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Court No. - 45

Case :- CRIMINAL APPEAL No. - 2624 of 2019

Appellant :- Smt. Raj

Respondent :- State of U.P.

Counsel for Appellant :- Sheshadri Trivedi, Sr. Advocate

Counsel for Respondent :- G.A., Hemendra Kumar

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard Sri Satish Trivedi learned Senior Advocate assisted by Sri Sheshadri Trivedi, learned counsel for the appellant, Sri L.D. Rajbhar learned AGA for the State and Sri Hemendra Kumar learned counsel for the informant.

2. Present Criminal Appeal arises from the judgment and order dated 18.03.2019 passed by Ms. Anita Raj, Additional Sessions Judge/Special Judge (SC/ST Act), Ghaziabad in Sessions Trial No. 1179 of 2013, arising out of Case Crime No. 512 of 2013, under Sections 302/34 and 201 IPC, Police Station Sahibabad, District Ghaziabad. By that order the learned trial court has convicted the appellant and sentenced her to undergo life imprisonment and to pay fine Rs. 20,000/- for the offence under Section 302 IPC and in default of payment of fine to further undergo simple imprisonment of six months and to undergo rigorous imprisonment and fine Rs. 5000/- for the offence under Section 201 IPC and in default of payment of fine to further undergo one months simple imprisonment. The basic

occurrence is the murder of the husband of the deceased. He (a police man), was shot at, four times, with his service pistol, inside his house.

3. The prosecution story emerged on the strength of a Written Report submitted by Savitri – the mother of the deceased (P.W.-1 at the trial), dated 12.04.2013. It is Ex.Ka-1 at the trial. On that Written Report, a First Information Report was registered in Case Crime No. 512 of 2013, on 12.04.2013, at 8.10 p.m. The First Information Report is Ex.Ka-4 at the trial. In that First Information Report, it was narrated that the son of P.W.-1 namely, Ajeet Singh (deceased) lived with his family (including his wife/appellant and minor two children), at House No. 10/1, Sector-3 Rajendra Nagar, Sahibabad, Ghaziabad, for the last three years. P.W.-1 had also lived with them for some time but that the present appellant Smt. Raj (wife of the deceased) was unhappy in her marriage and used to quarrel with the first informant (P.W.-1), from time to time. According to her, one Mukesh 'Master' lived in another flat - below the flat occupied by the deceased and his family. He used to frequent the appellant, in the absence of the deceased. His activities were suspicious and objected to by her (P.W.-1). On that objection being raised, the appellant used to offer bad behaviour towards the first informant. Then, the first informant further stated that the appellant and the said Mukesh 'Master' had formed illicit relations. On such fact knowledge being disclosed to the deceased, the couple quarrelled a lot and the appellant had asked for dissolution of her marriage and also turned out P.W.-1 from that house. However, the quarrel between the deceased and the appellant continued thereafter. For the last 4-5 months, the first informant (P.W.-1) had been living in a rented accommodation, at Hardevpuri in Delhi.

4. In that fact background as disclosed in the Written Report, P.W.-1 she further disclosed that on receipt of information on 11.04.2013 she reached Flat No. 10/1, Sector-3 Rajendra Nagar, Sahibabad, Ghaziabad.

By that time, the police had taken away the deceased. A crowd had gathered at the place. She was thus informed that the deceased had been done to death by the present appellant and the said Mukesh 'Master'. She also disclosed that the deceased had received four bullet wounds in his abdominal region and that the appellant was trying to give the occurrence colour of death by suicide.

5. While the occurrence came to be described (later) to have taken place at around 1:30 a.m., the '*Panchayatnama*' was drawn on 11.04.2013 at about 7:00 a.m., that day. In that, the time when the information of the occurrence was received by the police is 3:05 a.m., on 11.04.2013 of the occurrence having taken place at 1:30 a.m. The '*Panchayatnama*' was witnessed by five witnesses namely, Sohanveer Singh (P.W.-3 at the trial), Ramveer Singh, Rajkumar, Deepak Kumar and Azad Singh (not examined at the trial). The '*Panchayatnama*' is Ex. Ka-2 at the trial. Also, on 11.04.2013, the police team under Rajpal Singh, S.I. (P.W.-8 at the trial) recovered a '*Khes*' (with red border)/bedding material, white '*Khes*'/quilt, bearing bullet holes, blood soaked red and black printed bed sheet. That Recovery Memo is Ex.Ka-12 at the trial. Also, on 11.04.2013, the police team recovered a pistol, empties as also live bullets and scattered pieces of used/fired bullet, from the room of the house where the occurrence had taken place. That Recovery Memo is Ex.Ka-13 at the trial.

6. Thereafter, on 11.04.2013 at about 2:15 p.m., the dead body of the deceased was subjected to autopsy examination by Dr. R.P. Singh (P.W.-5 at the trial). He recorded the cause of death as "*shock and haemorrhage as a result of gunshot injuries.*" As to the injuries, he noted the same as below:

"1. lacerated wound of entry 0.5 cm x 0.5 cm over left side lower (illegible) 13 cm medial and below to left nipple 7.30 chest (illegible) blackening present and margins are inverted cavity deep.

2. A L.W. wound of entry 0.5 x 0.5 cm cavity deep at lower chest 11 cm medial and below to right nipple blackening present (illegible) margins are inverted 50 chole (illegible).

3. A L.W. wound of entry 0.5 x 0.5 c, cavity deep midline of abdomen 5 above umbilicus 120 (illegible). Blackening present margins inverted.

4. 0.5 x 0.5 wound of entry LW over Rt. side (illegible) cavity deep blackening present (illegible) to umbilicus.

Wound of exit

1. 1 x 1 cm exit wound midline just Rt side of spine 16 cm below C7 vertebra - bullet remove

2. 31 x 1 cm exit wound left side back of chest 15 cm below (illegible) and lief scapula

3. 1 x 1 cm right side back of chest 6 cm (illegible)”

That autopsy report is Ex. Ka-3 at the trial.

7. The recovered items were subjected to forensic examination. In the first place, vide report dated 08.06.2016 submitted by the FSL, Agra, ‘Khes’ (bedding material), quilt/‘Khes’, bedsheet, innerwear/vest of the deceased were found to bear human blood marks. However, the blood type/group- could not be identified. The said report is Ex. Ka-16 at the trial.

8. Also, vide another report dated 06.7.2015 of the FSL, Agra, it was reported that the firearm/service pistol recovered from the place of occurrence, had been used to cause the occurrence. The empties EC-1, EC-2, EC-3 and EC-4 were opined to have been fired from that weapon/service pistol. The bullet holes on quilt/ ‘Khes’ and the vest worn by the deceased were found to correspond to the projectile used. Three holes were noted on the bedding material/ ‘Khes’ on both sides. Three holes were also noted on the bedsheet. Also, four holes were noted on the quilt/ ‘Khes’. Similarly, four holes were noted on the front side and three on the back side of the vest worn by the deceased. Those holes were found to correspond to the bullet injuries suffered by the deceased. The said report is Ex.Ka-17 at the trial.

9. During investigation, besides P.W.-1, the investigating officer also examined the minor daughter of the deceased (and the appellant), namely, Kumari Avni Balyan (P.W.-2 at the trial). Upon completion of the investigation, the Investigating Officer submitted a charge sheet. It was accepted. Upon the case being committed for trial, the following charges were framed against the present appellant and Mukesh 'Master':

“प्रथम- यह कि दिनांक 11-4-2013 को लगभग 1.30 बजे स्थान मकान नं.० 10/1, सै०-3, राजेन्द्र नगर साहिबाबाद थाना साहिबाबाद में आपने परिवादनी के बेटे अजीत सिंह जो कि (अभियुक्त राज का पति था), ने एक राय होकर सामान्य आशय की पूर्ति में अग्रसर होकर अजीत सिंह के पेट में गोली मारकर उसकी हत्या कर दी। इसप्रकार आपने ऐसा कार्य किया जो भा०दं० सं० की धारा 302/34 के अधीन दण्डनीय अपराध है जो इस न्यायालय के प्रसंज्ञान में है।

द्वितीय- यह कि उपरोक्त दिनांक समय एवं स्थान पर आप अभियुक्तगण ने परिवादनी के बेटे अजीत सिंह की हत्या करने के बाद साक्ष्य का विलोपन करने के उद्देश्य से उसके शव को रफादफा करने की कोशिश की गयी। इस प्रकार आपने ऐसा कार्य किया जो भा०दं० सं० की धारा 201 के अधीन दण्डनीय अपराध है जो इस न्यायालय के प्रसंज्ञान में है।

अलएव में आदेशित करता हूँ कि आपके विरुद्ध उक्त आरोप का विचारण इस न्यायालय द्वारा किया जावेगा।”

10. At the trial, Savitri the first informant who is the mother of the deceased, was examined as P.W.-1. During her examination-in-chief, she described - she herself alongwith the deceased, the present appellant and the two children (born to those parties), namely a son and a daughter (Avni) had earlier lived together. According to her, the appellant used to quarrel with the deceased. Mukesh 'Master' used to fetch the milk for the two households namely, his own and that of the deceased. He used to chat with the appellant for long durations, in the kitchen of her house. On P.W.-1 questioning the appellant to such presence of Mukesh 'Master', the appellant would make excuses. P.W.-1 further stated that the appellant and the said Mukesh 'Master' had formed intimate physical relations and that she had seen them in that circumstance, through a grill gate. She also claimed, on being told of the same, the deceased did not believe his mother (P.W.-1). In such circumstance, Savitri (P.W.-1) started living separately, since the last six months prior to the occurrence. In that regard

she claimed, because of bad relations between her and the appellant, her son (deceased) had rented her a separate accommodation. She also claimed that the deceased and the appellant had discussed dissolution of their marriage but that the parents of the appellant had asked for six month's time to get the appellant to make amends.

