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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 04.05.2023

Decided on: 16.05.2023

+ **CRL.A. 379/2018**

YOGESH BANSAL alias KAKE

..... Appellant

Represented by: Mr.Rajesh Mahajan, Advocate
(Amicus Curiae, DHCLSC) with Mr.
Ranjeeb Kamal Bora, Advocates.

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Represented by: Ms.Shubhi Gupta, APP for the State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

POONAM A. BAMBA, J :-

1.0. Vide this appeal, the appellant is assailing the judgment dated 22.02.2018 (**'impugned judgment'** in short) passed by Ld. ASJ-04, North-West District, Rohini Courts, Delhi, whereby the appellant was convicted for the offence punishable under Sections 302/307 Indian Penal Code, 1860 (**'IPC'** in short) as well as under Sections 25 & 27 of Arms Act, in Sessions Case No. 52139/2016, in FIR no. 499/2013, Police Station Vijay Vihar ; and order on sentence dated 22.02.2018, whereby the appellant was sentenced to :

(a) rigorous imprisonment for life **under Section 302 IPC**, and fine of Rs. 5,000/-, in default to further undergo simple imprisonment for a period of six months ;

(b) rigorous imprisonment for a period of seven years **under Section 307 IPC**, and fine of Rs. 5,000/-, in default to further undergo Simple Imprisonment for a period of six months ;

(c) rigorous imprisonment for a period of three years **under Section 25 Arms Act**, and fine of Rs. 2,000/-, in default to further undergo Simple Imprisonment for a period of three months ;

(d) rigorous imprisonment for a period of three years **under Section 27 Arms Act** and fine of Rs. 2,000/-, in default to further undergo Simple Imprisonment for a period of three months,

which shall run concurrently.

2.0. Prosecution case in brief is, that on 14.10.2013, on receipt of DD no. 9B (Ex. PW-5/B) and DD 5B (Ex. PW-5/A), SI Sonu Ram (PW-26) reached the spot i.e. Rithala Road, near New Tomar Bakery, K-2 Block, Budh Vihar, Phase-I, where beat staff Ct. Narender (PW-20), Ct. Daya Ram (PW-27) and Ct. Jarnail Singh (PW-19) were already present. By the road side, one person was found dead and was bleeding from the injuries on his head and chest ; and at a distance, one Wagon-R car bearing no. DL-8CU-4918 (Ex. PY) of light grey colour was found standing. Around that time, HC Dharambir (PW-21) also arrived at the spot on receiving the information. Name of the deceased was revealed to be Sumit Solanki son of Satyanarain R/o A-51, Budh Vihar, Phase-I, Delhi. Dead body of the deceased was removed to BSA Hospital, where he was examined vide MLC no. 10881/13 (Ex. PW-1/A) by PW-1 Dr. Kumar Akhilesh, declaring him brought dead.

2.1. Meanwhile, on receiving information, SHO Ajay Singh Rawat (PW-31), the investigating officer (IO) along with staff also reached the spot and requisitioned the Crime Team, which inspected the spot and took photographs. During inspection, one empty cartridge on which KF-7.65 was engraved and one bullet lead was found lying at the spot. Eye witness Praveen Gupta (PW-10) visited the police station and his statement was recorded. Exhibits from the spot i.e. one empty cartridge (Ex. P-4), one bullet lead (Ex. P-5), blood stained earth, blood sample and earth control and also the aforesaid Wagon-R car used by the accused, were seized ; and plastic glasses (Ex. P-7) and two empty quarters of liquor (Ex. P-6) where the complainant along with his associates had consumed liquor, were also taken into possession ; and seized exhibits were deposited in Mal khana. Site plan Ex. PW-31/A at the instance of eye-witness (PW-10) was prepared. Santro Car DL-4CAG-5872 (Ex. PX) by which the deceased had come to the place where the complainant/eye-witness and others were consuming liquor, was also seized. After identification of the dead body by his brother Amit Solanki (PW-3) and uncle Satish Solanki (PW-2), the same was sent for post-mortem examination and thereafter, handed over to his legal heirs.

2.2. Dr. Vijay Dhankar (PW-7) at BSA Hospital, conducted the post-mortem on the body of Sumit Solanki, the deceased and tendered his report, Ex. PW-7/A, which reads :

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Date : 14.10.2013 from 4:15 pm to 7:00 pm by Dr. Vijay Dhankar and assisted by Surender Tanwar, PM Technician.

I. CASE PARTICULARS:

FIR No. 499/13

Dated: 14-10-2013

P.S. VijayVihar

Name of the Deceased: Sumit Solanki S/o Satyanarayan Solanki
R/0; A-15, Budh Vihar Ph. I, Delhi.
Age: 20 years Sex: Male
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II. BRIEF HISTORY AS PER I/O:

Allegedly the deceased was killed by gunshot injury on 14.10.2013 at about 1.38 am in Budh Vihar Phase I. He was brought to Dr BSA Hospital where he was declared brought dead. The dead body was preserved in cold storage of Dr BSA Hospital mortuary.
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VI. EXTERNAL GENERAL APPEARANCE

a. Clothes:

Body received covered with a white colored cloth sheet. Wearing blue colored chequered full sleeves shirt, blue colored denim pants, white colored sleeveless baniyan and blue colored underwear. Large parts of the shirt and baniyan are soaked with blood. Few blood stains present over the pants. The shirt and baniyan have holes roughly corresponding to a wound on the front of left side of chest. A pair of grey colored sandals present in the feet.
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VIII. PROBABLE TIME SINCE DEATH

About half a day.....

IX. EXTERNAL EXAMINATION

Injuries: (diagrammatic representation of page 8)

1. ***Firearm entry wound 1.5 cm x 1 cm*** present over the *right temple* region of head, situated 2 cm from the right eyebrow and 4 cm from the right ear. The margins are abraded, blackened and slightly averted. There is an area of blackening about 1 cm wide around the margins of the wound. The tissues inside the wound show a cherry red discoloration.

2. ***Laceration 1.6 cm x 0.7 cm*** present over the *left temple region of head*, situated 4 cm from the right pinna of ear and 4 cm from the outer part of left eyebrow. The wound is cruciate in appearance, the margins are averted with loose pieces of skull bone protruding from the wound.

