

Neutral Citation No. - 2024:AHC:140414-DB

Court No. - 43

RESERVED

1. Case :- CRIMINAL APPEAL No. - 1991 of 2009

Appellant :- Bhura

Respondent :- State of U.P. and Another

Counsel for Appellant :- Imran Ullah, Dharamveer Singh, Rakesh Kumar Rathore, S.N. Yadav

Counsel for Respondent :- Govt. Advocate

WITH

2. Case :- CRIMINAL APPEAL No. - 6827 of 2024

Appellant :- Pradeep @ Pinku

Respondent :- State of U.P.

Counsel for Appellant :- Mohammad Khalid

Counsel for Respondent :- Govt. Advocate

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Dr. Gautam Chowdhary, J.

(Delivered by Hon'ble Dr. Gautam Chowdhary, J.)

1. Heard Shri S. D. Singh Jadaun, learned counsel for the appellant and the learned A.G.A. for the State.

2. The present criminal appeal under Section 374(2) Cr.P.C. has been filed by the accused-appellant, Bhura, challenging the judgment of conviction and sentence passed by the court of learned Additional Sessions Judge, Court No. 5, Firozabad dated 04.03.2008 in Special Session Trial No. 90 of 2004 (State Vs. Bhura and others), arising out of Case Crime No. 241 of 2003, under Sections 302, 506, 302/120-B I.P.C. read with Section 3(2)5 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act along with Session Trial No. 90B of 2004 (State Vs. Bhura), arising out of Case Crime No. 256 of 2003, under Section 25/27 of Arms Act, relating to Police Station Sirsaganj, District Firozabad. By the impugned judgment the accused-appellant, Bhura has been convicted and sentenced to life

imprisonment under Section 302 I.P.C. along with a fine of Rs. 5,000/- and on failure to deposit the fine to undergo additional imprisonment of one year, and three years rigorous imprisonment along with a fine of Rs. 1,000/- under Section 27(1) of Arms Act and on failure to deposit the fine to undergo additional imprisonment for six months.

3. The informant, who happens to be the brother of the deceased, has given a report on 10.11.2003 at about 13:30 hours (Ex.Ka.-1), stating that today at about 12:00 hours he was going to take his pension from village to Sirsaganj on a scooter along with his uncle, Satyabhan, when they reached on the road near to the Village Surajpur, he saw that his brother, namely, Ram Singh (deceased) was returning on his motorcycle to the Village after purchasing diesel on his motorcycle along with his son, Neetu, then suddenly accused, Bhura and Pinku @ Pradeep, who were riding on a motorcycle came from behind and after overtaking the motorcycle driven by Ram Singh got fell down him and fired gun shots from their firearm weapons, on account of which his brother, Ram Singh, died on the spot. After firing the son of Ram Singh, ran towards the informant who along with his uncle while making noise tried to apprehend both the accused then the accused persons fled away from the spot while firing shots and extending threats to them. It has also been written in the F.I.R. that earlier on 28.04.2003 when a Tilak ceremony of Sandeep Kumar was going on in the village, then on that night Sarvesh Kumar and Rambabu of the village were going after stealing a Maruti car from Sirsaganj and the police was chasing them, and on being stopped and surrounded the car on suspicion by them, these people attacked all of us and ran away, and when the police arrived, we and my brother Ram

Singh told their names and addresses to the police and got the car confiscated. After this incident, these people and their families were having enmity against us. It has also been further stated by the informant in the F.I.R. that on 28.08.2002 when son of his uncle, namely, Prag Singh was shot fire by Pinku, Sushil Kumar and Chhotey Lal, on account of which he sustained gun shots and for the said incident a F.I.R. was lodged under Section 307 I.P.C. in Police Station Sirsaganj on account of which the accused persons were having ill will against them.

