

AFR

Neutral Citation No. - 2025:AHC:137967-DB

Reserved on – 14.05.2025

Delivered on – 13.08.2025

In Chamber

Case :- CRIMINAL APPEAL No. - 2695 of 1986

Appellant :- Bala Shankar

Respondent :- State of U.P.

Counsel for Appellant :- Kamlesh Kumar, Deena Nath

Counsel for Respondent :- A.G.A.

Hon'ble Vivek Kumar Birla, J.

Hon'ble Jitendra Kumar Sinha, J.

(Per:- Hon'ble Jitendra Kumar Sinha, J.)

1. The appeal stood abated in respect of appellant Nos. 2 and 5 namely Nand Lal and Bhagirathi vide order dated 14.05.2025. The appeal survives in respect of appellant Nos. 1, 3 and 4 namely Bala Shankar, Rajmani and Mangaru.
2. Heard Sri Deena Nath, learned counsel for the appellants and Sri S.S.R. Dwivedi, learned A.G.A. for the State and perused the record.
3. The appellants have challenged their conviction under Section 302/149, 323/149 and 324/149 I.P.C.. Further appellant No.1 Bala Shankar has been convicted under Section 148 I.P.C. and rest of the appellants have been convicted under Section 147 I.P.C. The appellants have been sentenced to imprisonment for life under Section 302/149 I.P.C. Appellant No.1 Bala Shankar has been sentenced to undergo one year rigorous imprisonment under Section 148 I.P.C., whereas rest of the appellants have been sentenced to undergo one year rigorous imprisonment for offence under Section 147 I.P.C. Appellant Bala Shankar has been sentenced to rigorous imprisonment for six months under Section 323/149 I.P.C. and rest of the appellants have been sentenced six months rigorous imprisonment for the offence under Section 323/149 I.P.C. Further all the sentences have been ordered to run concurrently.

4. Prosecution story in brief is that one Ram Pyare @ Babau Mishra gave a written report to the Police Station- Rampur, District- Jaunpur stating therein that on 21.06.1982 at about 02:00 P.M. Bala Shankar, Mangaru, Rajmani, Nand Lal and Bhagirathi armed with 'ballam' and 'lathi' (Bala Shankar was armed with 'ballam' and other were armed with 'lathi') came to his door and started abusing him. When he stopped them from abusing, Bhagirathi exhorted the other accused persons and on the said exhortation they attacked his brother Vidya Shankar and his mother Sohagin and their neighbour Adya Prasad Mishra by 'lathi' and 'ballam'. When uproar was made, Murlidhar Mishra, Shambhunath Mishra, Anil Kumar Mishra reached there and intervened and saved them. It is further stated that Bala Shankar gave blows of 'ballam' to Vidya Shankar and Vidya Shankar had received many injuries. The informant has further stated that he reached the police station along with injured persons to lodge a report. On the basis of the above written report, the first information report was lodged under Sections 147, 148, 323, 324 and 326 of the I.P.C. against Bala Shankar, Mangaru, Rajmani, Nand Lal and Bhagirathi. During medical treatment, Vidya Shankar died and case was converted into Section 304 I.P.C. After investigation the charge sheet was submitted under Sections 147, 148, 323, 324, 326 and 304 of I.P.C. on 01.07.1982. The Magistrate took cognizance of the offence and committed the case to the court of sessions for trial. Trial stood transferred to the court of Special Judge/Additional Session Judge, Jaunpur. The then learned Addition Sessions Judge, Jaunpur framed charges under Section 147, 302/149, 307/149 of the I.P.C. against appellants Mangaru, Rajmani, Nand Lal, Bhagirathi vide order dated 18.07.1983, whereas the appellant Bala Shankar has been charged under Sections 147, 148, 302, 302/149, 307/149 I.P.C. vide order dated 18.07.1983.