11. Thereafter, P.W.-1 claimed Mukesh 'Master' informed her at about 2:30 a.m. on 11.04.2013 that the deceased had committed suicide. On such information being received, she reached the place of occurrence. By that time the police had taken away the dead body of the deceased.

12. As to the actual occurrence, she claimed that she had been told by her grand-daughter Avni (P.W.-2) that the deceased returned from duty at about 10.30 p.m. on 10.04.2013, had dinner whereafter a quarrel erupted between the deceased and the appellant. The appellant wanted to pursue her B.Ed. course, to which the deceased was opposed. She also claimed to have been told that the deceased kept his service pistol in a safe inside the house. She claimed that her grand children were present in the same room (with the deceased), while the appellant went to the other room.

13. Thereafter, Savitri (P.W.-1) further stated that the appellant confessed to her on 13.04.2013 that she had made a mistake and that her hurt ego and anger had got the better of her. She further stated, the deceased had been done to death by the appellant and the said Mukesh 'Master', together.

14. She further claimed that she had submitted the Written Report, typed at her dictation. It had been read out to her, before it was signed and submitted.

15. During her cross-examination, as to the marriage between the deceased and the present appellant, she described the same to have been solemnised about 11 years ago. In that, during her cross-examination, she

admitted that she has a niece named Pooja who is the daughter of her brother-in-law Dharmveer and a resident of village Tikraul. However, at the time of the occurrence, she was living in Vasundhara, Ghaziabad.

16. She also disclosed that her husband died 8 years ago. Prior to his death, he had bought a two room house in Meerut. Later, that house was sold and another house was bought at Ghaziabad in the name of the appellant (where the occurrence took place). She admitted that Mukesh 'Master' used to visit her house, from before, their being family friendship from the time when she alongwith her family lived at Meerut. She also admitted that the house where the occurrence took place was purchased with the help of the said Mukesh 'Master' who had been living in that complex from before, as a tenant. At the same time, on being questioned, she also disclosed that she had lived in that house for three and a half year.

17. With respect to the occurrence, she disclosed that at that time she was at her village home in Bhaurakala, Muzaffarnagar. She stood by her statement that she was informed about the occurrence at 2:30 p.m. by Mukesh 'Master' on her mobile phone. However, she could not recollect that mobile phone number. She also disclosed that at the time of the information being received, Sohanveer Singh (P.W.-3), Amresh, Sunita were also present with her at that village house. Thereupon, she left for Ghaziabad along with others, in three vehicles. However, she could not recollect the names of all who may have accompanied her. She reached Ghaziabad at about 9:00 a.m. At that time, Sohanveer Singh, Sunita, Amresh, Roshni, Praveen and others had already reached the place of occurrence. Thus, though Sohanveer Singh (P.W.-3) may have been present with her at that village Bhaurakala, Muzaffarnagar when the information was received, according to her, he reached the place of occurrence prior in time. She also disclosed that she remained present at that house till about 7 p.m. during which time the appellant also remained

present. She denied the suggestion that at the time of the occurrence she was at her Hardevpuri, Delhi, accommodation. She also denied the suggestion that her niece Pooja had informed the appellant about the occurrence. She maintained that the F.I.R. was registered on her Written Report.

18. It also came out during her cross-examination that she had filed a civil proceeding claiming title in the apartment where the occurrence took place. Those proceedings were instituted against the present appellant. She also admitted that since the occurrence, her grand children were living with her at village Bhaurakala, Muzaffarnagar. She further disclosed that the place of occurrence was about 100-150 kilometres from the village Bhaurakala, Muzaffarnagar.

19. Also, she stated, the dead body of the deceased had been taken away by the time she reached the place of occurrence. It was handed over to her at the Police Station where documentation was done. In that, she stated '*Panchayatnama bhara gaya*'. She further stated that the '*panch*' witness Sohanveer Singh, Ramveer, Rajkumar, Deepak and Hardeep, affixed their signatures on the '*Panchayatnama*' at the Police Station. During her cross-examination (on the same day), she further stated that she and the deceased were opposed to the appellant pursuing B.Ed course and that she suspected Mukesh 'Master' because the appellant used to go to him, for studies. At that late stage, she specifically denied any role of the said Mukesh 'Master' in the occurrence.

20. Thereafter, Ms. Avni Baliyan, the minor daughter of the deceased (and the present appellant), who was aged about 12 years on the date of her statement being recorded and may have been about 10 years on the date of the occurrence, was examined as P.W.-2. She described she was a student of Class-3rd, when the occurrence took place. Her father - the deceased had returned from duty at about 10-11 p.m. It was the

appellant's birthday. For that reason, her father took her, her brother, the appellant and the said Mukesh 'Master', for a birthday treat at a pastry - burger shop. At that time, the deceased was wearing his uniform and carrying his service pistol. After they returned home her younger brother insisted upon the deceased to explain the working of his pistol. At that, the deceased told him that it was not a child-play and put aside his service pistol, in a safe inside the house. Thereafter, the deceased changed his clothes for the night. A quarrel erupted between the deceased and the appellant. The deceased was insisting on the appellant to not pursue B.Ed course. Thereafter, the deceased went to sleep on a folding cot, besides the bed on which the appellant and her two children lay down for sleep.

21. The said witness claimed that she was woken up by the sound of gunfire. She saw the appellant shoot at the deceased, 3-4 times. She further claimed to have seen the occurrence in the light of a low wattage bulb/night lamp that was lit and in outside light - as the curtains on the window had not been drawn. As to her own reaction, she described, she was petrified and kept lying on her bed. In that, she saw the appellant cleaning the blood on the floor with a cloth that was later thrown by her in the house below i.e. the apartment of the said Mukesh 'Master'. She also disclosed that she was threatened by the appellant to keep her mouth shut, else she would also be shot dead.

22. During her cross-examination, she disclosed, her date of birth to be 19.08.2005. She confirmed, after the occurrence she had been living at village Bhaurakala, Muzaffarnagar. She further stated that at the time of occurrence, her brother and mother were sleeping with her, on the bed whereas the deceased was sleeping on the folding bed, lying next to that bed. In that she further disclosed that the folding bed was placed next to her mother and that next to her own bed (on the other side), was a balcony.

23. On being further questioned, she disclosed that after they had returned home from the birthday treat - on the occasion of her mother's birthday, Mukesh 'Master' left for his home.

24. As to the actual occurrence, she reiterated, she woke up on hearing gunshot and that she heard separate gunshots fired by the appellant with time interval, described by her to be 5 minutes. She was not further questioned as to that except that she could not recall the total time of firing and that the firearm had been used from a two arm distance (from the deceased).

25. As to the arrival of the police, she disclosed that they arrived after some time (3-4 hours). According to her, the first person to reach the place of occurrence was Mukesh 'Master'. Thereafter, other neighbours also arrived. However, she could not recall their names. On being questioned, she stated that the information was given to the police by the said Mukesh 'Master'.

26. Again, according to her she did not speak to Savitri (P.W.-1) at that time but later. However, she confirmed that P.W.-1 had lived with the deceased and his family, in the same house, at Meerut.

27. She confirmed that at the time of occurrence the deceased was using a quilt/ '*Khes*' and that the police had found blood soaked bed etc., at the place of occurrence. She also stated, the appellant placed the weapon of assault/service pistol of the deceased on his bed together with empties. She insisted that in her previous statement, she had disclosed that the deceased had taken his family out for a treat on the occasion of the birthday of the appellant. She denied, she had told the I.O. that before the occurrence the appellant had gone out of the room and was sleeping on a '*divan*', outside the room where the occurrence took place. She also claimed that she had stated to the police that the appellant had caused the occurrence, by shooting the deceased with a gun.

28. Similarly, she denied any other suggestion thrown at her, to doubt her statement and stood by her deposition made to the Court. Also, she denied any suggestion of tutoring. At the same time, at the fag end of her deposition she admitted that it was true that this was the first time she had made a statement against her mother, in Court.

29. Here itself, it may be noted that though such questions were put to the witness, at no stage she was confronted with any specific/marked portion of her previous statement.

30. Thereafter, Sohanveer Singh the '*panch*' witness was examined as P.W.-3. He disclosed that the '*Panchayatnama*' proceeding started at 03:05 a.m. on 11.04.2013 and continued till 09:00 a.m. During his cross-examination, he disclosed, he was sleeping when he received the information about the occurrence. Yet, he could not disclose who gave him that information. He stated that Savitri (P.W.-1) being his sister-in-law (*Bhabhi*), was also present at Village – Bhaurakala (when he received information of the occurrence). They started for the place of occurrence, in separate vehicles. He further confirmed, when he reached the place of occurrence, the dead body of the deceased was lying on his bed. The police were already present. He also confirmed the presence of other persons including other family members of the deceased.