4. Based on such written report, a first information report came to be lodged as Case Crime No. 241 of 2003, under Sections 302, 506, 302/120-B I.P.C. read with Section 3(2)5 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act at Police Station Sirsaganj, District Firozabad and after inquest proceeding the dead body of the deceased was sent by the police for postmortem which was conducted on the next day, i.e., 11.11.2003 at 12:00 o'clock of noon, and as per the postmortem report six gun shot injuries, i.e., three entry wounds and three exit wounds were found on neck, right hand and chest of the deceased, thus three fire were shots upon the deceased. One bullet was recovered from the chest cavity of the deceased. In the postmortem the concerned doctor found that lower jaw was broken, about one and half pound of blood was accumulated in the chest, pleura on the left side and left lung were found ruptured and as per the postmortem report cause of death was found to be shock and haemorrhage due to ante mortem injuries.

5. During the course of investigation the police had also recovered one country made pistol along with one empty

cartridge on the pointing out of the accused, Bhura in presence of two independent witnesses, namely, Deendayal and Sanjeev Kumar, which recovery memo was exhibited as Ex.Ka-15 and in respect of said recovery a separate F.I.R. was got registered by the police against the accused, Bhura as Case Crime No. 256 of 2003, under Section 25/27 of Arms Act. Further on the pointing out of accused, Pinku @ Pradeep, one country made pistol along with one empty cartridge was also recovered, which recovery memo was exhibited as Ex.Ka.-16 and in respect of which a separate F.I.R. was got registered by the police against the accused, Pinku @ Pradeep as Case Crime No. 273 of 2003, under Section 25/27 of Arms Act. After investigation the police submitted three charge sheets against both the accused, whereafter the concerned Magistrate took cognizance and committed the case to the Court of Sessions. After framing of charge the accused denied charges and demanded trial.

6. At the stage of trial the prosecution has adduced following documentary evidence:

(i) F.I.R. dated 10.11.2003 (Ex.Ka.-9), (ii) F.I.R. dated 07.12.2003 (Ex.Ka.-13), (iii) F.I.R. dated 03.12.2003 (Ex.Ka.-11), (iv) written report dated 10.11.2003 (Ex.Ka.-1), (v) recovery memo of motorcycle (Ex.Ka.2), (vi) recovery memo of empty cartridge and country made pistol (Ex.Ka.-15 & 16), (vii) postmortem report dated 11.11.2003 (Ex.Ka.-27), (viii) F.S.L. reports (Ex.Ka-28 & 29), (ix) Inquest report dated 10.12.2003 (Ex.Ka.-3), (x) three charge sheets (Ex.Ka.-20, 23 & 26), (xi) Site Plan with Index (Ex. Ka.-17, 18, 19, 21 & 24).

7. In addition to above, oral testimonies have also been brought on record by the informant and other witnesses.

8. The informant-Chhadami Lal (P.W.1), who happens to be younger brother of the deceased and claims to be one of the eye witnesses of the incident, has supported the version of F.I.R. in his statement before the trial court by stating that Pradeep and Bhura had fired shots upon the deceased, whereas Sushil and Kamlesh were also present there. He has also proved his signature made in the written report. This prosecution witness in his cross-examination has stated that deceased was his elder brother. Prior to the said incident the accused had fired gun shots upon Prag Singh, in respect of which two persons were found guilty and the accused Sushil and Bhura were acquitted. In his cross-examination P.W.1 has further stated that Satyabhan is his uncle, on the date of incident at about 11:45 a.m. he went out by riding scooter for debiting his pension from State Bank Sirsaganj and his uncle Satyabhan was also sitting behind him on the scooter, on the way when they were at a distance of about 50-60 metres first fire was shot, thereafter, second and third fires were shot, fourth fire was shot upon Neetu. In his cross-examination P.W.1 further states that after seeing the deceased he saw that accused Pinku and Bhura were coming behind the deceased, Pinku @ Pradeep was riding the motorcycle, who after overtaking the motorcycle of Ram Singh got fell him down and thereafter both the accused fired shots upon him from their country made pistols holding in their hands, where the dead body of the deceased was lying, potato crop was standing on its western side, which has also been proved from the site plan (Ex.Ka.-21 & 24). He further states that it is wrong to say that at the place of occurrence he was not present on the spot along with Neetu and Satyabhan. He also states that his nephew, Neetu had fallen down in the field of potato which field was beside the road on western side. The

accused persons also shots fire upon Neetu while he was running away.