5. The prosecution has examined Pyare Lal Mishra as PW-1. Adya Prasad as PW-2. Dr. Chandra Bhoosan Upaddhyay as PW-3. Dr. R.K. Singh as

PW-4. Sri Vidya Dhar Tripathi (S.H.O.) as PW-5. Sri Purushottam Das Sharma as PW-6. Sri Jamwant Singh (Constable) as PW-7.

In documentary evidence, the prosecution has proved written report as Ext. Ka-1. Injury report of Adya Prasad as Ext. Ka-2. Injury report of Pyare Lal @ Babau as Ext. Ka-3. Injury report of Smt. Suhagin as Ext. Ka-4. Injury report of Vidyadhar as Ext. Ka-5. Post mortem report as Ext. Ka-6. Panchayatnama as Ext. Ka-7. F.I.R. as Ext.-12. Charge sheet as Ext. Ka-17.

6. After closure of prosecution evidence the statement of appellants/accused persons were recorded under Section 313 Cr.P.C. The appellants denied their involvement in the commission of offence and stated that they have been implicated in this case due to enmity. The defence has also produced two witnesses DW-1 Mewa Lal and DW-2 Sri Sahab Lal.

7. After hearing the arguments of the prosecution and defence, the learned trial court has passed the judgment and order impugned.

8. Learned counsel for the surviving appellant Nos. 1, 3 and 4 states that the learned trial court has erred in convicting the appellants under Section 302/149 I.P.C. as the charge sheet was submitted against the appellants under Section 304 I.P.C. He further submits that the incident took place on 21.06.1982 and Vidya Shankar died on 29.06.1982 i.e. eight days after the incident. He further submits that PW-4 Dr. R.K. Singh., who conducted the postmortem of the deceased Vidya Shankar on 29.06.1982 has categorically stated in his examination-in-chief and it was difficult for him to say that the deceased died due to injuries received in the incident that took place at 02:00 P.M. on 21.06.1982. Learned counsel further submits that PW-4 in his cross-examination has stated that it is wrong to say that he made cutting on 'not' in the post mortem report in which it has been mentioned that death is due to shock and subsequent septicaemia. He further submits that the Doctor has sated in his cross-examination that the

cutting in the post mortem report does not bear his initials. Learned counsel further submits that from the testimony of PW-4 Doctor, it is not proved that the death of Vidya Shankar was the result of injuries he received on 21.06.1982 at 02:00 P.M. as alleged by the prosecution. He further submits that the death of deceased Vidya Shankar was due to septicaemia . He further submits that septicaemia can be due to negligence of the Doctor while treating the patient. Learned counsel further submits that out of six witnesses of fact as mentioned in the charge sheet only two witnesses have been examined by the prosecution which also casts doubt on the prosecution case. There is a cross case of the incident and it is not clear that who was the aggressor in the incident. Initially, the fight was started by the informant side and the accused appellants have acted in their self-defence. Learned counsel further submits that even if the case is found to be proved, the offence does not fall under Section 302/149 I.P.C., at best it would fall under Part-II of Section 304 I.P.C. He further submits that the incident took place some 43 years ago and now appellants Bala Shankar, Rajmani are aged about 78 years and appellant Mangaru is aged about 89 years. He further submits that considering the above even if the appeal is not successful then at best they should be sentenced under Section 304 Part-II/149 for period of incarceration already undergone by them.

9. On the other hand, learned A.G.A. Sri S.S.R. Dwivedi has supported the judgement of learned trial court and has submitted that PW-1 and PW-2 are injured witnesses and from the testimonies of the witnesses, accused appellant Bala Shankar gave two blows of ‘ballam’ to the deceased Vidya Shankar. He further submits that it is well settled law that testimonies of injured witnesses stand on higher pedestal than any other witnesses. Further contention of learned A.G.A. is that from the evidence available on record the case against the surviving appellants Balashankar, Rajmani and Mangaru does not fall under Section 304 I.P.C. and learned trial court

was fully justified in convicting them under Section 302/149 I.P.C. and other sections.

