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AFR

RESERVED ON 26.5.2025

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In Chamber

Case :- CRIMINAL APPEAL No. - 538 of 1984

Appellant :- Kanne And Others

Respondent :- State of U.P.

Counsel for Appellant :- Abrar Ahmad Siddiqui, Krishna Kumar Shukla, Sanjay Kumar Tripathi, Suresh Dhar Dwivedi

Counsel for Respondent :- Krishna Kumar Shukla, Sanjay Kumar Tripathi

Hon'ble Vivek Kumar Birla, J.

Hon'ble Ms. Nand Prabha Shukla, J.

(Delivered by Hon'ble Ms. Nand Prabha Shukla, J.)

1. Heard Sri Suresh Dhar Dwivedi, learned Counsel for the surviving Appellant No. 4, Sabir Ali, Sri Rahul Asthana, learned Additional Government Advocate for the State and perused the records.
2. This Criminal Appeal has been filed against the Judgement and Order dated 15.02.1984 passed by the Vth Additional Sessions Judge, Shahjahanpur in Sessions Trial No. 140 of 1983 (State vs. Sabir and Others) and Sessions Trial No. 141 of 1983 (State vs. Kanne and Others) convicting the appellants under Section 302/34 IPC and sentencing each of them for life imprisonment.
3. The Criminal Appeal against Appellant No.1, Kanne, Appellant No.2, Shamsheer and Appellant No.3, Ram Singh has been abated on 19.07.2018 due to their death.
4. The present Criminal Appeal has been argued only on behalf of surviving Appellant No.4, Sabir Ali.

INTRODUCTORY FACTS

5. The prosecution case, in brief, is as follows:

The first informant, Rajaram lodged an F.I.R. dated 04.12.1982 at 9.15 P.M. against Room Singh, Sabir, Shamsheer and Kanne alleging that on 04.12.1982 at around 7.00 P.M., his brother Ratiram, aged about 18 years, had gone to take a round of his paddy crop field situate at Village Walipur, P.S. Kanth, District Shahjahanpur whereby due to previous enmity the accused caught hold and strangled his brother Ratiram and done him to death. Ompal, Haripal and Natthu witnessed the incident.

6. The scribe of the FIR was Attar Singh, son of Rameshwar Singh, Police Station Paraur, District Shahjahanpur.

7. The FIR was registered as Case Crime No. 239 of 1982 under Section 302 IPC, Police Station Kanth, District Shahjahanpur.

8. The police proceeded to the spot. The inquest proceeding was started on the very same day and completed on the next day i.e 05.02.1982 at 7.00 A.M. According to the inquest report, the death occurred due to strangulation.

9. The dead body of Ratiram was sent for post mortem examination on 05.12.1982. According to the opinion of the Doctor, the cause of death was due to asphyxia as a result of *anti mortem* strangulation.

10. On 08.12.1982, two separate Recovery Memo were prepared. One torch having two cells was recovered from Deen Mohammad and another having three cells was recovered from Harpal.

11. The investigation was entrusted to S.I Narottam Singh Chauhan who went to the place of occurrence, recorded the statement of the witnesses and prepared the site plan. The investigation was further conducted by Inspector Prem Chand Pathak and after the completion of investigation the charge sheet was submitted on 31.12.1982 against Sabir

under Section 302 IPC and rest accused were charge sheeted on 05.02.1983. Shamsher was proceeded under Section 82/83 Cr.P.C.

12. The cognizance was taken on 15.01.1983.

13. After committal proceedings, on 31.3.1983, the learned Vith Additional Sessions Judge, Shahjahanpur framed the charges against all the four accused under section 302 IPC read with section 34 IPC.

14. It would be relevant to mention that as two separate charge sheets were submitted, therefore, two separate Sessions Trial were proceeded, namely, 140 of 1983 and 141 of 1983 against all the four appellants and were consolidated and heard together. The trial commenced and in both the trials, a common set of evidence was led by the prosecution and the defence.

