed on **State of A.P. v. K. Srinivasulu Reddy, (2003) 12 SCC 660, Sachchey Lal Tiwari v. State of U.P., (2004) 11 SCC 410, Jarnail Singh v. State of Punjab, (2009) 9 SCC 719, Rajesh Yadav v. State of U.P., 2022 SCC OnLine SC 150 and Masalti v. State of U.P., AIR 1965 SC 202.**

45. Shri Arvind Singh, learned Government Advocate further submits that statement of Manoj Rajwanshi (PW-6) shows that conspiracy to murder the said two persons was initially prepared in Hoshangabad Jail. The newspaper cutting (Ex. P/101) is relied upon to submit that the reasons for changing the Investigating Officer is clear from this newspaper cutting. By placing reliance on the statement of Devendra Rajput (PW-3) and Gullu (PW-8), Shri Singh submits that prosecution was able to establish its case beyond reasonable doubt. The court below has not committed any error in assigning reasons in Paragraph Nos. 49 to 57 of the judgment. On a specific query from the Bench, Shri Arvind Singh, learned counsel for the State fairly submitted that conviction of Shankar Mihani is solely based on the statement of Gullu (PW-8) and statement recorded under Section 164 of Cr.P.C (Ex. D/3).

Rejoinder Submissions :-

46. Shri A. K. Jain, learned counsel for certain appellants submits that initially the conspiracy theory was relating to Shankar Mihani and Anshul. Other persons were not included. Heavy reliance is placed on the testimony of Devendra Singh Rajput (PW-3). In cross-examination, he admitted that he had not seen any incident of quarrel and assault at all. He further stated that he is not able to identify any of the accused persons.

47. Shri Jain further submits that Ex.D/2 is statement of Gullu (PW-8) recorded under Section 161 of Cr.P.C whereas the statement of Gullu recorded under Section 164 Cr.P.C is (Ex. D/3). He was not confronted with his previous statements at the time of his cross-

examination in the court. Thus, no reliance can be placed on Ex. D/2 and Ex. D/3. This is trite, submits Shri Jain that the said documents can be used only for corroboration or to establish contradictions and cannot be treated to be a substantive piece of evidence. Lastly, he submits that paragraph-75 of the impugned judgment shows that the charge under Section 120-B of IPC could not be established and therefore, the conspiracy theory projected by the Devendra Singh Rajput has lost its significance.

48. The parties confined their arguments to the extent indicated above. We have bestowed our anxious consideration on rival contentions and perused the record.

Findings :

Cr.A. No. 408 of 2016 :

49. As per the prosecution story, Shankar Mihani with accused persons prepared a conspiracy in Hoshangabad Jail to murder Munnu and Sachin. In para-75 of the impugned judgment, the Court below has disbelieved the story of conspiracy and did not record conviction under Section 120-B of IPC.

Ocular evidence :

50. Devendra Singh Rajput (PW-3) is a star witness of prosecution but this witness has turned hostile and did not support the case of the prosecution that incident of quarrel had taken place near a marriage function. During cross-examination, he clearly denied that he had seen any incident at around 11:00 O'Clock in the night at Azad Panja crossing or seen any quarrel between deceased persons and Shankar Mihani and other accused persons. So far his statement under Section

164 of Cr.P.C. (Ex.P-7) is concerned, he stated that as directed by the Police, he deposed that statement and at the time of recording of statement in the Court, he was under the pressure of police present in the Court.