10. In a recent judgment of **Dheer Singh and Others Vs. State of U.P., 2025 (4) ADJ 791**, a Co-ordinate Bench of this Court, of which one of us (Vivek Kumar Birla, J.) was a member has considered the law as to why a realistic approach to be adopted by criminal courts, which appreciating evidence in criminal trial. The law in respect of injured, related and interested witness was also considered extensively, paragraph nos. 22 to 35 whereof reads as under:-

“22. In Krishna Mochi and others vs. State of Bihar, (2002) 6 SCC 81, the Hon'ble Apex Court laid emphasis on realistic approach to be adopted by the criminal courts while appreciating evidence in criminal trial, paragraph 32 whereof is quoted as under:

"32. The court while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. I find that in recent times the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same are boulders, the court should not make an attempt to jump over the same. These days when crime is looming large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have become much more. Now the maxim "let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practice, changing the world over and courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals". I find that this Court in recent times has conscientiously taken notice of these facts from time to time....."

(Emphasis supplied)

23. In Masalti vs. State of U.P., AIR 1965 SC 202, Hon'ble Apex Court in paragraph 14 observed as under:

"14. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is

evidence of partisan or interested witnesses. ... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice."

(Emphasis supplied)

24. In *Darya Singh vs. State of Punjab*, AIR 1965 SC 328, the Hon'ble Apex Court has also taken the view that related witness does not necessarily mean or is equivalent to an interested witness. A witness may be called interested only when he or she derives some benefit from the result of litigation; a decree in a civil case, or in seeing a person punished in a criminal trial, paragraph 6 whereof is quoted as under:

"6. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars."

25. In *Appabhai and another vs. State of Gujarat*, AIR 1988 SC 696, the Hon'ble Apex Court in paragraph 11 observed as under:

"11.....Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner....."

(Emphasis supplied)

26. Similar view has been taken in *State of A.P. vs. S. Rayappa and others*, (2006) 4 SCC 512 wherein it has been observed that it is now almost a fashion that public is reluctant to appear and depose before the court especially in

criminal cases and the cases for that reason itself are dragged for years and years, paragraph 6 whereof is quoted as under:

"6.....by now, it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons."

(Emphasis supplied)

27. In Pulicherla Nagaraju @ Nagaraja Reddy v. State of AP, (2006) 11 SCC 444, the Hon'ble Apex Court in paragraph 16 has held as under:

"16. In this case, we find that the trial court had rejected the evidence of PW1 and PW2 merely because they were interested witnesses being the brother and father of the deceased. But it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or closely related to the deceased, if it is otherwise, found to be trustworthy and credible. It only requires scrutiny with more care and caution, so that neither the guilty escape nor the innocent wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, it can be acted upon. If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted."

(Emphasis supplied)

28. In Satbir Singh and others vs. State of U.P., (2009) 13 SCC 790, the Hon'ble Apex Court in paragraph 26 held as under:

"26. It is now a well-settled principle of law that only because the witnesses are not independent ones may not by itself be a ground to discard the prosecution case. If the prosecution case has been supported by the witnesses and no cogent reason has been shown to discredit their statements, a judgment of conviction can certainly be based thereupon "

(Emphasis supplied)

29. In Jayabalan vs. U.T. of Pondicherry, 2010 (68) ACC 308 (SC), the Hon'ble Apex Court in paragraph 21 held as under:

"21. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not

be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

(Emphasis supplied)

30. In *Dharnidhar vs. State of U.P.*, (2010) 7 SCC 759, the Hon'ble Apex Court held that there is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case, paragraphs 12 and 13 whereof is quoted as under:

"12. There is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In the case of Jayabalan v. U.T. of Pondicherry [(2010)1 SCC 199], this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim. The Court held as under:

" 23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.

.....