15. The accused pleaded not guilty and claimed for the trial.

PROSECUTION EVIDENCE

16. The prosecution examined as many as eight witnesses and proved the Ex. Ka-1 to Ex. Ka-20 and Ex. Kha-1 to 4 and Material Exhibits 1 to 3 which are discussed here-in-below:-

P.W.1	Rajaram	Real brother of the deceased	First Informant
P.W.2	Harpal	Real brother of the deceased	Eyewitness
P.W.3	Natthu	Cousin brother of the deceased	Eyewitness
P.W.4	Deen Mohammad	Villager	Eyewitness
P.W.5	Dr. P.K. Gupta		Conducted the autopsy and proved the <i>post mortem</i> report
P.W.6	Narottam Singh Chauhan	Sub-Inspector, Police Station Kanth, Shahjahanpur	Investigating Officer
P.W.7	Prem Chand Pathak	Inspector, Police Station Kanth, Shahjahanpur	Further investigated the matter and proved the charge sheet dated 31.12.1982 and 05.02.1983
P.W.8	Ram Charan Singh	Head Constable No. 34, Police Station Kanth, Shahjahanpur	Proved the Chik FIR and the G.D. Entry No. 32 at 9.15 P.M.

Exhibits

Exhibit Ka-1	Written Report
Exhibit Ka-2	Panchayatnama (Inquest Report)
Exhibit Ka-3	Site Plan
Exhibit Ka-4	Post Mortem Report
Exhibit Ka-5	Search Memo
Exhibit Ka-6	Search Memo
Exhibit Ka-7	Search Memo
Exhibit Ka-8	Search Memo
Exhibit Ka-9	Recovery Memo of Torch and Supardginama
Exhibit Ka-10	Recovery Memo of Torch and Supardginama
Exhibit Ka-11	Memorandum of Attachment under Section 82/83 Cr.P.C.
Exhibit Ka-12	Memorandum of Attachment under Section 82/83 Cr.P.C.
Exhibit Ka-13	Memorandum of Attachment under Section 82/83 Cr.P.C.
Exhibit Ka-14	Diagram of Dead Body
Exhibit Ka-15	Letter Address to CMO
Exhibit Ka-16	Challan
Exhibit Ka-17	Sample of Seal
Exhibit Ka-18	Chik FIR
Exhibit Ka-19	G.D. at Serial No. 32 (Extract of Registration of F.I.R.)
Exhibit Ka-20	Affidavit of Constable Baburam taking the dead body to Mortury
Exhibit Kha-1	Chargesheet dated 31.12.1982
Exhibit Kha-2	Copy of the surety bond
Exhibit Kha-3	Copy of the application addressed to SDM Sadar, Shahjahanpur dated 03.01.1984
Exhibit Kha-4	Extract of Kutumb Register

MATERIAL EXHIBITS

Material Exhibit 1	Bushirt of the deceased
Material Exhibit 2	Sweater of the deceased
Material Exhibit 3	Underwear of the deceased

WITNESS OF FACT

17. P.W.-1 to P.W.4 are the witnesses of fact. Their testimony, in brief, are as follows:

PW-1, Rajaram : The deposition of Rajaram was recorded on 23.06.1983. He was the real brother of the deceased. He lodged the First Information Report but was not an eye witness of the occurrence. In his testimony, he deposed that on 04.12.1982 at 7.00 P.M. his brother Ratiram had gone to see his paddy crop field lying at a distance of one furlong from his Village Walipur in its north west direction. He deposed that his paddy crop stood reaped and stacked in the field of Ram Sahai in the west. On the South of his field lies the field of Chhanga and there was a fence (medh) in between. Shamsheer, Ram Singh and Gulzari Singh were contesting for the Pradhani elections. Gulzari Singh stood victorious with his support and canvassing. In this backdrop, Shamsheer and Ram Singh were inimical with him. The election took place in the month of Chaitra and the incident took place in the month of Aghan. At around 7.00 P.M. Harpal, Ompal and Natthu came and informed that his brother Ratiram had been cornered (gheraoed) by Shamsheer, Room Singh, Khamne and Sabir and strangulated his neck with a rope and done him to death. Hearing this news, he rushed to the spot and found his brother lying dead at the (fence) medh of the field. The medh connected three fields, his own, Chhanga and Ram Sahai. The witness and his brothers brought the dead body of Ratiram at the Chaupal (portico) of their house. Thereafter, the Tehrir was dictated to Attar Singh, the scribe which was proved as Ex. Ka.-1 bearing his signature. The FIR was registered and the Police proceeded to his village and inspected the spot and prepared the site plan. In his cross-examination, the witness deposed that they were four brothers and now only three remains. He was the eldest, then Krishnapal, Harpal and the youngest was Ratiram. Natthu was his cousin brother. Om Pal was his uncle. Natthu was proceeded under Section 107/116 Cr.P.C. However, at the time of incident, the said proceedings were dropped. He