31. Next, Ms. Praveen a first cousin of the deceased was examined as P.W.-4. She claimed to have witnessed the extra-judicial confession made by the appellant- admitting to P.W.-1 that she had made a mistake. Though she was cross-examined on behalf of the present appellant, however, she was not questioned as to the extra-judicial confession described to have been witnessed by her.

32. Next, Dr. R.P. Singh who conducted the post mortem was examined as P.W.-5. He proved the cause of death as also *ante mortem* injuries noted in the post mortem.

33. Next, Narendra Kumar, Office In-Charge, Field Unit, was examined as P.W.-6. He proved that he reached the place of occurrence about 03:00 a.m. on 11.04.2013 and took photographs of the crime scene as also collected samples. During his cross-examination he admitted that fingerprints were not lifted.

34. Next, Narsingh Dubey (Constable Clerk) was examined as P.W.-7. He proved the '*chik*' FIR.

35. Next, S.O. Rajpal Singh was examined as P.W.-8. He proved the '*Panchayatnama*'. He stated that '*Panchayatnama*' proceeding could not be conducted and completed earlier, though he claimed, he reached the place of occurrence at 03:30 a.m. Yet, the '*Panchayatnama*' proceeding was started at 07:00 a.m. for reason of poor light, earlier. He further proved the crime scene as observed by him. He also proved the recoveries.

36. During his cross-examination by the appellant, he disclosed that he supported the appellant's stand of an intimation received about the occurrence leading to G.D. entry recorded at 03:05 a.m. on 11.04.2013. He confirmed that the '*Panchayatnama*' could not be conducted upto 07:00 a.m., for reason of poor light.

37. Thereafter, Sub-Inspector Bhanupratap Singh (Investigating Officer) was examined as P.W.-9. He proved the investigation. During his cross-examination, he disputed the correctness of the statement of P.W.-2 that she had disclosed to him (during investigation) that the two children, the appellant and the deceased were sleeping on the same bed. However, he recollected that he had been told by the said witness that she and her brother were sleeping on the bed while the deceased was sleeping on a folding bed next to that bed and that the present appellant was sleeping/lying on a '*divan*', in the other room.

38. Similarly, contrary to the statement made by P.W.-2 at the trial, he claimed - she had told him that she had seen Mukesh 'Master' shoot at the deceased and that she could do nothing as she was traumatised by the occurrence.

39. Thereafter, the prosecution evidence was closed. The statement of the accused persons were recorded under Section 313 Cr.P.C. Upon hearing the parties, learned court below has passed the impugned order and convicted the present appellant while acquitting the co-accused Mukesh 'Master'.

40. In these facts, Sri Satish Trivedi learned senior counsel and Sri Sheshadri Trivedi appearing for the appellant would submit, the F.I.R. was lodged wholly belatedly. While the occurrence may have taken place at 1:30 a.m. i.e dead of the night on 10/11.4.2013, the F.I.R. was lodged about 42 hours thereafter at about 8.10 p.m., on 12.4.2013. In that regard, it has been submitted, the Savitri (P.W.-1) who is the mother of the deceased claimed that she had reached the place around the time of preparation of '*Panchayatnama*'. Inordinate delay in lodging the F.I.R. clearly discloses that the entire F.I.R. narration is an afterthought. As to the alleged false implication offered in the F.I.R., reliance has been placed on pre-existing dispute between Savitri (P.W.-1) and the present appellant wherein the said witness admitted that for reason of such disputes, she had stopped living with the deceased and his family members. Later, P.W.-1 filed a civil proceeding against the appellant claiming title in the apartment where the occurrence took place.

41. Second, it has been submitted, no or very weak or in any case inconsistent motive has been assigned to the appellant – the wife of the deceased. Merely because the deceased may not have liked the idea of the appellant pursuing B.Ed course, it may not have offered the appellant any motive to kill the deceased. In fact, that motive was later set up at the

stage of trial. The original motive of illicit relationship allegedly formed by the appellant with Mukesh 'Master' as disclosed in the F.I.R. was clearly given up at the stage of evidence. In any case, the prosecution never proved the existence of illicit relationship formed by the appellant with the said Mukesh 'Master'. In fact, she admitted that the said Mukesh 'Master' was known to the family of Savitri (P.W.-1) from before i.e. since their days spent at Meerut. She also described that the said Mukesh 'Master' helped the deceased and his family buy the apartment in which the occurrence took place.

42. Third, it has been submitted, the prosecution case is wholly false from the beginning. Though the police claims to have learnt about the occurrence soon after it took place, the '*Panchayatnama*' was not prepared from 3.05 a.m. on 11.4.2013 till about 9.00 a.m. That delay was deliberately caused, to allow for a false prosecution narration to arise. In fact, the said '*Panchayatnama*' was drawn at the police station as was proven by the Savitri (P.W.-1). In any case, no FIR came to be registered till very late i.e. till 8.10 p.m. on 12.04.2013, though the first informant (P.W.-1) had reached the place of occurrence in the morning on 11.04.2013.

43. Next, it has been submitted, the statement of the child witness Avni (P.W.-2) is wholly unreliable. She is a tutored witness. There was no source of light in the room where the occurrence took place. Once the police authorities admit that the '*Panchayatnama*' could not be drawn for reason of lack of light, it requires no further proof that there was no source of light. In any case, Avni (P.W.-2) maintained during the investigation that Mukesh 'Master' had killed the deceased. She did a volte-face at the trial. Thus, she first described that the occurrence was caused by the appellant and not Mukesh 'Master'. Mere bald denial was

offered by her with respect to her previous statement recorded during investigation. It is of no use.

44. In any case, her statement made at the trial, is wholly incredible inasmuch as she could not have been present at the time and place of the occurrence and yet escaped unhurt inasmuch as four gun-shots were fired at the deceased who, according to Avni (P.W.-1), was sleeping on a folding cot just next to the bed of the said witness. Her version of the occurrence has also been doubted for the further reason that the deceased had not received any firearm injuries from close range as disclosed by this witness. The medical evidence does not support the deposition of the said witness. Clearly, the said witness had been tutored over a period of two and half year when she remained in the custody of Savitri (P.W.-1) and other family members of the deceased. Since the appellant was in jail, the child witness altered her stand at the trial.

45. Thus, it has been submitted, the occurrence had been caused wholly otherwise. Only because there existed disputes, first Mukesh 'Master' was assigned the role of causing the occurrence, by Savitri (P.W.-1) and Avni (P.W.-2). Later, for reasons of P.W.-1 being won over by Mukesh 'Master', arising from their old acquaintance and reasons not known to the present appellant, wholly false accusation emerged at the belated stage i.e. trial stage wherein Savitri (P.W.-1) changed the motive- from illicit relationship between the appellant and the said Mukesh 'Master' to objection raised by the deceased to the appellant pursuing B.Ed course. More than two years had passed in the meanwhile (from the date of occurrence). At that stage, Avni (P.W.-2) – the solitary eye-witness who also is a child witness, succumbed to tutoring. Thereafter, for the first time, she assigned the role (of causing four gunshots injuries to the deceased), to the present appellant.

46. The entire prosecution story is cooked up from beginning. More than reasonable doubt exists. Therefore, the appellant is entitled to acquittal, at least on a benefit of doubt. In that regard, reliance has been placed on **Murlidhar & Ors. Vs. State of Rajasthan, AIR (2005) SC 2345** to submit that the prosecution having set up a case of direct evidence, it never became open to it to invoke Section 106 of the Evidence Act. Also, reliance has been placed on the decision of the coordinate bench of this Court in **Pawan Kumar Vs. State of U.P., (2017) 3 ADJ 493** wherein the aforesaid decision of **Murlidhar (supra)** was applied and followed.

47. Responding to the above, Sri L.D. Rajbhar, learned AGA would submit, the prosecution story is based on direct evidence. Yet, it has not been disputed by the defence that the occurrence took place inside the dwelling house/apartment jointly occupied by the deceased, appellant and their two children. It is also not disputed to the defence that the occurrence took place at 1:30 a.m. on 12.04.2013. Further, it cannot be doubted that the occurrence took place while the deceased was sleeping on a folding cot covered with a quilt/'Khes'. Four bullet holes on the 'Khes'/quilt, four entry wounds on the vest worn by the deceased; his and the bedding/'Khes', clearly establish that the deceased was shot at while he was sleeping on that folding cot in the manner narrated by the prosecution. The fourth bullet was lodged inside the body of the deceased. It is also not in dispute that the deceased was done to death by four firearm injuries caused by his service pistol which was available inside the apartment where the occurrence took place and that was also recovered from the place of occurrence alongwith three empties of the projectile that caused the occurrence. The ballistic report confirms use of the said service pistol.

48. In such facts, it has been submitted though the prosecution has relied on a solitary eye-witness account and that witness may be described as a 'child witness', yet, there is no rule of law or of prudence that her deposition must be corroborated by any independent witness or other evidence, before the order of conviction may arise or be sustained. Here, the statement of the 'child witness' is wholly corroborated in the first part i.e. with respect to the manner and place of occurrence. As to the assailant, discrepancy being claimed in her account may not be blown out of proportion, to doubt the prosecution story. Insofar as the statement of such 'child witness' (made before the court), is wholly consistent and singular as to the occurrence, no undue reliance may be placed on her alleged statement made to the Investigating Officer (under Section 161 Cr.P.C.), in the absence of any confrontation with such previous statement. Even though the Sub-Inspector Bhanu Pratap Singh, Investigating Officer (P.W.-9) may have maintained that he had recorded the statement of Avni (P.W.-2) correctly in the Case Diary yet, in absence of any effective confrontation offered to Avni (P.W.-2) no benefit may arise to the present appellant.