3. ***Firearm entry wound 1.5 cm x 1 cm***, oval shaped, *present over the left upper part of front of chest*, situated 7 cm below the mid clavicular line and 7.2 cm lateral to the midline. The margins are abraded and inverted. The tissues inside the wound show a cherry red discoloration

4. Contusion 5 cm x 3 cm present over the left eye. (Black Eye)

X. INTERNAL EXAMINATION

a. Head

On reflection of the Scalp effusion of blood present in the scalp layers surrounding the external injuries. Rest of scalp was pale in appearance. Circular defect in the skull 1.5 cm x 1 cm with beveling on the inside present over the right temporal bone apposing the external injury no. 1. Circular defect in the skull 1.5 cm x 1.5 cm with bevelling on the outside present over the right temporal bone apposing the external injury no. 2. No epidural hemorrhage present. Comminuted fracture of anterior cranial fossa of base of skull present involving the roof of orbital cavity.

Defect measuring 1.2 cm x 1 cm corresponding to the external injury no. 1 present in the right temporal region of duramater. Defect measuring 1 cm x 0.8 cm corresponding to the external injury no. 2 present in the left temporal region of duramater. Diffuse thin layered subdural hemorrhage present all over the brain. Pia arachnoid were congested. Sub arachnoid hemorrhage present all over the brain.

Penetrating wound 2.5 cm x 2 cm present over the right temporal lobe of brain. Another penetrating wound 3 cm x 2.7 cm present over the left temporal lobe of brain. Brain parenchyma was softened, with cavity of tissue destruction present between the two wounds on the right and left temporo frontal lobes. Brain weighed 1266 grams.

b. Neck

No extravasation of blood was present in the subcutaneous tissues of the neck. The Larynx, pharynx and tracheal mucosa were pale. Hyoid Bone and Thyroid Cartilage were unremarkable. Esophagus was pale. Thyroid gland, strap muscles and vessels of neck were unremarkable.

c. Chest

Extravasation of blood was present on reflection of chest wall ***in the left upper part of front of chest beneath and surrounding the external injury on the chest.*** Both collar bones and sternum were intact. ***9th rib was fractured in the posterior part on the left side.*** Rest of the ribs were intact. Laceration 2.7 cm x 1.5 cm present over the upper part of left side of front of chest in the 2nd intercostal space. Left pleural cavity contained about 1900 cc of fluid and clotted blood. Right pleural cavity was unremarkable.

Both lungs were pale and collapsed. ***Left lung showed a penetrating***

injury 2.3 cm x 2.6 cm on the upper anterior part corresponding to the external injury. Another penetrating injury 2.7 cm x 2.6 cm present in the lower posterior part of left lung. Cut section showed a cavity with tissue destruction between the two injuries. Cut section of rest of left lung and the right lung showed a pale and dry appearance, The lungs weighed 268 grams 501 grams on the left and right side respectively.

A laceration 3 cm x 2.6 cm present over the posterior part of 8th intercostals space with surrounding effusion of blood. On exploration a deformed jacketed bullet of about 7mm - 8mm diameter found embedded in the intercostals space between the muscles of the back. The bullet weighed 4.5 grams.

Pericardium and pericardial cavity were unremarkable. Heart was unremarkable and weighed 254 grams. Great vessels were unremarkable and grossly normal. Myocardium and endocardium were unremarkable. Valves were patent and competent. Coronary ostia were patent. Significant patency was present in the various segments of the coronary tree.

Diaphragm was intact,

d. Abdomen

Peritoneal cavity was unremarkable and abdominal viscera showed normal luster. Liver was pale and weighed 1448 grams. Gall bladder was distended with bile and grossly normal. Spleen was pale and weighed 112 grams. Stomach contained about 50 cc of reddish colored fluid. No specific food particles were identifiable. No characteristic smell was emanating from the contents. Mucosa was pale. Small intestine contained fluids and gases. Large intestine contained fecal matter and gases. Mucosa and mesentery of small intestine was pale. Mucosa of large intestine was pale.

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g. Track of injuries

1. *The bullet entered through injury no. 1*, penetrated the subcutaneous tissues, fractured the skull bone, pierced the duramater on the right side, entered the right temporal lobe of brain *travelled through the brain parenchyma, exited the brain through the left temporal lobe*, pierced the duramater on the left side, fractured the skull on the left temporal bone, passed through the left temporalis muscle and *exited through injury no. 2*. The general direction of the injury is right to left, slightly below upwards in a coronal plane.

2. *The bullet entered through injury no. 3. penetrated the subcutaneous tissues, pierced through the muscles of the chest wall*, passed through the 2nd intercostals space, entered the pleura! cavity, entered the left

lung in the upper anterior part, travelled through the lung parenchyma and *exited the lung in the lower posterior part, again entered the pleural cavity, pierced the chest wall in the lower posterior part of chest wall in the 8th intercostals space fracturing the 9th rib and embedded itself in the muscles* of the back. The general direction of the injury is forwards to backwards, upwards to downwards and in a lateral to medial direction.

XI OPINION:

Death is due to combined effect of cranio cerebral damage and hemorrhagic shock consequent to penetrating injury to the head and chest. All injuries were antemortem, fresh before death and *caused by projectiles discharged through some firearm.*”

2.3. The above report remained uncontroverted as PW-7 Dr. Vijay Dhankar was not cross-examined in that regard.

2.4. SI Sonu Ram (PW-26) apprehended the appellant from Haridwar Railway Station and arrested him vide Arrest memo (Ex. PW-23/A). His disclosure statement (Ex. PW-23/C) and supplementary disclosure statement (Ex. PW-26/B) were recorded. Pursuant to his disclosure statements, the appellant got recovered one *desi katta* (country made pistol) from one small airbag kept under the bed in a room on ground floor of his house, which was found having one live cartridge. Sketch of the said country made pistol, live cartridge and magazine (Ex. PW-26/C) was prepared. Country made pistol, live cartridge, one empty cartridge and one bullet lead were sent to FSL for examination. Chance prints from plastic glasses and liquor bottles were lifted, but were not sent for comparison as they were used by the deceased and his associates. On completion of investigation, charge sheet was filed.

3.0. Prosecution examined 34 witnesses to prove its case.

4.0. On incriminating evidence being put to the appellant/accused, he

denied the same. He stated that he was lifted by the police from his house and has been falsely implicated. He was made to sign blank papers, which were misused by the police for recording different documents/statements. He also stated that he never got recovered any pistol or cartridges and the same have been planted on him just to solve the case. The appellant did not lead any evidence in his defence.