51. As per the prosecution story, on 18.02.2010 Sachin and Munnu were assaulted at Azad Panja Chowk between 11:00 - 11:30 O'Clock. Sanjay Guryani (PW-12) clearly stated that he accompanied Munnu and Sachin who dropped him to his house at around 11:30 p.m. -11:45 p.m. in the night of 18.02.2010. The Investigation Officer Ram Kumar Dhariya (PW-41) admitted that Saroj informed him that Sachin came to his house at 11:30 in the night of 18.02.2010. Similarly, father of Sachin, Ganesh Prasad Tiwari (PW-7) deposed that at around 11:30 -11: 45, in the night, Sachin's mother had a talk with him on telephone. On mother's insistence to take dinner at home, Sachin thereafter came back to home and took his dinner. Interestingly, these witnesses have not been declared as hostile. We find force in the argument of Shri Surendra Singh, learned Senior Counsel that since Sanjay Guryani (PW-12), Ganesh Prasad Tiwari (PW-7) (father of deceased Sachin) and Investigation Officer Ram Kumar Dhariya (PW-41) were not declared as hostile, their statements are binding on the prosecution in the light of judgments of Supreme Court in **Sarwan Singh** and **Javed Masood (Supra)**. This clearly shows that tentative time of death was certainly after 12:00 O'Clock.

Time of death – Autopsy report :

52. The statement of Dr. Dinesh Yadav (PW-20) was relied upon wherein he deposed that during post-mortem, 100 ml semi-digested

food was found in the stomach of deceased Sachin Tiwari. The judgment of this Court in **Chhakki (supra)** was referred to show that the semi-digested food remains in the stomach between 3-5 hrs. Pertinently, before the Court below, the defence relied on the judgment of Supreme Court i.e. **State of Punjab Vs. Daljit Singh, 2004 SCC (Cri) 1776**. In para-32 and 33 of impugned judgment, the Court below considered the said judgment and opined that as per this judgment, if semi-digested food is found in the stomach of deceased, it can be presumed that he had consumed food more than an hour before the time of murder. The Court below not followed this judgment solely for the reason that Dr. Dinesh Yadav (PW-20) has not given any finding regarding quantity of semi-digested food found in the stomach. This finding of Court below in our view is perverse because evidently Dr. Dinesh Yadav (PW-20) had deposed about the quantity of semi-digested food present in the stomach of Sachin Tiwari. Thus, the argument of appellant has substance that murder must have taken place at around 2:30 O'Clock whereas prosecution witnesses deposed that incident of assault at Azad Panja Chowk had taken place between 11:30 – 12:00 O'Clock.

Chain of events :

53. The chain of events as projected by the prosecution shows that initially quarrel had taken place near the marriage place. Shankar Mihani instructed his associates that since a marriage function is going on, take Munnu and Sachin to Azad Panja Chowk and at Azad Panja Chowk both of them were assaulted which was witnessed by Gullu (PW-8). The blood stained shoe of Munnu was found at spot 'S' in Site

Map (Ex.P-18) at '*Muktidham*'. Spot 'T' indicates dragging sign with blood. Another spot is the place where bodies and motorcycle were found which is at Raja Patel's field. No amount of evidence was led by the prosecution to complete this chain of events. In other words, it was not established as to how dead bodies reached the field of Raja Patel. No amount of evidence was also led to establish the reason how Munnu's shoe and sign of dragging were found at '*Muktidham*'. The prosecution was obliged to complete this chain by leading satisfactory evidence.

Evidentiary value of statement under Section 164 of Cr.P.C.:

54. Devendra Singh Rajput (PW-3) deposed against the appellant and Court below has considered his statement recorded under Section 164 of Cr.P.C. This statement in our considered opinion, could not form basis of conviction at all for the simple reason that the statement recorded under Section 164 of Cr.P.C. is not a substantive piece of evidence and it can be relied upon only for the purpose of establishing contradiction or omission. Reference was rightly made to the judgments of the Supreme Court in the cases **Shri Ram Lohia and P. Ravikumar (Supra)**. Moreso, no oath was administered to Devendra Singh Rajput (PW-3) while recording his statement under Section 164 of Cr.P.C.