49. The defence theory was that the occurrence was suicidal. In face of four firearm injuries suffered by the deceased in his abdominal region and later suggestion that it had been caused by Mukesh 'Master', the defence theory is not only baseless but wholly unbelievable and imaginary besides being contradicted. In the context of admitted facts that the occurrence was caused inside the dwelling house/apartment of the appellant with the service pistol of the deceased, no reasonable doubt may be read in the prosecution story, on simple inconsistencies being pointed out by the defence.

50. In the context of direct evidence existing, motive may have remained secondary, if not irrelevant. Here, motive was also established.

At the trial Savitri (P.W.-1) had described two motives to the appellant - one of illicit relationship formed with the co-accused Mukesh 'Master' and the other objection of the deceased to B.Ed course pursued by her. That description arose during her examination-in-chief itself on 03.09.2014. Therefore, it is factually incorrect to allege that the said Savitri (P.W.-1) altered her stand during her cross-examination, after she had been won over.

51. As to delay, it has been submitted, there is no inordinate delay. Clearly, G.D. Entry no. 6 existed containing report of the occurrence then described to be suicidal. It is in that factual background that sometime may have been consumed in registering the FIR as per Written Report. However, there is nothing to doubt that the police reached the place of occurrence at 3:05 a.m. on 12.04.2013. Yet, the '*Panchayatnama*' was drawn in the early hours on 12.04.2013 and the autopsy was also performed on the same date. Therefore, merely because the FIR was formally registered at 08:10 p.m. on 12.04.2013, it may not be claimed that the FIR is doctored.

52. As to the actual occurrence, there existed only one witness namely Avni (P.W.-2), aged about 10 years. Considering her relation with the parties and the trauma that would have arisen both for reason of her relationship with the appellant being her daughter and also for reason of the shock that may have been suffered by her, the clear version of the occurrence arose later. In fact, the appellant may have tried to mislead the investigation by first not correctly reporting the occurrence by describing it as a suicidal occurrence.

53. Other submissions advanced by learned counsel for the appellant have also been repelled. Thus, it has been submitted, Avni (P.W.-2) was woken up from sleep upon hearing the gunshots. She had described that occurrence. As to source of light, it has been submitted, a child of 10

years of age may have made no mistake in identifying her mother as the assailant, she being present in the same room. Then, she did disclose and it cannot be doubted that there was 'zero'/low wattage bulb in that room and further there is nothing to doubt her narration that curtains on the window facing the outside balcony were not drawn and therefore outside light that was entering the room, allowed her to see the occurrence as is unfolded.

54. As to tutoring, the submissions advanced by learned counsel for the appellant have been strongly resisted. It is not a conclusion to be readily drawn. It cannot be disputed that the 'child witness' has made consistent statement against her mother/the appellant. No contradiction arose upon her cross-examination. In absence of confrontation with any previous statement that may have been made by that 'child witness' and in absence of any credible material to infer tutoring, that conclusion may not be drawn, to doubt the prosecution story.

55. Having heard learned counsel for the parties and having perused the record, in the first place, it is an admitted fact between the parties that the occurrence took place inside the dwelling house/apartment jointly occupied by the appellant and the deceased and their two children including Avni (P.W.-2). It is not in doubt that the occurrence took place at 1:30 a.m. on 12.04.2013. It is unrebutted that the deceased was shot at four times in his abdominal region, with his service pistol. That manner of occurrence is not suicidal. The defence theory as to that is inherently impossible. In the first place, the deceased was shot at, four times. Second, he was shot at in his abdominal region. More critically and clinchingly, he was shot at in a manner such that four bullet holes were caused to his clothing/vest and the quilt/'*Khes*' that covered him while he was lying on his bed. Also, correspondingly three holes were proved in the bedding/'*Khes*' on which he was lying. The fourth bullet did not pass

through the body of the deceased. It passed through the quilt/'Khes' and the clothing material of the deceased. It caused an entry wound but it got stuck in the spinal region of the deceased. Therefore, it did not cause any exit wound as may have resulted in another hole in the bedding/'Khes' on which the deceased was lying. Thus, it is proven beyond any doubt that the deceased was shot at four times when he was lying on his cot, covered in a quilt/'Khes'. Such occurrence may never have been caused by the deceased himself. To accept that nature of the occurrence, would be to accept that the deceased was lying on his cot covered with a quilt/'Khes' and he managed to shoot himself four times in his abdominal region with his service pistol. One/first shot itself would have disabled him from shooting himself the second time leave alone three times, thereafter. He being a trained police man, it may be assumed that he would have been aware of the surest way to end ones' life by causing a bullet injury to the most vital part, namely the human brain. Therefore, the defence suggestion that the occurrence was suicidal is wholly unbelievable, if not plainly absurd.

56. Then, the place of occurrence is not disputed. Rather, it is admitted. We may also not lose sight of the fact that keeping in mind the time and place of occurrence being inside the house of the deceased that too in his bed room, that exact place of occurrence did not allow for ease of entry to an outsider, to cause such an occurrence that too with the service pistol of the appellant and to leave without a trace, i.e. without knowledge of the appellant. Section 106 of the Indian Evidence Act apart (that we may examine a little later), it is relevant to note, though the appellant has raised an objection that there is a delay in the FIR being lodged, it is admitted to her that she was present at the time and place of occurrence inasmuch as she was also inside the dwelling house/apartment and therefore would have always been aware of the occurrence. Yet, she lodged no FIR and it is not her case that any obstruction was offered by

any person or authority in her lodging any FIR about the occurrence. Instead, the FIR came to be lodged by Savitri (P.W.-1) (the mother of the deceased) on 12.04.2013.

57. As to the delay, we have carefully examined the record. In that, we find, though the '*Panchayatnama*' is not a piece of substantive evidence, there is no reason to doubt that such '*Panchayatnama*' proceeding began at about 3.05 a.m. on 11.04.2013. The fact that the occurrence took place in the dead of the previous night, it is for that reason that the police authorities chose to complete the '*Panchayatnama*' after sunrise that is about 7:00 a.m. which fact was proven by Sub-Inspector Rajpal Singh (P.W.-8) wherein he stated that the formalities of '*Panchayatnama*' were started at 7:00 a.m. That fact he maintained during his cross-examination. He explained the reason for that delay being poor light condition. He further proved, he was present at the place of occurrence till about 9:00 a.m. No doubt emerged during his cross-examination as may lead us to any doubt that the '*Panchayatnama*' was drawn in the morning of 11.04.2013.

58. Then, there is further no reason to doubt that the recovery of bedding material/'*Khes*', bedsheet and blood soaked quilt/'*Khes*' made on 11.04.2013. Those aspects were duly proven at the trial by Sub-Inspector Rajpal Singh (P.W.-8). Further, there is no reason to doubt that the autopsy was conducted on the dead body of the deceased on 11.04.2013 at 2:15 p.m., upon the dead body of the deceased being handed over to Dr. R.P. Singh (P.W.-5), by the police. Thus, all documentary evidence (as duly proven at the trial) exists that the occurrence took place on 11.04.2013 at about 1:30 a.m. The police were reported of the same and those authorities had swung into action immediately. They had visited the crime scene, conducted the '*Panchayatnama*', made recoveries and in addition also invited the field unit to visit that crime scene.

59. Though the FIR came to be lodged at 08:10 p.m. on 12.04.2013, it cannot be inferred, for reason of that delay the prosecution story is false. Here, we do note that G.D. entry no. 6 was proven narrating, earlier the police had been informed about the occurrence as suicidal. A note to that effect exists on the Case Diary as well, in red ink. Though the defence has claimed delay in lodging the FIR, it admits that the present appellant was the only adult person present inside the dwelling house/apartment where the occurrence took place, she did not lodge any FIR. In such circumstances, though it was open to the police authorities to themselves register a case and not wait for Savitri (P.W.-1) to make a formal Written Report, in face of prompt police action that is seen to have emerged soon after the occurrence and in face of no doubt existing with respect to the completeness of that action involving preparation of 'Panhayatnama', making recoveries of the bedding and other material of the deceased as also of the firearm and the empties as also shattered bullets (used in the assault) and preparation of the autopsy report, the alleged delay in lodging the FIR does not create a doubt as to the truthfulness of the prosecution story.

60. As to the delay in lodging of the F.I.R., the issue has been considered time and again. In **Lalai @ Dindoo and Another Vs. State of U.P. (1975) 3 SCC 273**, a three judge bench of the Supreme Court considered the issue and observed as below:

“6. The only other ground on which Radhey Shyam's evidence was challenged is that though the incident took place at about 10.30 p.m. on the 24th it was not until 11 a.m. on the 25th that Radhey Shyam lodged the first information report. This undoubtedly is an important circumstance but the Sessions Court and the High Court have given a reasonable explanation of the delay. The night was dark, the road was rough and the assault so fierce that Radhey Shyam could not have collected his wits to proceed straightway to the police station. There is no indication in the evidence that the names of the appellants were incorporated in the first information report as a result of any confabulation.”