5.0. Ld. Counsel for the appellant argued that the star witness of the prosecution-eye witness Praveen Gupta, (PW-10) is hardly reliable. His conduct was very abnormal that he did not try to save the deceased ; and despite having a mobile phone, he did not make a PCR call and rather fled away from the spot to return later. Same renders his presence at the spot highly doubtful and is evidently a planted witness. He further argued that even documents on record contradict PW-10's version. In MLC (Ex. PW-1/A), no proper history is available, though it was expected of an eye witness to disclose the history to the doctor. DD no. 5-B (Ex. PW-5/A) recorded on first PCR call made by PW-14 Brijesh @ Goldy from his mobile phone 9250080630 that *"kuch adami mere bhai ko Wagon-R me utha kar le gaye,"* but no name of the assailants was given. Further, DD no. 9-B (Ex. PW-5/B) by PW-15 Shakti Solanki records that, *mere bhai ko kisi ne goli maar di aur utha kar ly gaye.* Information in these DDs is also contrary to the version of PW-10.

5.1. Ld. counsel for the appellant also argued that mother of the deceased Smt. Daya Wati (PW-8) stated that Praveen Gupta (PW-10) came to her residence along with Sumit Giri and informed that a quarrel had taken place

with the deceased. She informed her son Shakti Solanki (PW-15) about the same. Thereafter, PW-10 along with her son, Sumit Giri and Brajesh @ Goldy left in search of her son/deceased. Ld. Counsel submitted that if the quarrel had taken place, there was no occasion for them to go in search of the deceased. Further, Brajesh @ Goldy came into picture only when PW-8 Dayawati called him. He also submitted that Brijesh @ Goldy (PW-14) deposed that during the search, Parveen Gupta (PW-10) informed them that the appellant was in Wagon-R along with the deceased. This is at variance with the version of PW-10. Ld. Counsel also argued that reliability of PW-10 being doubtful is also evident from the testimony of IO/PW-31, who stated that the character of the witnesses in the present case is not above board and that their role in the present case was also investigated by him. Ld. Counsel submitted that PW-31 even stated that other person i.e. Sumit Giri was murdered ; and that Sumit Giri and Sumit Solanki/the deceased are of indifferent character. Further, other witness of the prosecution i.e. PW-11 Yogesh @ Chichi, who was produced from jail refused to depose in the matter. Ld. Counsel also argued that admittedly there was no enmity between the deceased and the appellant and in absence of any enmity and quarrel, there was no motive on the part of the appellant to kill the deceased.

5.2. Ld. Counsel further argued that the eye witness PW-10 deposed that his motorcycle had skid causing damage, but the mechanical inspection report (Ex. PW-12/A) shows no fresh damage to the motorcycle. Further, if the motorcycle had skid, the PW-10 must have received some injuries, but he was not medically examined ; even the post-mortem report of the deceased does not show any abrasion or injury. Thus, the version of PW-10

has not been corroborated either by the mechanical inspection report or by the medical evidence. Ld. counsel submitted that even the conduct of the eye-witness/PW-10 visiting the appellant in jail twice and calling up his father before the date of deposition in court clearly shows that he approached them for money and reflects on the credibility of this witness.

5.3. Ld. Counsel further argued that even the arrest of the appellant from Haridwar on 15.10.2013 is highly doubtful as no transit remand of the appellant was sought, nor was any police official from Haridwar was produced as a witness.

5.4. Ld. counsel for the appellant also argued that no recovery was made pursuant to the appellant's disclosure. After two days, another disclosure statement was allegedly recorded, pursuant to which, the pistol involved in the crime was recovered at the instance of the appellant from his room. Recording of two piecemeal disclosures, itself raises suspicion about the recovery. Further, no independent witness was joined at the time of recovery. He also argued that in supplementary disclosure statement, gap between the appellant's signatures and where the document ends, itself shows that it was recorded on a blank signed sheet.

5.5. Ld. counsel further argued that chance prints were lifted by the crime team from the plastic glasses and bottle of whiskey, but no report has been placed on record. Prosecution even failed to prove the call detail record to show that the deceased was called for help by Sumit Giri. Even the site plan Ex. PW-31/A was prepared on the pointing out of the IO.

5.6. Ld. counsel also argued that even the ballistics report Ex. PW-9/A does not connect the appellant with the offence as bullet mark “EB2” allegedly recovered from the body of the deceased could not be conclusively said to have been fired from the weapon alleged to have been recovered at the instance of the appellant. Simply because, the bullet ‘EB1’ and empty cartridge ‘EC1’ recovered from the spot were found to have been fired from the weapon in question, does not show that the bullet ‘EB2’ was also fired from the same weapon.

6.0. *Per contra*, the ld. Prosecutor on the other hand, argued that the prosecution has been able to prove its case beyond reasonable doubt in view of the fact that PW-10/complainant Parveen Gupta, the sole eye witness, has narrated the entire incident as witnessed by him. PW-10 has stated that the appellant had shot the deceased twice from point blank range, which fact has also been corroborated by the post-mortem Report (Ex. PW-7/A). PW-10’s testimony that he had visited the deceased’s house and informed his mother, who in turn informed her son/brother of deceased has also been corroborated by mother PW-8 and brother PW-3. She further argued that PW-10’s presence at the time of incident is clearly proved from the fact that his version that their friend Sumit Giri (since murdered) had called the deceased over phone, is corroborated by PW-8, mother of the deceased, who deposed that the deceased while leaving, informed her that he was going to meet his friend, who had called.

6.1. Ld. Prosecutor also argued that Wagon-R car driven by the appellant

was seized from the spot and the fact that he was driving the said Wagon-R has come in the testimony of PW-9 Smt. Sheetal, who has categorically stated that the appellant was her driver and used to drive her Wagon-R. The fact that the said Wagon-R was found stuck in a pit on the road near Budh Vihar as is testified by PW-10, is corroborated by Ct. Narender (PW-20), HC Dharambir (PW-21) and Ct. Daya Ram (PW-25), SI Sonu Ram (PW-26) and IO Ins. Ajay Kumar Singh (PW-31). Further, as per the inspection of Wagon-R vide mechanical inspection report Ex. PW-12/B, there was fresh damage to the car and the vehicle had been opined to be 'not fit' for road due to damage, which also supports PW-10's version that it was stuck in a pit.

6.2. With respect to the arrest of the appellant from Haridwar, Id. Prosecutor submitted that it has come in the testimony of PW-9 Smt. Sheetal that she had received a call from the appellant that he was leaving for Haridwar. The factum of arrest of the appellant is proved by PW-23 HC Anand, PW-24 Ct. Kuldeep Singh and PW-25 Ct. Dayaram, who have stated that the appellant was arrested from road outside Railway station at Haridwar, on the pointing out of the informer.