Investigation by SHO of other Police Station :

55. Shri Surendra Singh, learned Sr. counsel on more than one occasion urged that Anil Bajpai (PW-40) was an officer posted in a different police station and therefore, continuance of investigation by him for an offence which had taken place in the jurisdiction of different

police station is bad in law. However, no provision is referred which makes such investigation by Anil Bajpai (PW-40) as impermissible or illegal. Thus, this argument deserves to be discarded.

Roznamcha entries :

56. Purity of investigation was called in question for yet another reason. By referring to statutory provision of Regulations, it was pointed out that there was a serious flaw in the entries of the *Roznamcha*. Before dealing with this aspect, we deem it apposite to reproduce relevant portion of Regulations 633 and 635(b) of **Madhya Pradesh Police Regulations**, which read as under :-

“**633. Register maintained General.** The following registers are maintained at police stations:-

A-General

- 1. The General Diary.**
2. The Case Diary.
3. The First Information Book.
4. The Crime Register.
5. The Village Crime Note-Book and Index.
6. The index to History Sheets.
7. The surveillance Register.
8. The Register of Property Seized.
9. The Register of Arrest.
10. The Register of Absconded and Proclaimed Offenders.

D-Miscellaneous

.....

25. Daily duty Register.

.....

635. Details entered- The following details will be entered as prescribed by Section 44 of the **Police Act, 1861:-**

(a) The substance of charges preferred or information given. with the name of the complainant or informant.

(b) The names of any witnesses examined.

(c) The names of all persons arrested and a list of all weapons or property taken from them.

(d) The time of each arrest, and the time of forwarding each accused in custody.”

(Emphasis Supplied)

57. The Regulation 633 makes it obligatory for the police station to maintain certain registers including the *Roznamcha* (the general diary). Regulation 635(b) mandates to enter the names of any witness examined.

58. The first investigation Officer Shri R.K. Dhariya (PW-41) clearly admitted that during the investigation conducted by him, no witness has deposed that he had seen the incident at Azad Panja Chowk. Anil Bajpai (PW-40) conducted the investigation thereafter. We find substantial force in the argument of Shri Surendra Singh, learned Sr. counsel that the identity of assailants is not reflected till 27.02.2010 which is evident by perusal of *Roznamcha* No.2201 dated 27.02.2010. R.K. Dhariya (PW-41) in his cross-examination candidly stated that he did not get any clue about the murder and assailants till 27.02.2010. The *Roznamcha* dated 25.02.2010 for the first time shows that statement of Gullu (PW-8) was recorded on 24.02.2010. Non-mentioning of recording of statement of Gullu (P-8) in the *Roznamcha*

dated 24.02.2010 certainly creates a doubt on the purity of investigation. Moreso, when no plausible explanation has been given by the investigation officer as to why the *Roznamcha* of 24.02.2010 does not reflect the name of witness i.e. Gullu (PW-8).

59. Anil Bajpai (PW-40) stated that statement of Gullu (PW-8) under Section 161 of Cr.P.C. was recorded on 25.02.2010. *Roznamcha* of 24.02.2010 does not reflect the name of Gullu. Thus, while examining the genuineness of statement of Gullu and in order to determine whether he is a ‘chance witness’, ‘independent witness’ or a ‘planted witness’, this aspect would be relevant. The importance was attached to aspect of writing of *Roznamcha* by Apex Court in the case reported in **(1972) 4 SCC 783 (Onkar Nath Sidhaulti alias Narain and Kailash Vs. The State of U.P.)**. Relevant observations extracted from Para 20 read thus :