9. The prosecution witness, P.W.2-Neetu, who is also eye witness of the incident, in his statement before the trial court has stated that the accused, Bhura and Pradeep @ Pinku, after overtaking the motorcycle got fell down them and fired shots from their country made pistol on account of which he died on the spot, and while he was running by making noise he saw that Satyabhan and Chhadami Lal were coming on the scooter, thereafter, both the accused fled away by extending threats. In his cross examination P.W.2 has supported the prosecution case with regard to committing murder of the deceased by the appellant and co-accused, Pinku @ Pradeep. He has also stated that at the time of incident he was studying in Class-IX at his maternal home at Jasrudh, he does not remember the name of the school, on the date of incident it was Monday and that day was holiday and school was closed due to some festival. After one minute of the incident Chhadami Lal (informant) and Satyabhan met him. The accused did not hit my father's motorcycle and they stopped the motorcycle by overtaking and by kicking the accused-Bhura had got fallen down his motorcycle on account of which his father fell down near the motorcycle, and thereafter, three shots were fired upon his father. At the time of firing he was standing near to his father, after firing of two shots he ran away. When he was running two shots were also fired upon him, while he was running he looked his uncles were coming at a distance of 20-25 paces and he saw that Bhura was filling third cartridge in his pistol, therefore third shot was fired by Bhura upon his father, fourth and fifth shot was fired upon him while he was running but he escaped. While running

when he fell down then his uncles (P.W.1 & P.W.3) came there and they saved him. After firing Bhura and Pinku fled away towards Sirsaganj. Pinku was wearing glasses at the time of incident. He further states that while running he fell down in potato field which was wet on account of which he did not sustain any injury. After the incident police came with his uncle (P.W.1). The police had collected cartridges at the spot and he had seen while police was picking one cartridge from the spot.

10. The prosecution witness, P.W.3-Satyabhan in his statement before the trial court has supported the prosecution case and has stated that the deceased was his nephew. On the date of incident at about 12:00 noon the deceased and his son-Neetu were coming to the village after purchasing diesel from Sirsaganj; when they reached on the road at Surajapur then the accused Bhura and Pinku @ Pradeep came from the back of the deceased on a motorcycle and by overtaking them they got fallen down the motorcycle of the deceased and they fired shots from their pistols on account of which the deceased died on the spot; he was going to take his pension from village to Sirsaganj on a scooter along with the informant-Chhadami Lal and they had seen the incident occurred. Neetu was running towards them; when they ran towards accused persons to catch them then they fired shots towards them and extended threats for killing them and thereafter they fled away towards Sirsaganj. Kamlesh and Sushil are involved in conspiracy of murder. One day prior to the incident when he went to the shop of Beche Lal Nai for purchasing tobacco at about 6:00-7:00 p.m, then he saw that in the room of Bhura, all the accused persons, namely, Sushil, Pinku, Bhura and Kamlesh were talking to eliminate the deceased. The motorcycle which was used in the incident

belongs to the accused, Kamlesh. He also stated the reasons of enmity having been kept by the accused persons, as stated by other two prosecution witnesses. In his cross-examination this prosecution witness while reiterating his earlier statement before the trial court has deposed the evidence against the accused by stating that he had seen 3-4 empty cartridges at the place of incident which the police took with them.

11. P.W.4 is the Senior Sub Inspector, who proved inquest report.

12. P.W.5 & P.W.6 are police personnel who proved police papers.

13. P.W.7 is the Head Constable who proved recovery memo prepared by Station Officer.

14. P.W.8 is the Station Officer, who proved recovery memo.

15. P.W.9 is the Circle Officer, who conducted investigation. He has also proved G.D. entry, site plan and recovery memo. He has stated that during investigation he has recorded statements of witnesses during the course of investigation. In his cross-examination, this witness has stated that during preparation of site plan, the informant did not tell him where he stationed the scooter; the informant also did not tell him that he and Satyabhan had ran behind the accused upto what distance and which side but they told him that accused persons ran away towards Sirsaganj.