6.3. Id. prosecutor further argued that the weapon of offence was recovered from the appellant's own residential house at his instance, as has come in the testimony of PW-26 SI Sonu Ram and IO/Ins. Ajay Kumar Singh/PW-31 and there is no reason to doubt the same. She also argued that report from the ballistic division Ex. PW-29/A also connects the appellant to crime. She submitted that even as per the post-mortem report, two fire arm

entry wounds i.e. one on the head and other on the chest and one exit wound/exit point of the bullet from the lacerated wound on the head, have been observed. Further, the cause of death has been opined to be combined effect of cranio cerebral damage and hemorrhagic shock consequent to penetrating injury to the head and chest, caused by projectiles discharged through some firearm, which prove that the deceased died due to bullet injuries. Thus, the prosecution has been able to prove that it is the appellant/accused, who shot dead the deceased.

7.0. We have duly considered the submissions made by both the sides.

8.0. Praveen Gupta (PW-10), is the eye-witness of the prosecution. PW-10 deposed that on 13.10.2013, he along with his friend Yogesh @ Chichi and Sumit Giri was celebrating Dussehra at his house and consuming liquor. As the liquor got over, he along with his friends went out at about 8.00-8.30 pm to bring more liquor, which also was consumed. Thereafter, they went out for a walk and while they were at Dal Mill Road, his friend namely Goldy (PW-14) met them and thereafter all four of them started consuming liquor at Dal Mill Road, Budh Vihar. At that place, two persons were drinking liquor and they started abusing them. On which, Sumit Giri called his friend Sumit Solanki/the deceased on phone. Fifteen to twenty minutes thereafter, Sumit Solanki/deceased reached there and on seeing him, both the boys, who were abusing them, ran away. After those boys ran away, Sumit Solanki/deceased told them that he also wanted to have beer. He (PW-10) and Sumit Solanki/ deceased went to theka for purchasing beer. While he (PW-10) was driving the motorcycle and reached *theke wala road*,

Main Market, Budh Vihar, Phase-I, one silver colour Wagon-R came from the side at excessively high speed, but they had a narrow escape. Sumit Solanki/deceased asked him (PW-10) to chase that car. When they reached Rithala Road, Budh Vihar following that car, they saw that the said car was standing at Rithala Road and on reaching near the car, they noticed Yogesh @ Kake/appellant (duly identified) present near the car. On seeing the appellant/accused, Sumit Solanki/deceased asked him (PW-10) to immediately escape from there. On which he applied brakes, as a result of which, his motorcycle slipped and fell down and both of them also fell down. They noticed 4-5 more persons present there with the appellant/accused. When Sumit Solanki/deceased stood up and tried to run, the appellant and his accomplices chased the deceased and overpowered him after about 15-20 paces. The appellant then fired two gun shots on the deceased Sumit Solanki from point blank range. On seeing the same, the appellant's accomplices ran towards Ganda Nala, Budh Vihar. He (PW-10) also tried to escape and when he was fleeing, the appellant fired a gun-shot even at him, but luckily he escaped. Thereafter, the appellant ran away. When the appellant and his accomplices left the spot, he (PW-10) returned to the spot and saw that Sumit Solanki/deceased had already died. He then rushed to Yogesh @ Chichi and Sumit Giri and told them about the incident and then they went to the deceased's house and informed his family members about the incident. Thereafter, he (PW-10) returned to the spot and by that time, the police had already reached there. Police made inquiries from him and recorded his statement Ex. PW-10/A. He also deposed that police lifted one empty cartridge shell and a bullet lead from the spot, sketches of the same (Ex. PW-10/B) were prepared. Empty

cartridge shell and bullet lead were sealed and seized vide memo Ex. PW-10/C.

8.1. As PW-10 resiled from his previous statement, he was cross-examined by the Ld. Prosecutor and in the said cross-examination, PW-10 admitted that Sumit Solanki/deceased was sent to BSA Hospital by the police in a private vehicle. He also admitted that crime team was called, which inspected both the places i.e. where the incident took place and also the place where they had consumed liquor, took photographs, lifted exhibits. From the spot, blood, blood stained earth, earth control, were sealed and seized vide seizure memo Mark PW-25/A ; Wagon-R car was also seized vide seizure memo Ex. PW-10/D. From the place where they consumed liquor, four plastic glasses [Ex. P-7 (colly)] and two empty quarter bottles of liquor (Ex. P-6) were seized vide seizure memo Ex. PW-10/E. He also admitted that when Sumit Giri called Sumit Solanki/the deceased telephonically, the deceased had come in a Santro car bearing registration no. DL-4CAG-5872, which was parked in front of Om Medicos, when they left for purchasing beer ; said car was also seized vide seizure memo Ex. PW-10/F. He also admitted that at his instance, the police prepared site plans of both the places i.e. where Sumit Solanki/the deceased was murdered and where they had consumed liquor. PW-10 identified all the aforesaid exhibits, when produced in court.

8.2. PW-10 stood by his testimony in cross-examination. He stated that the deceased had arrived within 15-20 minutes of the phone call made by Sumit Giri. He also reiterated that when he along with Sumit

Solanki/deceased were going on his bike towards Kishan Vihar, the driver of Wagon-R car of Silver colour tried to hit them, but they had a narrow escape and their bike was not hit. He also stated that distance between the medical store and the theke wali gali, is about 160-170 meters. He further stated that after turning left, the car was found stationary at a distance of 80-90 meters and it was found stuck in a pit/ghadha.

9.0. It has come on record that the second boy Sumit Giri, who was with PW-10 was murdered subsequently ; and Yogesh @ Chichi, aged about 19 years, the third boy, who was with PW-10 Praveen Gupta, though appeared before the court as PW-11, he declined to depose pleading sickness. In view of which, he was discharged by the court though observing that he did not appear to be sick.

10.0. Testimony of PW-10, the eye witness is corroborated by PW-8 Dayawati, mother of the deceased. She deposed that in the intervening night of 13-14 on the day of Dusheera, about 2 years ago, which she later clarified to be of 2013, her son/the deceased told her that he had received a telephone call from his friend. In response to a leading question put by the Ld. Prosecutor, PW-8 admitted that while leaving, her son/deceased had informed that his friend Sumit Giri had called him for some work ; and he left the house at about 11.15/11.30 pm in her Santro Car bearing registration no. 5872, though she could not recollect the complete registration number. She further stated that at about 1.00 am, Praveen Gupta (PW-10) friend of his son/the deceased, had visited her house with Sumit Giri, who was standing outside and informed that a quarrel had taken place with the

deceased. She then informed the same to her son Shakti Solanki (PW-15) and also made a phone call to Brijesh @ Goldy (PW-14), another friend of the deceased ; and thereafter, all of them left in search of the deceased. After some time, she received a telephone call from her son Shakti Solanki (PW-15) that the deceased had been shot dead. She further testified that her Santro car which was seized by the police, was got released by her on superdari, later on. Testimony of PW-8 remained uncontroverted as she was not cross-examined except asking her as to when was her statement recorded, which initially she stated that she did not remember, but on being suggested that it was recorded on 30.11.2013, she admitted the fact.