and his brother Krishnapal, Kifaiyat and his son Deen Mohammad were also involved along with Natthu in the said proceeding. Sabir initiated the proceeding along with his brother-in-law Nabi and Shamsheer who were the accused persons. At the time of trial, Gulzari Singh was present. The wife of Ratiram (deceased) had solemnised marriage with Harpal. Krishnapal was married prior to the incident. At the time of occurrence he received the information while he was at home. He had returned from Shahjahanpur around 4.00 to 5.00 P.M. by bus. He further deposed that Attar Singh (Scribe) was his nephew. He studied at Jalalabad and was present at home on account of his holidays. He had mentioned the distance and the use of rope in the FIR but did not know why it was not there. He went to the spot and with the help of his brothers, brought the dead body of Ratiram to the Chaupal (portico) of his house. Nothing was lying near the dead body not even *lathi*, *danda* or torch. He could not listen the hue and cry of his brother. He was informed at his Chaupal that Ratiram had been killed so he rushed to the spot at once. While rushing he carried a torch and another torch was carried by Deen Mohammad.

PW-2, Harpal: This witness was also the real brother of the deceased and was an eye witness account. He deposed that at around 7.00 P.M. while he was sitting at home, along with Ompal and Natthu, heard Ratiram screaming that he was beaten and caught hold by the accused Shamsheer, Khanne, Room Singh and Sabir. Hearing the hue and cry, he along with Ompal and Natthu rushed to the spot and in the flash of torch light saw Shamsheer, Khanne, Sabir and Room Singh. When they challenged the accused, they rushed away. Shamsheer was carrying the rope which was a cattle driving rope. While they chased the accused, Deen Mohammad also reached at the spot. He went near Ratiram and found him dead. He went straight to his house and informed his brother Rajaram who also came to the spot and together they brought the dead body of Ratiram at their Chaupal (Portico). During the cross-examination, he deposed that he handed over two cells torch to the Police Officer. He heard his brother

screaming (bachao, bachao mar gaye). He did not take lathi with him. Torch and danda was already with him. Om Prakash and Natthu were having lathi. He did not inform at home. His house and Chaupal are nearby. After crossing 2 to 3 fields from his village he saw the accused persons. He could not recollect whose fields he had crossed. He could not recollect whether he crossed the distance of ten feet or twenty feet. He went towards north west direction. Firstly, the accused were not running. Then he saw his brother and raised the noise and chased them thereafter the accused ran away. He went to his brother and found him dead. Leaving Natthu, Om Prakash and Deen Mohammad near the deceased he went to his home. There existed previous dispute between the family members of Deen Mohammad and Sabir. Sabir was the real brother of Shamsheer who contested the Pradhani elections. Shamsheer was available in the village and was the resident of Khudaganj. He further deposed in his cross examination that Ratiram was married to the daughter of Maiku of Sambhalpur about six months back. He denied that she was first married at Allahganj. He deposed that the paddy was harvested 3 to 4 days back and were stacked together by them. They did not take the lunch. They remained in the field for the full day till 5.00 P.M.

P.W.-3, Natthu : This witness was the cousin brother of the deceased and also was an eye witness account. The said witness deposed that he heard the noise of Ratiram. He rushed towards the spot along with Harpal and Ompal and saw Shamsheer, Room Singh, Kanne and Sabir who were assaulting Ratiram by putting the rope around his neck. Harpal carried a torch and lathi and he was carrying only lathi. Harpal went to his home. In the meantime, Deen Mohammad reached at the spot with his torch. He saw the accused in the flash of the torch light of Harpal and thereafter saw the dead body of Ratiram lying dead. The dead body of Ratiram was brought to the Chaupal (Portico) and thereafter FIR was registered. In his cross-examination, he deposed that at the time of incident he was proceeding from his house towards the west direction when he heard the

noise. He walked the distance of 30 to 40 feet from his house and went from west to north about 40 to 50 feet. Hearing the noise, he could realise that someone had been killed. He was carrying a lathi and did not went to take the torch. His house was at the distance of about 2 to 4 fields. When he shouted, the accused fled away. He denied that he did not witness any incident. He gave the information to Rajaram.