16. PW.10 is the Sub Inspector, who in his statement recorded before the trial court has stated that he started investigation. He has proved written report, site plan and charge sheet.

17. P.W.11 is the Head Constable, who in his statement before the trial court has stated that he has made signatures on the statements of witnesses during investigation and he has also proved his signature on site plan and recovery memo.

18. P.W.12 is the doctor who conducted postmortem of the deceased and has proved the postmortem report. In his cross-examination this witness has stated that postmortem was conducted at 12:00 noon and death could be caused prior to 18 hours.

19. P.W.13 is the ballistic expert of Forensic Science Laboratory, and has proved ballistic report (Ex.Ka-23) of the country made pistols recovered on the pointing out of the accused.

20. P.W.14 is the scientist of Forensic Science Laboratory who proved Ex.Ka.-22, and has proved blood stains on the belongings of the deceased.

21. On the basis of evidence collected by the prosecution the statement of accused has been recorded under Section 313 Cr.P.C., who denied their involvement and have asserted that they have been falsely implicated.

22. The trial court on the basis of evidence lead in the matter has come to conclusion that the charges levelled against the accused are proved inasmuch prosecution witness, P.W.2, in his evidence adduced has stated that three shots were fired upon the deceased, which has been proved by the evidence adduced by the prosecution witness, P.W.14, thus, the trial court has convicted the accused, Bhura and Pinku @ Pradeep under Section 302 I.P.C. and Section 25(1) of Arms Act, while

acquitted them from the charges framed under Section 506 I.P.C. and Section 3(2)5 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act as per above. The trial court by the impugned order has also acquitted the accused-Sushil Kumar from the charges framed against him by granting him benefit of doubt.

23. Challenging the aforesaid judgment and order of conviction and sentence the present appeal has been preferred.

24. Shri S. D. Singh Jadaun appearing for the appellant submits that the trial court while convicting the accused-appellant has erred in law in appreciating the evidence lead by prosecution, in as much as in the F.I.R. the informant (P.W.1) has specifically alleged that he had seen that the accused, Bhura and Pinku @ Pradeep had fired shots upon the deceased and killed him, whereas in his statement before the trial court he has stated that after the incident he along with other persons had tried to catch the accused, Bhura, Pradeep @ Pinku, Sushil and Kamlesh, who after firing shots fled away from the spot. Learned counsel for the appellant thus submits that this contradiction in the evidence lead by the informant shows that he was not present on the spot, as such he is not an eye witness of the incident and the trial court has erred in law while relying upon the evidence of P.W.1. Learned counsel further submits that so far as the evidence lead by P.W.2-Neetu, who has alleged that when he was coming with his father (deceased) while riding with him on the motorcycle after purchasing diesel, the accused-appellant, Bhura and Pinku @ Pradeep came from their back riding together on a motorcycle and after stopping by the accused Bhura, he kicked the motorcycle of the deceased on

account of which they fell down, thereafter they fired shots upon the deceased but in this incident neither the deceased nor P.W.2 sustained any injury on account of falling down on the ground, thus it appears that P.W.2 is not an eye witness of the case. Learned counsel further submits that P.W.2 in his evidence has also stated before the trial court that after killing the deceased the accused persons also fired upon him, but no such injury has been sustained by him. Moreover, P.W.2 has specifically stated that he was studying in Class-IX at his maternal home at Jasrudh, on the day of occurrence it was Monday and his school was closed due to some festival, whereas, P.W.3-Satyabhan, in his evidence lead before the trial court has stated that on the date of incident when he was going to Bank at Sirsaganj to take his pension then on the way he saw that accused persons had fired shots upon the deceased, which shows that presence of P.W.2 is doubtful at the place of occurrence at the time of incident. Learned counsel further submits that evidence of P.W.3-Satyabhan is also not trustworthy in as much as he in his cross-examination before the trial court has specifically stated that one day prior to the incident when he went to the shop of Beche Lal Nai for purchasing tobacco at about 6:00-7:00 p.m, then in the room of Bhura, all the accused persons, namely, Sushil, Pinku, Bhura, Kamlesh were talking about eliminating of the deceased, but the same has not been told by him to any person, which is unnatural, thus, the evidence of P.W.3 is also not reliable. Learned counsel further submits that P.W.3 in his statement before the trial court has also stated that he along with P.W.1 were going on scooter at the time of incident but he has not been able to tell the number of that scooter in his cross-examination. Learned counsel for the appellant thus submits that these contradictions in the evidence