13. Similar view was taken by this Court in *Ram Bharosey v. State of U.P.* [AIR 2010 SC 917], where the Court stated the dictum of law that a close relative of the deceased does not, per se, become an interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the Court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown over- board, but has to be examined carefully before accepting the same.

14. In the light of the above judgments, it is clear that the statements of the alleged interested witnesses can be safely relied upon by the Court in support of the prosecution's story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons, who are closely related to the deceased. When their statements find corroboration by other witnesses, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then we see no reason why the statement of so called 'interested witnesses' cannot be relied upon by the Court."

(Emphasis supplied)

31. In a very recent judgement rendered by Hon'ble Apex Court in Baban Shankar Daphal and others vs. The State of Maharashtra, 2025 SCC Online SC 137 in respect of testimony of witness which should not be discarded merely because of relation with victim, the Hon'ble Apex Court has, in paragraphs 27 and 28, held as under:

"27. One of the contentions of the learned counsel for the appellants is that the eyewitnesses to the incident were all closely related to the deceased and for prudence the prosecution ought to have examined some other independent eyewitness as well who were present at the time of the unfortunate incident. This was also the view taken by the Trial Court, but the High Court has correctly rejected such an approach and held that merely because there were some more independent witnesses also, who had reached the place of incident, the evidence of the relatives cannot be disbelieved. The law nowhere states that the evidence of the interested witness should be discarded altogether. The law only warrants that their evidence should be scrutinized with care and caution. It has been held by this Court in the catena of judgments that merely if a witness is a relative, their testimony cannot be discarded on that ground alone.

28. In criminal cases, the credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinized. However, being a relative does not automatically render a witness "interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the victim. Courts must assess the reliability, consistency, and coherence of their statements rather than labelling them as untrustworthy.

(Emphasis supplied)

32. In a recent judgement rendered by Hon'ble Apex Court in *Shahaja @ Shahajan Ismail Mohd. vs. State of Maharashtra*, (2023) 12 SCC 558 has observed that the appreciation of ocular evidence is a hard task and has summed up the judicially evolved principles for appreciation of ocular evidence in a criminal case, paragraphs 29 and 30 whereof is quoted as under:

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

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

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

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

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

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

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

29.7. *Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.*

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

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

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

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

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

29.13. *A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.*

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983 Cri LJ 1096 : AIR 1983 SC 753, Leela Ram v. State of Haryana, AIR 1999 SC 3717, and Tahsildar Singh v. State of UP, AIR 1959 SC 1012]

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

(Emphasis supplied)

33. Paragraph 48 of *Pahalwan Singh and others vs. State of U.P.*, 2020 (6) ALJ 166 is quoted under:

"48. Thus, in view of aforementioned decisions of the Supreme Court, it is now a settled position of law that the statements of the interested witnesses can be safely relied upon by the court in support of the prosecution story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons who are closely related to the deceased. When their statements find corroboration by other evidence, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then there is no reason as to why the statement of so-called 'interested witnesses' cannot be relied upon by the Court. It would be hard to believe that the close relatives shall leave the real culprit and shall implicate innocent persons falsely simply because they have enmity with the accused persons.

(Emphasis supplied)

34. Insofar as the testimony of injured witness is concerned, this Court in *Kaptan Singh vs. State of UP*, 2020 (1) ADJ 106 (DB) has, in paragraph 20, observed as under:

"20. Close scrutiny of the evidence shows that the statements of (PW-1) Vimla Devi and (PW-2) Ram Singar Pandey are clear, cogent and credible. They have been subjected to cross-examination, but they remained stick to the prosecution version and no such fact, contradiction or inconsistency could emerge, so as to create any doubt about their