“**20.**The General Diary at the police station is maintained under U.P. Police Regulations. Regulation 294 prescribes that the General Diary shall be written in duplicate under the superintendence of the officer-in-charge of the station who is responsible for the entries made in it. The regulation further says that the original is to be sent to the Superintendent or Assistant or Deputy Superintendent-in-charge of the sub-division. The diary should be a complete but brief record of the proceedings of the police, and of occurrences reported to them or of which they have obtained information. In other words, the General Diary is to be kept from minute to minute and from hour to hour and a charge of this nature that the Officer-in-charge of the Station had not written up the General Diary in

accordance with the regulation would be indeed a very serious charge which may not be countenanced unless established by strong evidence. Therefore, there is no reason whatsoever why the entry should not have been made at the time when the message was received. And since this entry about the message follows the entry with regard to the first information report, the normal inference would be that the several entries had been made in due course of official business. If the defence suggestion were true, we must assume that something must have occurred at 8.25 p.m. which inspired the police station not to enter the entries in due course. If none of the persons interested in complaining about the offence had reached the police station at that time and there was no known source of information at the police station with regard to the offence, there could not have been any good reason at all why the entries should not be made in the usual course..... It is impossible to believe that if such a statement of a cognizable offence being committed was reported to the police station, the officers would have remained absolutely indifferent and inactive. As already stated no other influence was working at the police station at that time and, therefore, there could have been no reason at all why the information given by Kailash should not have been recorded.”

(Emphasis Supplied)

The importance and purpose of *Roznamcha* entries cannot be marginalized. Regulation mandates the methodology of filling up date-wise entries in the said register to maintain purity and transparency in the investigation process and to avoid and eschew manipulation of any nature. In cases of any such discrepancy in the entries of *Roznamcha*, a

plausible and convincing explanation must be advanced by the prosecution which is missing in the case at hand.

Credibility of (PW-8) :

60. The parties are at loggerheads on the question whether Gullu (PW-8) is a genuine witness. As noticed above, Shri Singh, learned counsel stated that he himself is a criminal known to Police and is a 'chance witness' planted by the Police whereas Shri Arvind Singh, learned Government Advocate has taken a diametrically opposite stand by taking aid of judgments of Supreme Court in the cases of **K. Srinivasulu Reddy, Sachchey Lal Tiwari, Jarnail Singh, Rajesh Yadav and Masalti (Supra)**. Since Gullu (PW-8) is a very important star witness of prosecution, his statement deserves to be scrutinized with utmost care. So far proposition that if incident had taken place on a crossing or on a road, a passerby will be the natural witness, cannot be doubted. What needs to be examined is whether presence of Gullu (PW-8) at Azad Panja Chowk can be said to be genuine and natural.

61. Gullu (PW-8) admitted that he is facing various criminal cases and therefore, he was known to Police.

62. During his deposition in the Court on 29.04.2011, he stated that he was bribed by Dayal Mihani, brother of Shankar Mihani. He was also given threat by brother of Shankar Mihani. Shri Surendra Singh and Shri Ashwani Dubey, learned counsel placed reliance on the judgment of Court below in RCT No.401222/2015 decided on 10.06.2021 and on another judgment of learned JMFC, Hoshangabad in Criminal Case No.733/2011. As per these judgments, the above

charges of giving bribe and threatening could not be established by the prosecution. Gullu (PW-8) stated that he provides Mare (*Ghodi*) for Barat (Marriage Procession). On the date of incident, he traveled with the Barat from his village Meharagaon to Sonasawri. While returning back with Mare through a shortcut route, he witnessed the incident at 11:30 O'clock at Azad Panja Chowk. I.O. Ram Kumar Dhariya (PW-41) deposed with utmost clarity that Azad Panja Chowk does not come midway between Mehragaon and Sonasawri. Putting it differently, his statement leaves no room for any doubt that Azad Panja Chowk does not come in any route whether a long route or a short one. This creates serious doubt regarding presence of Gullu (PW-8) at the scene of crime. Gullu (PW-8) in his statement took names of various persons who were allegedly present at the time of commission of crime at Azad Panja Chowk. The prosecution has not chosen to introduce any of them. Thus, there is no corroboration of the statement of Gullu (PW-8).