(emphasis supplied)

61. In **Tara Singh and Others Vs. State of Punjab 1991 Supp (1) SCC 536**, the Supreme Court considered the issue of delay in lodging of F.I.R. It was observed as below:

“4. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report. Of course the Supreme Court as well as the High Courts have pointed out that in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the courts are cautioned to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay. These are all matters for appreciation and much depends on the facts and circumstances of each case. In the instant case there are three eye-witnesses. They have consistently deposed that the two appellants inflicted injuries on the neck with kirpans. The medical evidence amply supports the same. In these circumstances we are unable to agree with the learned counsel that the entire case should be thrown out on the mere ground there was some delay in the FIR reaching the local Magistrate. In the report given by PW 2 to the police all the necessary details are mentioned. It is particularly mentioned that these two appellants inflicted injuries with kirpans on the neck of the deceased. This report according to the prosecution, was given at about 8.45 p.m. and on the basis of the report the Investigating Officer prepared copies of the FIR and despatched the same to all the concerned officers including the local Magistrate who received the same at about 2.45 a.m. Therefore we are unable to say that there was inordinate and unexplained delay. There is no ground to doubt the presence of the eye-witnesses at the scene of occurrence. We have perused their evidence and they have withstood the cross-examination. There are no material contradictions or omissions which in any manner throw a doubt on their veracity. The High Court by way of an abundant caution gave the benefit of doubt to the other three accused since the allegation against them is an omnibus one. Though we are unable to fully agree with this finding but since there is no appeal against their acquittal we need not further proceed to consider the legality or propriety of the findings of the High Court in acquitting them. So far as the appellants are concerned, the evidence against them is cogent and convincing and specific overt acts are attributed to them as mentioned above. Therefore

we see absolutely no grounds to interfere. The appeal is, therefore, dismissed.”

(emphasis supplied)

62. Then in **Ravinder Kumar and Another Vs. State of Punjab (2001) 7 SCC 690**, there was delay of two days in lodging the F.I.R. In that, the Supreme Court made following pertinent observations:

“13. The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein.

14. When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquillity of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident.

15. We are not providing an exhaustive catalogue of instances which could cause delay in lodging the FIR. Our effort is to try to point out that the stale demand made in the criminal courts to treat the FIR vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR.

...

16. In the present case, no doubt, there is apparently a long delay of two days to give information to the police but the bereaved widow was not

absolutely certain that she lost her husband once and for all until her brother-in-law confirmed to her; after identifying the dead body, that the same was that of her husband. The initial tension and suspense undergone by her would have billowed up into a massive wave of grief. It is only understandable how much time a woman, placed in such a situation, would take to reach some level of placidity for communicating to the strangers of what she knew about the last journey of her husband. We therefore find no merit in the contention based on the delay in lodging the FIR.”

63. In the present facts, it cannot be denied that the deceased was done to death on 10/11.4.2013 at about 1.30 a.m. inside his house. At that time the only other adult person present was the appellant alongwith her two children. Savitri (P.W.-1) who is the mother of the deceased arrived in the morning hours on 11.04.2013. However, she had no first hand knowledge of the occurrence. During her cross-examination, she also indicated that it was initially represented to her that the occurrence was suicidal. That statement is corroborated by G.D. entry no. 6. It is also on record that besides the deceased, Savitri (P.W.-1) had a daughter with whom she was not enjoying good relations. Thus, she may have taken time to come to terms with the traumatic occurrence of the killing of her son inside his house. What transpired from 11.4.2013 to 12.4.2013, before the F.I.R. came to be lodged by Savitri (P.W.-1), is an untested fact. Suffice to note that the defence did not cross examine Savitri (P.W.-1) to any extent on the issue of delay in lodging the F.I.R. Once that cross examination is lacking, there is no occasion for the Court to doubt the prosecution story for reason of assumed delay in lodging the F.I.R. In **Dalip Singh and Others Vs. State of Punjab (1953) 2 SCC 36**, though delay was of six and half hour only, yet in the context of the objection raised, we find the following pertinent observation was made by the Supreme Court:

“29. The first information report was made by Punnan (PW 2) herself. It was made very promptly though this was attacked by Mr Sethi. It was made at 8.30 p.m. within 6½ hours of the occurrence at a place 12 miles from the police station. The victims did not die at once and it was only natural that Punnan's first thoughts should have been to tend them. Next, she had to walk part of the distance and the rest she covered in a lorry, and above all she has not been

cross-examined regarding the delay. We consider that a report made within 6½ hours in such circumstances is prompt.

30. Now the important thing about this report is that it names the seven accused, no less and no more, and from start to finish Punnani has adhered to that story without breaking down in cross-examination and without any attempt to embellish it by adding more names; and in this she is supported by Charni (PW 11)."

(emphasis supplied)

64. At the same time, we may note, Section 154 Cr.P.C. reads as under:

"Information in cognizable cases.

154. (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

[Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1960) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer :

Provided further that-

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be video-graphed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.]

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."

65. Then Rule 97 of Chapter 10 Part II of the the U.P. Police Regulations reads as under:

"97. Whenever information relating to the commission of a cognizable offence is given to an officer-in-charge of a police station the report will immediately be taken down in triplicate in the check receipt book for reports of cognizable offences (Police Form No. 341). This step will on no account be delayed to allow time for the true facts to be ascertained by a preliminary investigation. Even if it appears untrue, the report must be recorded at once. If the report is made orally, the exact words of the person who makes it, including his answers to any questions put to him should be taken down and read over to him; he must sign each of the three parts, or if he cannot write, he must make his mark or thumb-impression. If a written report is received an exact copy must be made, but the signature or mark of the messenger need not be taken. In all cases the officer-in-charge of the station must sign each of the three parts and have the seal of the station stamped on each. The triplicate copy will remain in the book; the duplicate copy will be given to the person who makes the oral or brings the written report; the original will be sent forthwith through the Superintendent of Police to the Magistrate having jurisdiction with the original written report (if any) attached.

The practice of delaying first information reports until they can be sent to headquarters attached to special or general diaries is contrary to the provisions of Criminal Procedure Code and is prohibited.

If there is an Assistant or Deputy Superintendent incharge of the sub-division, and stationed at a place other than the headquarters of the district, the original should be sent through him to the Magistrate."

66. Therefore, there was error/slackness on part of the police authorities in registration of the FIR. Though they were aware that a cognizable

offence had been committed, resulting in the unnatural death of the deceased, no FIR was lodged till 41 hours, after the police authorities first gained knowledge of that occurrence.

67. In that light, we find, Savitri (P.W.-1) proved that she received the information about the occurrence at about 2:30 a.m. on 11.04.2013. At that time, she was at Village - Bhaurakala, Muzaffarnagar at a distance of about 100-150 kms. from the place of occurrence. She effectively denied the suggestion that she was living at Delhi, at that time. Merely because she could not recall the phone number on which she had received the information, her statement (as noted above) may not be doubted.

68. In such circumstances, she further disclosed that she alongwith her other family members including Sohanveer Singh (her brother-in-law), the '*panch*' witness started their journey in 2-3 different vehicles. Considering the circumstance in which that journey was undertaken, it is not material that the said Sohanveer Singh may have reached earlier in time, and was nominated as a witness of the '*Panchayatnama*' while Savitri (P.W.-1) reached later. By that time the dead body of the deceased had been taken away by the police, from the place of occurrence.

69. Also, no doubt may be seen to exist for reason of the statement made by Savitri (P.W.-1) that the '*Panhayatnama*' was prepared at the Police Station or that the '*Panch*' witness affixed their signatures thereto at the Police Station. Both Sub-Inspector Rajpal Singh (P.W.-8) and the '*Panch*' witness P.W.-3 categorically proved that the '*Panchayatnama*' was drawn at the place of occurrence. No doubt emerged as to the correctness of those statements, during the cross-examination of those witnesses.

70. Insofar as Savitri (P.W.-1) is not a '*Panch*' witness, her statement to the extent it may be inconsistent to the statement made by Sohanveer Singh (P.W.-3) and Sub-Inspetor Rajpal Singh (P.W.-8), is of no consequence. Since it is not first established that Savitri (P.W.-1) was

present at the time of the '*Panchayatnama*' being drawn and her presence during such proceedings, has not been proven or shown to exist, her statement with respect to '*Panchayatnama*' proceedings is wholly irrelevant. It is not the requirement of law that every statement made by a witness must be first proved to be true before their evidence may be acted upon or relied by Courts. On the contrary, the evidence led by witness must be looked at in entirety to test if it has a “ring of truth” about it. Once that test is satisfied, one or two stray sentences that may be inconsistent, must be ignored. In **State of U.P. Vs. M.K. Anthony, (1985) 1 SCC 505**, the Supreme Court clearly observed that in appreciating oral evidence the Court must ascertain if the evidence of witness, read as a whole, has a ring of truth about it. Once that ring of truth arises, deficiencies, drawbacks and infirmities pointed out in such evidence must be scrutinised as a whole. Against such evaluation, the doubts that may be expressed as to the truthfulness of such evidence may be examined. Thus, it was observed as below :

"10. 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 scrutinise 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. 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. 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. Even honest and truthful witnesses may differ in some details unrelated to the main incident because

power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer."