P.W-4, Deen Mohammad : A villager and an eye witness deposed that when he heard the hue and cry, he rushed towards the west side of the village carrying his torch and from a distance of 10 feet, he saw Shamsheer, Kanne, Room Singh and Sabir. He identified their faces in the flash of the torch light. Shamsheer was carrying a rope and Kanne was armed with lathi and the rest were unarmed. When he challenged then Shamsheer replied that he had done his task and fled away. He reached the spot and found Ratiram lying dead near the field of Sohan Pal and Rajaram. Many villagers gathered and saw the dead body lying. In his cross-examination, he reiterated that he saw all the four accused. Though Shamsheer replied but did not disclose as to what he did. The deceased was wearing sweater, bushirt and underwear but was barefooted. The nose was running and slight blood was oozing. No blood was found nearby. Further, in his cross-examination, he deposed that there was no case registered against his father. He knew Sabir. A proceeding under Section 107/116 Cr.P.C. was initiated. He admitted that before the incident Sabir was beaten by family and Shamsheer had beaten his father regarding which litigation is going on. His father had received fracture in his hand. In the proceeding under Section 107/116 Cr.P.C. he went to jail. His house is at the distance of at least 40 feet from the place of the occurrence. He saw the accused carrying the rope. He could notice its length and diameter.

FORMAL WITNESSES

18. **P.W.-5, Dr. P.K. Gupta :** This witness was posted as a Surgeon at the District Hospital, Shahjahanpur. He deposed that on 05.12.1982 he conducted the post mortem of deceased Ratiram aged about 18 years. The

dead body was one day old and was of average built. *Rigor mortis* stood passed off the upper limbs but was present in lower limbs. The abdomen was distended. Nails were of blue colour. Dense bloody fluid was coming out of mouth and nostrils. Faecal matter was present at anus. The following *anti mortem* injuries were found on the body of the deceased:-

EXTERNAL EXAMINATION

There was ligature marks all round the neck and were well marked except on the left side in an area of 1.5 cm. on the lateral aspect of neck. They were faint and dimensions were 31cmx1cm. The marks passed from front hyoid bone and were located 6.5 cm below the left ear pinna on neck and 6 cm below the left ear pinna, on the right side on neck and middle of back of neck.

INTERNAL EXAMINATION

On internal examination he found membranes, brain, lungs, liver, intestines, stomach, spleen and kidneys congested. He also located fracture of the hyoid bone. Left side of heart was empty and right side contained dark blood weighing 2.5 ounce. Stomach contained food matter including rice. Small and large intestines contained faecal matter. Bladder was empty. According to the opinion of the doctor, the death was caused due to asphyxia as a result of *anti mortem* strangulation. The said injury was possible due to strangulation with some muslin rope. The said incident was possible on 04.12.1982 at 7.00 P.M. In his cross-examination, the said witness deposed that in a case of suicide by tying the rope, the hyoid bone will not be fractured.

P.W.6, Narottam Singh Chauhan : He was the first Investigating Officer. He deposed that on the date of incident he was posted as Sub-Inspector at Police Station Kant. The First Information Report was lodged in his presence and was entrusted with its investigation and recorded the statement of the Head Mohrir and the first informant. He made spot inspection and on the next date, the inquest report of the deceased was

prepared and sent for the *post mortem*. The said witness proved the inquest report which was in his handwriting and signatures and proved it as Ex.Ka-2. He prepared the site plan and exhibited as Ex.Ka-3. He also arrested the accused Sabir and issued search warrants for others which was in his handwriting and signature and proved it as Exhibits Ka-4, Ka-5, Ka-6, Ka-7, Ka-8. In his cross-examination, he deposed that till the inquest proceedings he could only record the statement of Panch witnesses. At the place of incident, he did not find any material which could prove the incident nor found any marks of the feet. He did not prepare the site plan of the place where the dead body was found. He also proved challan lash and Chithhi CMO as Ex. Ka-14 to Ex. Ka-17.