63. Gullu (PW-8) after witnessing the incident went to his house but did not inform his family members about such incident. He resides in a family of five brothers. It cannot be assumed that he was so frightened that he could not narrate the said incident to the family members when he was in his own village and was duly protected by presence of family members. Thus, in our judgment, Gullu (PW-8) is not a 'natural witness'. This is trite that statement of 'chance witness' deserves to be scrutinized with circumspection (**See: AIR 2010 SC 3699 Jarnail Singh vs. State of Punjab**). Similarly, statement of Sanjay Guryani (PW-12) shows that Gullu (PW-8) was present at the funeral of Munnu and Sachin on 19.02.2010. As per statement of Shri R.K. Dhariya

(PW-41), Gullu (PW-8) was present at the time of preparation of inquest memo and intended to become witness to it. Neither on the date of funeral nor at the time of preparation of inquest memo, he had chosen to narrate the incident to the Police. In this regard, the judgment of Supreme Court in **Suresh and another (supra)** is noteworthy. Same reads as under :-

“44. The credibility of the witnesses, which the prosecution mainly relies on to prove the case on the basis of the circumstantial evidence is an important aspect. In this case the evidence of PW 13 (wife of the deceased) is crucial. Her statements should be carefully appreciated. The statements, as indicated above, clearly portray that there were material improvements in the statements, which makes her statement unreliable and doubtful. The vindictive statements which were made during the cross-examination, clearly bar us from taking her testimony into consideration. There is no dispute that there was prior enmity between the wife and the appellant-accused, which makes her statements unreliable. It is revealed from her evidence that, even though she knew that her husband was taken for shooting somebody, she kept quiet and did not stop her husband from accompanying the accused. Such behaviour would be suspicious as it does not fit with the natural human behaviour to inspire any confidence.

(Emphasis Supplied)

64. Reference may be made to the judgment of **Ramreddy Rajesh Khanna Reddy vs. State of A.P. (2006) 10 SCC 172** wherein it has been held that –

“4. PW 9, Dronapalli Chiranjeevi was said to be an eyewitness. His statement before the police was recorded three days after the incident. The trial court in its judgment held him to be a reliable witness and passed a judgment of conviction, inter alia, relying on his evidence holding:

“PW 9 is also found to be a natural witness and he is returning to his house after attending Annadanam Karyakram on 14-6-1998 which had taken place at Seven Hills Hotel area, Kothagudem. This is deposed that himself and one M.A. Isas Assha (DW 18) were returning with a torchlight as there was no electricity. It is also deposed that it was a rainy night and there was drizzling. The natural sequence of the events deposed by PW 9 cannot be overlooked for the reason that he is a planted witness. While returning from Annadanam Karyakram in Coolie Line, hearing cries in the street is a natural event. On hearing a cry there is every possibility of focusing the light towards that side, which is in the natural fashion. PW 9 focused the torchlight and identified the deceased Mohd. Rafiq Khan and three others. In all, together, he deposed that four persons were present. He also specifically deposed that A-2 used a knife and cut the throat of the deceased and the overt acts of A-1, A-2 and A-4 were stated before the court.”

5. The High Court, however, did not agree with the said views of the learned Sessions Judge opining:

“At the outset, we must make it clear that we are not inclined to believe the evidence of PW 9, the alleged eyewitness to the occurrence, who was examined by the police two days after the registration of the crime.

Though he was present at the scene of the offence at the time of the inquest, he never chose to inform the police about the fact that he had witnessed the murder.”

6. Having gone through the testimony of the said PW 9, we are also of the opinion that the **High Court was right in discarding his statement.**

(Emphasis Supplied)

65. In the light of these judgments, we are constrained to hold that Gullu (PW-8) was not a natural eye-witness. When his statement is minutely examined, it creates serious doubt about the genuineness of his statement. His statement does not inspire confidence and conviction of appellant cannot be permitted to stand founded upon such statement.