(emphasis supplied)

71. Further, in **State of U.P. Vs. Krishna Master, (2010) 12 SCC 324**, in the context of oral evidence led by rustic witness, it was observed as below :

"24. The basic principle of appreciation of evidence of a rustic witness who is not educated and comes from a poor strata of society is that the evidence of such a witness should be appreciated as a whole. The rustic witness as compared to an educated witness is not expected to remember every small detail of the incident and the manner in which the incident had happened more particularly when his evidence is recorded after a lapse of time. Further, a witness is bound to face shock of the untimely death of his near relative(s). Therefore, the court must keep in mind all these relevant factors while appreciating evidence of a rustic witness."

(emphasis supplied)

72. Again, in **Prem Prakash @ Lillu & Anr. Vs. State of Haryana, (2011) 11 SCC 687**, it was observed as below :

"19. The evidence, essentially, must be viewed collectively. The statement of a witness must be read as a whole. Reliance on a mere line in the statement of the witness, out of context, would not serve the ends of justice and the conclusion of the court based on such appreciation of evidence could be faulted."

73. Then, as to actual occurrence, the prosecution had relied on a solitary eye-witness namely Avni (P.W.-2). She is the daughter of the deceased and the present appellant. She was ten years of age on the date of occurrence. Before her statement was recorded, questions were put to her by the Court to which she gave intelligent answers. Thereupon, the learned court below assessed her to be a competent witness. In such circumstance, Avni (P.W.-2) clearly stated that the appellant had caused the four firearm injuries (suffered by the deceased), that led to his death. That witness clearly stated that on the night of 10/11.4.2013, her father/deceased returned from duty at about 10 or 11 P.M. Being her mother's/appellant's birthday, he took his family out for a pastry and

burger shop along with Mukesh 'Master'. They ate and returned home. Thereafter, her father put his service pistol in a safe, after repelling her younger brother's inquisitive queries to explain to him the working of that pistol. After that pistol had been thus put away, her parents entered into a quarrel wherein the deceased was asking the appellant to give up her B.Ed studies. In that background, she further disclosed that the deceased lay down on the folding cot besides the bed on which, she, her brother and the appellant, lay. She described the appellant/her mother lay on the bed on the side of her father while there was a window on her side of bed, facing the balcony. After she went to sleep, she woke up on hearing gunfire. In that, she described having seen the present appellant/her mother shoot at the deceased, three to four times. As to source of light, she stated, there was a 'Zero'/low voltage bulb illuminating the room and also there was outside light entering the room, from the window on which the curtains had not been drawn. Thereafter, she described, she was petrified and continued to lay on her bed. However, she observed that her mother/present appellant tried to clean up the blood on the floor with a cloth and throw the same in the house below- belonging to Mukesh 'Master'. She also claimed to have been threatened by the appellant with death, if she chose to tell anybody about the occurrence.

74. During her cross-examination, she candidly stated that she was living with her grand-mother Savitri (P.W.-1), since the occurrence. She also admitted that her other relatives from the side of her deceased father were present in Court and that she came to Court, with them. During her cross-examination, on being questioned as to the presence of Mukesh 'Master', she replied in the negative, by saying he went back to his home after all of them returned from the pastry/burger shop.

75. During her cross-examination, though she maintained her stand as to the occurrence wherein she clearly described that the deceased was

lying on a folding bed covered with quilt/'Khes', she was not confronted with any marked portion of her alleged previous statement made to the police during investigation. The law as to confrontation to doubt the occurrence or credibility of the witness is very clear.

76. In **Tara Singh vs State of U.P., (1951) SCC OnLine SC 49**, two witnesses entered the witness box at the trial and made depositions contrary to their statements recorded earlier under Section 288 Cr.P.C. Yet, they were not confronted with that previous statements made by them. When generally asked about those previous statements (at the trial), they only replied that they were made under coercion. That reply was found to have not met the requirement of Section 145 of the Indian Evidence Act. In that regard, the Supreme Court observed as below:

41. Now, it is evident that one of the main purposes of using the previous statements was to contradict and displace the evidence given before the Sessions Court because until that evidence was contradicted and displaced, there was no room in this case for permitting the previous statements to be brought on record and used under Section 288. Therefore, as these statements were not put to these witnesses and as their attention was not drawn to them in the manner required by Section 145, Evidence Act, they were not admissible in evidence. The observations of the Privy Council in Bal Gangadhar Tilak v. Shrinivas Pandit [Bal Gangadhar Tilak v. Shrinivas Pandit, (1914-15) 42 IA 135 at p. 147 : 1915 SCC OnLine PC 16] are relevant here.

(emphasis supplied)

77. In **Rudder vs State, 1956 SCC OnLine All 141**, a co-ordinate bench of this Court opined, a deposition in Court can or cannot be reconciled with a statement made under Section 161 Cr.P.C. only after the alleged omission is brought to the notice of the witness and he is given an opportunity to explain the same. In that regard, it was observed as below:

“Desai, J. also went on to hold that if the statement under Sec. 162, Cr. P.C. can be reconciled with the deposition in court and can stand with it then there is absolutely no contradiction. The question whether the deposition in court can or cannot be reconciled with the statement recorded under Sec. 161, Cr. P.C. can only be settled after the omission has been brought to the

notice of the witness and the witness has had an opportunity to give his explanation. If after the explanation it appears that the two are reconcilable, it would cease to be a contradiction. But that can happen not only in the case of an omission, but even in the case of an apparent contradiction of positive facts included in the deposition and the statement under Sec. 161, Cr. P.C. There may appear to be a contradiction between the deposition in court and the statement under Sec. 161, Cr. P.C. but when it is put to the witness, he may give an explanation which may reconcile them, whereupon the contradiction may cease to be a contradiction. The mere fact that he may possibly reconcile the two statements, cannot effect the applicability of the proviso to Sec. 162, Cr. P.C. in the case of an omission which is of such a nature that it can be held to be a contradiction.”

78. In **Inder Deo & Anr. vs State, (1958) SCC OnLine All 175**, an issue arose if a statement recorded under Section 288 Cr.P.C. may be treated as evidence if it was not disclosed to the witness (at the time of such statement being recorded), that the Court may use the statement as evidence. While considering the issue, a coordinate bench of this Court noticed non-compliance of Section 145 of the Indian Evidence Act, 1875. Thereupon, relying on **Tara Singh vs State of U.P., (supra)**, a coordinate bench of the Court observed as below:

*“There is, in the present case, yet another difficulty which we have found in the way of properly treating the statements of the two witnesses mentioned above as admissible, if we may use that expression, under Sec. 288, Cr. P.C. and the difficulty we find is that in respect of these statements compliance had not been made of the provisions of Sec. 145 of the Indian Evidence Act. Sec. 288 itself states that evidence was subject for all purposes to the provisions of the Indian Evidence Act. As we have pointed out earlier, specific passages or the particular portions on which the prosecution desired to contradict the witnesses were not read out to the witnesses and they were not afforded an opportunity of explaining those particular or specific passages. The entire statements were read out to the witnesses and they were asked to say what they had to in regard to the entire statements. In our opinion, this was not compliance with the provisions of Sec. 145 of the Indian Evidence Act. A proper compliance of these provisions can only be if the particular passages are put to the witnesses. We may here refer to the decision of their Lordships of the Supreme Court in *Tara Singh v. The State* [1951 A.L.J. 640 : A.I.R. S.C. 441.] wherein their Lordships at pages 446-447 said this:*

“There is some difference of opinion regarding this matter in the High Courts. Sec. 288 Provides that the evidence recorded by the Committing Magistrate in the presence of the accused may, in the circumstances set

out in the section, 'be treated as evidence in the case for all purposes subject to the provisions of the Indian Evidence Act, 1872.' One line of reasoning is that Sec. 145, Evidence Act, is not attracted because that section relates to previous statements in writing which are to be used for the purpose of contradiction alone. Statements of that kind do not become substantive evidence and though the evidence given in the trial can be destroyed by a contradiction of that kind, the previous statements cannot be used as substantive evidence and no decision can be grounded on them. But under Sec. 288, Cr. P.C. the previous statement becomes evidence for all purposes and can form the basis of a conviction. Therefore, according to this line of reasoning Sec. 145, Evidence Act, is not attracted. Judges who hold that view consider that provisions of the Evidence Act referred to are those relating to hearsay and matters of that kind which touch substantive evidence."

In my opinion the second line of reasoning is to be preferred. I see no reason why Sec. 145, Evidence Act, should be excluded when Sec. 288 states that the previous statements are to be 'subject to the provisions of the Indian Evidence Act.' Sec. 145 falls fairly and squarely within the plain meaning of these words. More than that this is a fair and proper view and is in accord with sense of fair-play to which Courts are accustomed.....I hold that the evidence in the Committal Court cannot be used in the Sessions Court unless the witness is confronted with his previous statement as required by Sec. 145, Evidence Act..... but if the prosecution wishes to go further and use the previous testimony to the contrary as substantive evidence, then it must, in my opinion, confront the witness with those parts of it which are to be used for the purpose of contradicting him. Then only can the matter be brought in as substantive evidence under Sec. 288." (The decision of the Supreme Court was given, by Bose, J. and Fazl Ali, J., Patanjali Sastri, J., and Das, J., agreed with that decision.)."