testimony. Keeping in view the fact that after incident, deceased as well as injured were taken to hospital and were admitted there and that on the same night deceased Ram Niwas Rao has succumbed to injuries, it is apparent that the first information report of the incident was lodged without any undue delay. Version of (PW-1) Vimla Devi finds corroboration from testimony of (PW-2) Ram Singar Pandey and is fully consistent with medical evidence. It is also to be kept in mind that (PW-2) Ram Singar Pandey has himself sustained injuries in the same incident. In *Jarnail Singh v. State of Punjab*, (2009) 9SCC 719, the Supreme Court reiterated the special evidentiary status accorded to the testimony of an injured accused. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case, the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon. Similar view was expressed in the case of *Krishan v. State of Haryana*, (2006) 12 SCC 459. Hon'ble Supreme Court in Criminal Appeal Nos. 513-514 of 2014 *Baleshwar Mahto and another v. State of Bihar and another*, decided on 9.1.2017, has reiterated the law as under :

"28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.

"Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh v. State of Bihar* [(1973) 3 SCC 881:1973 SCC (Cri) 563:AIR 1972 SC 2593], *Malkhan Singh v. State of U.P.* [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12], *Machhi Singh v. State of Punjab* [(1983) 3 SCC 470 : 1983 SCC (Cri) 681], *Appabhai v. State of Gujarat* [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696], *Bonkya v. State of Maharashtra* [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113], *Bhag Singh* [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163], *Mohar v. State of U.P.* [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606b-c), *Dinesh Kumar v. State of Rajasthan* [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472], *Vishnu v. State of Rajasthan* [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302], *Annareddy Sambasiva Reddy v. State of A.P.* [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] and *Balraje v. State of Maharashtra* [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] 29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab* [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107], where this Court

reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

"28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

In State of U.P. v. Kishan Chand [(2004) 7 SCC 629 : 2004 SCC (Cri) 2021] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the Courts below."

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein." In this very judgment, relationship between the medical evidence and ocular evidence was also discussed, based on number of earlier precedents, as under: "33. In State of Haryana v. Bhagirath [(1999) 5 SCC 96 : 1999 SCC (Cri) 658] it was held as follows: (SCC p. 101, para 15)

"15. The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the Court. If the opinion is bereft of logic or objectivity, the Court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person

regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the Court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject."

In Shivalingappa Kallayanappa v. State of Karnataka, 1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694, the Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

It has been held that law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

(Emphasis supplied)

35. In a recent judgement rendered by Hon'ble Apex Court in Neeraj Sharma vs. State of Chhattisgarh, (2024) 3 SCC 125 in respect of importance of injured witness in a criminal trial, the Hon'ble Apex Court has, in paragraphs 22 and 23, held as under:

"22. The importance of injured witness in a criminal trial cannot be overstated. Unless there are compelling circumstances or evidence placed by the defence to doubt such a witness, this has to be accepted as an extremely valuable evidence in a criminal Trial.

23. In the case of Balu Sudam Khalde v. State of Maharashtra 2023 SCC OnLine SC 355 this Court summed up the principles which are to be kept in mind when appreciating the evidence of an injured eye-witness. This court held as follows:

"26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

- (a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*
- (b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.*
- (c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.*
- (d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.*
- (e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.*
- (f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."*

(Emphasis supplied)

11. PW-1 Pyare Lal Mishra informant has stated that there was enmity due to election of Pradhanship of the village and his side had voted in favour of Hari Shankar and accused persons were supporters of Mewa Lal. The real nephew of accused Bhagirathi namely Samar Bahadur was also a candidate in the election. Mewa Lal had been elected as Pradhan and on account of this there was enmity between the informant side and accused side. This witness has supported the prosecution case stating that about three years and three months from the date of his deposition in the trial court he was sitting along with Vidya Shankar, Adya Prasad, Anil Kumar, Murlidhar and Shambhu at his door and at this point Bala Shankar, Nand Lal, Mangaru, Rajmani and Bhagirathi all the accused persons reached there. Accused Bala Shankar was armed with 'ballam' and rest of the accused persons were armed with 'lathi'. Bhagirathi exhorted other accused persons to kill them. On the above exhortation of Bagirathi, Bala Shankar gave blows of 'ballam' to Vidya Shankar and rest of the accused gave blows of 'lathi' to his mother Sohagin and Adya Prasad.