10.1. In view of the above, testimony of PW-8 Smt. Dayawati cannot be rejected as pleaded by Ld. counsel for the appellant merely because, her statement u/s 161 Cr.P.C was recorded around one and a half months after the incident. It is a settled position of law that delay in recording of statement of a witness does not necessarily discredit his testimony. Court may rely on such a testimony, if it is cogent and reliable and the delay is explained to the satisfaction of the court. (**Ganeshlal vs. State of Maharashtra, (1992) 3 SCC 106** ; judgement dated 20.10.2016 in Criminal Appeal Nos. 1624-1625 of 2013 & Criminal Appeal Nos. 217-218 of 2013 titled as '**Harbeer Singh vs. Sheeshpal & Ors. and State of Rajasthan vs. Sheeshpal & Ors.**') Moreover, neither was PW-8 nor was the investigating officer PW-31 cross-examined regarding delay/its reason, in recording of statement of PW-8.

10.2. Vide categoric testimony of PW-10 Praveen Gupta corroborated by

PW-8 Dayawati, it has come on record that Sumit Giri had phoned the deceased, on which he reached where PW-10 along with others were consuming liquor. In view of the same, as pleaded, merely because no CDR of mobile phone of Sumit Giri has been produced/placed on record by the prosecution, does not in any manner impact the prosecution case.

11.0. Testimony of PW-8 is corroborated by PW-15 her son Shakti Solanki and PW-14 Brijesh @ Goldy. PW-15 deposed that in the intervening night of 13-14th October 2013, after attending a party, he returned home at about 12.40 am. His mother informed that Praveen Gupta (PW-10) and Sumit Giri had informed her that some quarrel had taken place with his brother/deceased ; and that she has informed about the same to Brijesh (PW-14) ; and Brajesh also reached there. He further testified that PW-10 Praveen Gupta and Sumit Giri met him outside his house and they informed him that the appellant has shot the deceased and has taken him in Wagon-R. He then dialled number 100 from his mobile phone. He (PW-15) along with PW-10 and Brijesh (PW-14) went in search of his brother at Budh Vihar, Delhi and when they reached at A-2 Block, near New Tomar Dairy, they came to know that his brother has been taken to BSA Hospital. They also found there, a Wagon car bearing no. DL-8CU-4918 of grey colour.

11.1. Testimony of PW-15 also remained uncontroverted as he was not specifically cross-examined with respect to his version. He was only asked about the place where his statement was recorded and besides him whose statement was recorded by the IO. With respect to another query, PW-15 stated that some police persons were present when they reached the spot and

denied that he is deposing falsely.

12.0. PW-14 Brijesh @ Goldy deposed that in the intervening night of 13/14.10.2013, at about 12:45 am, he received a call from Ms. Daya Murti (mother of his friend Sumit Solanki), who informed that Praveen Gupta (PW-10) and Sumit Giri have come and told her that a quarrel had taken place with the deceased. He immediately reached the deceased's house, where he met Shakti, brother of deceased (PW-15) outside his house. He along with Shakti (PW-15), Praveen Gupta (PW-10) and Sumit Giri left in search of the deceased at Budh Vihar, Delhi. During search, PW-10 Praveen Gupta informed him that the appellant was in the Wagon-R car along with the deceased. He then dialed at 100 number from mobile no. 9250080630, which is registered in his mother's name and informed the police that 'some person had taken away my brother in Wagon-R car' After some time, he came to know that someone had shot at the deceased at A-2 Block, Budh Vihar, Phase-I and the police had taken him to BSA hospital.

12.1. PW-14's version is not controverted except putting a general suggestion that he was deposed falsely, which he denied. He was also asked about the time of recording of his statement, to which he replied that his statement was recorded at Police Station after one or two days. He further stated that he did not remember whether the deceased's brother/PW-15 had made a call at number 100.

13.0. Testimonies of PW-14 Brijesh @ Goldy and PW-15 Shakti Solanki that they had made a call at 100 number from the aforesaid mobile phones,

is corroborated by PW-5 and DD no. 9-B (Ex. PW-5/B) and DD no. 5-B (Ex. PW-5/A). PW-5 Ct. Sudesh deposed that on 13-14.10.2013, he was posted as DD writer at PS Vijay Vihar and had received information from PCR Control Room that some persons had taken away the brother of the informant, which was recorded vide DD no. 5-B at 1.00 am on 14.10.2013 (Ex. PW-5/A) ; and HC Dharambir (PW-21) was informed about the same telephonically for taking appropriate action. He further deposed that at about 1.30 am, another message from PCR was received about somebody having fired at the brother of the informant, which was reduced into writing by him vide DD no. 9-B (Ex. PW-5/B) and the same was passed on to SI Sonu Ram (PW-26) for necessary action. Deposition of this witness also remained uncontroverted as the only query put to him in cross-examination was, whether he had received the PCR forms of the above calls, which he could not recollect.

13.1. It is noteworthy that DD no. 9-B (Ex. PW-5/B) records caller mobile number as 9210100801 and DD no. 5-B (Ex. PW-5/A) records the caller mobile number as 9250080630, as have come in the testimonies of PW-15 and PW-14, from which they claimed to have made calls to police ; and which remained uncontroverted in absence of their cross-examination in this regard.

13.2. The fact that the DDs No. 5B and 9B were assigned to PW-21 HC Dharambir and PW-26 SI Sonu Ram, respectively is corroborated by these two witnesses. PW-21 HC Dharambir deposed that in the night of 13-14.10.2013, at about 1.00 am, he had received information recorded vide

DD no. 5-B and he dialled the number given in that DD and had talked to one Brajesh @ Goldy (PW-14), who told him that some of the friends of the deceased have told that the deceased had been kidnapped by someone and he was also going in search of the deceased. Thereafter, he (PW-21) reached K-2 Block, Budh Vihar, near Tomar Dairy, where he found the deceased lying in injured condition and one Wagon-R bearing no. DL-8CU-4918 was also stuck in a pit and other beat staff was also present. On instructions of SI Sonu Ram (PW-26), he shifted the injured to BSA Hospital in a private car, where at about 2.05 am, he was declared brought dead by the doctor vide MLC no. 10821. This witness was not cross-examined.