(emphasis supplied)

79. In **Tahsildar Singh & Anr. vs State of U.P., (1959) SCC OnLine SC 17**, six-judge bench of the Supreme Court had the occasion to consider the changes made to Section 162 of the Cr.P.C. The Supreme Court recognized the object to incorporate the amendment to Section 162 Cr.P.C. and Section 145 of the Indian Evidence Act - to protect the accused from any statement made by a witness only before any police authority and to protect the accused from any false statement deposition made at the trial. It was also recognized, such previous statement made to

the police may be used by the accused person to bring out any contradiction that would be of help to the accused and/or to discredit the witness making any statement before the Court. In that regard, in paragraph 17 of the report, it has been observed as below:

“17. At the same time, it being the earliest record of the statement of a witness soon after the incident, any contradiction found therein would be of immense help to an accused to discredit the testimony of a witness making the statement. The section was, therefore, conceived in an attempt to find a happy via media, namely, while it enacts an absolute bar against the statement made before a police officer being used for any purpose whatsoever, it enables the accused to rely upon it for a limited purpose of contradicting a witness in the manner provided by Section 145 of the Evidence Act by drawing his attention to parts of the statement intended for contradiction. It cannot be used for corroboration of a prosecution or a defence witness or even a court witness. Nor can it be used for contradicting a defence or a court witness. Shortly stated, there is a general bar against its use subject to a limited exception in the interest of the accused, and the exception cannot obviously be used to cross the bar.”

(emphasis supplied)

80. Then, in **Rammi vs State of M.P., (1999) 8 SCC 649**, the Supreme Court examined the scope of Section 155 of the Indian Evidence Act and held, the previous statement made by a witness (who later deposes before a Court), may be used to impeach his credibility, in accordance with the Section 155(3) of the Indian Evidence Act. In that, it observed as below:

“25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

155. Impeaching credit of witness.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him—

*(1)-(2)****

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;”

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be “contradicted” would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to “contradict” the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to “contradict” the witness.”

(emphasis supplied)

81. In **Karan Singh vs State of M.P., (2003) 12 SCC 587**, the Supreme Court explained the object of Section 145 of the Indian Evidence Act – to give the witness a chance to explain the discrepancy or inconsistency or to clear up the point of ambiguity or dispute. In that, it observed as below:

“5. When a previous statement is to be proved as an admission, the statement as such should be put to the witness and if the witness denies having given such a statement it does not amount to any admission and if it is proved that he had given such a statement the attention of the witness must be drawn to that statement. Section 145 of the Evidence Act is clear on this aspect. The object is to give the witness a chance of explaining the discrepancy or inconsistency and to clear up the particular point of ambiguity or dispute. In the instant case, Ext. D-4 statement as such was not put to the witness nor was the witness given an opportunity to explain it. Therefore, Ext. D-4 statement, even if it is assumed to be a statement of PW 1 Hari Singh, that is of no assistance to the appellants to prove their case of private defence.”

(emphasis supplied)

82. Then, in **Munna Pandey vs State of Bihar, (2023) SCC OnLine SC 1103**, the three-judge bench of the Supreme Court had the occasion to consider the issue as to the credibility of the prosecution evidence led at the trial, in the absence of such evidence being tested on the anvil of Section 145 of the Indian Evidence Act, 1875-by contradicting the witness with their previous statement (recorded during investigation). Deprecating the practice on part of the prosecution in not doing so and further not appreciating the slackness on part of the defence in that regard, as also

cautioning the Courts to remain vigilant, on that aspect, the Supreme Court observed as below:

41. It was the duty of the defence counsel to confront the witnesses with their police statements so as to prove the contradictions in the form of material omissions and bring them on record. We are sorry to say that the learned defence counsel had no idea how to contradict a witness with his or her police statements in accordance with Section 145 of the Evidence Act, 1872 (for short, 'Evidence Act').

42. The lapse on the part of public prosecutor is also something very unfortunate. The public prosecutor knew that the witnesses were deposing something contrary to what they had stated before the police in their statements recorded under Section 161 of the CrPC. It was his duty to bring to the notice of the witnesses and confront them with the same even without declaring them as hostile.

43. The presiding officer of the Trial Court also remained a mute spectator. It was the duty of the presiding officer to put relevant questions to these witnesses in exercise of his powers under Section 165 of the Evidence Act. Section 162 of the CrPC does not prevent a Judge from looking into the record of the police investigation. Being a case of rape and murder and as the evidence was not free from doubt, the Trial Judge ought to have acquainted himself, in the interest of justice, with the important material and also with what the only important witnesses of the prosecution had said during the police investigation. Had he done so, he could without any impropriety have caught the discrepancies between the statements made by these witnesses to the investigating officer and their evidence at the trial, to be brought on the record by himself putting questions to the witnesses under Section 165 of the Evidence Act. There is, in our opinion, nothing in Section 162 CrPC to prevent a Trial Judge, as distinct from the prosecution or the defence, from putting to prosecution witnesses the questions otherwise permissible, if the justice obviously demands such a course. In the present case, we are strongly of the opinion that is what, in the interests of justice, the Trial Judge should have done but he did not look at the record of the police investigation until after the investigating officer had been examined and discharged as a witness. Even at this stage, the Trial Judge could have recalled the officer and other witnesses and questioned them in the manner provided by Section 165 of the Evidence Act. It is regrettable that he did not do so.

(emphasis supplied)

83. In Birbal Nath vs State of Rajasthan & Ors., (2023) SCC OnLine SC 1396, it has been observed as below:

“19. Statement given to police during investigation under Section 161 cannot be read as an “evidence”. It has a limited applicability in a Court of Law as prescribed under Section 162 of the Code of Criminal Procedure (Cr.P.C.).

20. No doubt statement given before police during investigation under Section 161 are “previous statements” under Section 145 of the Evidence Act and therefore can be used to cross examine a witness. But this is only for a limited purpose, to “contradict” such a witness. Even if the defence is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness. It is here that we feel that the learned judges of the High Court have gone wrong.”

(emphasis supplied)

84. Recently, in **Alauddin & Ors. vs State of Assam & Anr., (2024) SCC OnLine SC 760**, the Supreme Court again considered the manner in which a prosecution witness may be cross-examined with the help of their prior statement. Referring to Section 162 of the Cr.P.C. and Section 145 of the Indian Evidence Act, the Supreme Court has observed as below:

“6.

The basic principle incorporated in sub-Section (1) of Section 162 is that any statement made by a person to a police officer in the course of investigation, which is reduced in writing, cannot be used for any purpose except as provided in Section 162. The first exception incorporated in sub-Section (2) is of the statements covered by clause (1) of Section 32 of the [Indian Evidence Act, 1872](#) (for short, ‘Evidence Act’). Thus, what is provided in sub-Section (1) of Section 162 does not apply to a dying declaration. The second exception to the general rule provided in sub-Section (1) of Section 162 is that the accused can use the statement to contradict the witness in the manner provided by Section 145 of the Evidence Act. Even the prosecution can use the statement to contradict a witness in the manner provided in Section 145 of the Evidence Act with the prior permission of the Court. The prosecution normally takes recourse to this provision when its witness does not support the prosecution case. There is one important condition for using the prior statement for contradiction. The condition is that the part of the statement used for contradiction must be duly proved.”

(emphasis supplied)

85. Specifically, with respect to Section 145 of the Indian Evidence Act, the Supreme Court observed as below:

“8.

The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross-examined by asking whether his prior statement exists. The

second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the contradictory part of his previous statement is proved the contradictions can be said to be proved. The usual practice is to mark the portion or part shown to the witness of his prior statement produced on record. Marking is done differently in different States. In some States, practice is to mark the beginning of the portion shown to the witness with an alphabet and the end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was shown to the witness. Which part of the prior statement is shown to the witness for contradicting him has to be recorded in the cross-examination. If the witness admits to having made such a prior statement, that portion can be treated as proved. If the witness does not admit the portion of his prior statement with which he is confronted, it can be proved through the Investigating Officer by asking whether the witness made a statement that was shown to the witness. Therefore, if the witness is intended to be confronted with his prior statement reduced into writing, that particular part of the statement, even before it is proved, must be specifically shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the cross-examination of the concerned police officer. The object of this requirement in Section 145 of the Evidence Act of confronting the witness by showing him the relevant part of his prior statement is to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness.”

(emphasis supplied)

86. Also, recently, in **Lavkush vs State of U.P., (2024) SCC OnLine All 7674**, a coordinate bench of this Court also had the occasion to consider the manner of confrontation of a witness with his previous statement, in accordance with the Section 145 of the Indian Evidence Act, 1875. In that, it was observed as below:

“37.

The basic principle incorporated in sub-Section (1) of Section 162 is that any statement made by a person to a police officer in the course of investigation, which is reduced in writing, cannot be used for any purpose except as provided in Section 162. The first exception

incorporated in sub-Section (2) is of the statements covered by clause (1) of Section 32 of the [Indian Evidence Act, 1872](#) (for short, 'Evidence Act'). Thus, what is provided in sub-Section (1) of Section 162 does not apply to a dying declaration. The second exception to the general rule provided in sub-Section (1) of Section 162 is that the accused can use the statement to contradict the witness in the manner provided by Section 145 of the Evidence Act. Even the prosecution can use the statement to contradict a witness in the manner provided in Section 145 of the Evidence Act with the prior permission of the Court. The prosecution normally takes recourse to this provision when its witness does not support the prosecution case. There is one important condition for using the prior statement for contradiction. The condition is that the part of the statement used for contradiction must be duly proved.

38. When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under Section 161(1) or Section 164 of [CrPC](#) has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under Section 161(1) or Section 164 of [CrPC](#), it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the Police, which he states before the Court in his evidence. The explanation to Section 162 [CrPC](#) indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the cross-examination.

39. ...

The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross-examined by asking whether his prior statement exists. The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the contradictory part of his previous statement is proved the contradictions can be said to be proved. The usual practice is to mark the portion or part shown to the witness of his prior statement produced on record. Marking is done differently in different States. In some States, practice is to mark the beginning of the portion shown to the witness with

an alphabet and the end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was shown to the witness. Which part of the prior statement is shown to the witness for contradicting him has to be recorded in the cross-examination. If the witness admits to having made such a prior statement, that portion can be treated as proved. If the witness does not admit the portion of his prior statement with which he is confronted, it can be proved through the Investigating Officer by asking whether the witness made a statement that was shown to the witness. Therefore, if the witness is intended to be confronted with his prior statement reduced into writing, that particular part of the statement, even before it is proved, must be specifically shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the cross-examination of the concerned police officer. The object of this requirement in Section 145 of the Evidence Act of confronting the witness by showing him the relevant part of his prior statement is to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness.

40. ...

It must be noted here that every contradiction or omission is not a ground to discredit the witness or to disbelieve his/her testimony. A minor or trifle omission or contradiction brought on record is not sufficient to disbelieve the witness's version. Only when there is a material contradiction or omission can the Court disbelieve the witness's version either fully or partially. What is a material contradiction or omission depends upon the facts of each case. Whether an omission is a contradiction also depends on the facts of each individual case."

87. In absence of any confrontation offered to the said witness with any previous statement that may have been made by her, we are unable to read any reasonable doubt in her statement made to the Court. Merely because Bhanu Pratap Singh (P.W.-9) may have asserted otherwise, would be of no avail. That statement of the Investigating Officer cannot be read to discredit witness of fact - Avni (P.W.-1). Her statement is found to be wholly credible and free from any doubt.

88. As to the statement made by Avni (P.W.-2) that she had first accused her mother of having caused the occurrence, in Court, besides what had been noted above, we are also of the opinion that by making that statement, the said child witness did not admit that she was a making statement to the Court, contrary to her statement made earlier. She only

stated that before making that statement (to the Court), she had not made any other statement to the Court.

89. Then, though no corroboration may be required before such statement made by Avni (P.W.-2), a child witness may be acted upon, yet, there is enough corroborative material that brings out the correctness of the narration made by her. In the first place, the occurrence is of inside the house of the appellant. The presence of Avni (P.W.-2) is wholly natural. In that, she disclosed that she along with her brother had gone off to sleep on the bed along with her mother, in the same room where the deceased went to sleep on a folding cot next to the bed, on the side where the the appellant lay down for sleep. That description is quite natural and such as may normally exist in many Indian households. She further disclosed that the deceased was covered with a quilt/ 'Khes', at the time of occurrence. That fact description is corroborated by four bullet holes in the quilt/ 'Khes' recovered. Considering that the deceased was sleeping on a separate folding cot and the appellant was described to have shot on him on that cot and not on the bed of which Avni (P.W.-2) and her brother were sleeping, there is nothing inherently unbelievable or doubtful. How the assailant chooses to cause an occurrence is not for the Court to speculate. What is of relevance is whether a credible and trustworthy account of the occurrence exists. At most, the Court may also ascertain (to be doubly sure) that corroborative facts are not inconsistent to that narration. Here, such credible and trustworthy account was offered by Avni (P.W.-2). Second, all shots fired from the service pistol of the deceased hit him in his abdominal region. Not one escaped him. Corroborative material in the shape of holes in the quilt/'Khes', clothes of the deceased and exit wound on the bedding/'Khes' as also one bullet found lodged inside the body of the deceased confirm that no shot was fired as may have gone to hit Avni (P.W.-2) who was asleep on a nearby bed. Thus, the statement of Avni (P.W.-2) has a "ring of truth" about it.

Her statement as to the occurrence is also corroborated by the recoveries, duly proven at the trial.

90. Here, we also take note of the fact that the defence does not dispute that no one else was present in the dwelling house or the apartment where the occurrence took place. Though learned counsel for the appellant have been at pains to submit that the presumption under Section 106 of the Indian Evidence Act may not be relied in a case of direct evidence, at the same time, in **Murlidhar (supra)**, facts were otherwise. The basic prosecution allegation that the deceased was dragged to their house by the assailants could not be proved. Therefore, the basis to apply Section 106 of the Indian Evidence Act, was found lacking. In that fact, the accused persons could not have been thereafter burdened to offer any explanation. Since the basic allegation of the deceased having been dragged away by the assailants was not proved, the stage of application of Section 106 Indian Evidence Act, did not arise.

91. Equally, the ratio contained in the decision of a coordinate bench in **Pawan Kumar (supra)** is inapplicable to the facts of the present case. In that case, death had been caused inside the house of the accused. He was the husband of the deceased. As to the occurrence, prosecution first led direct evidence of the mother of the deceased and other persons having seen the accused strangle the deceased. At the same time, all other witness of fact were declared hostile. They did not prove the occurrence through direct evidence. As to the presumption arising under section 106 of Indian Evidence Act, that was found inapplicable as during her cross-examination, the mother of the deceased further described that the accused first quarrelled with the deceased and assaulted her as also his own father. Thereafter he left his house. The said witness alongwith the father of the deceased also left the house to make a report at the police station, about the physical assault committed by the accused. They left the

deceased at that house, while she was alive. On returning, they found the deceased lying dead. Once the prosecution witness herself dislodged the presence of the accused from the house, rebuttable presumption under Section 106 Indian Evidence Act was found inapplicable.

92. In that regard, it may be relevant to take note of the following pertinent observation of the Supreme Court in **Trimukh Maroti Kirkan Vs. State of Maharashtra (2006) 10 SCC 681**:

“15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.”

93. In the present facts, it is not doubted by the defence that the occurrence took place inside the dwelling house/apartment of the deceased. It is proven beyond doubt that the time of occurrence is about 1.30 midnight. It is also proven that before the occurrence the deceased, appellant, their two children and Mukesh ‘Master’ had gone out for birthday treat on the occasion of the birthday of the present appellant. While the appellant and her family returned home, Mukesh ‘Master’ went back his home/apartment in the same block/building. It is also proven that the deceased and the appellant quarrelled thereafter. At no point any other evidence was led to establish that the appellant left the house/apartment after that quarrel or before the occurrence. It was also not proven by the prosecution or through any other evidence that any other person entered or left that house/apartment after the deceased, the appellant as may have caused the occurrence.

94. In such circumstances, the burden did arise on the appellant to give a cogent explanation as to how the offence was committed. The only explanation offered by her was that the occurrence was suicidal. That explanation has been found to be unbelievable, bordering the absurd. In the absence of any other explanation furnished, the rebuttable presumption arising under Section 106 Indian Evidence Act became absolute. To the extent direct prosecution evidence is consistent to that presumption, we do not find any error committed by the learned court below, in relying on that presumption, as well.

95. Clearly, it is not the law that the prosecution may rely on Section 106 Indian Evidence Act only in cases of circumstantial evidence and/or it may not rely on Section 106 Indian Evidence Act where it leads direct evidence. As noted above, the provision is a rule of evidence. It may be relied to prove an individual fact. It may be inapplicable if the conditions for its applicability are disproved. Here, no such fact has been proven either to establish that the appellant had left the house/apartment before the occurrence or that any one else had entered the house before the occurrence. On the other hand, the prosecution clearly proved that the service pistol of the deceased, used in the assault was kept inside a safe by the deceased before he lay down to sleep. Access to that weapon of assault may have remained only with the appellant and not her minor children who in any case were incapable of making use of such weapon. Thus, the defence has miserably failed to explain how such an occurrence could ever have taken place in the dead of the night when the deceased and the appellant herself along with two minor children born to the parties were the only persons present inside that apartment. It is not the case of the defence that a third party had broken into the house or was otherwise present and that such person may have caused the occurrence.

96. In view of such credible ocular evidence, duly proven, the issue of motive is not required to be established. In any case, it is wholly wrong to assert (on part of the appellant) that Savitri (P.W.-1) changed her stand during her cross-examination after being won over by Mukesh 'Master'. Looking at her statement made during her examination-in-chief, she had attributed dual motive to the appellant namely - 'her illicit relationship with Mukesh 'Master' and her quarrel with the deceased with respect to her pursuing B.Ed course.' Though Savitri (P.W.-1) may not have wholly supported the allegation of illicit relationship, she maintained the motive arising the acrimonious relationship between the deceased and the appellant wherein the deceased was opposed to the appellant pursuing B.Ed course.

97. Appeal lacks merit. It is accordingly **dismissed**.

98. The appellant – Smt. Raj is on bail. Her bail bonds are cancelled and her sureties discharged. She may surrender forthwith. Failing that, Chief Judicial Magistrate, Ghaziabad is directed to get the appellant arrested and to send her to jail, to serve out the remaining sentences.

99. Let a copy of this order be communicated to the Chief Judicial Magistrate, Ghaziabad through Registrar (Compliance) of this Court, for necessary compliance.

100. Let the trial court record be returned forthwith alongwith a copy of this order.

Order Date :- 16.04.2025

Faraz/SA/Prakhar/Abhilash

(Dr. Gautam Chowdhary, J.) (S. D. Singh, J.)