12. This witness has further stated that Bala Shankar also gave blow of 'ballam' to his mother. Anil Kumar, Shambhu and Murlidhar intervened and saved them. He got the report written by Murlidhar and lodged. This witness has identified his signature on Ext. ka-1. In cross examination this witness has been consistent in his testimony and defence has not been able to extract any material contradiction in his testimony.

13. PW-2 Adya Prasad, who is injured witness has supported prosecution case in his examination-in-chief and has stated that the incident took place at 02:00 P.M. on 21.08.1982 when he was sitting at the door of Pyare Lal and Shambhu, Murlidhar, Anil Kumar were also sitting there. At that point of time Bala Shankar, Nand Lal, Mangaru, Rajmani and Bhagirathi reached there. Bala Shankar was armed with 'ballam' and rest of the accused were armed with 'lathi'. Bhagirathi gave exhortation to other accused persons and on that exhortation Bala Shankar gave blow of 'ballam' to Vidya Shankar and when his mother tried to save him, she was also given blow of 'ballam' by him and rest of the accused gave 'lathi' blow to his mother. This witness has further stated that when he rushed to save them, Mangaru and Rajmani assaulted him and Pyare Lal by 'lathi'. Pyare Lal, Sohagin and he received blows of 'lathi'. He further states that Vidya Shankar died due to injuries caused by 'ballam'. This witness is an injured witness and has been consistent in his cross-examination. The defence has not been able to extract any material contradiction in his testimony.

14. PW-3 Dr. Chandra Bhusan Upadhyay has medicolegally examined Adya Prasad and has found following injuries:

"1- Contusion 9cm x 2cm on right thigh 14 cm above right knee joint.

2- Contusion 7 cm x 2 cm right thigh 24 cm above right knee joint.

3- Traumatic swelling 4 cm x 2 cm on right fore arm.

4- Abrasion 1cm x 1/2cm in left fore arm.

5- Contusion 7cm x 3cm on right back on scapula.

6- Contusion 5cm x 4cm on left back.

7- Abrasion 4cm x 2cm on left back.”

In the opinion of Doctor all the injuries were simple in nature and were caused by blunt object and were 1.25 days old.

15. Similarly, PW-3 has also medicolegally examined Sohagin and has found following injuries:-

“1- Incised wound 6cm x 1/2cm scalp deep 4 cm above left eye brow.

2- Traumatic swelling 6cm x 4cm on right palm.

3- Abrasion 1cm x 1cm right index finger.

4- Abrasion 1cm x 1/2cm on right upper arm.

5- Contusion 4cm x 1cm on right back.”

16. Similarly, PW-3 has also medicolegally examined Pyare Lal Mishra and found following injuries:-

“1- Abrasion 1/2cm x 1/2cm on left thigh.

2- Lacerated 2cm x 1cm x 1/2cm left foot.”

17. This witness has also examined Vidya Shankar and found the following injuries:-

“1- Punctured wound 7cm x 3cm depths food material came out indicating puncture of intestined 11cm right nipple.

2- Punctured wound 3cm x 1cm x 4cm dept at left back 23cm below left nipple.”

18. PW-4 Dr. R.K. Singh has conducted post mortem of the deceased Vidya Shankar and reported that the death was caused due to shock and haemorrhage as a result of following injuries:-

“1- Septic punctured stiched wound obliquely placed on front of abdomen crossing the mid line transversely. The wound is clean cut measuring 3.5cm x 0.5cm x skin deep. Muscle passing through the penitiorial tissue entering into abdomen cavity thus converting it into penetrating wound corresponding to this wound the interior surface of stomach is penetrated which repair but the cut gut stiches Septic surgical wound stiched 7cm x 1cm on the right side of the front of abdomen. Pus is coming out from the

2- Stiche septic stabbed wound 1.5 cm x .5 on on the outer aspect of the lowest portion of the left side of chest in left posterior axillary. 24 cm below the left axillary. The wound is just cavity deep.