P.W. 7, Prem Chand Pathak : This witness deposed that on 08.12.1982 he was posted as Inspector In-charge at Police Station Kant. He took over the further investigation after S.I. Narottam Singh Chauhan on 08.12.1982. He went to the village to search the accused but he did not find him. He recorded the statement of the witnesses Harpal Singh, Rup Pal Singh, Natthu etc. He prepared the Supurdginama (Recovery Memo) of the torches of Harpal Singh and Deen Mohammad and returned them back. He proved the Supurdginama which were in his own handwriting and signatures and proved it as Ex. Ka-9 and Ex. Ka-10. On 31.12.1982, he submitted the charge sheet against Sabir, and on 05.02.1983 against rest other accused. Proceedings under sections 82 and 83 Cr.P.C. were initiated against Shamsher and warrant of attachment were issued. He proved the attachment proceedings as Ex. Ka-11 to Ex. Ka-13. In his cross- examination, he deposed that witness Harpal did not disclose that the deceased was shouting taking the names of the accused.

P.W.-8, Ram Charan Singh, Head Constable No. 34 : This witness deposed that on 04.12.1982 he was posted as Head Mohrir at Police Station Kant. On that day, at around 09.00 P.M., the first informant Rajaram along with others gave a written Tehrir scribed by Attar Singh, on the basis of which a Chik FIR was registered which was in his

handwriting and signatred and proved as Ex. Ka-18 and its extract entered in the G.D. as Rapat No. 32 at 9.15 P.M. and proved it as Ex. Ka-19. He refuted that the FIR was *anti timed*.

DEFENCE WITNESS

STATEMENT OF ACCUSED U/S 313 CR.P.C.

19. The statement of all the four accused were recorded under Section 313 Cr.P.C. and incriminating circumstances were put to them. They denied the prosecution case and stated that they have been falsely implicated due to previous enmity. The accused pleaded that the first informant Rajaram was not an eye witness of the incident and Harpal was the real brother of the deceased, Natthu was the cousin brother of the deceased and Deen Mohammad was inimical to the accused. The accused in their statement under Section 313 Cr.P.C. admitted that there was enmity between the parties due to Pradhani elections.

D.W.1, Parivaksha : The accused examined Parivaksh, son of Chhihu as DW. 1 who deposed that he knew Ratiram (deceased) son of Chhotu Lal. His residence was at a distance of 50 to 60 feet. Rajaram and Ratiram were real brothers. Rajaram was ploughing the field of about five bighas. The field of Nausey lies in the south and field of Chhangey was also in the south and field of Sohal Pal in the west. He saw the house of Rajaram and the field was at the distance of two kilometers from the house of Rajaram. He further deposed that he saw the dead body of Ratiram which was lying at Mohra (frontage) of Ratiram and his mother was sitting and weeping. He heard the mother saying that in case she would have not performed the Gauna (Vidai) then her son would not have committed suicide. In his cross-examination, he deposed that the dead body was lying upside down on the cot and again corrected and stated that it was lying straight. He further deposed that no blood was oozing from any place. About 10 to 12 ladies and 2 to 4 persons were present. He stayed there at about 20 to 25 minutes. He had not disclosed anything to the

Police Officer regarding the suicide. Many villagers were of the opinion that he committed suicide.

20. Thus, after examining and scrutinising the prosecution and defence evidence as well as in the light of the documentary and ocular evidence, the learned Trial Court held all the four accused appellants guilty and convicted them for the commission of offence under Section 302 read with section 34 IPC and sentenced them for life imprisonment.