66. The statement of Gullu (PW-8) deserves to be disbelieved for yet another reason. As held by Supreme Court in **AIR 1996 SC 3471 Sudip Mazumdar vs. State of Madhya Pradesh, 2010(6) SCC 407 Gopal Singh and others vs. State of Madhya Pradesh, AIR 2016 SC1178 Shahid Khan vs. State of Rajasthan and AIR 2019 SC 3714 Balwan Singh vs. State of Chhattisgarh** there must be some explanation when there is inordinate delay in recording the statements under Sections 161 and 164 of Cr.P.C. of a star witness. Ordinarily, when there exist a delay in recording the statements aforesaid, defence is obliged to raise specific question to the Investigating Officer. In the instant case, *Roznamcha* entries were shown to discredit the investigation procedure and in addition to show that statement of Gullu (PW-8) was not recorded on 24.2.2010. As per I.O. Shri Ram Kumar Dhariya (PW-41), till 27.2.2010, nobody informed the police that he witnessed the

incident. Thus, we are satisfied that Gullu (PW-8) is not a 'natural' witness.

67. As noted hereinabove, the argument of learned Senior Counsel was that whole conviction of appellant Shankar Mihani is based on the statement of Gullu (PW-8) and statement of Devendra Singh Rajput (PW-3) recorded under Section 161/164 of Cr.P.C.

68. Learned Government Advocate did not dispute this contention when put to question by the Court specifically.

Suspicion :

69. In the impugned judgment, in para-29 the Court opined that Devendra Singh Rajput (PW-3) has turned hostile. He is not an eye-witness. While recording this finding, it is further recorded although this witness has denied that he is not narrating the correct facts because of any pressure from accused persons, the possibility of such pressure cannot be denied in view of criminal background of most of the accused persons. In this paragraph and in para-42 of the impugned judgment, the Court below has given the finding based on suspicion. It is trite that suspicion, however strong it may be, cannot take place of proof. For these cumulative reasons, in our opinion, the very foundation on which edifice of conviction of Shankar Mihani stands, collapsed and cannot sustain judicial scrutiny.

Remaining Criminal Appeals :

70. In these connected criminal appeals, appellants were convicted on the basis of recovery of blood stained weapons/clothes from them. The learned counsel for these appellants mainly assailed the conviction

by contending that the recovery/seizure is doubtful, there is no finding in the FSL reports that human blood found on the weapons/clothes was of deceased persons. In absence of blood grouping/matching, it is not safe to affirm the conviction.

71. The points deserve serious consideration. Before dealing with the aforesaid, the relevant details regarding these appellants are extracted from impugned judgment in a tabular form :-

| NAME | INCRIMINATING MATERIAL | BLOOD FOUND | HUMAN BLOOD FOUND | WHETHER RELEVANT QUESTIONS ASKED U/S.313 OF Cr.P.C. |
|--|-------------------------------|--------------------|--------------------------|--|
| BABLU @ SADA (Cr.A. No.356/2016) | KNIFE (ARTICLE-N) | FOUND | NOT MENTIONED | YES |
| | PANT (J-1) | FOUND | FOUND | YES |
| PAWAN MAURYA (Cr.A. No.296/2016) | IRON KNIFE (ARTICLE -AB) | FOUND | FOUND | YES |
| | SHIRT (L-1) | FOUND | NOT FOUND | YES |
| DEEPAK @ GOLU GAJRAJ (Cr.A. No.709/2016) | 'BAKA' (ARTICLE -AC) | FOUND | FOUND | YES |
| | PANT (AD-1) | FOUND | FOUND | YES |
| | PANT (AD-2) | YES | YES | YES |
| VIKRAM TAKKU (Cr.A. No.309/2016) | @ PURSE (A-2) | NO | NO | NOT APPLICABLE |
| | IRON KNIFE (ARTICLE-B) | FOUND | FOUND | YES |
| | RUMAAL (A-1) | FOUND | FOUND | YES |
| MUKKU MUKUL (Cr.A. No.296/2016) | @ 'GUPTI' (ARTICLE-Y) | FOUND | FOUND | YES |
| | SHIRT (X-1) | FOUND | NOT FOUND | YES |
| | BANIYAN (X-2) | NOT FOUND | NOT FOUND | NOT APPLICABLE |
| | PANT (X-3) | NOT FOUND | NOT FOUND | NOT APPLICABLE |