3- Scabed linior abrasion some what semicircular in shape 4 cm long on the palm of the right hand towards literal side.”

19. PW-5 Police Officer is formal witness, who has proved the inquest of the deceased. PW-6 Investigating Officer is also formal witness,, who has proved the chik F.I.R. and he has testified regarding investigation being done by him and has proved various police papers. PW-7 Jamwant Singh is Constable of Police, who has given an affidavit and he is a formal witness.

20. The defence has produced two witnesses namely DW-1 Mewa Lal and DW-2 Sahab Lal. DW-1 has stated that he is Pradhan of village. The election of ‘Pradhanship’ took place on 21.06.1982. This witness has further stated that Hari Shankar Mishra, Samar Bahadur, Bansh Raj and he himself were candidates for Pradhanship. This witness has stated that no ‘marpeet’ took place during the election and he had heard that a quarrel took place between the voters at about 02:00 P.M. This witness has stated that after hearing that the quarrel had taken place he reached there by 2:15 P.M. then no body was there. This witness has further stated that Vidya Shankar received stab injuries and he was lying there. He did not see any other person. This witness has further stated that he did not see family members of Vidya Shankar there, later on police vehicle came in which Sub-Inspector and Constables took the injured Vidya Shankar in their vehicle. In cross-examination this witness has stated that he did not see any one assaulting Vidya Shankar and no one had even stabbed him in front of him.

21. DW-2 Sahab lal has stated that on 21.06.1982 on the date of election for Pradhanship he had gone to cast vote and after casting his vote he was taking rest under the ‘Neem tree’ and at about 2:00-02:30 P.M. he heard some uproar and on hearing the uproar he went there and saw that an

altercation was going on between voters and they were fighting with 'lathis' and other weapons. Then he saw that someone gave stab blow to Vidya Shankar but he did not see as to who inflicted the said blow. Adya Prasad and Subhagi were also injured but they did not see as to who assaulted them. In cross-examination this witness has stated that he had heard that knife blow was given but he cannot say that it was knife blow or it was blow of 'ballam'. Similarly this witness has stated that he did not identify the person who inflicted the injuries on Adya Prasad and Vidya Shankar and Shubhagi.

22. PW-1 is eye-witness to the occurrence and as discussed above, is wholly reliable and PW-2 is an injured witness who is also wholly reliable. It is well settled that prosecution is under no obligation to produce each and every witness. It is well settled law that it is the quality and not the quantity of evidence which matters.

23. Even DW-1 and DW-2 have stated that the deceased Vidya Shankar had received knife blows and other injured Adya Prasad and Shubhagi had received 'lathi' blows, however these witnesses have stated that they did not see as to who inflicted the said injuries on them.

24. The testimonies of PW-1 and PW-2 have been corroborated by medical evidence of PW-3 and PW-4. The injuries on the person of the deceased Vidya Shankar and other injured persons have already been noticed above and remaining witnesses are of formal nature.

25. From the overall appreciation of evidence and all the witnesses, we find that the incident as alleged by the prosecution has been proved beyond reasonable doubt. Now the question arises that under what section the accused persons are liable to be convicted?

26. PW-4 Dr. R.K. Singh who conducted the post mortem of the deceased Vidya Shankar has stated in his examination-in-chief that it was difficult for him to say that the deceased had died due to injuries received by him on 21.06.1982 at 02:00 P.M., because duration of the injuries could be

ascertained only when a person is alive. However, this witness has stated that injuries of the deceased could have been caused by 'ballam' and the injuries were sufficient in the ordinary course of nature to cause death.

27. In the opinion of this witness, the death of the deceased was caused due to septicaemia arising out of ante mortem injuries and the death of the deceased took place in the District Hospital, Jaunpur on 29.06.1982 at 04:50 A.M.