of P.W.1, P.W.2 and P.W.3 goes to show that accused-appellant has falsely been implicated in the case due to previous enmity. Learned counsel further submits that P.W.3-Satyabhan in his statement before the trial court has stated that after the incident police collected 3-4 empty cartridges at the spot but there is no such recovery on the record made by the police. Learned counsel further submits that prosecution witnesses have given evidence that accused persons had used motorcycle of Kamlesh in the incident but no such recovery of the same was ever made by the police. Learned counsel thus submits that in view of above contradictions in the evidence adduced by the prosecution witnesses and in view of discrepancy between the ocular and medical testimony, it can be said that trial court has not evaluated and analyzed the evidence adduced before it in correct perspective and has passed the impugned judgment and order of conviction, which is liable to be set aside. It has also been submitted that appellant is in jail since 29.11.2003.

25. Learned A.G.A. for the State, on the other hand, contends that the evidence on record proves the commissioning of offence for which the accused-appellant has been charged and convicted by the trial court and that the appeal itself has no merit.

26. We have heard both the parties and perused the material on record.

27. The contention of the learned counsel for the appellant is that there are major contradictions in the evidence lead by witnesses P.W.1, P.W.2 and P.W.3, but on perusal of testimony given by these witnesses before the trial court we find that in the F.I.R., P.W.1 has alleged that at about 12:00 hours he was going to take his pension from village to Sirsaganj on a scooter

along with his uncle, Satyabhan and when they reached the road near Village Surajpur, he saw that his brother, namely, Ram Singh (deceased) was returning on his motorcycle to the Village after purchasing diesel along with his son, Neetu. Suddenly accused, Bhura and Pinku @ Pradeep, who were riding on a motorcycle came from behind and after overtaking the motorcycle driven by Ram Singh brought him down by kicking on the motorcycle and fired gun shots from their firearm weapons, on account of which his brother, Ram Singh, died on the spot. In his cross-examination P.W.1 has stated that on the date of incident at about 11:45 a.m. he had gone to the Bank on scooter for drawing pension of Satyabhan from the State Bank, Sirsaganj. His uncle Satyabhan was also sitting behind him on the scooter. On the way when they were at a distance of about 50-60 metres from the deceased the first fire was shot, thereafter, second and third fires were shot, fourth fire was shot upon Neetu.

28. In his cross-examination P.W.1 further states that after seeing the deceased he saw that accused Pinku and Bhura were coming behind the deceased. Pinku @ Pradeep was riding the motorcycle, who after overtaking the motorcycle of Ram Singh kicked the motorbike of Ram Singh as a result of which he fell and thereafter both the accused fired shots upon him from their country made pistols holding in their hands. At the place of incident standing crops existed on either sides. Where the dead body of the deceased was lying the potato crop existed on its western side, which fact has also been corroborated from the site plan (Ex.Ka.-21 & 24). The prosecution witness, P.W.2-Neetu, who is also an eye witness of the incident, in his statement before the trial court has stated that the accused,

Bhura and Pradeep @ Pinku, after overtaking the motorcycle kicked it as a result of which the deceased fell and fired shots from their country made pistol on account of which he died on the spot. P.W.2 fell in the potato field and ran to save himself. It is then that Satyabhan and Chhadami Lal were seen coming on their scooter.