13.3. PW-26 SI Sonu Ram testified that on the intervening night of 13/14.10.2013, at about 1.38 am on receiving telephonic information regarding the contents of DD no. 9-B (Ex. PW-5/B), he reached Rithala Road, near New Tomar Bakery, K-2 Block, Budh Vihar, near electric pole, where he met Ct. Narender (PW-20), Ct. Daya Ram (PW-27) and Ct. Jarnail (PW-19) who were on patrolling duty. They found the deceased lying on the side of the road having injuries on his head and chest. Meanwhile, SHO, PS Vijay Vihar along with HC Dharamvir (PW-21) also reached there. PW-10 complainant Praveen Gupta and Crime Team also arrived. PW-26 further deposed about the complainant (PW-10) informing him about the place where the complainant and his friends had consumed liquor and other facts ; and that the spot and other places were got inspected by the crime team. He also deposed that he recorded the statement of PW-10/the complainant and sent rukka through Ct. Narender (PW-20) and got the FIR (Ex. PW-4/A)

registered. Further investigation was handed over to IO Ins. Ajay Kumar (PW-31).

14.0. PW-31 Inspector Ajay Kumar, to whom the investigation was handed over after the registration of the FIR, deposed that in the intervening night of 13-14.10.2013, at about 3.30 am, he was informed about the incident of firing at K-2 Block, Budh Vihar, Phase-I, Delhi and reached there, where SHO, PS Vijay Vihar, Ins. Ram Chander Dahiya along with SI Sonu Ram (PW-26) and beat staff were present and crime team had already conducted the inspection at the spot. Ct. Narender (PW-20) handed over to him a copy of FIR (Ex. PW-4/A) and original tehreer at about 5.00 am and accordingly, he proceeded in the matter. From the spot, one empty cartridge case of 7.65 mm and one lead were recovered and seized vide seizure memo Ex. PW-10/C and their sketch Ex. PW-10/B was prepared. One Wagon-R car bearing registration no. DL-8CU-4918 which was stuck in a pit near the spot was also seized vide seizure memo Ex. PW-10/D. He also deposed about lifting of exhibits i.e. blood stained earth material, earth control and blood in gauze from the spot and seized vide seizure memo Ex. PW-25/A.

14.1. He also deposed that the complainant (PW-10) led him and his team to X-1/18, Budh Vihar, Phase-I near Om Medicos, where he along with the deceased and other friends namely Yogesh @ Chi chi and Sumit Giri had consumed liquor. He also stated that one black colour Santro Car bearing registration no. DL-4CAG-5872 of the deceased Sumit Solanki, in which he had reached there was seized vide seizure memo Ex. PW-10/F. Four plastic tumblers and two empty quarter bottles make Imperial Blue Whiskey and

Aristocrat premium whiskey found lying there on the side of road near Om Medicos, were also seized vide seizure memo Ex. PW-10/E. He prepared the site plan (Ex. PW-31/A) of that place and thereafter of the spot (Ex. PW-10/DA) at the instance of the complainant Praveen Gupta (PW-10). He further deposed that thereafter, he along with PW-26 SI Sonu Ram reached house no. S-1/14, Budh Vihar, Phase-I, belonging to the appellant/accused, but he was not found there ; accused was not found even in the vicinity. Case property was deposited in mal khana. Thereafter, he along with PW-26 SI Sonu Ram reached BSA hospital and request for post-mortem (Ex. PW-31/B) was made after identification of the dead body by Satish Solanki and Amit Solanki vide their statements Ex. PW-2/A and Ex. PW-3/A, respectively. After post-mortem, dead body of the deceased was handed over to his father Sh. Satyanarain vide handing over memo Ex. PW-31/E.

14.2. PW-31 further testified that SI Sonu Ram PW-26 apprised him about receipt of secret information regarding whereabouts of the appellant ; and accordingly, raiding party consisting of SI Sonu Ram (PW-26), HC Anand (PW-23), Ct. Kuldeep (PW-24), Ct. Dayaram (PW-25) and Ct. Rajbir left the police station at about 5.55 pm for Hardiwar in search of the appellant/accused. On 15.10.2013 at about 10.00 am, the raiding party returned along with the appellant and his custody was handed over along with his arrest memo, disclosure statement and his personal search memo. He had then recorded the statement of HC Anand and SI Sonu Ram. The appellant was interrogated and as per his disclosure statement, the weapon of offence was searched in a drain near the spot, but in vain. During further interrogation, the appellant kept changing his version regarding the weapon

of offence and finally on 17.10.2013, he disclosed that he had kept the concerned pistol at his residence i.e. S-1/14, Budh Vihar, Phase-I, Delhi and accordingly, his supplementary disclosure statement (Ex. PW-26/B) was recorded. Pursuant to the said disclosure statement, the appellant led the police party to his aforesaid house and took out one country made pistol kept by him in small air bag lying beneath his bed in a room on the ground floor of his house. On opening the magazine, one live cartridge was found. He prepared the sketch of the pistol, magazine and live cartridge (Ex. PW-26/C). Said pistol along with live cartridge were seized vide seizure memo Ex. PW-26/D. Thereafter, the appellant had led the police party to the spot and pointed out the spot vide pointing out memo Ex. PW-26/E. The exhibits were deposited in the mal khana. PW-31 further deposed that on 26.10.2013, Sumit Giri produced his motorcycle bearing registration no. DL-10SC-1450 make Bajaj Pulsar of black colour, on which deceased Sumit Giri and the complainant Praveen Gupta (PW-10) were going ; said motor-cycle was seized vide seizure memo Ex. PW-31/G. He got the said motorcycle and the aforesaid Wagon-R car mechanically inspected. Subsequently on 07.10.2014, he along with the draftsman SI Manohar Lal inspected the spot and scaled site plan (Ex. PW-22/A) at his instance was prepared. PW-31 identified all the exhibits in the Court.

14.3. In his cross-examination, PW-31 categorically denied that he had not conducted the investigation fairly and as per rules and has deliberately let the actual culprits go scot free and has falsely implicated the appellant/accused. PW-31 explained that PW-10 Praveen Gupta on being asked had clarified that 5-6 associates of the appellant/accused, who were

standing near him at the spot, were actually not his associates and his supplementary statement to that effect was recorded on 14.10.2013. It may be noted that PW-10 also explained in his cross-examination that it appeared to him that they were associates of the appellant and accordingly he had stated so before the police, but they were actually public persons. Thus, nothing of substance could be extracted in the cross-examination of PW-31 to reflect on his credibility.