SUBMISSIONS ON BEHALF OF THE APPELLANT

21. The learned counsel for the appellant contended that the Appellant No. 4, Sabir is innocent and has been falsely implicated due to previous enmity. Shamsher who was the real brother of Sabir contested the Pradhani elections but could not succeed. While the first informant supported Gulzari who won the election. Both the parties were at daggers drawn. The prosecution witnesses in their FIR had admitted that there existed previous enmity between them. It was pleaded by learned counsel for the appellant that enmity is a double edged weapon and has been used as a tool to falsely implicate the appellant. It was further submitted that the incident took place during winter season at around 7.00 P.M. and there was darkness all around. There was no source of light to identify the actual assailants. Though the FIR was lodged in time but the first informant Rajaram was not an eye witness to the incident. Counsel for the appellant has also raised the contention that the alleged FIR was *anti timed* as the incident did not take place at the given date, time, place and manner as alleged by the prosecution. No incriminating material was found from the spot. Neither any drop of blood nor any weapon or any other material was collected by the Investigating Officer. The alleged incident seems to have taken place at some other place and a false story has been cooked up to falsely implicate the appellant. There are major contradictions in the statement of eye witnesses P.W.-2 Harpal, PW-3 Natthu and P.W.-4 Deen Mohammad in regard to the distance and use of rope in committing murder. In the First Information Report, there is no

narration regarding the use of rope but a fresh story was cooked up by the witnesses by stating that the deceased was strangled with a rope and was done to death. The alleged rope was also not recovered from the appellant nor from any other co-accused. The prosecution in order to evade the truth had brought the dead body from the place of incident and placed it before their Chaupal (Portico) and thereafter lodged a false case against the appellant to take vengeance for the previous enmity. It was also submitted that in the *post mortem* report, some food particle and rice was found in the large intestine of the deceased which falsifies the prosecution case as by that time the food is digested and villagers in rural areas go for the ease during dusk time. The post mortem report does not support this fact. It is also relevant to mention that except Deen Mohammad all the three witnesses were the close relatives of the deceased, therefore, they are the partisan witnesses and are not reliable and trustworthy. P.W.-1, Rajaram was a real brother of the deceased and P.W.-2 Harpal, the eye witness was also the real brother of the deceased and P.W.-3 Natthu was his cousin brother. As far as Deen Mohammad is concerned proceedings under Section 107/116 Cr.P.C. were drawn by Sabir against him, therefore, he could be an interested witness in taking revenge against the appellant.

22. As far as the search warrants are concerned the appellant never escaped from the court proceedings. The alleged search warrants were prepared falsely for the arrest of the accused. The non-recovery of any incriminating article (rope) or weapon from the possession of the appellant also falsifies the prosecution case. It was quite strange that P.W.-1, P.W.-2 and P.W.-3 were available in the house at the time of incident and only PW-2 and PW-3 could hear the noise of the deceased and rushed to the spot but PW-1 could not hear a single sound of the deceased. It is relevant to discuss that the distance from the spot to the house of the eye witness was too far (two kilometres) to hear the scream of the deceased who was seeking help. The prosecution witnesses in their testimony could

not specify the manner of incident except spotted Shamsheer carrying the rope. P.W.-2, P.W.-3 and P.W.-4 who are the eye witness account did not disclose the actual occurrence of the incident rather they had falsely implicated the appellant on the basis of suspicion and previous enmity. According to the defence witness D.W.1, Parivaksha the deceased committed suicide due to his Gauna ceremony. The alleged recovery memo of torches are vague and are baseless. The witnesses did not see the actual commission of the offence as there was no source of light. They could only notice the accused running away. There was no prior meeting of mind or pre-arranged plan to commit the offence, therefore, the appellants have been wrongly held guilty of the commission of offence under Section 302 read with Section 34 IPC. It has also been pleaded that all three main accused have already died, therefore, there is no occasion to convict the sole surviving appellant no. 4, Sabir.