29. P.W.3-Satyabhan in his statement before the trial court has stated that on the date of incident at about 12:00 noon the deceased and his son-Neetu were coming to the village after purchasing diesel from Sirsaganj; when they reached the road at Surajapur then the accused Bhura and Pinku @ Pradeep came from behind on a motorcycle and by overtaking it kicked on the motorcycle due to which Ram Singh fell and thereafter they fired shots from their pistols on account of which the deceased died on the spot. Thus, the incident of killing the deceased has been described by these prosecution witness in almost similar manner and their testimony is consistent. P.W.1 in his cross examination has also stated that he heard the firing of gunshots on the deceased from a distance of 50-60 meters, then again second and third fire was shot, whereas P.W.3 in his cross examination states that he had seen the deceased and P.W.2-Neetu from a distance of 30-40 paces from where he heard the firing of gunshots, thus, there is no material contradiction in the evidence of P.W.1, P.W.2 and P.W.3 regarding the occurrence as also the presence of these witnesses at the spot and there is similarity in their statements regarding their presence on the spot and their statements appear natural which cannot be ignored. Moreover, these witnesses in their testimony state that the alleged incident occurred at about 12:00 hours in the noon of 10.11.2003 and P.W.12-Dr. A. K. Agarwal, who conducted

postmortem of the deceased and proved the postmortem report, in his cross-examination has clearly stated that when he started postmortem at 12:00 noon on next day, i.e., 11.11.2003 he found that rigor mortis was present on the person of the deceased and thus death of the deceased could be caused prior to 18 hours of the postmortem, which period matches with the time of incident as told by these prosecution witnesses. During trial on behalf of accused no evidence has been produced to discredit these prosecution witnesses or their presence at the place of occurrence at the time of incident. By merely saying that witnesses were not present at the place of occurrence the entire testimony of these witnesses cannot be discarded and disbelieved.

30. Presence of P.W.2 is questioned by the defence on the ground that this witness was studying at Jasrudh and it being a Monday his presence at the village or the visit with his father is highly improbable. We are not impressed by this argument. Firstly, P.W.2 has stated that it was a holiday which fact is not questioned during trial. Even if it was not holiday yet the presence of P.W.2 would not become doubtful only for this reason. No defence evidence is produced to show that P.W.2 had actually attended the school at Jasrudh on the date of incident. It is not uncommon for a young school going student to skip the school. It was otherwise the festive season with Dussehra and Diwali falling close by and the probability of P.W.2 having come to visit the parents cannot be frowned upon. This part of the defence argument, therefore, cannot be accepted.

31. The further argument that P.W.2 didn't receive any injury in the incident or he missed the gunshots later filed at him

needs to be carefully adjudged. P.W.2 in his testimony has stated that when accused person kicked on his father's bike he was thrown in the nearby potato field. It is not necessary that some serious injury necessarily be caused to P.W.2 particularly as he fell on the potato field. P.W.2 has moreover stated that he was muddy by the time he met P.W.1 which supports his version of having fallen on the adjoining field. Moreover, the fact that P.W.2 missed the shot fired at him is not unusual as he had fallen at a distance and the idea apparently was to scare him away.

32. So far as the evidence lead by P.W.2 that he was studying in Class-IX at his maternal home at Jasrudh, on the day of occurrence it was Monday and his school was closed due to some festival, whereas, P.W.3-Satyabhan, in his evidence lead before the trial court stated that on the date and time of the incident he was going to Bank at Sirsaganj to take his pension, these are minor contradictions and may be on that day school of P.W.2 was closed on account of some local holiday and which does not necessarily mean that on that day the Bank should also be closed. So far as the contention advanced by the learned counsel for the appellant that P.W.3-Satyabhan in his cross-examination before the trial court has specifically stated that one day prior to the incident when he went to the shop of Beche Lal Nai for purchasing tobacco at about 6:00-7:00 p.m, then in the room of Bhura, all the accused persons, namely, Sushil, Pinku, Bhura, Kamlesh were talking about eliminating the deceased, but the same has not been told by him to any person, which is unnatural, but in his cross-examination P.W.3 has stated that on the next morning, i.e., on the date of incident he told the deceased regarding hatching of conspiracy by the accused,

Sushil, Pinku, Bhura and Kamlesh. The evidence led by these witnesses appears no doubt. The recovery of country made pistol along with cartridge has also been made on the pointing out of the appellant in presence of two independent witnesses, therefore, the same cannot be discarded. Apart from the testimonies of these three eye witnesses, the other evidence includes F.S.L. report which was proved by P.W.13 who is the ballistic expert of Forensic Science Laboratory, according to which sign of firing pin and breach are found same on the recovered pistols and cartridges, thus the ballistic report corroborates the evidence led by the prosecution.