15.0. PW-26 has corroborated the testimony of PW-31 with respect to finding from the spot of one empty cartridge case (on the bottom of which, KF-7.65 was engraved) and one bullet lead, sketch (Ex. PW-10/B) of which was prepared, conducting of proceedings at the spot where the dead body was found and the place where the complainant PW-10 and his friends were consuming liquor. He also testified about receipt of information from the informer and proceeding to Haridwar on 14.10.2013, apprehension of appellant from outside railway station Haridwar and his arrest vide arrest memo (Ex. PW-23/A), thereafter recording of his disclosure statement (Ex. PW-23/C) and recording of supplementary disclosure statement (Ex. PW-26/B) pursuant to further interrogation ; and also about recovery of country made pistol at the instance of appellant (pursuant to his supplementary disclosure statement) from a small airbag under the bed in his room ; and that the said pistol was found containing one live cartridge, on which also was engraved KF7.65 and its seizure vide seizure memo Ex. PW-26/D. Sketch of the pistol, magazine and cartridge (Ex. PW-26/C) was prepared.

15.1. PW-26 stood by his testimony in cross-examination. He stated that

he had reached the spot at about 1.45 am. No public person was present at that time. With respect to arrest of the appellant/accused, he admitted that no police official from local police post of Railway Station was called, but denied that the appellant was not arrested from Haridwar. With respect to recovery of country made pistol at the appellant/accused's instance from his residence, PW-26 was only asked whether the same was photographed and whether site plan of place of recovery was prepared, to which he replied in negative. But no specific suggestion disputing recovery of country made pistol at the instance of the appellant was put to PW-26.

16.0. Ld. counsel argued that factum of recording of two piecemeal disclosures of the appellant itself raises suspicion about the recovery of pistol at the instance of the appellant/accused. In view of the testimony of PW-31, it stands explained as to how the supplementary disclosure of the appellant came to be recorded, pursuant to which the recovery of country-made pistol was made at his instance from his residence. Thus, there is hardly any merit in the argument of the ld. counsel for the appellant.

17.0. Ld. counsel for the appellant also argued that the information given in DDs No. 5-B (Ex. PW-5/A) and 9-B (Ex. PW-5/B) that the deceased had been kidnapped in Wagon-R, is contrary to the version of PW-10. Even the name of the assailant, though known, was not disclosed. Further, there was no occasion for PW-10 Praveen Gupta, Sumit Giri and PW-14 Brijesh @ Goldy leaving in search of deceased, when they already knew that the deceased had been shot at, at the spot. These contradictions also raise serious doubt on the veracity of testimony of PW-10, the star witness of the

prosecution and other witnesses.

17.1. Explanation in this respect has come in the testimony of PW-31/IO Ins. Ajay Kumar Singh. PW-31 in his cross-examination has stated that in their statements, PW-10 Praveen Gupta, PW-14 Brijesh @ Goldy and PW-15 Shakti Solanki explained the anomaly as crept in the aforesaid DDs. PW-31 further stated that PW-10 Praveen Gupta and Sumit Giri, who were with the deceased, stated that they were frightened and could not gather courage to give the information of the incident/death of the deceased and thus told PW-14 Brijesh @ Goldy about the deceased being taken away in Wagon-R ; PW-14 in turn gave the said information to the mother of the deceased (PW-8 Dayawati) and it was mother of the deceased, who gave this information to PW-15 Shakti Solanki. Nothing to the contrary was suggested to PW-31 in this regard.

18.0. The fact that the appellant was in possession of the aforesaid Wagon-R car no. DL-8CU-4918 and was driving the same on the date of incident, has come on record vide testimony of PW-9 Smt. Sheetal, the owner of the car. She deposed that the appellant @ Kake was her driver and was driving the aforesaid Wagon-R car. As he used to deliver the clothes sold by her at different destinations, the said car used to remain with him only and even at night. She even permitted him to take the car home. She testified that on 13.10.13 i.e. on the day of festival of Dussehra which was also the death anniversary of her husband, she did not have any program to go out ; her car was with the appellant in the intervening night of 13/14.10.13. She received a phone call from the appellant that her car had got stuck in a pit at Rithala

Road and he is not able to take it out. Appellant further informed her that he was going to Haridwar leaving the car in the pit. On receiving the said information, she reached Rithala Road and found her car struck in a pit of sewer. As she was unable to take the car out, she returned home. Later on, she got released the said car on superdari.

18.1. PW-9 stood by her deposition in her cross-examination. She categorically denied that the appellant was not her driver or she has deposed falsely. She explained that she had not kept photocopy of the driving license or any other ID proof of the appellant as the appellant was employed by her on reference of an acquaintance, who was known to her for last 10/12 years ; and the appellant also used to reside in that area. Thus, her testimony remained unshaken.

18.2. Ld. counsel for the appellant argued that testimony of PW-9 cannot be relied upon as she has stated that her statement was recorded by police twice or thrice and that all her statements were recorded in one day by different police officials. It is noted that PW-9's statement under Section 161 Cr.P.C was recorded on 20.10.2013. Her supplementary statement recorded subsequently on 16.11.2013 was only to the effect that she had got released her car on superdari and that she will produce the same as and when required by the court. Thus, there is hardly any merit in this argument.

19.0. PW-29/Puneet Puri, Assistant Director (Ballistics), FSL, Rohini, deposed about his report Ex. PW-29/A which mentions that the cartridge

case (Ex. EC-1) as well as bullet recovered from the spot (Ex. EB1) correspond with the country made pistol (Ex. F1), (which was recovered from the house of the appellant/accused) as the individual characteristics of firing pin marks and breech face marks present on Ex. 'EC1' and on test fired cartridge case mark 'TC1', were found identical. He however, testified that no opinion could be given as to whether the bullet (Ex. EB2) recovered from the body of the deceased has been discharged from the same pistol or not, as the individual characteristics of striations were insufficient for comparison and opinion. He also testified that that the improvised pistol marked (Ex.F1) is a 'firearm' and the cartridge marked Ex.A1, the cartridge case marked EC1 and the bullets marked Ex.EB1 and EB2 were 'ammunition' as defined in Arms Act 1959 ; and the Firearm was in working order. PW-29 also deposed that the seals on the parcels were intact and tallied with the specimen seal. In his cross-examination, PW-29 stated that the ammunitions had the stamp of KF 7.65mm, though it is not so mentioned in report Ex. PW-29/A. PW-29 explained that the same has been mentioned in his observation sheet, though he admitted that it is not made part of record/report. Same supports the version of PW-26 and PW-31 that empty cartridge case found at the spot had KF-7.65 engraved on its bottom.