28. The incident took place on 21.06.1982 and the deceased died on 29.06.1982 i.e. after about eight days. In the opinion of Doctor the cause of death was septicaemia due to ante mortem injuries.

29. Hon'ble Supreme Court in the case of **Virsa Singh Vs. State of Punjab 1958 AIR (SC) 465** has held as under:-

"(9) This is a favourite argument in this kind of case but is fallacious. If there is an intention to inflict an injury that is sufficient to cause death in the ordinary course of nature, then the intention is to kill and in that event, the "thirdly " would be unnecessary because the act would fall under the first part of the section, namely-

" If the act by which the death is caused is done with the intention of causing death."

In our opinion, the two clauses are disjunctive and separate. The first is subjective to the offender:

"If it is done with the intention of causing bodily injury to any person."

It must, of course, first be found that bodily injury was caused and the nature of the injury must be established, that is to say, whether the injury is on the leg or the arm or the stomach, how deep it penetrated, whether any vital organs were cut and so forth. These are purely objective facts and leave no room for inference or deduction: to that extent the enquiry is objective; but when it comes to the question of intention, that is subjective to the offender and it must be proved that he had an intention to cause the bodily injury that is found to be present.

(10) Once that is found, the enquiry shifts to the next clause-

" and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."

The first part of this is descriptive of the earlier part of the section, namely, the infliction of bodily injury with the intention to inflict it, that

is to say, if the circumstances justify an inference that a man's intention was only to inflict a blow on the lower part of the leg, or some lesser blow, and it can be shown that the blow landed in the region of the heart by accident, then, though all injury to the heart is shown to be present, the intention to inflict ail injury in that region, or of that nature, is not proved. In that case, the first part of the clause does not come into play. But once it is proved that there was an intention to inflict the injury that is found to be present, then the earlier part of the clause we are now examining-

"and the bodily injury intended to be inflicted "

is merely descriptive. All it means is that it is not enough to prove that the injury found to be present is sufficient to cause death in the ordinary course of nature; it must in addition be shown that the injury is of the kind that falls within the earlier clause, namely, that the injury found to be present was the injury that was intended to be inflicted. Whether it was sufficient to cause death in the ordinary course of nature is a matter of inference or deduction from the proved facts about the nature of the injury and has nothing to do with the question of intention.

(11) In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broadbased and simple and based on common sense: the kind of enquiry that " twelve good men and true could readily appreciate and understand.

(12) To put it shortly, the prosecution must prove the following facts before it can bring a case under S. 300 "thirdly " ;

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

(13) Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under S,300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was Do intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional."

30. Since the death of the deceased took place after about eight days of the incident and cause of death is septicaemia due to ante mortem injuries, we find that the case of the surviving appellants Bala Shankar, Rajmani and Mangharu falls under Section 304 Part-II/149 instead of Section 302/149.

31. In view of the above the conviction of the appellants is altered to Section 304 Part-II/149 I.P.C. instead of Section 302/149 I.P.C. The conviction of the appellants under various other sections are just and proper and they remain unaltered. The incident took place more than 43 years ago and now the appellant Bala Shankar is aged about 78 years,

appellant Rajmani is aged about 78 years and appellant Mangaru is aged about 89 years. For the above reason we find that the period of sentence already undergone by them is sufficient to meet the ends of justice. Further they are directed to pay fine of Rs. 25,000/- each within one month, out of which Rs.60,000/- shall be paid to the legal heirs of the deceased Vidya Shankar. In default of payment of fine the appellants shall undergo imprisonment for six months in lieu of fine.

32. With the aforesaid modification, the appeal stands **partly allowed**.

33. Let a copy of this order be communicated by the Registrar (Compliance) to the Chief Judicial Magistrate, Jaunpur for compliance forthwith.

34. The Chief Judicial Magistrate, Jaunpur is also directed to send his compliance report within two months to Court from the date of receipt of this order.

Order Date :- 13.08.2025

Virendra