33. One submission was also made on behalf of accused-appellant that as per statement of P.W.2 before the trial court he had stated that after firing shots upon the deceased he started running and while running he fell down in the potato field but he did not sustain any injury, nor any mud etc., was reported to be found on his clothes. On this aspect this Court has also glanced over the evidence lead by P.W.2-Neetu itself who in his cross-examination says that while running from the place of occurrence he had fallen down in the potato field which was wet and his clothes got spoiled after falling in the wet field, they were covered with wet mud, he had shown the wet clothes to the inspector, whereas, P.W.3-Satyabhan in his statement before the trial court has stated that just after the incident when P.W.3-Neetu met them his clothes were not muddy and dirty due to wet soil and he did not tell us that while he was running towards him he had fallen in the wet field and his clothes got spoiled there. These are the minor discrepancies as P.W.2 was in fear after the incident as his father was killed in a gruesome manner in broad day light and during trial he could not

recollect that whether his clothes became muddy or spoiled and either the field was wet or dry but not muddy. So far as minor contradiction in the statements of P.W.1, P.W.2 and P.W.3 is concerned, the Hon'ble Supreme Court in the judgment rendered in **Kalabhai Hamirbhai Kachhot Vs. State of Gujarat, reported in (2021) 19 SCC 555** has observed as under:

24. Further, in the case of **Narayan Chetanram Chaudhary & Anr. v. State of Maharashtra : (2000) 8 SCC 457**, this Court has considered the effect of the minor contradictions in the depositions of witnesses while appreciating the evidence in criminal trial. In the aforesaid judgment it is held that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses. Relevant portion of Para 42 of the judgment reads as under:

“42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness.

34. Thus, in view of the aforesaid ratio as laid by Hon'ble Supreme Court in **Kalabhai Hamirbhai Kachhot (supra)**, coupled

with the evidence on record, we are clearly of the view that the prosecution has proved the case against the accused beyond reasonable doubt. The omissions like not seizing the motorcycle and when P.W.2 in his cross-examination says that on the date of incident his school was closed, whereas, P.W.3 in his statement before the trial court states that he was going to the Bank to take his pension, by itself is no ground to discredit the testimony of key witnesses who were examined on behalf of prosecution, whose testimony is consistent, natural and trustworthy.

35. On the basis of above discussions and evidence available on record, we find that P.W.1, P.W.2 and P.W.3 are the witnesses of fact, their evidence have been corroborated by the medical evidence adduced by P.W.12- Dr. A. K. Agarwal, who conducted the postmortem of the deceased. In that view of the matter, we are fully agree with the view taken by the trial court in recording conviction against the appellant. Therefore, conviction of appellant cannot be termed as perverse or against the evidence available on record and this Court is of the view that accused-appellant has been convicted and sentenced in correct perspective, therefore, the impugned judgment and order of conviction is liable to be upheld and it is hereby affirmed. Consequently, Criminal Appeal No. 1991 of 2009 (Bhura Vs. State of U.P. and another) fails and is, accordingly, **dismissed**.

36. So far as the connected Criminal Appeal No. 6827 of 2024 (Pradeep @ Pinku Vs. State of U.P.), is concerned, the letter sent by Chief Judicial Magistrate, Mainpuri dated 18.01.2024 indicates that accused, Pinku @ Pradeep has been released from district jail. Further, report dated 25.01.2024 also indicates that

the accused-Pradeep @ Pinku is missing since 11.01.2013, thus, he is absconding, therefore, the said criminal appeal is delinked from the present appeal which would be heard separately on its turn.

(Dr. Gautam Chowdhary, J.) (Ashwani Kumar Mishra, J.)

Order Date :- 31.08.2024

Mustaqeem.