SUBMISSIONS ON BEHALF OF THE STATE

23. *Per contra*, learned Additional Government Advocate has vehemently refuted the aforesaid contentions and submitted that the FIR was prompt and was lodged in time as the distance of the Police Station was about three miles from his village Walipur. It was also contended that the prosecution story cannot be disbelieved on the ground that the first informant was not an eye witness of the incident. As soon as the P.W.-2, P.W.-3 and P.W.-4 heard the noise they rushed to the spot and saw the accused from a distance of about 40 feet in the flash of the torch light and challenged them. They also saw the dead body of Ratiram lying nearby. It was getting darker, therefore, in order to place the dead body at a safer place, the witnesses brought the deceased Ratiram in a cot and placed him in front of their Chaupal (Portico). The presence of the eye witnesses at the spot cannot be doubted. The FIR was not anti timed as P.W.-8, Ram Charan Singh Head Constable No. 34, in his testimony, had proved the Chik FIR and extract of the G.D. Entry No. 32 at 9.15 P.M. Additionally, the prosecution case cannot be doubted and was a genuine one as the first

informant Rajaram P.W.-1 was not produced and examined as an eye witness though he was available at his home and could have been examined as an eye witness. The evidence of Harpal, Natthu and Deen Mohammad leaves no room for doubt that it was the accused-appellants who actually perpetrated the crime. The version of the First Information Report/Written Tehrir corroborates with the inquest as well in the post mortem report. According to P.W5, Dr. P.K.Gupta, the cause of death of the deceased was due to asphyxia as a result of *anti mortem* strangulation, therefore, it was a case of homicidal death and not a suicidal death. The hyoid bone was found fractured. The rest other *anti mortem* injuries also indicated that the deceased was done to death at the relevant point of time. The testimony of Dr. P.K. Gupta (P.W.5) corroborates with the prosecution case. As far as application of Section 34 of the IPC is concerned there is no requirement of overact, only a pre-mediation or pre-arranged plan between the appellant was sufficient to implicate them with the aid of Section 34 IPC. All the three eye witnesses P.W.-2, P.W-3, P.W-4 are natural and reliable witnesses who rushed at the spot and saw the appellants running from the place of incident with Shamsheer carrying a rope in his hand. The deposition of D.W.-1, Parivaksha was entirely a false story of suicide which does not justify the offence under Section 302 IPC. The ocular evidence corroborates with the medical evidence, therefore, the appellants have been rightly convicted by the learned Trial Court.

ANALYSIS

24. Upon hearing learned counsel for the parties and the arguments advanced, it transpires that the prosecution had lodged the FIR promptly against all the four appellants. The distance of the police station from the place of incident was about three miles and the first informant gave the written Tehrir in time. There was no deliberation, consultation or concoction. The contents of the FIR was brief and gave a true narration of the incident. The Investigating Officer in his testimony admitted that he

reached the spot on the very same night and made spot inspection and found the dead body lying at the Chaupal (Portico). The Investigating Officer had proved the Inquest Report and the *Post Mortem* Report. The Head Mohrir had proved the Chik FIR and extract of the G.D. Entry No. 32 at 9.15 P.M. and the FIR was not *anti timed*. The *post mortem* of the deceased was conducted on the next day and the cause of death was due to asphyxia as a result of *anti mortem* strangulation which cannot be a suicidal death rather it was a homicidal death. The hyoid bone was also found fractured. The appellant, Sabir was the real brother of main accused Shamsheer who contested and lost the Pradhani election and was inimical with them. Apart from political rivalry the proceedings under section 107/116 Cr.P.C. was also drawn between the parties. The first informant was the supporter and canvassed for Gulzari who won the Pradhani election against Shamsheer which was the main motive and root cause for enmity. The contention that P.W-1, P.W-2 and P.W-3 were the close relatives of the deceased and were the partisan witness being the real brothers and cousin brother of the deceased is baseless. It is trite that their evidence cannot be discarded solely on the ground as there is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused. The Apex Court in the case of **Nam Dev vs. State of Maharashtra, (2007) 14 SCC 150** has held that a close relative cannot be characterised as an (interested witness). He is a natural witness. His evidence, however, must be scrutinised carefully. If upon such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the sole testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the relative would normally be most reluctant who spare the real culprit and falsely implicate and innocent one. In **Mohd. Rojali Ali v.**

State of Assam, (2019) 19 SCC 567 it was held that the mere fact that the witnesses are related to the deceased does not impugn the credibility of the evidence if it is otherwise credible and cogent. Further, it was observed in para (13-15) and is quoted below:

“13. As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an “interested” witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between “interested” and “related” witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused [internal citations omitted].

14. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in Dalip Singh v. State of Punjab, (1953) 2 SCC 36 wherein this Court observed: (AIR p. 366, para 26)

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person.”

15. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent.”

25. Thus, there is no occasion for the false implication of the appellant. The three eye witnesses are the most natural witness who rushed to the spot and from a distance of about 40 feet saw in flash light of the torches that all the four appellants were running away and Shamsheer was spotted carrying a rope. They found the deceased Ratiram lying dead. Though they challenged the appellants but they ran away. All the accused were known to the witnesses and three of them were the resident of same

village. There was a strong motive and both the parties were inimical to each other due to Pradhani elections. The three eye witnesses in their testimony deposed that all the four accused were present at the spot and cornered the deceased Ratiram strangulated him with rope and done him to death. The appellants examined the defence witness D.W.-1 Parivaksha who gave a false colour of suicide to the incident. The said plea was baseless and unsustainable as it did not corroborate with the medical evidence. The hypothesis of suicide was not consistent with the medical evidence. It is the admitted case of the prosecution as well as the defence D.W.-1 Pariveksha that no blood was found at the place of incident and a very small quantity of blood was found oozing from the nose of the deceased. Thus, no blood could be collected from the spot. It was a dark/ winter night and the witnesses reached the spot with their torches and identified the four accused from the distance of about 40 feet. They brought the dead body of the deceased and placed it at the Chaupal (Portico) in front of their house which was a safe place. There is no matter to doubt the date, time, place and manner of incident. The recovery memo/supurdiginama of the two torches of two cells and three cells also supports the prosecution case. The Trial Court had rightly framed the charge against the accused under section 302 IPC with the aid of section 34 IPC. It is an admitted case that there was previous enmity between the parties and the appellants in a pre-concerted manner had committed the murder and were seen running away from the spot. The only issue for consideration is whether the surviving appellant no. 4, Sabir shared common intention along with other co-accused in killing Ratiram. From the perusal of record and after examining the testimony of the eye witnesses, it cannot be doubted that all the four appellants had shared the common intention collectively and together killed the deceased by strangulating his neck which is not possible by a single person.

26. The Hon'ble Apex Court in **Gulab vs. State of U.P., (2022) 12 SCC 677** (three Judges Bench) had observed that common intention

implies acting in concert. Existence of a pre-arranged plan has to be proved either from the conduct of the accused or from circumstances or from incriminating facts. It is not enough to have the same intention independently to each other. The prosecution is not required to prove that there was an elaborate plan between the accused to kill the deceased or appellant was in existence for a long time. A common intention to commit the crime is proved if the accused by their words or action indicate their assent to join in the commission of the crime.

27. Recently, the Hon'ble Supreme Court in **Krishnamurthy @ Gunodu v. State of Karnataka, (2022) 7 SCC 521** has observed on the collective action of all the accused and sharing of the common intention and is quoted hereinbelow:

“Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or pre-arranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be pre-arranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34 IPC are satisfied. We must remember that Section 34 IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34 IPC is not necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. Section 34 or

the principle of common intention is invoked to implicate and fasten joint liability on other co-participants.”

The role of the appellants and their presence at the spot and the nature of the incident that emerges from the consistent account of the three eye witnesses proves the prosecution case beyond reasonable doubt.

CONCLUSION

28. In the present appeal, as the guilt of the Appellant No. 4, Sabir has been established by the prosecution beyond reasonable doubt under Section 302 read with Section 34 IPC and the judgement of the Trial Court is a well discussed decision. We do not find any cogent reason to interfere in it.

29. Accordingly, the Judgement and Order of conviction dated 15.02.1984 passed by learned Vth Additional Sessions Judge, Shahjahanpur is hereby affirmed.

30. The Criminal Appeal is, accordingly, **dismissed**.

31. The surviving Appellant No. 4, Sabir is on bail. His bail bonds are cancelled and the sureties discharged. He shall surrender before the Court concerned within 30 days from the date of the order to serve the remaining sentence, failing which the Trial Court shall take appropriate steps for the compliance.

32. The Registry is directed to transmit the certified copy of the Judgement and Order of this Court along with the records to the Court concerned for necessary information and compliance. It is further directed that the record of the case transmitted by this Court shall be kept in safe custody by the Trial Court.

Order Date :- 20.08.2025

Puspendra