19.1. The FSL (Ballistics Division) Report Ex. PW-29/A further connects the appellant to the crime.

20.0. It has come in the testimony of PW-10 that the appellant fired two gun shots at the deceased from point blank range and one gun shot was also fired at him, however, he escaped. Post Mortem Report Ex. PW-7/A

records two bullet injuries on the body of the deceased. One of the bullet injuries over the right temple region of the head of the deceased (Injury no. 1) had an exit wound over the left temple region of the deceased's head (injury no. 2) ; another bullet injury was present over the left upper part of front of the chest (injury no. 3). As per post-mortem report, the bullet entered through injury no. 3 remained embedded in the muscles of the back, which was recovered from the body of the deceased, which along with other exhibits was seized by the IO vide seizure memo Ex. PW-31/F. The fact that one bullet and one empty cartridge case was seized from the spot and another bullet was recovered from the body of deceased further corroborates the testimony of PW-10. Further, as noted above, as per Ballistics Report Ex. PW-29/A, the bullet and cartridge case recovered from the spot matched with the country made pistol recovered at the instance of appellant/accused. Thus ocular Testimony of Praveen Gupta PW-10, the eye witness is also corroborated by the medical as well as forensic evidence.

21.0. Ld. counsel for the appellant argued that the star witness of the prosecution Praveen Gupta PW-10 is not reliable as his presence at the spot itself is highly doubtful. Same is clear from his abnormal conduct as neither did he try to save the deceased nor did he make a PCR call despite having a mobile phone. Same shows that he is a planted witness. It may be mentioned that PW-10 in his testimony has explained that from the spot, he rushed to inform Yogesh @ Chichi and Sumit Giri and that is why, he did not inform the police.

21.1. It was further argued on behalf of the appellant that even MLC (Ex.

PW-1/A) shows that PW-10 was not present, as neither did it record his presence nor proper history of the incident is given. Suffice it to state that the same stands explained by PW-10 in his cross-examination, wherein he has stated that though he was present at the spot, when deceased Sumit Solanki was shifted to the hospital, he did not accompany him to the hospital. He categorically denied that he was not present at the spot at that time.

21.1.1. It is noteworthy that the presence of PW-10 and that the deceased was shot at, at the stated spot, has come on record in view of the suggestions put to PW-10 in cross-examination by the appellant himself. It was suggested to PW-10 that one shot (at the deceased) was fired from the back side and therefore, PW-10 could not see the assailant. Same was denied by PW-10 and he further stated that the gun shot was not fired from their back side, but from their front side. PW-10's presence at the spot and firing of gunshot at deceased is also admitted by further suggestion put to PW-10 that it was PW-10 and Yogesh @ Chichi, who had fired gun shots at the deceased/Sumit Solanki, which he denied ; and stated that he did not have any enmity with the appellant/accused. The above suggestions put to PW-10 by the appellant's counsel and PW-10's reply to such suggestions would form part of the evidence, which can be relied upon by this court along with other evidence to determine the guilt of the appellant/accused. In this respect, reference with benefit is made to the judgement of the Hon'ble Supreme Court in **Balu Sudam Khalde and Another vs. State of Maharashtra, 2023 SCC Online SC 355.**

22.0. Ld. counsel for the appellant also argued that as per PW-10 Praveen Gupta, his motorcycle had skid which must have caused damage to the bike, but mechanical inspection report (Ex. PW-12/A) does not show any fresh damage to the motorcycle. Same also creates doubt about the presence of PW-10 at the spot and his version. As noted above, the presence of PW-10 at the spot is established. Thus, merely because, no fresh damage to the bike was noticed, cannot be a reason to discard his version. Rather PW-10's version that when they reached the spot, Wagon-R car was found stationary (which is supported by the PW-9, the owner of the car who stated that the car was stuck in a pit), is corroborated by Wagon-R car's inspection report Ex. PW-12/B, which showed fresh damage to the car and the vehicle was opined to be 'not fit' for road due to damage. Thus, testimony of PW-10 cannot be brushed aside for this reason alone.

23.0. Ld. counsel for the appellant further argued that the conduct of PW-10 visiting the appellant in jail on 13.05.2015 and 23.06.2015 and admittedly telephonically calling father of the appellant twice the previous day and in the morning, on which, he came to depose in the court, also renders his testimony highly doubtful. Same clearly shows that PW-10 demanded money and threatened to depose against the appellant, if the same was not paid and he actually did it. No doubt, PW-10 in his cross-examination admitted visiting the appellant in jail on 13.05.2015 and 23.06.2015. He however denied that he had visited the appellant to make some demands and explained that he was actually called by the appellant as was telephonically conveyed by the appellant's father. PW-10 also categorically denied that he had made 17 phone calls from different

numbers to the appellant's father to demand money for not deposing against the appellant in the court or that he had threatened the appellant's father that he will depose against the appellant, if the money was not paid to him. It is noteworthy, that although the appellant had an opportunity to lead evidence in his defence including by producing his own father to demonstrate the phone calls/demand for money/threats received by him from PW-10, he failed to avail of the same.

24.0. Ld. counsel for the appellant further argued that the testimonies of PW-10 Praveen Gupta, PW-14 Brijesh @ Goldy and PW-15 Shakti Solanki, are not trust-worthy for also the reason that the IO/PW-31 himself has stated that character of these witnesses is not above board and their role in the present case was also investigated by him. Needless to mention that in view of the evidence which has come on record, the cogent and reliable testimonies of these witnesses cannot be discarded merely because they are of questionable character as per the IO. [(**Sikander @ Mohd. Shafi vs. State, DRJ 1992 (24) (DB)**)]

25.0. Ld. counsel for the appellant argued that admittedly, there was no enmity between the deceased and the appellant and in view of the same, the prosecution has failed to prove any motive on the part of the appellant to kill the deceased. Suffice it to state that non-proving of motive on the part of the accused is not fatal to the case of prosecution, more so, in view of the evidence which has come on record, as discussed above. (*Shivaji Genu Mahite vs. State of Maharashtra, (1973) 3 SCC 219*).

26.0. In view of the above, prosecution has been able to prove beyond reasonable doubt that the appellant had fired two gun-shots at the deceased. As per the opinion of doctor/PW-7, the deceased died due to combined effect of cranio cerebral damage and hemorrhagic shock consequent to penetrating injuries (injury no. 1 and 3) to the head and chest.

27.0. In view of the above, the appellant has failed to demonstrate any illegality in the judgment and order on sentence. The appeal is accordingly dismissed.

28.0. Copy of the judgment be uploaded on the website and be also sent to the Superintendent Jail for updation of record and intimation to the appellant.

(POONAM A. BAMBA)
JUDGE

(MUKTA GUPTA)
JUDGE

MAY 16th, 2023/csc