| | | | | |
|------------------------------------|-------------------------|-------|-----------|-----|
| SACHIN (Cr.A.No.257/2016) | 'GUPTI' (ARTICLE-AF) | FOUND | FOUND | YES |
| | PANT (AE-1) | FOUND | FOUND | YES |
| | SHIRT (AE-2) | FOUND | FOUND | YES |
| ANKUR MEHTA (Cr.A.No.296/2016) | KNIFE (ARTICLE-AA) | FOUND | NOT FOUND | YES |
| | T-SHIRT (K-1) | FOUND | FOUND | YES |
| | PANT (K-2) | FOUND | NOT FOUND | YES |

72. Shri Ajay Kumar Jain, learned counsel placed reliance on certain judgments of Apex Court to bolster his submission that recovery and origin of blood must be established with utmost clarity. In the recent judgment in **Madhav (supra)** the Apex Court considered catena of its judgments on this points and opined as under:

“27. Apart from the fact that the witnesses in whose presence the seizure of the weapons was allegedly effected, had turned hostile, there was also one more thing. **There is nothing on record to show that the blood stains said to have been present in those weapons, matched with the blood of the deceased.** Unfortunately, the High Court proceeded on a wrong premise that there was scientific evidence to point to the guilt of the accused, merely because as per Exhibit P-25 (FSL Report), the knife and lathis said to have been seized by the police, contained stains of human blood. **The prosecution has not established either through the report of FSL or otherwise, that the blood stains contained in the knife and lathis were that of the deceased.**

32. Therefore, as pointed out by this Court in *Balwan Singh v. State of Chhattisgarh*¹⁴, there cannot be any fixed formula that the prosecution has to prove, or need not prove that the blood groups match. **But the judicial conscience of the Court**

should be satisfied both about the recovery and about the origin of the human blood.”

(Emphasis Supplied)

73. In our opinion, curtains are finally drawn by Supreme Court that ‘recovery’ and ‘origin’ of human blood must be established with accuracy and precision.

74. In the instant case, in Cr.A. No.257 of 2016, there is a cleavage of opinion about the place of recovery of weapon between Rajesh Mudgal (PW-11) and Investigating Officer Ram Kumar Dhariya (PW-41).

75. In other criminal appeals also as evident from the chart, although human blood was found on weapons/clothes, the blood group was not matched with that of the deceased persons. Thus, ‘origin’ of blood could not be established with clarity. Thus, we are unable to give our stamp of approval to the impugned judgment on the basis of FSL reports.

76. We have gone through the statement of accused persons recorded under Section 313 of Cr.P.C. and are unable to persuade ourselves with the argument of learned counsel for the appellants that the incriminating material/FSL reports were not shown to the accused persons. Since they were confronted with the incriminating material/FSL reports, this point raised by learned counsel for the appellants fades into insignificance.

77. Shri Ajay Kumar Jain rightly pointed out that testimony of Devendra Singh Rajput (PW-3) clearly shows that he had not seen any

incident of quarrel and assault. Hence, statement of this witness does not improve the case of the prosecution.

78. The appellants were already acquitted from the charge under Section 120-B of I.P.C. by the Court below. As analyzed above, the prosecution could not establish its case beyond reasonable doubt. The Court below on the basis of evidence mentioned hereinabove has committed an error in convicting the appellants. The appellants deserve to get the benefit of doubt.

79. As a result, the impugned judgment passed in S.T. No. 169/2010 dated 05.01.2016 is set aside by giving benefit of doubt to the appellants. If presence of appellants is not required in the prison for any other reason, they be released forthwith.

80. The Criminal Appeals are **allowed**.

(SUJOY PAUL)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE.