

Court No. - 45

Case :- CRIMINAL APPEAL No. - 4982 of 2019

Appellant :- Rajesh Kumar @ Pappu

Respondent :- State of U.P. and Anr.

Along With

Case :- CRIMINAL APPEAL No. - 5346 of 2019

Appellant :- Radhey Shyam Lal

Respondent :- State Of U.P. And Anr.

And

Case :- CRIMINAL APPEAL No. - 5347 of 2019

Appellant :- Pratap And Anr.

Respondent :- State Of U.P. And Anr.

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Dr. Gautam Chowdhary,J.

1. Heard Sri V.P. Srivastava, learned Senior Counsel assisted by Sri Santosh Kumar Rai and Ms. Neeja Srivastava, learned counsel for the appellants in the instant as well as in connected appeals, Sri L.D. Rajbhar, learned A.G.A. for the State and Sri Praveen Kumar Singh, learned counsel for the informant and perused the lower Court record.

2. The present appeals arise from the judgement and order dated 16.07.2019 passed by Sri Pradeep Kumar Singh, IInd, Special Judge (SC/ST) Varanasi in S.T. No. 212 of 2019 (State Vs. Radhey Shyam, Pratap Singh Jagarnath and Rajesh Kumar) whereby all the accused appellants have been convicted as below:-

Sl. No.	Name of accused/appellants	Special Session Trial No.	Case Crime No.	Conviction u/s	Sentence
1.	Rajesh Kumar alias Pappu	212 of 1999	27 of 1998	302/34 & 201 IPC and Section 3(2) (5) SC/ST (PA), Act	Life Imprisonment along with fine of Rs. 50,000/- in default in payment of fine to undergo for additional simple imprisonment of three months. 07 years R.I. along with fine of Rs. 20,000/- and in default in payment of fine to further undergo one month simple imprisonment.
2.	Radhey Shyam Lal	212 of 1999	27 of 1998	302/34 & 201 IPC and Section 3(2) (5) SC/ST (PA), Act	Life Imprisonment along with fine of Rs. 50,000/- in default in payment of fine to undergo for additional simple imprisonment of three months. 07 years R.I. along with fine of Rs. 20,000/- and in default in payment of fine to further undergo one month simple imprisonment.
3.	Pratap	212 of 1999	27 of 1998	302/34 & 201 IPC and Section 3(2) (5) SC/ST (PA), Act	Life imprisonment along with fine of Rs. 50,000/- and in default in payment of fine to further undergo for simple imprisonment of three months. 07 years R.I. along with fine of Rs. 20,000/- and in default in payment of fine to further undergo one month simple imprisonment.
4.	Jagannath	212 of 1999	27 of 1998	302/34 & 201 IPC and Section 3(2) (5) SC/ST (PA), Act	Life Imprisonment along with fine of Rs. 50,000/- in default in payment of fine to undergo for additional simple imprisonment of three months. 07 years R.I. along with fine of Rs. 20,000/- and in default in payment of fine to further undergo one month simple imprisonment.

3. The prosecution story emerges on the strength of Written Report dated 24.02.1998 Ex.Ka.-1 submitted by Sri Shyam Narain (PW.1 at the trial) written by the scribe Raja Ram (not examined at the trial). On the said Written Report, the First Information Report (F.I.R. in short) was registered in Case Crime No. 27 of 1998 under Sections 302/34 I.P.C. and 3 (1)V SC/ST Act at Police Station Dhanapur, District Chandauli, against the named accused persons i.e. the present appellants. In that, it was disclosed that the appellant Radhey Shyam bore animus towards the first informant and his family. Two days prior to the occurrence, the appellant Pratap Kumhar had tried to unlawfully take away the trolley of Panna Lal, the brother of the informant. That was opposed by Panna Lal. Then, the appellant Pratap Kumhar abused Panna Lal. The deceased Mohan Ram also reprimanded Pratap Kumhar. At that time, the latter threatened to kill Mohan Ram. In that background, it was alleged, on the intervening night of 21/22.04.1998, all the appellants killed Mohan Ram and his wife Bodha Devi (second deceased), at about 01:00 A.M. on 22.04.1998, while the two were sleeping near the pumping set of Kamla Singh who had engaged the two deceased, to guard his agricultural field etc. Upon hearing gun fire, the informant Shyam Narain Ram (P.W.1) along with Ram Dular (P.W.2 at the trial), who were harvesting wheat crop, rushed towards the well of Kamla Singh. From near the place of occurrence, they saw (in the light of an electric bulb installed on the well), Radhey Shyam Lal armed with a gun, Pratap Kumhar armed with a country made pistol, Jagannath and Pappu alias Gandhi armed

with '*danda*' etc., dragging the two deceased towards the well. They also disclosed the appellants threw the deceased into the well. The F.I.R. last narrates, having seen that occurrence, the informant and Ram Dular were petrified. They reached the well after the assailants/appellants had left. A lot of villagers gathered at the same time, at the place of occurrence. However, the occurrence being of night, the F.I.R. could not be lodged, immediately.

4. On 22.04.1998, the police made four recoveries. One blood stained body cloth/'*Gamcha*' (not referable to the deceased), was recovered from the place of occurrence. It is Ex.Ka.-5. Second recovery was made, of a licensed S.B.L. Gun, against licence no.48608 belonging to the appellant Radhey Shyam Lal. That recovery was made from the house of the said appellant, along with two live cartridges. That Recovery Memo is Ex. Ka.-6. Third recovery was made also on 22.04.1998, of three empties of 12 bore, disclosing identification "K.F. SPECIAL", along with pieces of wad etc., along with pellets, from the place of occurrence. That Recovery Memo is Ex. Ka.-7. The fourth recovery was made of blood stained and plain earth from the place of occurrence. It is also dated 22.04.1998. That Recovery Memo is Ex. Ka.-8.

5. Also, on 22.04.1998 two '*Panchayatnama*' were drawn with respect to the two dead bodies of the deceased Mohan Ram and Bodha Devi. Those documents are Ex. Ka.-9 and 10.

6. Thereupon, autopsy was conducted on the dead body of Mohan Ram 24.04.1998. As to ante-mortem injuries, it was recorded as below:-

- “1. L.W. 4 c.m. X 3.5 c.m. X bone deep present over left side forehead 4 c.m. above the left eye brow.
2. L.W. 3 c.m. X 1 c.m. X bone deep present over the forehead just lateral to mid line towards left side.
3. L.W. 2 c.m. X 1.5 c.m. X bone deep present over the forehead right side adjacent to mid line.
4. Multiple lacerated wound in an area of 5 c.m. X 5 c.m. X bone deep present over top of head 10 c.m. above from the bridge of nose.
5. L.W. 2 c.m. X 1.5 c.m. X muscle deep present back of (4) rug fingers.
6. L.W. 2 c.m. X 1.5 c.m. X muscle deep over the right thumb.
7. L.W. 2 c.m. X 1 c.m. X muscle deep over the back of index finger .
8. L.W. 2 c.m. X 1 c.m. X muscle deep present in an area of right index finger.
9. L.W. 2 cm. X 11.5 c.m. X bone deep present over the middle of occipital report.
10. L.W. 4 c.m. X 3 cm. X bone deep present occipital report 3 c.m. above the injury no.9.
11. L.W. 11 3 c.m. X 2 c.m. X bone deep present over the left side occipital region 3 c.m. away from the injury no.9.
12. Abraded contusion 8 c.m. X 6 c.m. present over back of left forearm.
13. Abraded contusion 6 c.m. X 5 c.m. present over left shoulder joint.
14. Abraded contusion 4 c.m. X 3 c.m. present over right shoulder joint.
15. Contusion 4 c.m. X 3c.m. present over the front of mid line of chest.
16. Abraded contusion 12 c.m. X 10 c.m. present over back of chest including upto back of neck.

7. As to the cause of death, it has been opined as under:

“Death is due to injury to spine & spinal cord.”

8. At the same time, it may be noted, autopsy was first dis-continued on 23.04.1998, for reason no fire arm injury coming to the notice of Dr. R.M. Srivastava, who conducted that autopsy. It also records, thereafter, autopsy was continued on 24.04.1998 under the direction issued by the Chief Medical Officer, Varanasi and upon confirmation by Station House Officer, Dhanapur. For ready reference that recital contained on the autopsy report, reads as under:-

“Note:- Post mortem is not completed on 23.4.98 due to dispute of firearm injury. By the verbal orders of C.M.O. Varanasi P.M. was postponed on 23.4.1998 and by the order of C.M.O. Vns. Congested S/O. Dhanapur called for confirmation at 2 P.M. on 24.4.98.”

9. The autopsy was completed on 24.04.1998. The autopsy report is Ex.Ka.-22.

10. Also on 24.04.1998, another autopsy was conducted on the dead body of deceased Bodha Devi by Dr. S.K.Srivastava. It records the following ante mortem injuries:-

- “1. A lacerated wound 12 c.m. X 3 c.m. X bone deep on the back of skull in occipital region just left side of mid-line.*
- 2. Contusion 15 c.m. X 9 c.m. over forehead.*
- 3. Contusion 9 c.m. X 8 c.m. over occipital region and back o neck.*
- 4. Contusion 6 c.m. X 5 c.m. over the right shoulder.*
- 5. Contusion 6 c.m. X 4 c.m. over left shoulder.*
- 6. Contusion 48 c.m. X 28 c.m. over back of chest including the back of neck.*
- 7. Contusion 10 c.,m. X 5 c.m. on the lateral back of right left 3 c.m. below patells.”*

11. As to the cause of death, it has been opined as under:

“Due to fractured vertebrae and injury to spinal cord.”

12. The fire arm and empties recovered were sent for forensic examination to the Forensic Science Laboratory at Lucknow. In that three empties recovered from the place of occurrence were marked as EC-1, EC-2 and EC-3. According to the forensic expert, one, namely, EC-1 matched with the licenced weapon of Radhey Shyam Lal, an appellant in the instant appeal. However, EC-2 and EC-3 were reported not matched with the licenced weapon of appellant, Radhey Shyam Lal. The FSL report is Ex.Ka.-24.

13. Another serological report was obtained with respect to recovery of blood stained body cloth/‘Gamcha’ and

blouse worn by the deceased Bodha Devi, on which traces of human blood were confined. That is Ex.Ka.-25.

14. Upon completion of investigation two charge sheets were submitted. First, on 02.05.1998, and second on 18.05.2006. In such circumstances upon the trial being committed to the Court of Sessions, the following charges were framed:-

“Firstly:-

That you on 22.04.98 at about 1:00 A.M. at village Nerapur within the jurisdiction of P.S. Dhanapur, District Varanasi at present Chandauli in furtherance of your common intention, committed murder by intentionally or knowingly causing the death of Smt. Bodha Devi and Mohan alias Fazihat and you thereby committed an offence punishable under Section 302 I.P.C. read with Section 34 I.P.C. and within the cognizance of this Court.

Secondly:-

That you on the aforesaid date time and place, knowing (or having reason to believe) that the offence punishable with death of Smt. Bodha Devi and Mohan alias Fazihat has been committed, caused certain evidence of the said offence to disappear with the intention of screening from legal punishment and you thereby committed an offence punishable under section 201 I.P.C. and within the cognizance of this Court.

Thirdly:-

That you on the aforesaid date time and place, not being members of Scheduled Caste or Scheduled Tribe, committed any offence under the Indian Penal Code I.P.C. punishable with imprisonment for a term of 10 years against that deceased Smt. Bodha Devi and Mohan alias Pazihat on the dispute of land on the ground that Smt. Bodha Devi and Mohan alias Fazihat are the members of a Scheduled Caste or Scheduled Tribe and that you thereby committed an offence punishable under section 3(2)(v) of S.C. & S.T. (P.A.) Act and within the cognizance of this Court.”

15. At the trial, besides the above documentary evidence, prosecution sought to rely on the oral testimony of the first informant Shyam Narain Lal (P.W.1) and second eye-witness Ram Dular (P.W.2). No other witness was examined at the trial. Learned Senior counsel for the appellants would submit, three applications were filed by the prosecution before the learned Court below to summon the remaining witnesses. However, the defence took a stand that it was not opposed to the documentary evidence and it admitted the two ‘*Panchayatnamas*’, the two autopsy reports, the two charge sheets and the

Recovery Memos. At the same time, the prosecution as well as informant moved several applications for a direction to the witnesses to appear and testify before the trial. Those applications were rejected.

16. The informant side also approached this Court by filing application under Section 482 Cr.P.C. However, it is admitted, after the interim order lapsed in the light of **Asian Resurfacing of Road Agency Pvt. Ltd. Vs. Central Bureau of Investigation AIR 2018 SC 2039**, (as was in existence then), the trial was concluded. It resulted in conviction of the appellants.

17. Upon challenge, vide order dated 01.11.2023 a co-ordinate bench of this Court set aside the impugned order dated 15/16.07.2019 and remitted the matter to the learned Court below, to decide the same with certain directions, as contained in the order itself.

18. Special Leave to Appeal (Crl.) No. 16282-16284 of 2023 was filed before Supreme Court, by the first informant Shyam Narain Ram wherein the order dated 01.11.2023 was challenged. Vide order dated 21.10.2024, the Supreme Court has set aside the order of the co-ordinate bench of this Court, with the following observations.

“14. Section 294 of the CrPC reads as follows:

“Section 294 – No formal proof of certain documents .

1. Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

2. The list of documents shall be in such form as may be prescribed by the State Government.

3. Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved."

15. A bare reading of the aforesaid provision, in particular, sub-section (3) provides that where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed. That is to say that if the authors of such documents does not enter the witness box to prove their signatures, the said documents could still be read in evidence. Further, under the proviso the Court has the jurisdiction in its discretion to require such signature to be proved. In the present case, the documents filed by the investigating agency were all public documents duly signed by public servants in their respective capacities either as Investigating Officer or the doctor conducting the autopsy or other police officials preparing the memo of recoveries etc. As such the Trial Court had rightly relied upon the same and exhibited them in view of the specific repeated stand taken by the defence in admitting the genuineness of the said documents. In so far as the police papers which had been signed by private persons like the informant, the same had been duly proved.

16. Thus the only job left for the Court was to appreciate, analyse and test the credit-worthiness of the evidence led by the prosecution which was available on record and if such evidence beyond reasonable doubt established the charges, the conviction could be recorded. However, if the evidence was not credit-worthy and worthy of reliance, the accused could be given benefit of doubt or clean acquittal.

17. The Trial Court, after appreciating the evidence, found that the evidence of PW 1 and 2, eye-witnesses to the account, to have fully supported the prosecution story and during the cross-examination, the defence could not elicit anything which could discredit their testimony.

18. Coming back to the applicability of section 294 CrPC, reference may be had to the following judgments of this Court in the case of *Sonu alias Amar vs. State of Haryana* wherein this Court had held in para 30 as follows:

"30. Section 294 of the Cr.P.C. 1973 provides a procedure for filing documents in a Court by the prosecution or the accused. The documents have to be included in a list and the other side shall be given an opportunity to admit or deny the genuineness of each document. In case the genuineness is not disputed, such document shall be read in evidence without formal proof in accordance with the Evidence Act."

19. Further, in the case of *Shamsher Singh Verma vs. State of Haryana*, this Court held in para 14 as under:

"14..... It is not necessary for the court to obtain admission or denial on a document under sub-section (1) to Section 294 Cr.P.C personally from the accused or complainant or the witness. The endorsement of admission or denial made by the counsel for defence, on the document filed by the prosecution or on the application/ report with which same is filed, is sufficient compliance of Section 294 Cr.P.C. Similarly on a document filed by the defence, endorsement of admission or denial by the (2017) 8 SCC 570 (2016) 15 SCC 485 public prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution. In case it is admitted, it need not be formally proved, and can be read in evidence. In a complaint case such an endorsement can be made by the counsel for the complainant in respect of document filed by the defence."

20. Also, this Court in the case of *Akhtar vs. State of Uttaranchal* has held in para 21 as under:

"21. It has been argued that non-examination of the concerned medical officers is fatal for the prosecution. However, there is no denial of the fact that the defence admitted the genuineness of the injury reports and the post-mortem examination reports before the trial court. So the genuineness and authenticity of the documents stands proved and shall be treated as valid evidence under Section 294 of the Cr.P.C. It is settled position of law that if the genuineness of any document filed by a party is not disputed by the opposite party it can be read as substantive evidence under sub-section (3) of Section 294 Cr.P.C. Accordingly, the post-

mortem report, if its genuineness is not disputed by the opposite party, the said post-mortem report can be read as substantive evidence to prove the correctness of its contents without the doctor concerned being examined.” (2009) 13 SCC 722.

21. On a plain reading of section 294 Cr.P.C and its interpretation by this Court in the above judgments, we do not find any error in the judgment of the Trial Court and particularly considering the facts of the present case where the defence repeatedly continued to admit the genuineness of the prosecution documents exempting them from formal proof.

22. In our opinion, the High Court fell in error. Moreover, reliance by the High Court on the case of Munna Pandey vs. State of Bihar was misplaced, because in that case the issue was of fair trial and not of the application of section 294 Cr.P.C. In the case of Munna Pandey (supra), prosecution witnesses were not confronted with their statements under section 161 Cr.P.C. for purposes of contradiction and in such a situation this Court had held that if the same be put to witnesses under section 145 of the Evidence Act, 1872 it would have a bearing and, therefore, remitted the matter to the Trial (2023) SCC OnLine SC 1103 Court for further examination/cross- examination of the prosecution witnesses.

23. For all the reasons recorded above, we allow these appeals, set aside the impugned judgment and order of the High Court and restore the criminal appeals before the High Court to be heard and decided afresh on merits on the basis of material on record.

24. Considering the fact that the incident is of 1998, we request the High Court to make an endeavour to decide the appeals afresh on the basis of the evidence led during the trial as early as possible.

25. The private respondents in all the three appeals who stand convicted under the order of the Trial Court, would surrender within six weeks before the Trial Court and it would be open for them to apply for suspension of sentence before the High Court on admissible grounds in accordance to law, which application would be considered on its own merits uninfluenced by any observations made in this order. We further make it clear that the evidence has not been appreciated by us.”

19. Today, learned Senior Counsel appearing for the appellants, states, the appellants admit all documentary evidence. Statement made by learned Senior Counsel apart, the original record is before us. We find, at the trial, on the statement made by learned counsel for the informant, an order dated 28.05.2005 was passed by the learned court below. It reads :

“Case called out.

Accused persons Radhey Shyam Lal, Pratap Jagannath and Rajesh Kumar @ Pappu @ Gandhi are present in persons on bail with their learned defence counsel Sri P.N. Tripathi.

Remaining cross examination of P.W.-2 Ram Dulare is concluded today.

Learned prosecution counsel Sri Ajai Kumar Singh assisting through public prosecutor Sri Suresh Singh, learned ADGC (Crl.) for State, refused to produce and examine any more witness of fact and prayed for summoning formal witnesses.

Learned defence counsel Sri P.N. Tripathi examined the record of the case in the light of statement of examined fact witnesses and proposed to admit genuineness of prosecution papers sought to be formally proved by the formal witnesses with the prayer for not to summon formal witnesses by dispensing formal proof of the prosecution papers by summoning the formal witnesses. Accordingly, he was allowed. Learned defence counsel admitted genuineness of all prosecution papers, not proved by examined fact witnesses P.W.-1 and P.W.-2. Accordingly, summoning of formal witness is dispensed with and the prosecution papers, of which genuineness is admitted by defence, are exhibited. Accordingly, prosecution evidence is closed. Fix 4.5.05 for recording statement of accused persons u/s 313 Cr.P.C.

*Spl. J. (SC & ST) Act.”
(Emphasis supplied)*

20. At the trial, as to the oral evidence, Shyam Narayan Ram (P.W.-1) stated during his examination-in-chief that his family belongs to a Scheduled Caste. His father Mohan Ram and mother Bodha Devi, himself and his brother used to live together. He described the assailants as the present appellants. They belong to a general caste. He also disclosed that he knew the assailants from before, as they were residents of his village. He further described that the deceased had been engaged by Kamla Singh to guard his crops and pumping set. Therefore, they used to sleep at the pumping set of Kamla Singh.

21. As to the occurrence, he disclosed that the deceased had gone to the pumping set/agricultural field of Kamla Singh on the fateful night. There pre-existed property disputes between the deceased and the assailants. Motivated by that, the assailants, namely, Radhey Shyam Lal and others, bore animus towards the deceased and his family members. He also described the occurrence of a few days earlier. In that the appellant Pratap Kumhar had tried to make forcible use of the tractor trolley of his cousin Panna Lal. That was objected to by the latter at which Pratap Kumhar had hurled verbal abuses at Panna Lal. On reprimand being made by the deceased Mohan Ram, he too had been similarly abused and threatened with death.

22. As to the exact occurrence, he narrated that at the time of occurrence he was harvesting the crops of Kamla Singh along with Dashmi (not examined at the trial) and

Ram Dularey (P.W.-2). As to source of light, he claimed that it was a moon lit night but also there was a lighted electric bulb, at the pumping set of Kamla Singh. On hearing a gun shot, he ran towards the pumping set of Kamla Singh. There was enough light. In that he saw the appellant Radhey Shyam Lal wielding a gun, Pratap Kumhar holding a country-made pistol, Rajesh alias Pappu alias Gandhi and Jagannath armed with '*lathis*'. He further saw all the accused persons assault the deceased and drag them towards the pumping set. The assailants threw the deceased in the well. He further claimed that the occurrence was clearly seen-both by Dashmi and Ram Dularey (P.W.-2). As to the place from where he saw the occurrence, he described it at ten paces from the boundary wall. He further disclosed that he along with others could not react immediately as they feared for their life, having seen the assailants carry out the assault with deadly firearms. They reached the place of occurrence after the assailants had left and found the dead bodies of the deceased lying in the well, hanging from the foundation of the pumping set, inside the well.

23. He further disclosed, he could not immediately rush to the Police Station as he was petrified by the occurrence. However, after day break, he reached the Police Station and lodged the FIR, on the strength of his Written Report, that he duly proved.

24. He also disputed his earlier affidavit claimed to have been executed by him. During his cross examination, he

admitted that he was illiterate and he reiterated the prior occurrence involving the assailant, wherein Pratap Kumhar had abused Panna Lal and the deceased Mohan Ram and used derogatory words for his caste and had also threatened to kill the deceased Mohan Ram brutally. He further stood by his statement that the deceased used to sleep near the pumping set of Kamla Singh for the last 15-20 years as they were engaged by the Kamla Singh to guard his crops and pumping set. He also described a small room besides that pumping set and that his parents used to stay there and visit their residence only for food, etc. He described the boundary wall of the agricultural field of Kamla Singh, about 5-6 feet high with entrance on the northern side.

25. As to the place where the said witness was working on the field of Kamla Singh, he described the same about 40 paces away from the place where the deceased was sleeping. As to the place from where he saw the occurrence, he described it at 10-12 paces from the road besides the pumping set of Kamla Singh. He claimed to have seen the occurrence while hiding himself from the plain view of the assailants/appellants. He further claimed to have concealed himself for about half an hour and to have reached the place of occurrence only after the assailants fled.

26. During his further cross-examination, he described that the scribe Raju Ram (not examined at the trial) was a

resident of nearby village. However, he was present at the time of FIR being lodged.

27. As to the dimensions of the well from where the dead bodies of the deceased were recovered, he described the same was about 5-6 feet wide and about 50-60 feet deep. Both bodies were described found lying on the foundation of the pumping set, inside that well. Those dead bodies were further described recovered by the Police, the next morning.

28. He also claimed that body cloth (*'gamcha'*) recovered from the place of occurrence was that of Pratap Kumhar.

29. He also supported the prosecution story that empties and pellets were recovered from the spot. He confirmed that at the time of recovery of the dead bodies, the dead body of Mohan Ram was absolutely naked and that of the deceased Bodha Devi was naked, except for the upper body cloth/blouse. At last, on suggestion given, he stated that the FIR narration that the deceased had been killed upon being shot at, was correct.

30. Thereafter, Ram Dularey (P.W.-2) was examined. He too described the occurrence in a similar manner as Shyam Narayan Ram (P.W.-1). He also assigned a gun to Radhey Shyam Lal, a country-made pistol to Pratap Kumhar and '*lathis*' to Rajesh alias Pappu alias Gandhi and to Jagannath. He further added that at the time of assault, the assailants hit the deceased with the butt of their firearms and, thereafter dragged them to the pumping set

and threw them inside the well. He further claimed that the occurrence was seen by Shyam Narayan Ram (P.W.-1) and Dashmi as well. He also stated, having witnessed the said occurrence, he feared for his life and concealed himself till the assailants left. Thereafter, he and P.W.-1 reached the well and found the dead bodies of the deceased lying on the foundation of the well.

31. He confirmed that the deceased used to sleep at the place of occurrence, near the pumping set of the Kamla Singh, for the last many years. That he described as 20-21 years.

32. He also confirmed, Radhey Shyam Lal was involved in a property dispute with the deceased for which reason he bore deep animus towards the deceased. He also confirmed that the assailant Pratap Kumhar had abused Panna Lal two days earlier and had used derogatory words for the caste of Panna Lal and the deceased Mohan Ram. He also denied having executed the affidavit to withdraw from the allegations made in this case.

33. During his cross-examination, he further confirmed, the date and time of occurrence, he was harvesting wheat crop of Kamla Singh. He described the location of the well (from where the dead bodies were recovered), to be about 40 paces away from the place where he along with Ram Dularey, Ram Narayan and Dashmi were harvesting wheat crop.

34. It appears, he was further questioned as to the time of the occurrence. In that he gave a description that day was about to break, also that day broke after about two hours. He further stated, the police arrived at about 6-7 a.m. He confirmed, he reached the pumping set at the place of occurrence after heard three gun shots, while he was harvesting wheat crop.

35. As to the location of the well, he also confirmed that the same was inside the boundary wall (around the agricultural field of Kamla Singh). That boundary wall he described to be about 6-7 feet high. However, no question arose either during the cross-examination of this witness or of Shyam Narayan Ram (P.W.-1) if that boundary wall was made of brick and mortar or such as may not have allowed any person to see on the other side of that boundary wall.

36. Thereafter, further question was put to him by the defence, if he could tell if any firearm injury was inflicted on the deceased Mohan Ram and Smt. Bodha Devi. His answer remained in the negative. He also confirmed that the body of the deceased Mohan Ram was discovered naked, while that of the deceased Smt. Bodha Devi was also naked with only upper cloth/blouse present on her dead body.

37. Thereafter, the statements of the appellants were recorded under Section 313 Cr.P.C. Question nos.2, 3 and 10 put to the assailants were similar. In question no.2, the adverse circumstance cited was that the assailants had

caused the occurrence at about 1 a.m. on 21/22.04.1998, wherein Mohan Ram and Smt. Bodha Devi were shot and killed and that they were dragged and thrown in the well.

38. Question no.3 was specifically put to them if they had shot at the deceased and dragged them and had thrown them inside the well.

39. In such circumstances, the learned court below has reached the conclusion that the appellants had caused the occurrence/assault as narrated. Accordingly, it has convicted the appellants under Sections 302/34, 201 of I.P.C. and Section 3(2)(5) of SC/ST Act and sentence them for life imprisonment.

40. On the matter being heard on the earlier occasion, a co-ordinate bench was of the view that the prosecution evidence was not complete. Accordingly, it passed the order dated 01.11.2023. However, as noted above, that order has been set aside by the Supreme Court and the matter required to be decided, on the strength of evidence, that exists on the record.

41. In the above context, learned Senior Counsel for the appellants has first submitted that none had seen the occurrence and none could have seen the occurrence, as it was caused at about 01.00 a.m. in the intervening night of 21/22.04.1998, when the moon was in its waning phase.

42. He has also relied on the earlier order passed by the coordinate bench dated 01.11.2023. He submits, though

that order has been set aside by the Supreme Court on other reason, the submission as to lack of source of light remains. It may be considered, accordingly. In that regard, para 43 of the earlier order dated 01.11.2023 passed by the coordinate Bench, reads as below:

“(43). Moreover there is positive case of the prosecution that at the time of incident around 01.00 in the night they have seen the accused persons in the moonlight and the bulb was giving a sufficient light so as to identify the assailants. In this regard, Shri Srivastava, learned counsel for appellants has shown Hindi Calender (Panchang) that on 21/22.4.1998 on the fateful night, it was Dashmi, Krishna Paksha, Chaitra and on that day the “Chandrodaya” (moonrise) was at 02.46 a.m. and “Chandrast” (moon set) was at 2.35 p.m. Thus, there was no moonlight on the date and time of incident. So far as electricity bulb is concerned, since the counsel for the defence has already accepted the genuineness, it can’t be said with certainty that at the relevant point of time there was uninterrupted power supply. ”

43. To doubt the FIR, narration of P.W-1 and P.W.-2 having seen any part of the assault, learned Senior Counsel has also referred to the proven fact of no gun shot injury noted in autopsy report. Only lacerated wounds and contusions were found, contrary to the FIR narration that the occurrence had been caused with firearms. The fact that the body of the two deceased, who were a couple, were found practically naked, it has been urged, the occurrence was caused wholly, otherwise and in any case in view of the state of the deceased, P.W.-1, who is the son of the deceased, he may not have been present at the time of the occurrence. Also, in such facts, the witnesses could not have been at 40 paces distance from the place where the deceased may have been present, in enjoying private company of each other.

44. It has thus been submitted, the two eye witnesses had not seen the occurrence that the appellants dragged the deceased and threw them inside the well. They may have reached the place of occurrence after the occurrence and

discovered the dead bodies lying inside the well. Yet, they made no effort to retrieve those bodies. Those dead bodies were recovered by the police, the next morning.

45. Second, it has been submitted, extremely weak motive has been assigned. The property dispute cited by the prosecution is non-existing. Whatever dispute existed was with respect to agricultural field etc, had been resolved through legal processes, much prior to the occurrence in favour of the assailants. Therefore, the appellants had no motive to commit the offence.

46. Third, it has been submitted, that the recoveries are not reliable.

47. Last, prejudice has been caused to the appellants as they were not confronted with the alleged adverse circumstance of death caused by assault and deceased being thrown into the well. The only allegation existed of deceased being shot dead. That was the only adverse circumstance indicated in the statement recorded under Section 313 Cr.P.C.

48. On the other hand, learned A.G.A. would submit that the FIR is not an encyclopedia. The informant may not be burdened to disclose the occurrence with exact details and the first informant may also not be prevented to make any statement to elaborately explain the occurrence as may be seen as a departure from the FIR story. At the stage of the FIR being lodged, the primary importance is the disclosure of the occurrence, the place, time and manner of

occurrence, in the generic sense. Where the occurrence is supported by ocular evidence, it burdens the prosecution to name the accused as well. Tested on that parameter, there is no lacunae in the prosecution story, as it unfolded at the trial. The occurrence was preceded with gun fire. In that use of deadly weapons is clearly established. As to the assault, the FIR itself narrates that the deceased were physically assaulted, dragged and thrown inside the well, by the appellants. That prosecution story has found adequate proof, beyond reasonable doubt, at the trial. Both eye witnesses have consistently described the occurrence without any material departure from the narration made or in the FIR.

49. The ocular evidence is wholly corroborated by the medical evidence. Therefore, the prosecution story may not be disbelieved on a simple doubt being expressed by the defence. The fact that no gun shot injury may have been noted in the autopsy report is also of no consequence. Insofar as the prosecution has successfully established that the deceased were intimidated by use of firearm that may have been shot in the air or otherwise as may not have caused any injury to the deceased or as may have missed the deceased, which occurrence was admittedly not seen by either witness, the prosecution story is wholly truthful and credible to the extent it has been stated by both witnesses proved, they heard about 2 or 3 gun shots while they were harvesting the crops of Kamla Singh, at a place described to be 40 paces from the place of occurrence. On hearing such gun shots they ran

close to the place of occurrence but were fearful for their own lives and safety as the assailants were carrying firearms and were assaulting the deceased most brutally. In that, they further disclosed that the assailants, who were four in numbers, dragged the deceased to the pumping set of Kamla Singh and threw them inside it. Having witnessed that, they were petrified and fearful for their lives. Only after the assailants left the place of occurrence, the witnesses gathered enough courage to reach that well, where the bodies of the deceased were found lying on the foundation of the well.

50. Then, it has been submitted, it is not in dispute that involvement of licensed firearm of the appellant Radhey Shyam Lal is proven. Insofar as the recovery of the empty cartridge being EC-1, EC-2 and EC-3 is concerned, there is absolutely no doubt expressed with those recoveries. Therefore, those are absolutely clean recoveries, in law. Insofar as the licensed weapon of the appellant Radhey Shyam Lal is concerned, its Recovery Memo exhibited as Ex.Ka-6 may not be tested on the strict principle of recovery arising under Section 27 of the Indian Evidence Act. It being a licensed weapon of Radhey Shyam Lal and there being no report of its loss or misuse by any person, a presumption exists in law that the same was in the possession of Radhey Shyam Lal at the time of occurrence. That presumption stands confirmed as Radhey Shyam Lal never disputed ownership of that licensed weapon recovered from him. He also did not challenge the recovery of empty EC-1 from the place of occurrence.

Therefore, the lack of disclosure statement in part one and lack of disclosure statement in part two and lack of independent witnesses of the Recovery Memo Ex.Ka-6, is of academic worth and not real. Once the ownership of a licensed weapon is established or is undisputed to the accused, it is for him to explain how his licensed weapon came to be used in the occurrence. In absence of any explanation offered, the ownership of the licensed weapon and its use in the occurrence fixes the presence of the appellant-Radhey Shyam Lal, at the place and time of occurrence, beyond reasonable doubt.

51. Thus, the ocular evidence led by P.W.-1 and P.W.-2 finds wholesome corroboration in the FSL report (Ex.Ka-24) that clearly records that one of the three empties, namely, EC-1, sent for ballistic examination, was fired from the licensed weapon of Radhey Shyam Lal. In absence of any doubt in that regard, the presence of Radhey Shyam Lal in the occurrence must remain undoubted.

52. As to further submission with respect to lack of explanation of clothes on the bodies of the deceased, it has been submitted, the same was not material. Even though the learned court below may have returned a finding on the aspect, it was not necessary for the prosecution to explain that fact, in the context of admitted material facts that the deceased were a couple present at the place where they had been spending their nights, for years. Also, in the absence of any doubt as to the

occurrence, that fact was not material to be established by the prosecution. The defence conducted no cross examination of any substance, to doubt the prosecution story as to the occurrence. Therefore, the fact that the deceased were practically naked, is irrelevant. In absence of any doubt to the place and manner of occurrence, that issue loses its relevance.

53. He further submits, merely because the dead bodies of the deceased may not have been recovered till the next morning, would be of no relevance in light of other proven facts to establish that the occurrence was caused by the appellants.

54. As to source of light, it has been submitted, the occurrence took place close to the pumping set of Kamla Singh. Elaborate cross-examination could not shake the prosecution story on that count. It was established by both eye witnesses that there was a lighted electric light bulb, installed at that pumping station. It offered enough light for the witnesses to identify the assailants at the time of the occurrence being caused. Parties being known from before, no doubt arose as to the identification made by the two witnesses.

55. Learned counsel for the informant has adopted the submissions advanced by learned A.G.A.

56. Having heard learned counsel for the parties and having perused the record, in the first place, especially in view of the order of the Supreme Court, it has to be

recognised that these criminal appeals have to conclude on the strength of evidence existing on record. Though, a coordinate bench was of the view that no final opinion may be expressed till all witnesses are examined, the Supreme Court has clearly opined, otherwise. Therefore, we acknowledge that the conclusion of guilt/conviction or innocence/acquittal has to be reached only on the strength of material evidence available on record. No defect has been noted by the Supreme Court in the conduct of the trial, as may disable the instant proceeding, on that consideration.

57. As to the nature of evidence that exists on record, we find that all documentary evidence led by the prosecution including Ex.Ka-1, Ex.Ka-2, Ex.Ka-5, Ex.Ka-6, Ex.Ka-7, Ex.Ka-8, Ex.Ka-9, Ex.Ka-10, Ex.Ka-21, Ex.Ka-22, Ex.Ka-23, Ex.Ka-24 and Ex.Ka-25 are admitted to the defence, both, in terms of the order dated 28.05.2005 passed by the learned court below (extracted above), and in any case in view of the order dated 21.10.2024 passed by the Supreme Court. Therefore, the lack of formal proof of those documents is of no consequence to the conclusion of the trial. Once, the Supreme Court has ruled to that effect, there may not exist any quarrel between the parties, as to that.

58. As to the FIR and the alleged inconsistency in the oral testimony of P.W.-1 and P.W.-2, we are unable to subscribe to the view suggested by the learned Senior Counsel for the appellants that there is material contradiction. It is

true that in the FIR version a sentence appears that the four assailants killed the two deceased with gun shots. At the same time, the FIR elaborately describes, the assault, wherein it has been disclosed that the deceased were physically assaulted by the four assailants. In that they were also dragged to the pumping set of Kamla Singh and thrown inside the well. Therefore, at the most, it may be said that there were three nature of assault alleged-one of gun shot and the other assault with 'lathhis', 'dandas', etc., and third of the deceased being thrown inside the well, later described to be about 50-60 feet deep. Yet, neither in the FIR nor at the trial any description arose in the ocular evidence, that the first informant or the other ocular witness had seen the appellants shoot at the deceased. Rather, it was alleged, upon hearing gun shots, the witnesses ran to the place of occurrence. From near that place, they saw the appellants assaulting and dragging the deceased to the well and being thrown in it.

59. In **Surjit Singh @ Gurmit Singh Vs. State of Punjab, 1993 Supp (1) SCC 208**, it was observed as below :

"8. ...In this situation the aforesaid misdescriptions/omissions in the FIR about the number of shots fired and the absence of Taljit Singh's injuries or the appellant being not described as a military man become of lesser importance. First Information Report is not an encyclopaedia of the entire case and is even not a substantive piece of evidence. It has value, no doubt, but only for the purpose of corroborating or contradicting the maker. Here the maker was a young woman who had lost her husband before her very eyes. The omission or misdescription of these details in the FIR which was recorded most promptly, within three hours of the occurrence, would not tell on the prosecution case or the statements of the eyewitnesses with regard to the participation of the appellant in the crime. He had taken a leading and prominent part in spearheading and committing it. For these reasons, we are of the view that the High Court was right in convicting the appellant on giving cogent reasons to demolish the reasoning of the Trial Judge and adding thereto reasons of its own."

(emphasis supplied)

60. Hence, in the facts as proven at the trial, no material contradiction arose. Rather, the FIR corroborates the substantive evidence, led at the trial. Thus, the prosecution story emerged first through P.W.-1 the son of the deceased. He categorically stated, he was harvesting the crop of Kamla Singh near the place of occurrence, at about 40-50 paces therefrom, when he heard two gun shots. Similar description came to be made by P.W.-2. He described having heard two-three gun shots. Upon hearing those gun-shots, both witnesses claim to have run up to the boundary wall of the agricultural field of Kamla Singh along with Dashmi, from where they saw that the deceased were being physically assaulted and dragged by Radhey Shyam Lal and Pratap Kumhar, both armed with deadly weapons i.e. firearms along with the other two appellants, armed with '*lathis*'. The second were collectively physically assaulted by the four appellants. In that the deceased were also dragged towards a pumping set of Kamla Singh and thrown inside that well by the appellants. At no stage, i.e. after the two witnesses reached the place from where they saw the occurrence, they described having heard or seen a single gun shot fired at the deceased, by any assailant.

61. Therefore, one stray sentence appearing at the end of the lengthy cross-examination of P.W.-1 that he had rightly disclosed in the FIR that the assailants had killed the deceased by causing gun shot injury, cannot be torn out of the context and read in isolation, to conclude that it contradicts the entire prosecution story, as submitted by

the learned Senior Counsel for the appellants. Similarly, a minor discrepancy whether two or three gun shots were fired, is of no relevance. 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)

62. 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)

63. 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."

64. Here, the entire testimony of P.W.-1, the son of the two deceased, has to be read in entirety. During his entire deposition, he consistently stated, he along with Ram Dularey and Dashmi were harvesting the crop of Kamla Singh, when he heard two gun shots. Thus alarmed, he ran up to about 10 paces away from the place of occurrence and saw what he described. In that he described only a physical assault being made wherein the deceased were also dragged and thrown inside the well by all the appellants. The well was about 5-6 feet wide and 50-60 feet deep. In material parts, the cross-examination did not dislodge and it did not create any doubt as to the truthfulness and completeness of that occurrence.

65. He also clearly described that the appellant Radhey Shyam Lal was holding a gun in his hand while Pratap Kumhar was holding a country-made pistol. Though no recovery of country-made pistol was made, the licensed weapon of appellant Radhey Shyam Lal was recovered on 22.04.1998. Use of firearms is wholly corroborated and proved through recoveries of three empties from the place of occurrence, namely, EC-1, EC-2 and EC-3. In that further material corroboration exists inasmuch as EC-1 was proven [through a ballistic report of the FSL, Lko

(Ex.Ka-24)], that it had been fired from the licensed weapon of Radhey Shyam Lal.

66. As to the recovery of the licensed weapon, as noted above it has been rightly submitted by the learned A.G.A. in the context of recovery of the licensed weapon of Radhey Shyam Lal, a presumption arose as the presence of Radhey Shyam Lal at the place of occurrence upon the ballistic report confirming that the empty EC-1 (recovered from the spot/place of occurrence) had been fired from that licensed weapon. No evidence whatsoever was led by the defence to establish that licensed weapon of Radhey Shyam Lal was not in his possession at the time of occurrence. Also, there is absolutely no doubt as to the recovery of EC-1 from the place of occurrence. Therefore, there is no doubt created as to his presence at the time and place of occurrence. That corroboration clearly exists.

67. Once, the Recovery Memo of the empties is admitted, other things apart, it being a case of licensed weapon, the fact that the disclosure statements part one and part two may be lacking, would fade into insignificance. However recovered, it is not disputed to the defence that the weapon was a licensed weapon of Radhey Shyam Lal that came to be used in the occurrence. He never explained that it was not in his possession.

68. As to source of light, even if we disregard the prosecution story that it was a moon lit night, no doubt emerged during the extensive cross-examination of P.W.-1 and P.W.-2 as to the occurrence caused near the pumping

set of Kamla Singh and that the deceased were sleeping near that place and further, that at the time of the occurrence an electric light bulb was sufficiently illuminating the place of occurrence-offering enough light source to the two witnesses, who saw that occurrence as they described, being 10 paces away from where it was caused. In that, there is absolutely no doubt that the witness knew and recognized the appellants from before, all being residents of the same village.

69. Also no doubt emerged to the presence of Shyam Narain Ram (P.W.-1) and Ram Dularey (P.W.-2), who were harvesting the crop of Kamla Singh, in the nearby fields, as had allowed those witnesses to reach the place of occurrence, and witness the second and third stage of physical assault committed on the deceased. Thus, we find, the evidence led at the trial has a "ring of truth" about it, in all material parts. All four appellants had been causing the occurrence as narrated at the trial.

70. As to what may be considered as a reasonable doubt in **K. Gopal Reddy Vs. State of Andhra Pradesh, (1979) 1 SCC 355**, the Supreme Court observed as below :

"9. ...It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable. "A reasonable doubt", it has been remarked, "does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other: it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reasons [Salmon, J. in his charge to the jury in R. v. Fantle reported in 1959 Criminal Law Review 584] . As observed by Lord Denning in Miller v. Minister of Pensions [(1947) 2 All ER 372] "Proof beyond a reasonable doubt does not mean proof beyond a shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable", the case is proved beyond reasonable doubt, but nothing short of that

will suffice.” In Khem Karan v. State of U.P. [(1974) 4 SCC 603 : 1974 SCC (Cri) 689 : AIR 1974 SC 1567] this Court observed:

“Neither mere possibilities nor remote possibilities nor mere doubts which are not reasonable can, without danger to the administration of justice, be the foundation of the acquittal of an accused person, if there is otherwise fairly credible testimony.”

(emphasis supplied)

71. Further, in **Sucha Singh & Anr. Vs. State of Punjab, (2003) 7 SCC 643**, it was observed as below :

“20. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law. The prosecution is not required to meet any and every hypothesis put forward by the accused. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some inevitable flaws because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. ...Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth.”

(emphasis supplied)

72. Therefore, in such matters, it is not the empirical truth that the court may seek to discover, with the exactitude of a video recording. What is to be ascertained is the truthfulness, the wholesomeness and the completeness of the story narrated by the prosecution witness as may make it (reasonable) doubt-proof. In that, some element of doubt may always survive. An inquisitive, rationale and unprejudiced human mind may always have more queries to doubt any given situation. However, the process of trial and appeal is not to cure or to accommodate all doubts that may arise in a given narration. It is only to test the prosecution story beyond the element of a reasonable doubt.

73. In **Bikau Pandey & Ors. Vs. State of Bihar, (2003) 12 SCC 616**, in cases of direct evidence, motive was found to have changed into inconsequence. It was thus observed as below :

"Even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime."

74. Again, in **State of U.P. Vs. Krishna Master & Ors. (supra)**, it was observed as below :

"70. Further, it is well settled that the prosecution is not supposed to prove motive when prosecution relies on direct evidence i.e. evidence of eyewitnesses. ...Their evidence is found to be trustworthy and unimpeachable. As observed earlier, their evidence does not suffer from major contradiction and/or improvements nor noticeable embellishments have been made by them. As the prosecution has led acceptable eyewitnesses' accounts of the incident, this Court is of the firm opinion that failure to establish motive would not entitle the respondents to claim acquittal."

75. In the absence of any reasonable doubt as to existence of source of light and further in the absence of any doubt resulting during the extensive cross-examination of the two eye-witnesses, who proved the occurrence as narrated at the trial and as was corroborated in part by recovery of EC-1 fired from the licensed weapon (recovered) of Radhey Shyam Lal, we find no material and therefore no reasonable doubt, to disbelieve the prosecution story that the two eye witnesses were prevented from observing the occurrence- they being located about 10 paces away from the place of occurrence. Here it is remarkable, despite those witnesses being extensively cross-examined separately, and despite the fact that they are both simple villagers, besides minor inconsistency/ as number of shots fired (2 or 3), both maintained a consistent stand as to the basic aspects of the occurrence and the source of light.

76. The doubt being raised as to motive loses significance in face of credible ocular evidence existing. Even otherwise no doubt arose during the cross-examination of either P.W.-1 or P.W.-2 as to the occurrence caused two days

earlier when Panna Lal was abused using derogatory terms for his caste, by the assailant Pratap Kumhar.

77. The occurrence also finds corroboration from the admitted autopsy report. Therein multiple injuries of physical assault made, have been noted as may have been caused only upon heavy physical assault caused by more assailants than victims and upon a fall suffered from a height, as proven by the prosecution. Upon both deceased being thrown into a well of depth about 50-60 feet, after being brutally physically assaulted, they suffered grievous injuries to their spinal cords, resulting in their deaths.

78. As to the statement recorded under Section 313 Cr.P.C., the submission may not carry the defence any further, in these facts, as both adverse circumstances of firearm injury caused and of physical assault made and the deceased being thrown inside the well, were confronted to the defence.

79. Section 313 Cr.P.C. contains a provision of law that in effect is *pari materia* to the pre-existing Section 342 of the Code of Criminal Procedure, 1898. In that context, in **Tara Singh vs State, (1951) SCC OnLine SC 49**, it was observed as under:

“38. The whole object of Section 342 is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case

depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned.”

80. In **Jai Dev v. State of Punjab, AIR 1963 SC 612**, a three-judge bench of the Supreme Court elaborated on the test to be applied to determine if that provision of law had been fairly complied with. It was thus observed:

“21. ... The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity.”

81. Then, in **Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793**, another three-judge bench of the Supreme Court observed as below:

“16. ... It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction.”

82. Then, in **Naval Kishore Singh v. State of Bihar, (2004) 7 SCC 502**, it was observed as below:

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“5. The questioning of the accused under Section 313 CrPC was done in the most unsatisfactory manner. Under Section 313 CrPC the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation. No such opportunity was given to the accused in the instant case. We deprecate the practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation. The trial Judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence.”

83. In **Asraf Ali V. State of Assam (2008) 16 SCC 328**, applying the same principle, to Section 313 Cr.P.C., the Supreme Court observed as below:

“Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as a necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.”

84. Next, in **Alister Anthony Pareira vs State of Maharashtra, (2012) 2 SCC 648**, then pre-existing law was noticed. Thereafter, it was observed as below:

“61. From the above, the legal position appears to be this: the accused must be apprised of incriminating evidence and materials brought in by the prosecution against him to enable him to explain and respond to such evidence and material. Failure in not drawing the attention of the accused to the incriminating evidence and inculpatory materials brought in by the prosecution specifically, distinctly and separately may not by itself render the trial against the accused void and bad in law; firstly, if having regard to all the questions put to him, he was afforded an opportunity to explain what he wanted to say in respect of the prosecution case against him and secondly, such omission has not caused prejudice to him resulting in failure of justice. The burden is on the accused to establish that by not apprising him of the incriminating evidence and the inculpatory materials that had come in the prosecution evidence against him, a prejudice has been caused resulting in miscarriage of justice.”

85. That principle of law was again applied and followed by the Supreme Court in **Maheshwar Tigga v. State of Jharkhand, AIR (2020) SC 4535**.

86. In **Raj Kumar v. State (NCT of Delhi), (2023) 17 SCC 95 : 2023 SCC OnLine SC 609**, the Supreme Court summarized the law under Section 313 Cr.P.C., in the following words:

“22. The law consistently laid down by this Court can be summarised as under:
22.1. It is the duty of the trial court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction.
22.2. The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence.
22.3. The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused.
22.4. The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.
22.5. If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding

whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident.

22.6. In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him.

22.7. In a given case, the case can be remanded to the trial court from the stage of recording the supplementary statement of the accused concerned under Section 313CrPC.

22.8. While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered.”

87. More recently, in **Naresh Kumar v. State of Delhi, (2024) SCC Online SC 1641**, the issue of material prejudice caused for reason of non-examination/inadequate disclosure made under Section 313 Cr.P.C., was again considered. Though the principle in law laid down in **Raj Kumar (supra)** was taken note, it was specifically observed as below :

“21. We have already held that whether non-questioning or inadequate questioning on incriminating circumstances to an accused by itself would not vitiate the trial qua the accused concerned and to hold the trial qua him is vitiated it is to be established further that it resulted in material prejudice to the accused. True that the onus to establish the prejudice or miscarriage on account of non-questioning or inadequate questioning on any incriminating circumstance(s), during the examination under Section 313, Cr. P.C., is on the convict concerned. We say so, because if an accused is ultimately acquitted, he could not have a case that he was prejudiced or miscarriage of justice had occurred owing to such non-questioning or inadequate questioning.

22. In the light of the above view of the matter, we are inclined to consider the further question whether the non-questioning on the aforesaid twin incriminating circumstances to the appellant during his examination under Section 313, Cr. P.C., had caused material prejudice to him. The decision of this Court in State of Punjab v. Swaran Singh⁸, constrain us to consider one another factor while considering the question of prejudice. In Swaran Singh's case (supra), this Court held that where the evidence of the witnesses is recorded in the presence of the accused who had the opportunity to cross examine them but did not cross examine them in respect of facts deposed, then, omission to put question to the accused regarding the evidence of such witnesses would not cause prejudice to such an accused and, therefore, could not be held as grounds vitiating the trial qua the convict concerned...”

88. Thus, it may be safely inferred, in the first place, it was a requirement of law to confront the accused with the adverse evidence received against him or the inculpatory circumstances proven by the prosecution, to give the accused an opportunity to offer his response thereto. That remains a necessary concomitant of a fair trial. It inheres a

reflection/extension of the principle *audi alteram partem*, arising from due enforcement of rule of natural justice.

89. First, at the stage of framing of charge, the accused is confronted with the nature of occurrence attributed to him, to allow him fair opportunity to take a stand - whether guilty or not-guilty. Once such accused pleads not-guilty, the trial commences. The trial court receives evidence, to prove the charge framed against the accused, in his presence. It also allows the accused an opportunity to cross-examine the witnesses, appearing to prove various elements of the charge or the occurrence. Upon prosecution evidence being complete, the statement under Section 313 Cr.P.C. is required to be recorded by way of the second stage of compliance of rule of natural justice, to confront the accused with the exact nature of adverse circumstances, found proven against him. Unless inculpatory facts are first confronted to the accused, the risk of prejudice being caused to the accused, at the stage of leading defence evidence, may arise. What prejudice may or may not arise, would depend on individual facts of each case.

90. In the present case, the substantive evidence led at the trial through two eye-witness account, clearly disclosed to the appellants that they had caused the murder of the two deceased by use of firearm, upon physically assaulting the latter near the pumping set of Kamla Singh, and by dragging them to that pumping set and throwing them inside the well. Specific to the requirement of Section 313 Cr.P.C., we also note that

besides the element of shooting at the deceased, it was specifically put (by way of adverse evidence) that the appellants, that they had dragged and thrown the deceased in the well. In that, the adverse circumstance/evidence was not confined or described only to indicate to the appellants that they had first killed the deceased with gunshots and thereafter thrown their dead bodies inside the well. Rather, it was clearly indicated that the deceased were shot at and thereafter dragged and thrown inside the well. To the extent, such adverse circumstances were disclosed to the appellants, we find, no prejudice was caused to them, if the exact cause of death being injuries suffered on physical assault and the deceased being thrown inside to a depth of 50-60 feet, was not specified separately for the purpose of eliciting their statements under Section 313 Cr.P.C.

91. In **Shobhit Chamar & Anr. vs State of Bihar, (1998) 2 SCC 455**, the rule of prejudice to be satisfied by the defence before the order of conviction may be interfered by the higher court (there Supreme Court) for reason of non-compliance of Section 313 Cr.P.C. was examined. In that context, it was observed as below:

“24. We have perused all these reported decisions relied upon by the learned advocates for the parties and we see no hesitation in concluding that the challenge to the conviction based on non-compliance of Section 313 CrPC first time in this appeal cannot be entertained unless the appellants demonstrate that the prejudice has been caused to them. In the present case as indicated earlier, the prosecution strongly relied upon the ocular evidence of the eyewitnesses and relevant questions with reference to this evidence were put to the appellants. If the evidence of these witnesses is found acceptable, the conviction can be sustained unless it is shown by the appellants that a prejudice has been caused to them. No such prejudice was demonstrated before us and, therefore, we are unable to accept the contention raised on behalf of the appellants.”

92. In **Nar Singh vs State of Haryana, (2015) 1 SCC 496**, the Supreme Court had occasion to consider the

effect of non-compliance of Section 313 Cr.P.C. and the courses that become open to the appellate court in face of such defect being claimed by the defence. It was thus observed as below:

“30.1. Whenever a plea of non-compliance with Section 313 CrPC is raised, it is within the powers of the appellate court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for deciding the matter. If the accused is unable to offer the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer.

30.2. In the facts and circumstances of the case, if the appellate court comes to the conclusion that no prejudice was caused or no failure of justice was occasioned, the appellate court will hear and decide the matter upon merits.

30.3. If the appellate court is of the opinion that non-compliance with the provisions of Section 313 CrPC has occasioned or is likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313 CrPC and the trial Judge may be directed to examine the accused afresh and defence witness, if any, and dispose of the matter afresh.

30.4. The appellate court may decline to remit the matter to the trial court for retrial on account of long time already spent in the trial of the case and the period of sentence already undergone by the convict and in the facts and circumstances of the case, may decide the appeal on its own merits, keeping in view the prejudice caused to the accused.”

93. In the present case, besides pointing out the alleged defect in the framing of questions for the purpose of preparations of statement of Section 313 Cr.P.C., no incurable prejudice is shown to have been caused to the defence. In the first place, as noted above, the defence was confronted with the adverse circumstance of brutal assault carried out by all the accused-appellants on the two deceased wherein the latter were also dragged towards the pumping set and thereafter thrown inside the deep well resulting in fatal injury suffered by them. Even in this appeal proceeding, no explanation has been offered, on that count. While it was known to the appellants that after the order of the Supreme Court, the appeal has to be dealt with only on the strength of

material and evidence on record, no explanation is forthcoming. To that extent, no prejudice may be claimed.

94. The fact that the '*panch*' witness Kamla Singh and third eye-witness Dashmi may not have been examined at the trial, is of no consequence. It is not the number of witnesses but the quality of evidence led by the prosecution that dictates the fate of a criminal trial. Here, wholly credible ocular evidence was led by the prosecution. Both witness of fact had seen the occurrence. Their oral evidence remained unshaken at the trial. No reasonable doubt exists to doubt that ocular version. Both depositions satisfy the "ring of truth" test.

95. Plainly, no doubt emerges from the statement made by the accused persons. In view of the above, we find no defect in the order passed by learned court below. The appeals lack merit and are, accordingly, **dismissed**.

Order Date:- 11.3.2025

S.Ali/Anurag/-

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